

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  
RESPONSE TO PRIMARY WAVE  
MUSIC IP FUND 1, LP'S MOTION FOR  
RECOGNITION AS AN INTERESTED  
PERSON**

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Comerica Bank & Trust, N.A., in its capacity as personal representative (“Personal Representative”) of the Estate of Prince Rogers Nelson (“Estate”) respectfully submits this response to the Motion to Recognize Primary Wave Music IP Fund 1, LP (“Primary Wave”) as an Interested Person Under Minnesota Statute § 524.1-201(33).

**BACKGROUND**

In August 2019, Primary Wave purported to enter into a series of agreements with Alfred Jackson hours before his death, under which Mr. Jackson assigned most of his expectancy interest in the Estate to Primary Wave. (Sept. 18, 2019 Cassioppi Decl. ¶ 3.) As a result of that transaction, Primary Wave sought a status conference with the Court regarding its request to take the place of Mr. Jackson as an Heir in these proceedings, with the same rights and access to the confidential information of the Estate as had been granted to Mr. Jackson during his lifetime. The Personal Representative opposed the request. On September 20, 2019, the Court issued an Order and Memorandum denying Primary Wave’s request. In its Memorandum, the Court explained:

[T]his [Estate] is not a business where stockholders have a right to be heard and their “clout” may depend on the number of shares they own. In this matter, the Court has determined that there are six heirs to the Estate. The Court has given the heirs considerable opportunity to receive information regarding the Estate and provide input into decisions of the Personal Representative and the Court. . . . The Court has done so recognizing the unique nature of the music assets of the Estate and the legacy that Prince Roger Nelson leaves behind. The Court will continue to make decisions it believes are in the best interest of the Estate and, in doing so, will listen to all relevant information.

(Nov. 20, 2019 Order and Memorandum.) The Court explained that it “does not intend to open up the information gathering and decision making process any further than it already has” as a result of Primary Wave’s purported acquisition of Heir’s expectancy interest in the Estate. (*Id.*) The Court concluded: “There are still only six heirs to this Estate . . . .” (*Id.*)

Primary Wave has since stated that it has entered into similar agreements with Tyka Nelson. According to its Motion, Primary Wave entered into an “Expectancy Transfer Agreement” purporting to sell a portion of Ms. Nelson’s interest in the Estate and assign the right to represent Ms. Nelson’s interest in the Estate to Primary Wave. (Magnuson Decl. Ex. A.) As a result of the transaction, Primary Wave asserts that it is an “interested person” pursuant to Minn. Stat. § 524.1-201(33) because it has a property right in the Estate. Primary Wave also asserts that it “must be afforded all rights commensurate with its status including, but not limited to, notice and access to all filings and proceedings that are part of the decedent’s estate administration.” (Primary Wave’s Mem. in Supp. at 5.)

### **ARGUMENT**

#### **I. PRIMARY WAVE’S MOTION SHOULD BE DENIED AS AN IMPROPER MOTION TO RECONSIDER THE COURT’S NOVEMBER 20, 2019 ORDER.**

Primary Wave previously acquired a purported expectancy interest in the Estate through its agreements with Mr. Jackson and previously requested that the Court grant it Heir-status based on that purported interest. The Court considered and denied Primary Wave’s request.

Primary Wave now moves the Court for the same relief based on the same transaction with a different Heir, namely assignment of a portion of Ms. Nelson's expectancy interest in the Estate. While styled differently, Primary Wave's Motion is effectively a motion to reconsider the Court's November 20, 2019 Order. Minnesota General Rule of Practice 115.11 specifically prohibits motions to reconsider "except by express permission of the court, which will be granted only upon a showing of compelling circumstances." To request permission, a party must submit a letter to the Court of no more than two pages. Minn. R. Gen. Prac. 115.11. Primary Wave failed to follow the required procedure outlined in Rule 115.11 and failed to obtain the express permission of the Court. As a result, Primary Wave's Motion should be denied as an improper motion to reconsider.

**II. PRIMARY WAVE IS NOT AN HEIR AND SHOULD NOT BE GRANTED THE SAME STATUS AND ACCESS AS THE HEIRS.**

If the Court reaches the merits of Primary Wave's Motion, it should deny the Motion to the extent that Primary Wave seeks the status of an Heir in these proceedings as the Heirs.

Minnesota's Probate Code defines an "Interested Person" to include "heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against the estate of a decedent, ward or protected person which may be affected by the proceeding." Minn. Stat. § 524.1-201(33). Assuming that Primary Wave has been assigned an interest in Ms. Nelson's expectancy interest in the Estate,<sup>1</sup> Primary Wave may qualify as a party "having a property right in" the Estate "which may be affected by the proceeding." Minn. Stat.

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<sup>1</sup> The Personal Representative takes no position regarding the validity of Primary Wave's agreements with Ms. Nelson, but notes that *Thayer v. Knight*, 297 N.W. 625, 626 (Minn. 1941), which is the only Minnesota authority cited by Primary Wave regarding the conveyance of an expectancy, addresses only the conveyance of a vested interest in specific real property bequeathed by will, not the conveyance of an expectancy in an intestacy proceeding.

§ 524.1-201(33). Thus, to the extent that Primary Wave seeks recognition only as an “interested person,” the Personal Representative has no objection. However, Primary Wave is not an Heir of Prince Rogers Nelson and should not be recognized or treated as such.

In light of the unique nature of this Estate, the Court has granted the six Heirs a unique role in the administration of this Estate. The Court has permitted the Heirs unprecedented access to, and involvement in, the administration of the Estate, beyond that granted to heirs by the Probate Code. To protect the Estate’s confidentiality and to ensure the efficiency and integrity of the Estate’s administration, however, the Court has not granted that same level of access or involvement to any other interested person in the Estate. Primary Wave is not an Heir and it should not be treated as such simply because it has purchased one or more Heirs’ expectancy interests in the Estate. As an investor in the Heirs’ expectancy, Primary Wave should be treated no differently than the Estate’s creditors or other non-Heir interested persons, such as the multiple law firms with attorneys’ liens against Ms. Nelson’s interest. That is, Primary Wave may be afforded those rights granted to interested persons generally, but it should not be afforded access to the Estate’s confidential information or included in the Personal Representative’s decision-making. This is consistent with Minnesota’s Probate Code and with Minnesota case law cited by Primary Wave. *See Starkey v. Sweeney*, 73 N.W. 859, 859 (Minn. 1898) (permitting an heir’s creditor with a claim to the heir’s share of the estate to appear and be heard in the probate action for the purpose of opposing a proceeding to divest such heir and to seek an accounting for such heir’s share, but not affording any further relief or status to the creditor); *see generally* Minn. Stat. § 524.3-101 *et seq.*

The inclusion of Primary Wave in the administration of the Estate would considerably impact the processes and communication developed by the Personal Representative over the past

two and a half years. Such inclusion may also set a precedent for similarly positioned third parties in the future that could render the administration of this Estate virtually unmanageable. Primary Wave's status as an entertainment company, its history with the Estate, and its history as a lender to certain Heirs create additional concerns over the impact of the access and rights that Primary Wave is requesting. The Estate's entertainment partners have expressed concern over the possibility of Primary Wave obtaining access to their confidential agreements and other confidential information related to their transactions with the Estate because Primary Wave is viewed as a competitor by certain of the Estate's partners. (*See* Sept. 18, 2019 Cassioppi Decl., ¶ 6.)

Additionally, as the Court is aware, the Personal Representative learned earlier this year that Michael Lythcott and Gregg Walker surreptitiously provided Primary Wave and dozens of other persons access to many of the Estate's most confidential records. The Personal Representative was successful in obtaining agreements with the vast majority of those recipients that they would return or destroy the records. Primary Wave, however, refused, even after the Personal Representative provided Primary Wave a copy of the Court's February 13, 2019 Order. (*See* Sept. 18, 2019 Cassioppi Decl., Ex. D.)

Primary Wave may be an "interested person" under Minn. Stat. § 524.1-201(33), but Primary Wave is not an Heir of Prince Rogers Nelson and should not be treated as such in these Estate proceedings. The Court should re-affirm its previous decision and deny Primary Wave's Motion to the extent it seeks greater access to, and involvement in, the Estate's administration than provided by the Probate Code.

Respectfully Submitted,

Dated: December 6, 2019

*s/ Joseph J. Cassioppi*

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