

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF CARVER

FIRST JUDICIAL DISTRICT  
PROBATE DIVISION

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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  
REPLY 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**

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**REPLY**

The Personal Representative respectfully submits this Reply to address the arguments raised in the responses to its motion.

**I. THE COURT SHOULD APPROVE THE PERSONAL REPRESENTATIVE'S REQUEST TO ENSURE A NECESSARY CASH OPERATING RESERVE.**

In response to the Personal Representative's request regarding a cash reserve for the Estate, both Primary Wave and SNJLC accuse the Personal Representative of attempting to decide, for the Heir Group, how they should operate the assets of the Estate following closing and distribution. Not so. As a professional fiduciary, the Personal Representative has attempted to provide guidance and recommendations to the Heir Group regarding the expenses they can expect to incur and the cash needs they will have following closing of the Estate. That is why the Personal Representative has recommended to the Heir Group that they maintain a cash reserve of at least [REDACTED]. But to be clear, the Personal Representative's request that the Court allow it to raise additional funds if the Estate's cash reserve falls below \$5 million has

nothing to do with seeking to ensure that the Heir Group has sufficient funds to operate post-closing. Instead, the request is designed to ensure that the Estate is able to meet its anticipated, and any unanticipated, expense obligations prior to closing and does not run out of cash.

SNJLC asserts the Personal Representative's request is unsupported by Minnesota law, that any potential expenses the Estate may incur are speculative, and that the request is unnecessary because the closing of the Estate is now imminent. It is wrong on all three points.

First, the Probate Code provides broad authority to personal representatives to allow for the effective administration of an estate and the payment of all estate liabilities. This includes the power to sell any estate asset, borrow money, and otherwise exercise "the same power over the title to property of the estate than an absolute owner would have . . . ." Minn. Stat. §§ 524.3-711, 524.3-715.

Second, while the Personal Representative agrees that it cannot know, with certainty, what expenses the Estate will incur between now and the closing of the Estate, it has significant historical data that allows the Personal Representative to present a reasonable forecast of what those expenses will be. As set forth in the Current Cash Flow Model, even assuming no extraordinary unanticipated expenses, the cash reserve held by the Estate is estimated to fall below ██████████ during this quarter and below ██████████ later this year. (12/31/21 Bruce Dec., Ex. A.) The Personal Representative's request to maintain a minimum of \$5 million as an operating reserve is based on the historical cash needs of the Estate, anticipated expenses and liabilities, and the Personal Representative's significant experience serving as a fiduciary for estates and trusts across the county. The request is reasonable under the circumstances and should be approved by the Court.

Third, the Personal Representative shares SNJLC's hope and desire that the Estate can be closed quickly. But only a few paragraphs after asserting that closing is imminent, SNJLC contend that they may not be able to submit a distribution plan for consideration by the Court on

February 4, 2022 because of ongoing analysis by their tax advisors. The Personal Representative cannot be put in the position where it may literally run out of cash while it waits for: (1) the members of the Heir Group to submit their plans for consideration by the Court; (2) the Court to approve a plan; and (3) the completion of the steps by the Personal Representative and the Heir Group necessary to effectuate that plan.

Finally, Primary Wave asserts that the Personal Representative's request is premature, and the Personal Representative should wait to monetize the assets of the Estate until such time as there is a present cash need in the Estate. But that is exactly what the Personal Representative is requesting. In the event that income taxes and expenses are less than anticipated and the amount of cash held by the Estate does not fall below \$5 million, the Personal Representative will never need to exercise the authority it is requesting from the Court. And contrary to the arguments made by the Heir Group, the Personal Representative is not asking for carte blanche advance approval for any possible transaction necessary to raise cash. Instead, it is requesting only an expedited review and approval process for any potential transaction that would otherwise be subject to the current approval protocols (i.e., those that the Personal Representative reasonably anticipates may generate more than \$2 million in revenue for the Estate).

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

Both Primary Wave and SNJLC support the concept of the Court setting a deadline for the members of the Heir Group to submit proposed distribution plans for Court approval, but express hesitation regarding their ability to do so on the schedule proposed by the Personal Representative. The Personal Representative agrees with the Heir Group that they should be allotted the time necessary to ensure that any plans they propose have been adequately considered and analyzed by the members of the Heir Group and their advisors. That said, the Personal Representative continues to believe setting a deadline is necessary to ensure that the

parties progress towards a timely closing. The parties and the Court should discuss at the hearing setting a reasonable deadline for the Heir Group's submissions and the timing of a hearing for the Court to consider those submissions, to the extent that the February 4, 2022 hearing is not feasible from the perspective of the Heir Group.

Two other matters in the filings made by Primary Wave and SNJLC on this issue require a response. First, both Primary Wave and SNJLC suggest in their responses that their inability to timely submit distribution plans to the Court was based, in part, on the need for "additional information" from the Personal Representative. To be clear, at the time that Primary Wave and SNJLC filed their responses, there were no information requests outstanding from either party. The Personal Representative has been working cooperatively with Primary Wave and its tax advisors since September (after those advisors executed NDAs) on closing and transition planning. In late December, the tax advisor for SNJLC finally executed the NDA that was initially proffered in late August 2021. Subsequently, the Personal Representative worked diligently over the holidays to respond to over twenty information requests submitted on December 27. The Heir Group has followed-up with additional information requests this week, to which the Personal Representative is currently in the process of responding, and the Personal Representative anticipates a continuing dialogue moving forward. The suggestion that the inability of the members of the Heir Group to timely submit distribution plans to the Court has anything to do with the Personal Representative is simply inaccurate and underscores the need for the Heir Group to be formally accountable to the Court on this issue.

Finally, SNJLC request that the Court consider replacing the Personal Representative with new fiduciaries in the event that "additional time is needed to reach agreement on the appropriate structure of the entity or entities to receive assets." Needless to say, such a request is premature. The Personal Representative believes that it is in the best interest of all parties and the Court that the parties work towards a timely closing of the Estate. In the event, however, that

for tax or other reasons, the Court determines that there are compelling reasons to continue the administration of the Estate beyond the time period previously discussed with the Court, the parties can address at that time the manner and circumstances of the discharge of the Personal Representative and its replacement with one or more new fiduciaries.

### CONCLUSION

For the reasons set-forth herein and those in set-forth in its opening memorandum, 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 \$5 million (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: January 13, 2022

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