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(with revised redactions, per this Court's Order, dated July 24, 2017)

**STATE OF MINNESOTA
COUNTY OF CARVER**

**DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION
Case Type: Special Administration**

In re:

**Estate of Prince Rogers Nelson,
Deceased.**

Court File No. 10-PR-16-46

**MEMORANDUM IN SUPPORT OF
MOTION TO APPROVE PAYMENT OF
ATTORNEYS' FEES AND EXPENSES**

Holland & Knight LLP (“H&K” or “Petitioner”), counsel for Tyka Nelson (“Tyka”), hereby submits this memorandum in support of its Motion for an order approving payment of certain of Tyka’s attorneys’ fees and costs from the Estate of Prince Rogers Nelson (the “Estate”) for services performed by H&K related to the negotiation and finalization of confidential business deals entered into by the Estate.

FACTUAL BACKGROUND

H&K was retained on September 23 and formally substituted in as counsel of record for Tyka on September 27, 2016. (Affidavit of Robert Labate (“Affid.”), ¶ 3.) This Motion seeks reimbursement of fees incurred from September 26, 2016 through November 15, 2016. At the time of H&K’s substitution, the Special Administrator on the one hand, and Tyka, Omarr Baker, Alfred Jackson, Sharon Nelson, John Nelson and Norrine Nelson (collectively, the “Nelson Family”), on the other hand, were in a dispute regarding whether the Estate should enter into seven contemplated entertainment deals and whether Nelson Family Representatives should be involved in the negotiation and drafting of long-form agreements for those deals. (Affid., ¶ 4.)

H&K quickly got up to speed on the pending dispute, agreed that additional information was required to evaluate the merits of the proposed deals, participated in drafting briefing on the issue and prepared for and attended the hearing at which, among other things, we asked the Court to allow representatives for the Nelson Family to participate in negotiation of the long-form agreements for each deal. (Affid., ¶ 5.) Subsequently, the Court issued its October 6, 2016 “Amended Order Granting in Part the Special Administrator’s Motion to Approve Recommended Deals & Denying Motion to Void Advisor Agreement” (“Order”). (Affid., ¶ 7.)

The Order approved the concept of the deals that had been advanced by the Special Administrator, but the Court recognized that the proposed deals were “short-form deals” and that further drafting, and perhaps negotiation, needed to take place before the parties could execute a “long-form deal.” (Order, ¶ 2.) The Order also authorized the Nelson Family to appoint representatives (“Representatives”) to offer input on the “long-form deals” and assist in negotiating quid pro quo amendments to the deals. (Affid., ¶¶ 6-7.)

During much of the time period covered by this Application, Robert Labate served as one of the named Representatives. With approval of the Special Administrator, Jorge Hernandez-Toraño, also served in this role because of his extensive knowledge of music industry agreements to assist in providing input on the “long-form deals.” (Affid., ¶ 8.) No prior long-form agreements were provided and analysis of proposed agreements was performed on an expedited basis, thus, Mr. Hernandez-Toraño and Mr. Labate relied on other H&K attorneys to assist in this review and to prepare comments, particularly regarding the financial and operational effects on the Estate over the three to five-year term of such agreements. (Affid., ¶ 9.)

Following receipt of the Order, the Representatives promptly engaged in frequent communication with counsel for the other family members, the Special Administrator, and the Special Administrator’s Entertainment Advisors (the “Advisors”), to offer input and assist in negotiating long-form agreements. (Affid., ¶ 10.)

The Nelson Family, through the Representatives, provided detailed and extensive comments to the Bravado merchandising deal which was the first deal the Advisors indicated would be finalized and to the UMPG long-form agreement, the second deal the Advisors indicated would be approved. (Affid., ¶ 15.)

As Representatives, on October 19, 2016, Mr. Hernandez-Toraño and Mr. Labate travelled to New York to meet with the Advisors to discuss the Bravado and UMPG long-form agreements and, following that meeting, engaged in multiple telephone calls, emails, exchanges of information and re-drafts of the Bravado long-form agreement over several weeks. (Affid., ¶¶ 20-21.) As a result of these efforts, the Bravado deal under consideration is materially better for the Estate than the one advanced by the Special Administrator and its Advisors to the Court on October 6. For instance:

[REDACTED]

[REDACTED]

(Affid., ¶ 22.)

Notwithstanding the success in improving the Bravado deal, a dispute arose surrounding the execution of the UMPG deal. Although the UMPG deal was discussed at the New York meeting at which the Representatives provided extensive comments, no response from the Advisors was ever received. (Affid., ¶ 23.) Although multiple requests for a revised UMPG agreement were made before its execution, it was never received, and there was never an indication from the Advisors or the Special Administrator that they intended to execute the UMPG long-form agreement without showing modifications – or even exhibits, including a loan and security agreement – to the Representatives. (*Id.*) This lapse occurred despite regular communication on other matters between the Representatives and the Special Administrator. (*Id.*) The UMPG agreement was executed days before the Special Administrator notified the Nelson Family or their Representatives, who received notice through a press release issued only hours before the agreement was announced to the public. (*Id.*)

Notwithstanding the Representatives' limited opportunity to provide comments to the UMPG long-form agreement – and no opportunity to review and provide comments to exhibits such as the loan and security agreement and a confidentiality agreement – the Representatives' comments provided substantial benefit to the Estate. For instance, the following are

improvements to the UMPG deal, suggested by the Representatives, that made their way to the final deal:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(Affid., ¶ 24.)

Because of the circumstances under which the UMPG agreement was executed and the Representatives' inability to get obtain information from the Special Administrator about the progress of negotiations, further definition was needed regarding the roles of the respective parties for the remaining deals advanced by the Special Administrator. (Affid., ¶ 25.) A meet and confer between the parties regarding an agreed upon protocol for the remaining negotiations took place but an acceptable resolution was not reached. As a result, Tyka and Omarr Baker prepared and filed a Motion seeking a Protocol under the October 6, 2016 Order ("Protocol Motion"). (Affid., ¶ 31.)

Following the filing of the Protocol Motion, the Court issued its November 8, 2016 Order for Submissions regarding the Protocol Motion which in part, froze the Special Administrator from entering into any additional business contracts until further order of the Court. (Affid., ¶ 32.)

Following the Order, the parties subsequently continued their meet and confer process. (Affid., ¶ 33.) The meet and confer effort brought the parties closer together, and the Special Administrator moved substantially from their original position to avoid a future situation such as UMPG. Unfortunately, an ultimate resolution was not reached and each side submitted their proposed protocol to the Court. (*Id.*) The Court subsequently issued its ruling establishing a protocol under the Order. (Affid., ¶ 34.) As a result of the Motion and subsequent order, the Parties now have further clarity and definition regarding the negotiating process for the remaining four deals which will allow the maximum benefit for the Estate to be reached (as occurred with Bravado). (Affid., ¶ 34.) The Representatives, including Petitioner have now provided substantive comments to the next deal advanced by the Special Administrator- the GMR deal. (Affid., ¶ 26.) Petitioner now seeks reimbursement from the Estate for its efforts related to the entertainment work performed through November 15, 2016.

ARGUMENT

I. Minnesota Law Provides for the Payment of Attorney's Fees, Costs, and Expenses

Where the Services Have Benefitted the Estate

Minnesota law allows for the payment of attorney's fees from the Estate for services rendered on behalf of the Estate where "the services of an attorney for any interested person contribute to the benefit of the estate, as such, as distinguished from the personal benefit of such person." In such cases, the "attorney shall be paid such compensation from the estate as the court shall deem just and reasonable and commensurate with the benefit to the estate from the recovery so made or from such services." Minn. Stat. § 524.3-720; see also *In re Estate of Van Den Boom*, 590 N.W.2d 350, 354 (Minn. Ct. App. 1999) ("Van Den Boom [a remainder

beneficiary], as an interested person, acted for the benefit of the estate by keeping a major asset intact. His attorney is entitled to fees.”).

The Court uses the following factors to determine whether attorneys’ fees sought in a probate proceeding are just and reasonable:

- (1) the time and labor required;
- (2) the experience and knowledge of the attorney;
- (3) the complexity and novelty of problems involved;
- (4) the extent of the responsibilities assumed and the results obtained; and
- (5) the sufficiency of assets properly available to pay for the services.

Minn. Stat. § 525.515(b).

As noted by the Special Administrator in its July 29, 2016 fee petition:

“Where, as here, the Court has extensive experience with a probate matter and there is a voluminous court file recording the work of counsel, the Court is on firm ground to exercise its discretion to determine an award for the reasonable fees and costs. *In re Bush’s Estate*, 230 N.W.2d 33, 38-42 (Minn. 1975) (affirming attorney fee award where the Court was intimately familiar with the estate dispute and work performed by the attorneys); *In re Estate of Weisberg*, 64 N.W.2d 370, 372 (Minn. 1954)(affirming attorney fee award and holding that the size of the total estate is important factor when determining reasonable fee awards).”

The Special Administrator is correct that the Court is well aware of the extraordinary nature of this proceeding and the complexity of the various issues facing the Estate, including a daunting tax bill and one of the most unique collection of assets in Minnesota history, much of which requires significant effort and expertise to monetize. Additionally, the sheer number of individuals claiming to be heirs of the Estate has posed particular challenges for the Special Administrator and the siblings of the decedent who have been left uncertain of their legal status

as the Court sorts through the various legal claims and the Estate attempts to conduct its business.

Given the size, nature, and complexity of the Estate and the number of interested persons involved in this matter, H&K has managed significant undertakings which have benefited the Estate and whoever its beneficiaries ultimately are. These efforts, including assisting in the sophisticated and complex negotiations of entertainment deals advanced by the Special Administrator to ensure the best deal for the Estate, ultimately improved the deals that the Estate entered into. While H&K's efforts will benefit the Estate by helping it achieve the best "deals" possible, Tyka individually has not benefited from H&K's efforts, particularly since Tyka is not yet an adjudicated heir. In the event a will or child of the decedent was (or is) discovered during these intervening months, H&K's entertainment related efforts will have provided no benefit to Tyka whatsoever. Even if Tyka is an heir, H&K's efforts and expertise assisted all of the ultimate heirs. For that reason, H&K seeks reimbursement from the Estate for its efforts.

II. Summary of Time and Labor for Entertainment Related Efforts, the Results of Which Have Benefited the Estate

Petitioner has rendered services and incurred expenses from September 26, 2016 through November 15, 2016, as more fully described and set forth in the concurrently filed Affidavit of Robert Labate. If the Court requests it, H&K will lodge, *in camera*, its invoices for this work with the Court. However, because of attorney-client privilege and attorney-work product protection, only a summary of these efforts is presented here.

A. September 29 Briefing and Hearing

H&K conducted research and prepared and presented arguments at the court hearing on September 29, resulting in the October 6 Order which allowed the Representatives to have input

in the ongoing negotiations for the six entertainment deals advanced by the Estate. (See Affid., ¶¶ 18-19.) These efforts benefited the Estate by providing the collective entertainment expertise of the Representatives to assist in the negotiations, provided a process for allowing the Nelson Family to comment and assist with negotiation of the long-form agreements with an eye on the financial and operational effects of the agreements over their three to five year terms.

B. Review and Comment of Proposed Entertainment Deals

Because of their entertainment law expertise, including prior work representing Grammy award winning producers and artists in similar negotiations, H&K attorneys Robert Labate and Jorge Hernandez-Torano were among the Representatives selected to assist in providing input on the “long-form deals.” The experience of Mr. Labate and Mr. Hernandez-Torano, along with the other professionals for which reimbursement from the Estate is sought is set forth in the accompanying Affidavit of Robert Labate. (Affid., ¶¶ 12-14.)

Following entry of the Court’s Order, H&K extensively reviewed all drafts of the Bravado and UMPG agreements, revised and provided comments and improvements to each. (Affid., ¶¶ 20-24.) H&K has also reviewed and provided comments to the GMR deal. The complexity and sophistication of the work related to the Entertainment deals required the close coordination of lawyers and others across many areas of law and business. Accordingly, H&K engaged in frequent communication with counsel for the other Heirs, the Special Administrator, the Advisors, and the other Representatives appointed to offer input and assistance in negotiating the agreements and to provide updates to Heirs’ counsel. (Affid., ¶ 27.)

The efforts of H&K resulted in a materially better Bravado agreement than the one initially presented to the Court at the September 29 hearing (as fully described above), and a result the Estate benefitted from these efforts. In addition, the comments by the Representatives,

including H&K, on the other remaining proposed deals will ensure the Estate is getting the best terms on the deals advanced by the Special Administrator. And while it is unclear whether the UMPG agreement would have been improved with additional input from the Representatives, the proposals offered by the Representatives on that deal did result in a materially better deal for the Estate. (Affid., ¶¶ 15, 20-22.)

C. Efforts Related to Obtaining Protocol Under October 6 Order

As a result of the surprise completion of the UMPG agreement without the continuing participation of the Representatives, a dispute arose regarding how the negotiations for the Estate on the remaining four entertainment deals would be conducted. H&K undertook significant meet and confer efforts and the preparation of briefing on the issue, which ultimately resulted in an order that provided additional certainty regarding the roles of the parties in the negotiating process. (Affid., ¶¶ 30-37.) These efforts benefited the Estate, by again confirming the role of the Representatives in the negotiation process, and providing a level of certainty to the Heirs and the Estate's partners that the best interests of the Estate were being served by the proposed deals.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court authorize and direct the Special Administrator to pay \$385,101.50 in attorneys' fees and \$2,280.89 in costs to Holland & Knight LLP from the assets of the Estate for its entertainment related efforts.

Respectfully submitted,

Dated: December 12, 2016

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