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STATE OF MINNESOTA — DISTRICT COURT

COUNTY OF CARVER — FIRST JUDICIAL DISTRICT
PROBATE DIVISION

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

In Re:

**The Estate of Prince Rogers Nelson,
Decedent.**

SNJLC'S RESPONSE TO COMERICA'S MOTION REGARDING ESTATE CASH RESERVE, FOR CONSIDERATION OF A DISTRIBUTION PLAN, AND TO SET A PROCESS FOR A PETITION TO APPROVE A FINAL ACCOUNTING AND DISCHARGE

Sharon Nelson, Norrine Nelson, L. Londell McMillan, Charles Spicer and the Co-Trustees of the John. R. Nelson Revocable Trust ("SNJLC") submit this memorandum in response to the motion by Comerica Regarding Cash reserve, for Consideration of a Distribution Plan and to Set a Process for a Petition to Approve a Final Accounting and Discharge.

INTRODUCTION

It has been nearly six years since the death of the decedent, the late great Prince Rogers Nelson. Since such time, two heirs have died and three of the six heirs have transferred their interests in the Estate due, in large part, to financial needs. It is time for the Estate to be distributed so that the heirs – several of whom are elderly – can take control over, and enjoy the benefit of, the Estate assets.

SNJLC and Primary Wave (collectively, the "Beneficiary Group") have worked with Comerica, both directly and through mediation, and have resolved most of the issues that would allow closing of the Estate and distribution of the Estate assets shortly after Court approval of a plan of distribution, scheduled for hearing on February 4th. Indeed, some of these matters were challenging issues to resolve, such as the Sharon Nelson lawsuit against Andrea Bruce and

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Comerica, and SNJLC have worked very hard to cooperate and work with Comerica to move to a transition. The final piece of this puzzle is for the Beneficiary Group to agree on a final entity structure, and which entity or entities should receive each Estate asset as well as negotiate a final discharge of Comerica. Final resolution of the entity issues is deeply rooted in the classification of the assets and the tax implications; this requires more extensive information from Comerica, and analysis by the Beneficiary Group's tax and other advisors.

SNJLC appreciate all parties' efforts to continue working towards the February 4, 2022 hearing, and will continue doing all they can in order to prepare for the hearing on that date. It is our hope that the parties can reach resolution of all remaining issues and that the Beneficiary Group can present a plan for final distribution to be heard on February 4th; however, if issues remain that prevent final distribution of all assets, we believe that a partial distribution should take place and that most of the Estate's assets can be transferred to the Beneficiary Group. If certain assets cannot be transferred without significant tax consequences, or if additional time is needed to reach agreement on the appropriate structure of the entity or entities to receive assets, then the Estate should remain open for the limited purpose of holding only those assets. Under those circumstances, SNJLC suggest that a new personal representative or co-personal representatives be appointed that are acceptable to the Beneficiary Group so that the heirs and Interested Persons can receive the Estate assets – outright to the extent possible, and through personal representatives of their choice to the extent certain assets must remain in the Estate. The Beneficiary Group will present a proposed distribution plan on January 21st (the "Distribution Plan") while any remaining issues are addressed, including any income tax consequences of the Distribution Plan.

With respect to the three requests made in Comerica's motion, first, Comerica requests that the Court require a cash reserve of [redacted] to cover the cost of operating the assets of the

Estate for one year, or alternatively, that it be allowed to monetize the Estate assets by extending existing current licensing deals, entering into new deals and or selling Estate assets. SNJLC opposes this request because it is premature and would likely raise the professional fees [redacted] – clearly excessive sums. There are several problems with Comerica's request. First, until the time of distribution, it is impossible to project the amount of cash that will be necessary to operate post-distribution. Second, even if it were possible, whether there is sufficient liquidity to operate after distribution should be for the Beneficiary Group to determine, not Comerica or the Court. Third, the Beneficiary Group has indicated that if there is a cash shortfall following distribution, they will use their unique expertise to monetize the assets, or otherwise provide the funds necessary to operate. Fourth, an analysis of the tax consequences of the disposition of any assets and the restructure of the businesses must be performed with information requested by the Beneficiary Group, to avoid unanticipated and unnecessary tax consequences of the implementation of a Distribution Plan and the settlement of the Estate. Finally, if the Court authorizes Comerica to further monetize Estate assets – which would be a wasteful mistake – it should do so in a manner that will benefit all of the members of the Beneficiary Group, and allow the Beneficiary Group direct participation in the discussion and approval of any arrangement that will bind them after distribution.

Comerica's second request is that the Court set a deadline of January 21st for the Beneficiary Group to either present a joint plan for the distribution of assets or present motions for the Court to approve competing plans. It might be difficult to comply with such a deadline since some of the information needed to put a plan in place requires additional information from Comerica, and will require extensive analysis, and possible negotiations among the Beneficiary Group. Nevertheless, we do not oppose Comerica's request to set a deadline for the Beneficiary's

Group's Distribution Plan proposal. As described above, SNJLC believes that even if a final plan that addresses distribution of all assets is not in place, the assets that can be distributed shortly after the February 4th hearing should be distributed, while other assets remain in the Estate under the supervision of a new Personal Representative.

Finally, SNJLC does not oppose Comerica's third request – to either grant it a discharge or set a deadline for filing of any objections to Comerica's discharge, and setting a deadline for submissions.

ARGUMENT

I. COMERICA'S REQUEST TO ESTABLISH A RESERVE FUND OF [redacted] IS PREMATURE AND WASTEFUL. COMERICA SHOULD NOT BE GRANTED SOLE AUTHORITY TO ENTER INTO ADDITIONAL DEALS "WITHOUT LIMITATION."

Comerica has moved the Court for authorization to, "without limitation," extend current licensing deals, enter into new licensing deals, and sell Estate assets in the event that the Estate's cash position falls below [redacted]. Comerica's request is based on its estimate that, once the Estate's liabilities, Estate taxes and current income taxes are paid, the Estate will have [redacted] cash in hand, and will require a total [redacted] in total operating expenses for the entire calendar year.[1] SNJLC offers no opinion on the accuracy of this estimate but notes that it has nearly doubled from the [redacted] estimate that was given at the December 10, 2021 hearing. SNJLC opposes Comerica's request as premature.

There is no dispute that the money currently in the Estate is sufficient to pay off all the Estate's remaining taxes and liabilities. Comerica has not described any other Estate obligations for which Comerica would be liable following the "payment of all liabilities and expenses" that

[1] Comerica estimates [redacted] to be comprised of [redacted]

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Comerica has indicated will occur by March 2022. Under these circumstances, and with the Estate now moving toward a Q1 2022 distribution date, issues regarding post-distribution cash do not require the involvement of Comerica or the Court and should be left to the Beneficiary Group to resolve.

The Beneficiary Group has repeatedly told Comerica that it is capable of generating income and/or obtaining any capital necessary for post-distribution management of the assets. There is no dispute that both NorthStar and Primary Wave have the expertise and capabilities to generate the resources needed in this regard. Comerica has not cited, nor have we found, any legal authority requiring a beneficiary to make a showing to the Personal Representative that it has sufficient capital to operate a business, or which would require or obligate the Personal Representative to take action to generate such capital as a pre-condition to distribution of the Estate. There is no legal basis for Comerica's request, as it is the well-established role of the Personal Representative to essentially collect the assets, pay taxes and liabilities, and distribute assets – but not to act as a trustee with ongoing responsibility for operation of the assets. Now that the taxes have been paid, Comerica's focus should be on distributing Estate assets as quickly as possible, not in continuing to bind the Beneficiary Group to complex and potentially long-term deals. Minn. Stat. § 524.3-703(a); *see also* § 524.3-711 (limiting a PR's power over Estate assets to the period of appointment).

It is the duty of the Personal Representative to protect the assets of the Estate. (*Id.*) As referenced earlier and as the chart below illustrates (this information is taken from Comerica on HiQ), [redacted] At this point, the assets need to be distributed as expeditiously as

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possible and the Beneficiary Group needs to be directly involved in any further deals concerning the Estate assets.

[redacted]

For the foregoing reasons, SNJLC oppose Comerica's request for authorization to enter into licensing deals and sell Estate assets "without limitation." Comerica's involvement in the Beneficiary Group's post-distribution operation and financing of its business is not necessary nor the proper role of the Personal Representative. Minn. Stat. § 524.3-703(a); *see also* § 524.3-711. SNJLC oppose further on the basis that, with closing and distribution imminent, Comerica should not be given carte blanche to enter into transactions that will potentially have long term effects on the Beneficiary Group without the Beneficiary Group's direct participation and approval. As an initial matter, Comerica's sale of Estate assets could potentially trigger serious adverse tax consequences, depending on the assets, and the Beneficiary Group should be directly involved in any decision to sell an asset in order to assess these effects. Additionally, any contemplated long-term deals – particularly royalty-based deals – would incur further debt, unrecouped balances and be potentially detrimental to the short-term and long-term interests of the Beneficiary Group.

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As an example of the ongoing consequences of long-term deals, the chart below illustrates that [redacted] The Estate's music assets are run and managed largely by the Estate's deal partners, e.g., Sony Music, Universal Music Publishing and Warner Brothers Records.

[redacted]

Any further extension of existing deals would likely be advances (i.e., recoupable loans), and paying commissions to the Estate's entertainment advisors for these extensions would constitute unnecessary and wasteful expenditures at this stage.

If the Court authorizes Comerica to enter into further transactions, SNJLC request that the Court allow the Beneficiary Group's direct participation in the discussions and decisions to approve those transactions, particularly those involving sale of Estate assets, and long term and/or royalty-based deals. At this point in the proceedings, with the Beneficiary Group's imminent takeover of the Estate asset management, merely giving the Beneficiary Group five days' notice of any transaction is insufficient, the Beneficiary Group needs to take a direct role in this process.

II. SNJLC DOES NOT OPPOSE COMERICA'S REQUEST FOR A JANUARY 21, 2022 DEADLINE FOR THE BENEFICIARY GROUP TO SUBMIT A DISTRIBUTION PROPOSAL.

In regard to the entity structure and Distribution Plan, SNJLC and Primary Wave have been working diligently to develop a mutually agreeable entity structure and address the significant potential tax issues caused by the current structure of the assets, particularly the holding of certain assets in S Corporations. SNJLC has submitted its tax and business structure proposal to Comerica and Primary Wave. These discussions are ongoing and continue to be productive, although the Beneficiary Group's ability to work through these issues will depend in large part on Comerica's full and timely response to requests for key information.

Comerica has proposed a deadline of January 21, 2022 for the Beneficiary Group to submit its joint proposal, with any responses due January 28. SNJLC does not oppose this schedule, in the interests of getting these issues before the Court on February 4, 2022. However, in the event that the Beneficiary Group does not timely receive from Comerica the information necessary to finalize a joint Distribution Plan for all assets, or if the review and analysis of this information makes it impossible to present a joint proposal, the Beneficiary Group will put forth a plan for partial transfer of those assets for which it has been able to finalize a Distribution Plan by January 21, with the Estate to be held open following the partial transfer to allow the Beneficiary Group to finalize its Distribution Plan pursuant to which the remaining assets will be distributed. *See* Minn. Stat. § 524.3-505 (authorizing partial distributions upon application of any interested person).

III. SNJLC DOES NOT OPPOSE COMERICA'S REQUEST FOR A HEARING AND BRIEFING SCHEDULE ON THE TERMS OF COMERICA'S RELEASE AND DISCHARGE FOLLOWING DISTRIBUTION OF ALL ASSETS.

Finally, Comerica has requested that the Court order a hearing and briefing schedule regarding the terms of Comerica's release and discharge. SNJLC and Comerica have engaged in negotiation of these terms, and look for the Court's guidance in the event that the parties cannot reach an agreement. To the extent the Beneficiary Group submits a joint Distribution Plan for all assets on January 21, 2021, SNJLC does not oppose this request. As discussed above, SNJLC's position is that if the Beneficiary Group is in agreement over the distribution of some, but not all, the assets, and has put forth a joint Distribution Plan for those assets, then the Court should approve distribution of the agreed-upon assets and leave the Estate open, with the appointment of new Personal Representatives (a position that Comerica has not opposed) to allow the Beneficiary Group to finalize agreement on the remaining assets.

CONCLUSION

SNJLC respectfully asks this Court to move forward toward a full or partial distribution of estate assets during the first quarter of this year. SNJLC do not oppose setting of the various deadlines suggested by Comerica for submission of proposed distribution plans or objection to Comerica's accounts or discharge. The Court should, however, deny Comerica's motion to the extent it seeks authorization to extend existing licenses, enter into new licensing agreements and sell Estate assets. If the Court grants such authorization, SNJLC requests that the Beneficiary Group be allowed direct participation in the discussions and approval of these transactions.

Dated: January 7, 2022

By: /s/ L. Londell McMillian

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