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STATE OF MINNESOTA
CARVER COUNTY

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION

Case Type: Special Administration

In the Matter of:

Estate of Prince Rogers Nelson,

Decedent

Court File No. 10-PR-16-46

REPLY IN SUPPORT OF MOTION OF MEDIA COALITION TO INTERVENE FOR THE LIMITED PURPOSE OF ENSURING ACCESS TO COURT PROCEEDINGS AND RECORDS

In its July 21 opposition to the Media Coalition's Motion to Intervene, the Special Administrator for the Estate of Prince Rogers Nelson does not object to the request to intervene as of right under Minn. R. Civ. P. 24.01, and it raises no new arguments with respect to what it characterizes as the Media Coalition's request for "access to paternity proceedings." Instead, the Special Administrator rests on its prior submission regarding media access, filed on June 17.

That filing did not actually request closure of any proceeding. Thus, although it provided a brief overview of the Special Administrator's view of applicable law, it did not attempt to justify closure under Minnesota statutory law or the common law or First Amendment tests that the Media Coalition subsequently outlined in its motion papers. Instead, the Special Administrator's June 17 filing merely requested a denial of photography, video recording, and audio recording during the June 27 hearing, which request was granted.

As set forth in the Media Coalition's motion papers, neither the Probate Code nor the Parentage Act require closure of the courtroom or restrictions on public access to court files.[1] And even if one or both of these statutory schemes purported to require that discussions regarding paternity remain confidential, thereby potentially trumping the common law right of

[1] *See* Memorandum in Support of Motion of Media Coalition to Intervene for the Limited Purpose of Ensuring Access to Court Proceedings and Records at 12–15.

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access, First Amendment principles guaranteeing press and public access to civil proceedings[2] would require the Court to make on-the-record findings of fact and conclusions of law that closure is necessary to protect "a compelling governmental interest" and is "narrowly tailored to meet this governmental interest." *Minneapolis Star & Tribune v. Schumacher*, 392 N.W.2d 197, 203 (Minn. 1986).

Because no interested party has attempted to rebut these arguments, much less make the required common law or First Amendment showings, the Media Coalition requests that the Court take this opportunity to make clear that all proceedings and records in this matter will remain publicly accessible and that photography, video recording, and audio recording of proceedings will be permitted during all future proceedings (subject to the filing of a specific motion seeking to limit access and a meaningful opportunity for the Media Coalition to be heard on that motion).

The Court should also extend its June 29 order and unseal submissions from parties claiming to be direct descendants/children of Prince Rogers Nelson unless those parties can make the required common law and First Amendment showings required to maintain confidentiality. At the very least, the Court should unseal submissions from anyone who is not a minor, as there is no binding precedent requiring confidentiality when certain procedures borrowed from the Paternity Act are used in a probate proceeding, and because adults who have voluntarily inserted themselves into this probate proceeding have no reasonable expectation of privacy in parentage questions that may arise.

Finally, with regard to the Special Administrator's new request for an amended protocol and blanket sealing order for so-called "confidential business documents": The common law and First Amendment rights of access are not absolute and the Media Coalition acknowledges the *possibility* (though not the inevitability) that closure of the court or sealing of a document *might*

[2] *See id.* at 9–12.

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be justified under certain circumstances. However, the Special Administrator's request for a standing order permitting the filing of *all* "confidential business documents" under seal, indefinitely, is not justified and should be denied.

As explained in the Media Coalition's opening brief at 11–12, probate proceedings are no different than other civil proceedings and a presumptive right of access to both exists under the common law and First Amendment. Indeed, with regard to settlement-related filings—which appear to be of particular concern to the Special Administrator[3]—courts in both California and Wisconsin have held that the presumption applies and that such filings are subject to press and public access. The California court held,

> Probate proceedings, *including a petition for minor's compromise,* are not closed proceedings. No statute exempts probate files from the status of public records. As explained in *Hearst* in the context of a testamentary trust, "when individuals employ the public powers of state courts to accomplish private ends … they do so in full knowledge of the possibly disadvantageous circumstance that the documents and records filed … will be open to public inspection."

Copley Press, Inc. v. Superior Court, 74 Cal. Rptr. 2d 69, 74 (Cal. App. 1998) (quoting *Estate of Hearst*, 136 Cal. Rptr. 821 (Cal. App. 1977)) (internal citation omitted; emphasis added). The Wisconsin court likewise held that a court-filed settlement with a juvenile who killed his parents (and whose ability to inherit their estates was therefore in question) was subject to disclosure. *In re Estates of Zimmer*, 442 N.W.2d 578, 578 (Wisc. App. 1989). The Wisconsin court began its analysis "with the presumption that the public has a right to inspect the settlement agreement, that any exceptions to the rule of disclosure must be narrowly construed, and that denial of access to the agreement is contrary to the public interest and will be tolerated only in the 'exceptional case.'" *Id.* at 131. It then rejected the following reasons for sealing the record: (1)

[3] *See* Bremer Trust's (1) Memorandum in Response to Media Coalition's Motion to Intervene for the Limited Purpose of Ensuring Access to Court Proceedings and Records and (2) Request for Modified Protocol for Confidential Business Agreements at 3–4.

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disclosure of the settlement agreement might lead the parties to void it, causing a trial that would be expensive to the county; (2) "projected attorney fees" billed to the estate could approach $20,000; and (3) the deceased parents' relatives feared any contact with the juvenile. *Id.* at 133.[4]

As for other "confidential business documents," such as licensing agreements or real estate deals, courts require something more than vague allegations of confidentiality before restricting access, which is all the Special Administrator provides here. *See e.g., In re Rahr Malting Co.*, 632 NW 2d 572, 576 (Minn. 2001) ("Conclusory allegations of harm do not support a finding that data constitutes a trade secret.")[5]; *Williams v. Heins Mills & Olson, PLC*, No. 27-CV-6495, slip op. at 10 (Minn. Dist. Ct., Hennepin Cnty. Mar. 21, 2008) (finding that the specific public interest in the case, together with the strong presumption of openness, outweighed defendants' privacy concerns generally where those concerns related to business operations, including proprietary financial information such as accounts receivable, indebtedness, and method of allocating and distributing net income); *see also Kramer v. Ford Motor Co.*, No. 12-cv-1149 (SRN/FLN), 2015 U.S. Dist. LEXIS 176576, at *89 (D. Minn. Dec. 30, 2015) ("Defendant's allegations regarding the confidential nature of pages 1, 2, and 31 are too vague to demonstrate compelling reasons to warrant preservation of their confidentiality."); *Cardiac Pacemakers, Inc. v. Aspen II Holding Co.*, No. 04-4048 (DWF/FLN), 2006 WL 3079410, *5 (D. Minn. Oct. 24, 2006) (after *in camera* reviewing, maintaining seal on documents that contained

[4] *Schumacher* also involved access to settlement documents, but the court there emphasized the "narrowness" of its decision to deny access: "We are specifically considering only what standard should apply when a party seeks to restrict access to settlement documents or transcripts *made part of a civil court file by statute*. We do not intend this decision to apply to other civil trial records or documents." 392 N.W.2d at 203 (emphasis added).

[5] In *Rahr*, the Minnesota Supreme Court held that a tax court's refusal to close trial and seal court records was not an unauthorized exercise of power where the party seeking closure failed to make an adequate showing of the harm it would suffer if information relating to topics such as sales data, gross margins, dealings with a subsidiary, nature and extent of working capital, and overall profitability was disclosed. The evidence put forth by the party seeking closure stated only in conclusory terms that "disclosure of the data would be 'devastating' and affect the 'survivability' of the company;" it did not explain how information met the trade secret definition. 632 NW 2d at 576.

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trade secrets or other proprietary information but ordering that "all other supporting documents relating to the summary judgment record be unsealed").

Further, even if some sealing is justified, courts whenever possible require redaction, rather than withholding of entire documents. *See, e.g.*, *Press-Enter. Co. v. Superior Court*, 464 U.S. 501, 513 (1984) ("The trial judge should seal only such parts of the transcript as necessary to preserve the anonymity of the individuals sought to be protected."); *IDT Corp. v. Ebay*, 709 F. 3d 1220, 1224 (8th Cir. 2013) ("[I]t is unclear to us why the court concluded that the *entire* document should remain under seal. While the district court was justified in sealing information derived from materials produced under the protective orders, portions of the complaint may be amenable to public access without jeopardizing the confidentiality of sensitive information exchanged in the patent infringement litigation."); *see also United States v. Strevell*, No. 05-CR-477 (GLS), 2009 U.S. Dist. LEXIS 19020, at *14 (N.D.N.Y. Mar. 3, 2009) ("As to narrowness, judicial documents should be sealed in their entirety only if necessary. Redaction may provide a means to narrow sealing requests, but the court should not exclusively delegate redaction to a party." (internal citation omitted)).

The Special Administrator's proposed standing order—which gives only a perfunctory nod to the potential for "later determinations by the Court about whether such documents should remain filed under seal, including whether they should remain under seal in whole or in part with redactions"[6]—does not adequately protect the press and public right of access. Among other reasons, the Special Administrator's proposal does not set a time frame for review by the Court of whether the documents should remain under seal, and it does not provide for an opportunity for the Media Coalition to be heard.

[6] *See* Bremer Trust's (1) Memorandum in Response to Media Coalition's Motion to Intervene for the Limited Purpose of Ensuring Access to Court Proceedings and Records and (2) Request for Modified Protocol for Confidential Business Agreements at 8.

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Thus, the Court should deny the request for a standing order. When the Special Administrator has concrete concerns about specific proprietary or other commercially sensitive information in a document it needs to file with the Court, it can present those concerns in a public motion to seal that does not itself disclose the precise information at issue. Requiring the Special Administrator to bring such a motion on a case-by-case basis (and to explain, if it seeks to seal an entire filing, why redaction is not a feasible option) will allow the Media Coalition a fair opportunity to challenge the legal basis for such contentions or to suggest less restrictive means available to protect any legitimate asserted interest.

Finally, the Media Coalition comprehends the Special Administrator's expressed concern that the pace at which certain business negotiations occur may not allow for a motion to seal to be filed and heard before the "confidential business document" needs to be filed with the Court. Whenever possible, pre-approval to file under seal should be obtained. However, in exigent circumstances (not the result of simple poor planning), a reasonable alternative would be to permit the Special Administrator to file a document under seal, so long as, (1) within 24 hours after filing, it files a public explanation of what the document is, along with an explanation as to why sealing is necessary (and, if the entire document was filed under seal, why redaction was or is not possible), and (2) the press and public are provided with an opportunity to be heard on the issue within five business days. Though not ideal, this "emergency filing" alternative to the normal protocol would ensure that press and public rights of access are preserved in the long run, if not the short.

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Dated: July 27, 2016

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