

STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In the Matter of:

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

Estate of Prince Rogers Nelson,

Decedent.

**COMERICA BANK & TRUST, N.A.'S
MEMORANDUM IN SUPPORT OF
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**

Redacted Version

INTRODUCTION

The Personal Representative and the members of the Heir Group have spent the last several months discussing and negotiating terms to allow for an efficient closing of the Estate and distribution of the assets, following the payment of all creditor claims, to the members of the Heir Group. Unfortunately, to date, the parties have not been able to finalize an agreement on all outstanding issues. Accordingly, the Personal Representative brings this motion to address those priority issues that are a necessary predicate to moving forward with the closing of the Estate.

First, the Personal Representative, has recommended to the Heir Group that, at the time of distribution, the Estate should have sufficient cash assets [REDACTED] to cover the cost of operating the assets of the Estate for one year. To date, the Heir Group has not committed to providing the financing to fund such a reserve and has been resistant to the Personal Representative monetizing assets to provide for the reserve. Assuming the parties are able to close the Estate during the first quarter of 2022, the Personal Representative currently estimates that it will have sufficient cash assets to allow the Estate to pay all liabilities and expenses.

Doing so, however, would leave only a minimal reserve (estimated at [REDACTED]) and any unexpected liabilities, expenses, or delay could result in the Estate depleting the reserve in its entirety. If the members of the Heir Group remain insistent that they are not willing to fund—or authorize the Personal Representative to license or sell assets to fund—the [REDACTED] operating reserve recommended by the Personal Representative, the Personal Representative needs the opportunity to raise additional funds if the cash position of the Estate falls below [REDACTED]. Accordingly, the Personal Representative respectfully requests that, if the cash balance of the Estate falls below [REDACTED], the Court authorize the Personal Representative to take reasonable steps to ensure that the Estate has a sufficient cash reserve, including, without limitation, extending current licensing deals, entering into new licensing deals, and/or selling Estate assets.

Second, the members of the Heir Group are still negotiating amongst themselves regarding how they would like the assets of the Estate to be distributed. The Personal Representative provided the Heir Group an initial framework for a potential distribution plan during May 2020 and, thereafter, has provided additional information upon request to facilitate analysis and discussion amongst the members of the Heir Group. At the request of members of the Heir Group, the Personal Representative has deferred to the Heir Group regarding the distribution plan to ensure that assets are organized and distributed consistent with how the Heir Group would like to manage the assets following the closing of the Estate. To ensure that closing can proceed on a timely basis, the Personal Representative requests that the Court set a deadline for the members of the Heir Group to either: (1) present their joint plan for the distribution of the assets of the Estate; or (2) if they cannot reach agreement, bring motions for the Court to approve any competing plans. The Personal Representative would reserve the right to provide any input or other response to any such filings.

Finally, although the parties have discussed the issue extensively, they have not reached an agreement on the process of discharging the Personal Representative and approving its final accounting. Again, to ensure that the Estate may be closed on a timely basis, the Personal Representative requests that the Court set a schedule for submissions and a hearing on a petition to discharge the Personal Representative and approve its final account, following the Court's approval of a distribution plan and any other matters presented to the Court for consideration by the members of the Heir Group at the January 14, 2022 hearing.

ARGUMENT

I. THE COURT SHOULD AUTHORIZE THE PERSONAL REPRESENTATIVE TO TAKE THE NECESSARY STEPS TO ENSURE A CASH OPERATING RESERVE IN EXCESS OF [REDACTED].

During 2018, the Personal Representative prepared and filed with the Court a cash flow model that included detailed information on the current and anticipated future revenues and expenses for the Estate. (December 31, 2021 Declaration of Andrea Bruce ("Bruce Dec.") ¶ 2.) Since then, the Personal Representative has updated and provided the members of the Heir Group regular revised versions of the cash flow model, including most recently on December 20, 2021 (the "Current Cash Flow Model"). (Bruce Dec., Ex. A.)

The Current Cash Flow Model anticipates the Estate paying all its federal and state estate tax liabilities during January 2022, as well as income taxes and other expenses during the first quarter of 2022. The Current Cash Flow Model also includes estimated income and other expenses that will be necessary to close the Estate, [REDACTED]. [REDACTED]. Based on the assumptions in the Current Cash Flow Model, the Personal Representative anticipates the Estate or its successors having approximately [REDACTED] cash on hand at the end of March 2022, following payment of all known liabilities and expenses. (Bruce Dec., Ex. A.)

The fact that the Personal Representative was able to raise sufficient funds to pay all taxes and expenses, plus a [REDACTED] reserve, while not selling any of the Estate’s entertainment assets, is a testament to the Personal Representative’s careful stewardship of the Estate. That limited reserve, however, leaves very little margin for error in the event of unanticipated liabilities, expenses, or delays associated with closing the Estate. [REDACTED]

[REDACTED]

Through the cash flow models, the Personal Representative is able to provide an estimate of the expenses associated with operating the assets of the Estate for one calendar year, which is approximately [REDACTED] [REDACTED] [REDACTED]

[REDACTED]

The Personal Representative has notified the Heir Group that it is the Personal Representative’s strong recommendation that the Estate maintain a [REDACTED] reserve at the time of closing and distribution to ensure that the Heir Group is able to effectively manage the assets of the Estate following closing. Such a reserve would minimize the impact of any disagreements, following closing, amongst the members of the Heir Group regarding operations and monetization of the assets of the Estate, could allow for cash distributions post-closing, and could cover any unexpected liabilities or expenses. To date, however, the Heir Group has not committed to providing the financing necessary to fund such a reserve and has expressed

reservations regarding the size of the Personal Representative's recommended [REDACTED] reserve.

To the extent that the members of the Heir Group continue opposing the establishment of a reserve in the amount recommended by the Personal Representative, the Court needs to provide the Personal Representative the ability to raise additional funds between now and closing were the cash position of the Estate to fall below [REDACTED]. If the Estate does not maintain more than [REDACTED] in cash assets, any unexpected expense or liability, including, for example, larger than anticipated income taxes, an extraordinary expense associated with the Estate's real estate assets (including Paisley Park), or a new lawsuit, could deplete the Estate's cash reserve in its entirety.

Accordingly, the Personal Representative requests that the Court authorize the Personal Representative to raise additional funds in the event that the Estate's cash position falls below [REDACTED], including, without limitation, extending current licensing deals, entering into new licensing deals, and/or selling Estate assets. The Personal Representative would provide the Heir Group five days' notice and an opportunity to object to the Court prior to finalizing any transaction. In the event of an objection, the Personal Representative would seek Court approval of the transaction on an expedited basis to ensure the Estate can maintain a sufficient cash reserve to meet its ongoing operating needs.

II. THE COURT SHOULD SET A DEADLINE FOR THE HEIR GROUP TO PRESENT PROPOSED DISTRIBUTION PLANS FOR COURT APPROVAL.

During May 2020, the Personal Representative provided the Heir Group a proposed entity organization chart as the centerpiece of a potential distribution plan for consideration and to start conversations amongst members of the Heir Group. (Bruce Dec., ¶ 6 & Ex. B.) As set forth in the proposal, the distribution of the assets of the Estate is complicated by the fact that the Decedent held certain assets in his personal name and others in wholly-owned entities. There are

also potential tax and management ramifications related to the manner in which the assets of the Estate are held and organized at the time of distribution.

Since then, the Personal Representative has provided, and is continuing to provide, information upon request by the members of the Heir Group to assist with their analysis and discussions regarding a distribution plan. (Bruce Dec., ¶ 3.) The Personal Representative has otherwise deferred to the members of the Heir Group to allow them to decide how they would like the assets of the Estate to be organized and distributed at the time of closing. (*Id.*) The Personal Representative understands that the members of the Heir Group have held discussions on the issue but have yet to reach consensus regarding how the assets should be organized and distributed. (*Id.*)

Under Minnesota's Uniform Probate Code, there are at least three methods through which a personal representative or interested persons may address the distribution of an estate. First, the personal representative or any interested person may petition the Court for an order approving a plan of distribution. Minn. Stat. § 524.3-1001(a)(1). Second, the personal representative may deliver a proposal for distribution to the beneficiaries of the estate, after which the beneficiaries waive any objection to the proposed distribution unless it is raised within 30 days. Minn. Stat. § 524.3-906(b). Third, the successors to an estate have the right to agree amongst themselves regarding the distribution of the assets of the estate, which agreement is binding on the personal representative. Minn. Stat. § 524.3-912.

The Personal Representative strongly believes that, absent agreement by all parties or direction by the Court otherwise, it should be the Heir Group that decides how they would like to hold and manage assets following the closing of the Estate. Accordingly, since 2017 the Personal Representative has been encouraging the members of the Heir Group to discuss these issues and otherwise has taken all reasonable steps it can to facilitate those discussions. The Personal Representative is hopeful that the Heir Group can reach an agreement on the issue, thus

mooting this motion. But it is now December 31, 2021 and if the parties wish to stay on schedule for a closing during early 2022, the Court needs to set a deadline for the Heir Group to submit a joint distribution plan or, alternatively, to submit any competing plans for resolution by the Court. This Court-ordered deadline and process is necessary because, after a distribution plan is approved, the Personal Representative will need to prepare assignments, transfer assets into entities, appoint new officers and directors of existing entities, transfer bank accounts and, depending on what type of plan is approved, potentially incorporate new entities and/or dissolve current entities, among other possible requirements. While the Personal Representative will work diligently on all those tasks, it is reasonable to expect that the process may take several weeks.

The Personal Representative proposes that any joint plan, or a motion to approve a proposed plan by any member of the Heir Group be submitted to the Court by January 21, 2022. Any party, including the Personal Representative, would be entitled to respond by January 28, 2022 and the Court could address the matter at the previously scheduled February 4, 2022 hearing. In the event that no member of the Heir Group submits a proposal, the Personal Representative would separately petition for the Court to approve a distribution plan substantially similar to the one provided to the Heir Group during April 2020, with a hearing to be scheduled at a later date. (Bruce Dec., Ex. B.)

III. THE COURT SHOULD SET A PROCESS AND HEARING DATE ON THE PERSONAL REPRESENTATIVE'S PETITION TO APPROVE ITS FINAL ACCOUNT AND TO DISCHARGE THE PERSONAL REPRESENTATIVE.

The parties have engaged in a multi-month mediation process with Justice Gilbert that has substantially reduced the issues in dispute and, from the perspective of the Personal Representative, should materially shorten the time period to resolve any remaining disputes and allow for the timely closure of the Estate. The ultimate goal of the mediation process, however, was to agree to a framework to resolve all remaining issues, including, the terms under which the

Heir Group would release and discharge the Personal Representative and either approve or waive the necessity to review and approve the Personal Representative's final accounting. The parties have yet to accomplish that goal. As a result, the Personal Representative believes that it will reduce future delays if the Court sets the framework of a process now to adjudicate a petition from the Personal Representative to approve a discharge and its final accounting, in the event no resolution is reached by the parties on the issue in the meantime.

Under the Probate Code, a personal representative may petition for an order of complete settlement of the estate, which may include an order approving a final accounting, an adjudication of the final settlement and distribution of the estate, and discharging the personal representative. Minn. Stat. § 524.3-1001(a)(1). Before the Personal Representative may do so here, it will need a decision from the Court regarding the manner and form of distribution, as set forth above, as well as the time necessary to prepare to effectuate that distribution. Accordingly, the Personal Representative proposes that the Court, in its order approving a distribution plan, set a hearing at least 45 days after its order and a briefing schedule to allow: (1) the Personal Representative to bring a petition to approve a final accounting and discharge; (2) any interested person to respond thereto; and (3) the Personal Representative to submit a reply. Should the Personal Representative or any other interested person determine that it is not feasible, in light of the specific distribution plan approved by the Court or other unanticipated issues, to proceed on that schedule, it, he, or she may seek an extension of the schedule from the Court. Setting a schedule as soon as the Court adopts a distribution plan, however, will ensure that the Estate can be closed at the earliest possible date.

CONCLUSION

For the reasons set-forth herein, the Personal Representative respectfully requests that the Court enter an order: (1) authorizing the Personal Representative to raise additional funds in the event that the Estate's cash reserve falls below [REDACTED] (2) setting a process for the Heir

Group to present a joint distribution plan or any competition plans to the Court of consideration;
and (3) setting a process for the Personal Representative to petition to approve a final accounting
and discharge.

Dated: December 31, 2021

/s/ Joseph J. Cassioppi

Mark W. Greiner (#0226270)

Joseph J. Cassioppi (#0388238)

FREDRIKSON & BYRON, P.A.

200 South Sixth Street

Suite 4000

Minneapolis MN 55402-1425

612-492-7000

612-492-7077 fax

mgreiner@fredlaw.com

jcassioppi@fredlaw.com

Attorneys for Comerica Bank & Trust, N.A.