

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF CARVER

FIRST JUDICIAL DISTRICT  
PROBATE DIVISION

In Re:

Case Type: Special Administration

Court File No: 10-PR-16-46

Estate of Prince Rogers Nelson,

Judge: Kevin W. Eide

Decedent.

**(REDACTED)****SNJ, L. LONDELL MCMILLAN AND  
CHARLES SPICER'S (I) RESPONSES  
TO COMERICA'S INTERIM  
ACCOUNTING AND THE COURT'S  
REQUEST AND (II) MEMORANDUM  
IN SUPPORT OF MOTION TO  
INSTITUTE PROTOCOLS TO  
FACILITATE CLOSURE OF THE  
ESTATE**

Sharon Nelson, Norrine Nelson and Johnny Nelson (collectively, "SNJ"), L. Londell McMillan ("McMillan") and Charles Spicer ("Spicer") (all parties collectively, "Respondents"), as heirs and interested persons in the Estate of Prince Rogers Nelson ("Estate") submit the following in response to the Interim Accounting From 2/1/20 to 1/31/21 filed by Comerica Bank & Trust, N.A. ("Comerica") on May 12, 2021, and in response to the Court's request at the July 23, 2021 hearing that Respondents provide a written submission providing specific facts and requests concerning the issues discussed at the hearing. (Declaration of L. Londell McMillan (hereinafter, "McMillan Decl."), Ex. A at 35:5 – 36:4). In addition, this memorandum is written in support of Respondents' separate Motion to Institute Protocols to Facilitate Closure of the Estate.

### **INTRODUCTION**

SNJ, L. Londell McMillan, Charles Spicer and Primary Wave are all in agreement that setting the Estate of Prince Rogers Nelson on a path to a prompt closure is a matter of utmost importance (hereinafter, McMillan, Spicer and Primary Wave may be collectively referred to as

the “Interested Persons”). This Court has previously encouraged this same goal. Prince’s living heirs, SNJ, have been waiting well over five years for their inheritance. These are elderly individuals, in their late 70s and early 80s. (Declaration of Sharon Nelson (hereinafter, “S. Nelson Decl.”) at ¶1); Declaration of Norrine Nelson (hereinafter, (N. Nelson Decl.”) at ¶ 1). They should not be forced to wait even a few months more than what is absolutely necessary to close the Estate.

Time and time again, Respondents have stressed the urgency of the situation and sought to obtain transparency and to engage with Comerica and their highly-paid counsel to expedite closure. However, Comerica has been deceptive, sent mixed messages, taken inconsistent positions and avoided substantive discussions of a schedule and clear process for closure – and even picks and chooses when it wishes to communicate with Respondents and Primary Wave or participate in mediation. In one instance, Comerica, through its counsel, dismissively claimed that Respondents, together with Primary Wave, have not made sufficient “progress” to warrant a serious discussion on closure of the Estate – despite the fact that the Heirs and Interested Persons are united and have provided, among other things, a directive to seek closure of the Estate, a joint business plan, management plan, tax authorization letter agreement, and confirmation they will secure funds to close the Estate.

Without the active participation and support of Comerica and its counsel, closure of the Estate remains purely aspirational, as some elusive future event. The Estate, as currently run, requires the generation of many millions of dollars in revenue just to cover the legal fees, advisor fees and other administration costs for a single accounting period. (*See* McMillan Decl., Ex. A, Tr. at 18:19-24; Interim Accounting From 2/1/20 to 1/31/21 at 1-2). There is no financial incentive for Comerica and its counsel to expedite closure. This is not a healthy state of affairs and the focus should be on establishing a timeline and checklist for closure, mitigating the Estate’s expenses,

obtaining a federal and state tax settlement, discharging Comerica and distributing the assets of the Estate to the Heirs and beneficiaries.

It is easy to understand the reluctance that Comerica, its representatives and advisors might have to move the Estate toward closure. Administering the Prince Estate has been extremely lucrative these past five years, to the tune of over twenty million dollars in fees and commissions paid out from the Estate. But here, the Heirs and Interested Persons are unified in their belief that the Estate must scale back its expenses and expeditiously and efficiently close. Successfully achieving this requires all parties, not merely the Heirs and Interested Persons, to communicate openly and in good faith and engage in moving the Estate toward closure. Most importantly, success will require this Court to direct a path toward closure, as much as lawfully and practically possible.

Administration and closure of the Estate is a Court-supervised process. Respondents seek the Court's assistance in instituting certain protocols to facilitate the prompt and efficient closure of the Estate. Respondents are aware that there are certain issues – namely, resolution of the Estate's tax liabilities, that cannot be put on a strict internal timeline because they require the outside involvement of the tax authorities. Respondents are also aware that they will need to work with Comerica on structural matters related to the corporate, tax and legal needs for closure. However, the remaining issues can, and should, be resolved expeditiously if put on a reasonable schedule toward resolution, with direct and open communication and where necessary, mediation.

At the July 23, 2021 hearing, Respondents raised a number of issues to the Court, including the lack of open and direct communication, the status and transparency of tax negotiations, limits on the activities of certain entertainment advisors and transactions involving newly-created assets, the Heirs' need for a financial advisor to consult regarding accountings and other financial matters,

the procedure and timeline for the Heirs to respond to an Interim Accounting, and the Heirs' desire to wrap up the Estate and proceed toward closure. The Court requested that Respondents prepare and file a written submission setting forth additional specifics for these issues. Respondents object to the Interim Accounting on the basis that Comerica should not receive approval of its past actions because it has not worked diligently toward closure of the Estate, as the Heirs have sought for a long time, and Respondents' submission will focus primarily on how to change that going forward.

### **DISCUSSION**

#### **I. THE COURT SHOULD REQUIRE THE PARTIES TO DEVELOP AND IMPLEMENT A TIMELINE OF EVENTS AND ACTIONS NECESSARY TO MOVE THE ESTATE EXPEDITIOUSLY TOWARD CLOSURE.**

Respondents request that the Court institute protocols under which the parties shall cooperate to develop a framework and schedule for taking actions necessary to close the Estate. These actions include, but are not limited to, devising and implementing asset distribution and post-closure estate management plans, resolving Comerica's discharge, budgeting fees necessary for Estate wind-up and closure, including cash reserves for operating the entities and maintaining the Estate's other assets post-distribution, and resolving outstanding attorney's liens.

The Heirs and Interested Persons have been unable to have any clear, consistent or sufficient dialogue with Comerica concerning transition and closure. When Respondents raised issues concerning the transition with Comerica early on, including proposing the idea of setting a timeline, they were rebuffed. Comerica responded that not only would it not engage in such discussion directly, but that it would refuse to even participate in mediation of any issues concerning closure until such time as the Heirs had "demonstrated meaningful progress on their transition activities." (McMillan Decl., Ex. B at 4 (5/19/21 Email from Cassioppi to McMillan).

It is unfortunate that Comerica claims that the Heirs and Interested Persons' supposed lack of "progress" justifies its refusal to discuss a timeline and schedule that would help immensely in facilitating further progress. There is no requisite level of progress that must be achieved before communication regarding a timeline and schedule can take place – the entire purpose of implementing a timeline and schedule is so that a clear list of outstanding items can be established and progress can occur based on mutually acceptable parameters and timing. Notwithstanding this Court's directive in its April 23, 2019 concerning "open communication" between the parties, Comerica's communications have been selective, infrequent, non-specific, and mostly funneled through high-priced counsel.

Respondents have always been, and continue to be, willing and ready to discuss a timeline with Comerica directly and through mediation. However, the mediation process depends on both parties being involved, actively engaged and following up on issues agreed upon. On May 27, 2021, Respondents sent a mediation letter to Judge Gilbert, requesting mediation on issues including the requirements and timeline for proceeding to closure of the Estate, and the tax negotiation settlement schedule.<sup>1</sup> That same day, Respondents' representatives met with Judge Gilbert to discuss these and other issues. Judge Gilbert indicated that he would share the concerns with Comerica and forward its response.<sup>2</sup> Eleven weeks have now passed since this discussion took place, and Respondents have not received Comerica's responses nor have they had the

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<sup>1</sup> Respondents would attach a copy of this letter but Comerica has taken the position that it comprises privileged mediation material that should not be before the Court. Respondents do not agree with this position but have omitted the exhibit for the time being. Respondents reserve the right to address this issue at oral argument or at a later date.

<sup>2</sup> For the same reasons set forth in footnote 1, *supra*, Respondents have submitted a redacted version of this correspondence as part of its public filing, which discloses only the non-privileged information set forth in the preceding sentence. Again, Respondents do not agree with Comerica's position and reserve their rights as set forth above.

opportunity to advance these discussions further. As a result, Respondents, including Prince's three elderly living heirs, have now lost nearly three months in their attempt to even discuss a framework for proceeding with closure.

Respondents are not opposed to working with Justice Gilbert to discuss these issues and will continue to do so. However, it is critical that this mediation be accompanied by, and conducted in accordance with, protocols issued by this Court that establish a schedule and framework for the parties to develop "open communications" and negotiate a timeline and schedule for the necessary tasks and actions to be completed prior to closure of the Estate. In accordance with the Court's request for specifics, Respondents request that the Court issue protocols as follows:

- (i) Within seven (7) days of this Order, Comerica shall provide Respondents and Primary Wave with a timeline including the revised list of all tasks and actions to be completed by the parties in order to close the Estate, and proposed deadlines as to when each such action shall be completed and by which parties.
- (ii) Within three (3) business days of receipt of Comerica's list, Respondents and Primary Wave shall provide their written comments and/or objections.
- (iii) Comerica, Respondents and Primary Wave shall engage in direct, good faith discussions concerning Respondents' and Primary Wave's objections and revisions to the list.
- (iv) To the extent that there remain individual issues that have not been resolved through direct discussions within seven (7) days following Comerica's receipt of Respondents' and Primary Wave's objections and responses, each such issue shall be placed into mediation with Justice Gilbert, which shall conclude no later than fourteen (14) days following Comerica's receipt of Respondents' and Primary Wave's objections.
- (v) All issues to which the parties have reached a resolution through either direct discussion or mediation shall be submitted to the Court as a proposed Stipulation and Order within seven (7) days of the conclusion of mediation, or within seven (7) days of the parties' final agreement, if no mediation is required.
- (vi) All issues which the parties are unable to resolve following mediation shall be submitted to the Court within seven (7) days following the conclusion of mediation. The Court shall thereafter enter an Order resolving any remaining disputes.

- (vii) Any deadlines herein may be extended only by mutual agreement of Respondents, Comerica and Primary Wave, and upon application to the Court.
  - (viii) The Heirs, Interested Persons and Comerica shall meet on a bi-monthly basis, at a time and in a manner mutually convenient to all parties, for the purpose of providing updates and discussing issues related to closure of the Estate.
- A. Respondents Have Made Substantial Progress Toward Closure And There Are No Issues Precluding The Parties' Commitment To A Timeline.**

There are no issues that preclude the parties from agreeing to and instituting a timeline. The Heirs and Interested Persons have made substantial progress toward the transition, including their agreement on an Estate management plan and their cooperation in signing a tax authorization letter sought by Comerica's counsel in allowing greater flexibility for negotiations with the tax authorities. Importantly, Respondents and Primary Wave are aligned in their view that the immediate priorities are to settle and pay outstanding tax obligations in order to close the Estate. Respondents have communicated this view to Comerica on numerous occasions. (McMillan Decl., Ex. B at 3-4 (5/19/21 Email from McMillan to Cassioppi); Ex. E).

In a mediation conference call with Judge Gilbert, Comerica's representatives identified the following issues regarding Comerica's discharge and closure of the Estate: (i) the settlement with the tax authorities; (ii) the terms of Comerica's discharge; (iii) the Heirs' plan to manage the assets going forward; and (iv) resolution of Sharon Nelson's lawsuit against Andrea Bruce and Comerica. (5/27/21 Email Mediation Statement). None of these issues prevent Comerica from committing to a schedule and timeline for its discharge and closure of the Estate.

In regard to settlement of the Estate's taxes, Comerica has already reached a settlement with the IRS for settlement of the Estate's federal estate tax liability in connection with its real estate assets, which was approved by this Court on May 28, 2021. (May 28, 2021 Order Granting Comerica's Motion to Approve Stipulation of Settled Issues). In its January 11, 2021

correspondence to the Court, Comerica indicated it expected to receive the IRS's full settlement offer by late summer, or before the end of 2021. (1/11/21 Comerica Letter to the Court re Tax Status). During subsequent "roundtable discussions," Comerica's representatives stated that settlement of the Estate's tax liabilities [REDACTED].<sup>3</sup> Regardless of whether Estate's tax issues resolve [REDACTED], the need for timeline should not be contingent on knowing with absolute certainty as to when the Estate's tax issues will be resolved. We all understand that the IRS and MDOR are independent organizations who will reply on their schedule, yet certainly we should plan and do what is possible to expedite the tax settlement. We should also agree on the preferred plan of action based on the potential responses of the IRS. Additionally, there are other Estate closure issues that can and should be scheduled and addressed according to the timeline notwithstanding the timing of a tax resolution. This holds all parties, not just Comerica, accountable to each other to close the Estate.

In regard to the terms of Comerica's discharge, upon receipt of Comerica's proposed draft from Justice Gilbert, Respondents replied and made their objections known to him. (McMillan Decl., Ex. G). The substance of the dispute is that Comerica seeks the Heirs and Interested Person's agreement to a Stipulation and Order discharging its liability and waiving certain accounting obligations as well as a separate Release agreement with the Heirs and Interested Persons under different terms, requiring broad indemnification, waiver of accounting and a broad release of Comerica, its agents, counsel, insurers and "affiliates." Respondents believe that Comerica's discharge should be governed by the same or very similar terms as this Court ordered for Bremer, namely, a limited discharge of Bremer's liability. To the extent no resolution has been reached going forward, there is no reason why this issue should prevent a timeline from being put in place

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<sup>3</sup> See footnote 1, *supra*, regarding Respondents' mediation letter.



in regard to the entire transition, particularly since a framework for reaching resolution can be built into the timeline, and will help expedite resolution of this matter.

In regard to the Heirs' plan to manage the assets moving forward, the Heirs and Interested Persons are in agreement as to the framework for such plan, and have drafted their plan and provided it to Comerica. (McMillan Decl. Ex. H) (3/24/21 Email from Herbsman to Cassioppi) While the parties will undoubtedly build upon their management and operation agreement internally, as they better understand the details and financials of the Estate assets, this should not be a roadblock to advancing matters with open and direct communication.

Comerica represented to the Court that they are "still waiting" for an agreed plan (McMillan Decl., Ex. A., Tr. at 34:18-20), which they have already received. Following receipt of the Heirs and Interested Persons' initial plan, Comerica's counsel forced further discussion of the management plan, along with all other closure issues, into mediation where they languished without further progress for eleven weeks. As a result, the Heirs and Interested Persons have been effectively blocked from moving the process forward through further discussions and the provision of additional information. Respondents are ready and waiting to engage in productive discussions with Comerica and Fredrikson regarding the proposed estate management plan, and believe that establishing a timeline and schedule for resolving any issues and finalizing the plan would greatly facilitate the process of moving the Estate toward closure.

Finally, Sharon Nelson's pending lawsuit against Andrea Bruce and Comerica should not prevent the parties from implementing a timeline and moving expeditiously toward closure of the Estate. The lawsuit was brought by Sharon Nelson in her individual capacity, consists of a single civil assault claim based on allegations of Ms. Bruce's personal conduct, and seeks only nominal damages. Comerica has not provided any legal basis for its claim that it cannot be discharged

before this suit has been fully adjudicated or otherwise resolved (*see* McMillan Decl., Ex. B at 2) 95/24/21 Email from Cassioppi to McMillan). In order to attempt to resolve this issue in good faith, Comerica should provide Respondents with the legal basis for its position as well as an explanation of their concerns regarding the continuation of the lawsuit past discharge, which they have so far failed to do. Comerica's participation in implementing a timeline for closure of the Estate should not be contingent on Ms. Nelson's separate civil lawsuit for nominal damages.

## **II. COMERICA'S HANDLING OF THE TAX SETTLEMENT REQUIRES SCRUTINY AND DISCLOSURE OF INFORMATION REGARDING THE ESTATE'S TAX FILINGS AND SETTLEMENT NEGOTIATIONS.**

### **A. Respondents Have Concerns Regarding Comerica's Tax Filings and Negotiations With The Tax Authorities And Seek Greater Transparency Through Open Communications and Appointment of a Tax Representative.**

Respondents seek greater transparency and access to independent tax advice based on their concerns regarding the ongoing estate tax proceedings with the IRA and MDOR. As discussed in further detail below, Comerica has kept Respondents almost entirely in the dark concerning its dealings with the tax authorities. Comerica did not provide SNJ with a copy of Form 706 prior to its submission to the IRS. Respondents have since learned that the extremely low valuation reported by Comerica on Form 706, which was roughly half the amount of the IRS's valuation, has led to the IRS's assessment of a \$6.4 million "accuracy-related" penalty, incurring additional potential liability and resulting in the matter being moved into a tax court proceeding that could take many years to fully resolve. (1/11/21 Comerica Letter to the Court re Tax Status at 2; *see also* Declaration of C. Wells Hall (hereinafter "Hall Decl.") at ¶ 6).

Respondents are also concerned that they have never received a satisfactory explanation as to why the IRS and state tax audits were not resolved within the three-year statute of limitations and why, in particular, negotiations with the IRS appear not to have occurred prior to the issuance

of the statutory notice in June 2020, the filing of the petition in the Tax Court in August 2020, nor prior to November 2020 when Sharon Nelson was informed by the IRS that Comerica had not yet initiated settlement discussions. (S. Nelson Decl. at ¶ 6; *see* Hall Decl. ¶ 7). In fact, Comerica did not make a global settlement offer until April 2021. It is disconcerting that not only did Comerica not initiate any settlement discussions with the IRS for at nearly five years, but it did not disclose this information to the Heirs and they had to discover it for themselves. (S. Nelson Decl. at ¶ 7).

SNJ have stated unequivocally throughout the probate proceeding that they desire to settle the tax liability issues as soon as reasonably possible, and all Heirs and Interested Persons signed a tax authorization letter agreement with Comerica in April 2021 agreeing that they wanted Comerica to expedite tax negotiations even if it meant settling for a less favorable amount. Respondents are concerned that they have not been allowed sufficient information and involvement with the tax negotiation process, such decisions have been made without their knowledge of the facts and the potential ramifications, which have had the cumulative effect of prolonging the closing of the Estate, and potentially forcing it to extend for many additional years pending hugely expensive and slow-moving Tax Court litigation.

Respondents ask that the Court approve their request for the Estate to retain the D.C.-based law firm of Nelson Mullins Riley & Scarborough LLP as tax counsel to SNJ, specifically attorneys C. Wells Hall, Reed Hollander and Maurice Holloway, to advise Respondents on the critical and complex tax issues that remain pending in this matter. (*See generally*, Hall Decl.). Attorney biographies and a firm overview are attached to the Hall Declaration. Separate tax counsel for SNJ will help assure SNJ that their interests are being protected, that they are being fully advised and that the administration of the Estate will not be unduly prolonged by the tax proceedings. (*See* Hall Decl. at ¶ 8). In particular, SNJ will benefit from receiving sound professional advice on two

of the critical issues remaining, including assessment of a potential IRS settlement offer in the face of Tax Court litigation, and assessing whether it is in the best interests of SNJ to proceed with the Section 6166 process or pay the taxes immediately.

Respondents believe the best course of action would be, as the Heirs previously requested, to allow their tax representative to participate in the negotiations with the tax authorities going forward, or at least, participate in the communications between Comerica, Fredrickson and Respondents related to the Estate tax matters and tax implications of the closure of the Estate. Respondents do not seek to be directly engaged in negotiating –however, they believe the interests of transparency would be best served if they are permitted to engage an advisor with relevant expertise to observe the negotiations in real-time and inform Respondents as to the progress, explain the fine points and answer questions in order to facilitate a thorough understanding of the process and avoid unnecessary disputes.

This general approach was previously endorsed by the Court in its November 23, 2016 Order in connection with the negotiations of the UMG long-form agreement, and worked successfully in that instance where outside entertainment counsel was able to participate in negotiation of the UMG agreement. (November 23, 2016 Order Establishing Protocol For Finalizing Court-Approved Entertainment Agreements).

**B. Comerica Has Not Fully Provided Respondents With Information Regarding Tax Negotiations.**

Pursuant to the Court's April 23, 2019 Order, Comerica is required to keep the Heirs informed as to the position of the IRS and MDOR in regard to negotiations over the Estate's federal and state tax liability. (April 23, 2019 Order Regarding Personal Representatives Fees and Costs for February 2019 Through January 2020 & Petition To Limit Authority of Personal Representative). The tax filings, settlement negotiations and litigation are very technical and

detail-oriented and vague overviews do not effectively keep the Heirs informed unless these details are explained through open communication.

On June 3, 2021, Comerica's counsel uploaded two exhibits to the Comerica's High-Q digital workspace platform, comprising 6 pages total and setting forth valuation figures for certain Estate assets, and explained that they would be attached to Comerica's letter to the IRS setting forth the Estate's settlement offer (McMillan Decl., Ex. I at 5). That same day Respondents met with Comerica's outside counsel to discuss these valuations. Respondents requested several times in correspondence that they be provided a copy of Comerica's settlement letter to the IRS, but these requests were ignored and eventually denied. (McMillan Decl., Ex. I, Ex. J).

On June 16, 2021, Petitioners wrote to Comerica requesting an update on the status of tax negotiations and reiterating their request to receive a copy of the settlement offer letter sent to the IRS, as well other settlement correspondence sent to the IRS and the MDOR going forward. (McMillan Decl., Ex. J at 2 (6/16/21 LLM Email to Greiner et al.)). Comerica's counsel replied that they would not provide this information, claiming that it constituted "protected settlement communications." *Id.* (6/16/21 Email from Steinert to LLM). Comerica's response does not provide any basis on which to withhold critical tax settlement information from the beneficiaries of the Estate, and is contrary to the Court's April 23, 2019 Order.<sup>4</sup>

Comerica's refusal to disclose a copy of its settlement offers and accompanying communications with the tax authorities is contrary to this Court's April 23, 2019 Order, which was issued by the Court in response to Respondents' requests for greater transparency in the tax settlement negotiations and requires Comerica to keep the Heirs informed as to the position of the

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<sup>4</sup> Additionally, McMillan and Spicer have signed binding and comprehensive non-disclosure agreements which protect against disclosure of confidential information.

tax authorities in connection with the settlement negotiations. (April 23, 2019 Order at 3). Respondents, as beneficiaries of the Estate, have a huge stake in the outcome of the tax settlements and it is they, not Comerica, who will ultimately be dealing with the results and consequences of these negotiations. The Heirs and Interested Persons will be the ones required to come up with the sums necessary to pay the federal and state tax debt, and the handling of these tax and estate closure issues may also determine whether SNJ will ever be able to receive and enjoy their inheritance during their lifetime. They are entitled, as the Court has recognized, to be informed as to the ongoing process of negotiation and reasonably participate in closure of this Estate with the supervision of the Court.

The Respondents need access to Estate's settlement communications, as the mere valuations do not inform adequately for strategy input or future planning. By refusing to provide the specifics of Comerica's offers and negotiations with the tax authorities, Comerica is preventing Respondents from being fully informed as to how and why the tax authorities have taken a certain position, because they do not have full and accurate information as to what Comerica communicated to the authorities that resulted in that position – including all the details of Comerica's proposal, how Comerica has framed its offer, and how Comerica has responded to the IRS's concerns and counter-offers. Currently, there is little, if any, transparency in this process, and Respondents are entitled to a true and accurate understanding of how the negotiations are proceeding, not just to rely on Comerica and its counsel to report a final result.

The Court did not require that the Heirs be informed as to valuations of the Estate, it required that they be informed as to negotiations of the Estate's tax liability. It makes no sense that the Heirs receive full information regarding and maintain involvement in "Significant Entertainment Transactions" valued at or around \$2 million, but should not be provided critical

business information or allowed any participation concerning Estate tax liabilities comprising potentially tens of millions of dollars. Simply put, this Court should allow Respondents to have input in the Estate tax negotiations in the same manner it allowed the Heirs to have input in the entertainment transactions, if not more input.

In all candor, Respondents are concerned at the possibility that, based on the history of these negotiations, Comerica is refusing to disclose the substance of these negotiations because it knows there are aspects that the Heirs will find problematic, and that the handling of the tax matters were not in the Estate's best interests. For example, failure to negotiate the tax settlement earlier and no later than the end of the statute of limitations, and the excessive under-valuation of the estate's assets which resulted in the assessment of \$6.4 million in penalties. The Heirs and Interested Persons must have access to full information so they can reach their own determination as to whether if such actions are resulting in financial harm to the Estate or delays that could prevent SNJ from receiving their inheritance during their lifetime unless the Court intervenes. Increasing the transparency of this negotiation process will only help establish mutual trust and speed up the closure of the Estate as well as keep Respondents more informed on issues of critical importance to their interests in the Estate.

Respondents request that Comerica be required to provide Respondents with all written settlement communications between Comerica, the IRS and MDOR that have occurred to date, and going forward until the Estate's tax liability issues have been fully resolved.

**III. TROY CARTER'S AND TREVOR GUY'S ADVISORY SERVICES ARE NO LONGER NECESSARY FOR THE ESTATE AND THE FEES AND COMMISSIONS BEING PAID TO HIM ARE EXCESSIVE.**

Since 2017, Troy Carter and his companies Atom Factory and Q&A Management have been engaged as entertainment advisors to the Estate for over five years. During this period, the

Estate has paid millions to Carter in fixed monthly fees alone, independent of the commissions that he also receives for entertainment transactions. Respondents and Primary Wave are in agreement that, at this stage of the Estate proceedings, Carter's and Trevor Guy's advisory services are not critical and have a strong potential to complicate the parties' post-closure management of the Estate if continued, and that the amounts currently being paid to both of them are therefore excessive and do not, at this point, have a reasonable basis.

Comerica has defended its continued engagement of Carter by claiming that his commission rate is lower than the rates paid to McMillan and Charles Koppelman when they were entertainment advisors to the Estate in its early days, and falsely claim that McMillan is "hypocritical" because he made a deal late in his tenure as advisor. (McMillan Decl., Ex. A at 8:1-23).<sup>5</sup> However, the current circumstances are fundamentally different. First, McMillan and Koppelman never received six-figure fixed monthly fees on top of their commissions. Moreover, unlike in 2016, the Estate has since been organized, settled down, has already handled most emerging crises, has generated millions of dollars and now has long-term deals in place with Universal, Sony and Warner, among others, to actively exploit the music and entertainment Estate assets in the marketplace. In Comerica's own words, these entities serve as Comerica's "entertainment partners." (*See* Comerica's 12/6/19 response to Primary Wave's Motion For Recognition as an Interested Person at 5). These deals, some of which were made by McMillan and Koppelman, are currently in place and generate revenue year after year. Each of these entertainment partners have their own highly paid experts working on opportunities to monetize

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<sup>5</sup> Comerica's counsel also claimed that McMillan was seeking to remove Carter because McMillan wants to assume his role as entertainment advisor. However, McMillan has already served in that role and has stated that his priorities lie exclusively in advising SNJ on Estate matters and protecting his interest in the Estate. (McMillan Decl., at ¶ 12).



the Estate assets and often come back to the Estate simply to seek approvals of the matters and in most instances, Comerica takes the advice of their entertainment partners.

The Estate proceedings are now at an advanced stage and the parties are, or should be, increasingly focused on how to seamlessly and efficiently hand over the management of the Estate to the Heirs and other beneficiaries post-closure. It is only complicating things further to continue to pay large amounts of fees (whether a deal is made or not) and commissions to Carter and Guy to procure often complex deals that the Heirs and Interested Persons don't want and which may continue to bind them well after they have taken over possession and management of the Estate assets

At the July 23, 2021 hearing, Comerica's counsel indicated that it wished to keep Carter as an advisor "absent any transition or the agreement on a transition plan that would scale back these activities" (McMillan Decl., Ex. A at 9:14-20). The Heirs and Interested Persons are in the midst of putting a plan in place that will move the Estate toward closure reasonably and expeditiously, and it is therefore appropriate, as counsel indicated, to contemplate curtailing Carter's and Guy's activities and compensation as entertainment advisors to the Estate.

Respondents request that the Court remove Carter and Guy as paid advisors to Comerica effective as of the last day of the first full month following this Order.

**IV. THE COURT SHOULD ALLOW RESPONDENTS TO PARTICIPATE IN ALL PROPOSED TRANSACTIONS INVOLVING ASSETS CREATED AFTER PRINCE'S DEATH.**

While the Estate has been significantly engaged in the licensing of assets created by Prince during his lifetime – primarily the copyrights to his musical recordings and compositions, as well as the licensing of his name, image and likeness, the Estate has also engaged in costly negotiations to commercially create, produce and exploit new assets created posthumously as derivatives of

Prince's own works, for example, new musical compositions, new sound recordings and [REDACTED]. Transactions involving newly-created assets are particularly sensitive because they concern assets that Prince did not contemplate exploiting while he was alive, or assets that he may have chosen not to exploit. The Heirs and Interested Persons will likely be bound to agreements concerning newly-created assets long after Comerica has been discharged, and should now be active participants in such proposed transactions.

Comerica was not appointed by this Court to create, produce and commercially exploit new assets derived from the existing Estate assets, and Respondents believe that all parties to the Estate, based on their familiarity with Prince and his artistic vision, should seek to exercise a high level of sensitivity when considering the effect of creating entirely new works from his creative assets. The Heirs and Interested Persons, as stewards of Prince's legacy and eventual managers of his business interests, should be allowed to participate in consideration of proposed transactions involving newly-created assets, and have the right to object to transactions based on such creative tinkering as they feel is necessary to protect Prince's legacy.

To be clear, Respondents are not objecting to "all entertainment deals," as Comerica has claimed. Respondents' concerns over newly-created assets are limited to those assets that were not in existence at the time of Prince's death in their current form, and which have since been created by the Estate and/or its advisors for the purposes of exploitation. They do not apply to the entirety of Prince's music catalog and other property in existence at the time of his death.

**A. The Probate Code Does Not Convey Authority to Comerica to Create New Assets In Connection With The Estate.**

Minn. Stat. § 524.3-712 provides that "a personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust however, for the benefit of the creditors and others interested in the estate." Although this language may empower

the personal representative to convey or lease existing estate property as the de facto owner of title to such property, it does not empower the personal representative to create and exploit new property. This is reinforced through the provisions of Minn. Stat. § 524.3-716, which set forth twenty-nine “transactions authorized for the personal representative” by the statute. The power to create and exploit new assets is notably absent from this list of authorized transactions.

Moreover, the statute explicitly limits the continuation or incorporation of new business and ventures to those that the decedent was engaged in at the time of his death. *Id.* at § 716 (24), (25). Additionally, §524.3-716(24) provides that the personal representative may only continue such business or venture throughout the period of administration if none of the probable distributees of the business object to its incorporation and retention in the estate. *Id.* at § 716 (24)(iii). The statute ties the estate’s power to engage in businesses and ventures directly to whether the decedent was engaged in such business prior to his or her death and it conditions the ongoing continuation of such businesses on the approval of the probable distributees. Here too, a line must be drawn between assets created and used by Prince to further his business ventures prior to his death, and assets that have been newly created following his death.

**B. The Heirs and Interested Persons Should Receive Information and Be Allowed To Participate In All Transactions Concerning Newly-Created Estate Assets.**

Respondents request that the Court institute the following protocols relating to proposed transactions involving newly-created assets:

- (i) For all proposed transactions arising after the date of this Order that involve newly-created assets, the Heirs and Interested Persons shall be provided relevant business information from Comerica in the same manner that the Heirs receive information in connection with Significant Entertainment Transactions under the Court’s April 23, 2019 Order.
- (ii) The Heirs and Interested Persons may submit written objections to Comerica within five (5) days of receipt of Comerica’s full and complete disclosure of information concerning a proposed transaction involving newly-created assets.

- (iii) In the event that a majority of the Heirs and Interested Persons object to a proposed transaction involving newly-created assets, as determined by the percentage of expectancy interest controlled by each objecting party, those Heirs and Interested Persons may bring the issue before the Court on an expedited basis, within three (3) business days of providing such written objections to Comerica.

**V. THE COURT SHOULD APPOINT A FINANCIAL ADVISOR TO ADVISE SNJ ON ESTATE ACCOUNTINGS AND FINANCIAL DISCLOSURES, AND INSTITUTE PROTOCOLS FOR RESPONSE AND DISCUSSION.**

Respondents request that the Court approve the engagement of a financial advisor to advise SNJ on financial and accounting issues. SNJ do not have the benefit of the accounting professionals who advise Comerica in regard to the Estate's financial affairs. As this is a large and complex Estate, the associated financial disclosures are lengthy, complicated and extremely difficult to fully understand for parties without accounting expertise. Even for parties with accounting familiarity and experience with the estate's business affairs and structure, it is difficult to understand the whole financial picture. Respondents seek the Court's approval to engage an advisor with relevant financial expertise, to be paid by the Estate, who can assist SNJ with reviewing the Estate's accountings and other financial disclosures, understanding the full financial implications of the assets they will inherit, and to generally answer questions, explain the nuances and participate in discussions with Comerica where necessary.

As an example, McMillan noted at the July 23, 2021 hearing that although Comerica receives a monthly fee of \$110,000 for its administration of the Estate, only \$55,000 each month appears to be reported in the Fourth Interim Accounting under "Personal Representative Fees." (McMillan Dec1., Ex. A. at 17:21 – 18:7; Interim Accounting From 2/1/20 to 1/31/21 at 17-18). While the remaining half of Comerica's monthly fee is doubtless accounted for elsewhere in the disclosure, it is not apparent from review of the accounting how that has been accomplished. There

are numerous issues like this one that a financial advisor can assist SNJ in understanding, in order to prevent misunderstandings and the potential for further conflicts.

For the foregoing reasons, Respondents request that the Court approve the engagement of Barry S. Sziklay and his firm Friedman, LLP, to advise SNJ on financial matters in connection with the administration and closure of the Estate, and during the period prior to the Estate's closure. Friedman, LLP is a certified public accounting and advisory firm, and Mr. Sziklay practices primarily in the areas of forensic accounting, business and intangible asset valuation, mergers and acquisitions and litigation support for a variety of business and financial disputes. Mr. Sziklay's Curriculum Vitae is attached as Exhibit K to the McMillan Declaration.

Respondents also request that the Court institute protocols creating a framework for Respondents and Comerica to discuss accountings prior to the deadlines for filing formal objections. This will allow an opportunity the Heirs and Interested Parties to ask questions and engage in discussions of the issues in a non-adversarial setting in an effort to limit the need for expensive litigation of the issues before the Court. Accordingly, Respondents request the Court institute the following protocols:

- (i) All accounting disclosures filed by the Personal Representative going forward shall indicate that the Heirs and Interested Persons have fourteen (14) days to file their written responses.
- (ii) No later than five (5) days after the filing of each interim accounting disclosure, the Heirs and Interested Persons may submit written questions to the Personal Representative concerning information disclosed in the interim accounting.
- (iii) No later than five (5) days after the Personal Representative's receipt of any written questions, it shall provide written answers in response to each such question.

**CONCLUSION**

For the foregoing reasons, and in response to the Court's request for specific details, Respondents respectfully request that the Court institute protocols to facilitate closure of the Estate, as set forth in this memorandum and in the Proposed Order submitted herewith.

Dated: August 13, 2021

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