



September 6, 2017

The Honorable Kevin W. Eide
Judge of the District Court
Carver County Justice Center
604 East 4th Street
Chaska, MN 55318

VIA EFILE

Re: *In re Estate of Prince Rogers Nelson*, File No. 10-PR-16-46

Dear Judge Eide:

We write in response to the letter filed by Petitioners Roc Nation LLC, Project Panther Ltd., Aspiro AB and WiMP Music AS on September 1, 2017. Instead of addressing Petitioners' failure to produce requested documents, Petitioners resort to personal attacks, accusing counsel of "purposefully attempting to mislead the Court," evading discovery, and "gross[ly] distorting" the record. Petitioners' accusations are baseless and unwarranted.

The focus of Petitioners' letter is an error in the letter the Personal Representative filed on August 30. In the August 30 letter, the Personal Representative pointed out that Petitioners did not reference the alleged "Artist Equity Term Sheet" in their initial claim. The Personal Representative mistakenly cited the Petition instead of the May 27, 2016 letter Petitioners sent to the former Special Administrator to initiate the claim. When counsel for Petitioners pointed out the error, we immediately corrected it. The point we were making remains valid: Petitioners did not refer to the alleged "Artist Equity Term Sheet" in their initial claim and only produced the purported contract to the Personal Representative several months later. The mistake was inadvertent, and was immediately corrected in an amended filing.

In their zeal to capitalize on this mistake, Petitioners made several false statements in their letter to the Court, ironically engaging in the same behavior to which they wrongfully accuse the Personal Representative. Petitioners assert that the Personal Representative only produced documents after Magistrate Judge Franklin L. Noel "compelled" the Personal Representative to do so. Contrary to Petitioners' representations, no motion to compel was filed, let alone granted. The dispute Magistrate Judge Noel heard related to the issuance of document preservation notices to Decedent's former employees. At Petitioners' request, Magistrate Judge Noel amended the ESI Protocol to state that the Personal Representative would "furnish preservation letters to former agents or employees of NPG Records, Inc. and NPG Music Publishing, LLC

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that are likely to have discoverable information in their possession, custody or control.” (Amended Order Regarding Discovery of Hard Copy and Electronically Stored Information, Docket No. 51.) Magistrate Judge Noel did not consider whether documents possessed by former employees of the Decedent were within the Personal Representative’s possession, custody and control, and specifically indicated that he was not addressing whether the Personal Representative had a duty to collect documents from former employees. Whether the Personal Representative had a duty to collect documents from former employees was never resolved because the Personal Representative voluntarily collected from former employees through subpoenas and informal requests. The Personal Representative’s collection efforts have been timely and thorough. Petitioners’ representation that Magistrate Judge Noel “compelled” the Personal Representative to produce documents is untrue.

Petitioners represent that they produced documents to the Personal representative “on August 29 and August 30,” and they accuse the Personal Representative of misrepresenting the timing of the production. Counsel for the Personal Representative received the first production at 12:03 p.m. on August 30. (Exhibit A.) Counsel received a second production at 6:14 p.m. that same day. (Exhibit B.) Petitioners contend that documents were “produced” on August 29 because they were allegedly available to the Personal Representative on a share file site at some point that evening, even though the Personal Representative was not notified. (Exhibit C.) Whether the documents were “produced” on August 29 or August 30 has no bearing on the issues before the Court. However, Petitioners wrongly accused the Personal Representative of misrepresenting the date of the production and mischaracterized events in the process.

At the conclusion of their letter, Petitioners mention requests for production of documents allegedly served on April 26, 2017 and ask the Court to deem all objections waived. What Petitioners fail to tell the Court is that the requests were not properly served. Petitioners sent the document requests to the Personal Representative by email only. Under Rule 14.03(d)(3) of the Minnesota General Rules of Practice, discovery material may be served as “authorized by the court rules, as agreed by the parties, or as ordered by the court.” The parties did not agree to email service, and Minn. R. Civ. P. 5.02 does not authorize service by email.

Serving discovery through the EFile system, mail or personal delivery assures that the discovery requests are received and recognized as triggering an obligation to respond. The need for a more formal and reliable method of delivery than email is especially important in a case like this one where the Estate’s attorneys average more than a hundred emails daily relating to Estate matters.

Petitioners also failed to discuss the requests with the Personal Representative before seeking relief from the Court. Had Petitioners done so they would have learned that the Personal Representative is willing to provide written responses and objections even though the requests for production were not properly served. Counsel for the Personal Representative also would have explained that documents within the scope of permissible discovery have already been

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produced.¹ One of the cases Petitioners cite as authority is inapplicable for this very reason. In *Holmberg v. Lakeshore Management, Inc.*, the party seeking discovery immediately contacted opposing counsel when the response deadline lapsed, and followed up again a month later. No.02-CV-12-799, 2012 WL 10028102 at *2-3 (Minn. Dist. Ct. Apr. 6, 2012). Petitioners uttered nothing about the document requests until early August. Further, in *Holmberg*, the order to compel was justified because the responding party failed to produce specifically identifiable documents *and* indicated that they would object to any further production requests. *Id.* at *7-9. Here, on the other hand, the Personal Representative has already produced all documents to which Petitioners are entitled.

Finally, the relief Petitioners are seeking is inappropriate. Where a motion, pleading, or discovery is improperly served, it is treated as ineffective. *See, e.g., McKee v. Johnson*, 1994 WL 694048 at *4 (Minn. Ct. App. Dec. 13, 1994) (concluding that the district court properly denied a motion because it was improperly served under Minn. R. Civ. P. 5.02); *In re Rodriguez*, 506 N.W.2d 660, 662 (Minn. Ct. App. 1993) (finding that an improperly served notice of appeal was ineffective and did not trigger the appeal period). Further, where a party attempts to serve discovery by email without first obtaining the consent from the parties, “such attempted service shall be considered void.” *Family Dollar Stores, Inc. v. United Fabrics Intern., Inc.*, 896 F.Supp.2d 223, 228 (S.D.N.Y. 2012). Parties need not respond to improperly served discovery. *Id.* (finding that because the parties did not agree to service by e-mail, “no response was necessary”). Therefore, the Personal Representative was under no obligation to respond to the discovery, and the Petitioners’ requested relief is baseless.

Sincerely,

/s/ Lora M. Friedemann

Lora M. Friedemann
Direct Dial: 612.492.7185
Email: lfriedemann@fredlaw.com

62084892.1

¹ Rule 37.01 of the Minnesota Rules of Civil Procedure requires that parties confer in good faith in an effort to resolve discovery disputes without the need for Court action. Minn. R. Civ. P. 37.01(b). The Personal Representative met and conferred with counsel for Petitioners twice about their failure to produce documents. Petitioners made no attempt to meet and confer. In fact, when Petitioners first brought up the requests for production of documents last month, the Personal Representative indicated that it had no record of receiving them. Instead of providing the requests or pointing the Personal Representative to the transmittal email, Petitioners rushed to the court in an apparent effort to deflect attention from their deficient document production.

Friedemann, Lora

From: mail@sf-notifications.com on behalf of Christopher Atkins <mail@sf-notifications.com>
Sent: Wednesday, August 30, 2017 12:03 PM
To: Friedemann, Lora

ReedSmith

The business of relationships.

Lora,

Christopher Atkins has sent you files.

Expires 9/12/17

[Download](#)

Trouble with the above link? You can copy and paste the following URL into your web browser: <https://reedsmith.sharefile.com/d/335cd5af3eea4338>

ShareFile is a tool for sending, receiving, and organizing your business files online. It can be used as a password-protected area for sharing information with clients and partners, and it's an easy way to send files that are too large to e-mail.

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Friedemann, Lora

From: mail@sf-notifications.com on behalf of Christopher Atkins (Reed Smith LLP) <mail@sf-notifications.com>
Sent: Wednesday, August 30, 2017 6:14 PM
To: Friedemann, Lora
Subject: Christopher Atkins Has Created a New Item in ShareFile

ReedSmith

The business of relationships.

Lora,

Christopher Atkins has uploaded a file to the folder
PRN Estates.

[Click here to download RN005.zip](#)

[_ReedSmith\(US\)Admin > _ReedSmith\(US\) > 505894 > 20003 > PRN Estates](#)

Name: [RN005.zip](#)

Size: 228.64 MB • **Created:** 8/30/17 7:13p

Creator: C. Atkins

Dates are displayed in UTC -5

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<https://reedsmith.sharefile.com/d/78dd4a724c364399>

[Click here to change how often ShareFile sends emails](#)

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Friedemann, Lora

From: Friedemann, Lora
Sent: Wednesday, August 30, 2017 3:18 PM
To: 'Hoffman, Christopher P.'
Cc: Rondoni Tavernier, Anne; Cassioppi, Joseph; Siev, Jordan W.
Subject: RE: Document Production
Attachments: 2017_08_07 Letter to Jordan Siev With Redaction Log-c-c.pdf

Chris,

The first indication we received that documents had been produced was today at 12:03 p.m. through an email from Christopher Atkins at Reed Smith. If you posted documents to a share file site yesterday we were not notified. Regardless, however, the central issue remains unresolved – Tidal has not completed its production even though we agreed that our productions would be substantially complete by August 26. We talked about the August 26 deadline in our last meet and confer. Anne and I expressed concern that Tidal intended to wait until August 26 to produce everything and then give us a “document dump” on that date. You assured us that your clients would not wait until the last day to produce documents. Contrary to what you told us, Tidal failed to produce any of the promised documents by August 26 and is only now beginning to produce them. In your email, you acknowledge that the documents Tidal has yet to produce are “substantial.” We will proceed with the informal motion we filed and ask Judge Eide to order your clients to complete their production within ten days.

You assert in your email that the Estate “has not responded to all of the issues raised in our letter of August 2, 2017.” We responded in writing on August 7 (copy attached for your convenience), and we subsequently discussed the issues. If our letter and telephone conversation did not satisfy your inquiry, then please tell us what you believe remains unresolved.

You suggest in your letter that the Estate failed to respond to requests for production you claim were served on April 26, 2017. As we indicated in our August 7th letter, we have no record of receiving requests for production on that date, or any requests for production in the probate action for that matter.

Your email suggests that Tidal’s failure to produce responsive documents should somehow be excused because Tidal has produced more documents than the Estate has. The volume of documents produced is not the issue. The issue is Tidal’s failure to produce responsive documents in a timely manner, and before the agreed-upon deadline.

Jordan sent a separate email indicating that Tidal’s legal team is not available for a hearing on September 5th, the date provided by the Court. We will contact the Court and seek an alternative date for the hearing to accommodate your schedule.

Lora

From: Hoffman, Christopher P. [mailto:CHoffman@ReedSmith.com]
Sent: Wednesday, August 30, 2017 1:57 PM
To: Friedemann, Lora
Cc: Rondoni Tavernier, Anne; Cassioppi, Joseph; Siev, Jordan W.
Subject: RE: Document Production

Lora -

That is simply incorrect. Last evening we posted over 2000 documents to share file site that both you and Anne have been given access to. These documents include a prioritization of the Reed Smith documents, as you requested. You should have received an email notice from the share file of the document upload. To the extent e extent that did not happen, or you are having issues accessing the site, my litigation support personnel will re-send the log in instructions for the site.

This most recent production brings my clients' document production total in this matter to approximately 5,700 documents while the estate has produced substantially less. TIDAL has hardly been deficient in producing documents, as you claim, and will be making yet another substantial document production tomorrow morning (if not sooner).

Moreover, the estate has not responded to all issues raised in our letter of August 2, 2017, and as further specified during the parties' meet and confer. For example, the estate has failed to respond to the Aspiro Parties' and Roc Nation's ("Petitioners") First Request for Production of Documents to Comerica Bank & Trust, N.A. (Personal Representative) dated, April 26, 2017, nor has it produced documents in response to these requests.

Given that you appear to have not accounted for our document production of yesterday, we request that you immediately withdraw the application to Judge Eide. Should you decline to do so, we will bring before the Judge the deficiencies raised herein and in our letter dated August 2, 2017 and seek, among other things, an order that the estate has waived all objections to Petitioners' First Request for of Documents.

We suggest that it would be in the best interest of all parties to avoid unnecessary motion practice at this time while we continue document production and good faith settlement discussions.

Please advise us of your position.

From: Friedemann, Lora <lfriedemann@fredlaw.com<<mailto:lfriedemann@fredlaw.com>>>
Date: Wednesday, Aug 30, 2017, 1:36 PM
To: Hoffman, Christopher P. <CHoffman@ReedSmith.com<<mailto:CHoffman@ReedSmith.com>>>
Cc: Rondoni Tavernier, Anne <ARondonitavernier@fredlaw.com<<mailto:ARondonitavernier@fredlaw.com>>>, Cassioppi, Joseph <JCassioppi@fredlaw.com<<mailto:JCassioppi@fredlaw.com>>>, Siev, Jordan W. <JSiev@ReedSmith.com<<mailto:JSiev@ReedSmith.com>>>
Subject: RE: Document Production

Chris,

We did not receive a production yesterday. Given Tidal's continued failure to produce documents, the Estate filed a motion requesting that Judge Eide order Tidal to complete its production.

The below email asks about a "formal position" on items raised in a deficiency letter. We discussed your concerns about the Estate's document production some time ago and believed all issues had been resolved.

Lora

From: Hoffman, Christopher P. [<mailto:CHoffman@ReedSmith.com>]
Sent: Tuesday, August 29, 2017 6:38 AM
To: Friedemann, Lora
Cc: Rondoni Tavernier, Anne; Cassioppi, Joseph; Siev, Jordan W.
Subject: RE: Document Production

Lora –

We will be making a substantial document production today and will follow up with the balance of our documents as expeditiously as possible.

Please let us know if you will be taking a formal position on the items raised in our deficiency letter and the additional documents requested therein.

Thanks.

Christopher P. Hoffman

212.205.6109

choffman@reedsmith.com<<mailto:choffman@reedsmith.com>>

Reed Smith LLP

599 Lexington Avenue

New York, NY 10022

From: Friedemann, Lora [<mailto:lfriedemann@fredlaw.com>]

Sent: Monday, August 28, 2017 3:27 PM

To: Hoffman, Christopher P.; Siev, Jordan W.

Cc: Rondoni Tavernier, Anne; Cassioppi, Joseph

Subject: Document Production

Jordan and Chris,

The parties agreed that document productions would be substantially complete by August 26. You also assured us that you would prioritize the production so that we would receive certain categories of documents well before that date. August 26th has now come and gone. Not only did your clients fail to prioritize the production as you promised you would, we did not receive any production by the agreed-upon deadline. Please let me know ASAP when we can expect to receive the documents the Estate requested.

Lora

Lora M. Friedemann

Chair, IP Division

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Patent Litigation Bulletin

* * *

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