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12 **UNITED STATES BANKRUPTCY COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**  
14 **OAKLAND DIVISION**

16 In re

17 **PREDIWAVE CORPORATION,**  
18 a California Corporation,

19 Debtor.

20 Fed. Tax I.D. No. 77-0494328  
21

Case No.: 06-40547-RJN

Chapter 11

**APPLICATION OF DEBTOR AND  
DEBTOR IN POSSESSION FOR  
ORDER AUTHORIZING  
EMPLOYMENT OF MINATO  
INTERNATIONAL ACCOUNTING  
OFFICE NUNC PRO TUNC (AS OF  
THE PETITION DATE);  
DECLARATION OF ICHIRO KAWAI  
IN SUPPORT THEREOF**

[No Hearing Required]

1 **TO THE HONORABLE RANDALL J. NEWSOME, UNITED STATES BANKRUPTCY**  
2 **JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE AND OTHER PARTIES**  
3 **IN INTEREST:**

4 As permitted by Bankruptcy Code sections 327(a) and 328, Federal Rule of Bankruptcy  
5 Procedure 2014(a) and that certain Order Re Motion for Authority to Employ and Compensate  
6 Certain Foreign Non-Restructuring Professionals In The Ordinary Course [Docket # 250] (the  
7 "Foreign Professionals Order"); PrediWave Corporation, the above-captioned debtor and debtor  
8 in possession (the "Debtor" or "PrediWave"), shall, and does hereby, apply to this Court (the  
9 "Application") for an order authorizing the employment of Minato International Accounting  
10 Office ("Minato") as its tax accountant for its Japanese operations, nunc pro tunc as of April 14,  
11 2006. In support of this Application, the Debtor relies on the accompanying Declaration of  
12 Ichiro Kawai (the "Kawai Declaration"). This Application (including the Kawai Declaration)  
13 and a proposed form of Order approving the Application (lodged with the Court) have been  
14 served on the Office of the United States Trustee (the "U.S. Trustee") as well as the parties that  
15 have requested special notice in this case.

16 The Debtor respectfully represents and shows as follows:

17 **I.**

18 **INTRODUCTION**

19 On April 14, 2006 (the "Petition Date"), PrediWave commenced this case by filing a  
20 voluntary petition for relief under chapter 11 of the Bankruptcy Code. Pursuant to Bankruptcy  
21 Code sections 1107(a) and 1108, the Debtor is now operating its business and managing its  
22 affairs as a debtor and debtor in possession.

23 The Debtor filed this case in order to continue its business operations and preserve its  
24 assets after the Santa Clara Superior Court entered against it a pre-judgment right to attach order  
25 and a writ of attachment (the "Attachment") in the amount of \$117,000,000 in favor of New  
26 World TMT Limited ("New World") in the case of *New World TMT Ltd v. PrediWave Corp. et*  
27 *al.*, Santa Clara Superior Court Case No. 104 CV020369 (the "Santa Clara Action"). On April 4,  
28 2006, levying officers began executing the Attachment against PrediWave's bank accounts.

1 Absent a bankruptcy filing, the Debtor would have been forced to terminate immediately all of  
2 its employees and cease entirely its business operations and its defense of the Santa Clara  
3 Action.

4 **II.**

5 **THE FOREIGN PROFESSIONALS ORDER**

6 On July 27, 2006, this Court conducted a hearing on the Debtor's motion to employ and  
7 compensate certain foreign non-restructuring professionals, including Minato, in the ordinary  
8 course of business. While the Court denied the relief in part by requiring the Debtor to submit  
9 employment applications for these professionals, among other things, the Court authorized the  
10 Debtor to employ these professionals nunc pro tunc as of April 14, 2006, pursuant to sections  
11 327 and 328 of the Bankruptcy Code, and compensate each of them in an amount not to exceed  
12 \$24,000 per year without further application to or order from the Court. See, the Foreign  
13 Professionals Order.

14 **III.**

15 **RELIEF REQUESTED**

16 As permitted by the Foreign Professionals Order, the Debtor wishes to employ Minato as  
17 its tax accountant for its Japanese operations nunc pro tunc as of the Petition Date, pursuant to  
18 sections 327(a) and 328 of the Bankruptcy Code, and obtain authority to compensate the firm for  
19 services rendered and expenses incurred in connection therewith in an amount not to exceed  
20 \$24,000 per year (the "Annual Limit") without further application to or order from the Court.

21 Minato is composed of professionals who provide accounting and tax services for  
22 companies and others doing business in Japan. A summary of the experience and qualifications  
23 of the accountant who is expected to render services to the Debtor is attached hereto as Exhibit

24 1.

25 The Debtor needs Minato to render the following types of professional services:

- 26 a. To advise the Debtor on accounting and book-keeping matters relating to  
27 the preparation of Japan-related taxes ("Advisory Work"); and  
28 b. To prepare annual corporate income tax and asset tax filing (the "Annual

1 Tax Filings").

2 The Debtor does not expect any duplication in the services to be rendered to it by  
3 different accountants. While this Court has already authorized the Debtor's retention of Sun &  
4 Co., a tax accountant, Sun & Co. only advises the Debtor on domestic tax matters. The Debtor  
5 has a physical and operational presence in Japan, necessitating Minato's services. The Debtor  
6 may request that Minato undertake specific matters beyond the scope of the responsibilities set  
7 forth in the Application. Should Minato agree in its discretion to undertake any such specific  
8 matters, the Debtor will seek further order of this Court.

9 **IV.**  
10 **COMPENSATION**

11 Minato has been providing services to PrediWave since January 1, 2005. Pre-petition,  
12 Minato has charged PrediWave a flat fee for Japan-related tax and related accounting  
13 services. As set forth in the Kawai Declaration, in the one-year period preceding the Petition  
14 Date (i.e., from April 14, 2005 to April 14, 2006), Minato billed the Debtor \$1,907.11 for  
15 services rendered and costs incurred in connection with its representation of the Debtor on  
16 Japan-related tax and accounting services -- all of which was paid by the Debtor, with one  
17 payment of \$636.46 on or about February 17, 2006 and another payment of \$1,270.65 on or  
18 about March 24, 2006.

19 By this Application, PrediWave also seeks authority to compensate Minato as follows  
20 (the "Compensation Terms"): 31,500 (yen) per month for Advisory Work and 210,000 (yen) for  
21 the Annual Tax Filings, without further application to or order from the Court. Based on  
22 conversation rates as of October 13, 2006, this translates into approximately \$264 (USD) a  
23 month for Advisory Work and approximately \$1,760 (USD) for the Annual Tax Filings -- which  
24 is well below the Annual Limit. Notwithstanding the foregoing, Minato understands and agrees  
25 that it will be required to submit written invoices to the Debtor in the ordinary course, and that  
26 the Debtor shall review and process and, only if appropriate, pay such invoices in the ordinary  
27 course of business. In addition, Minato will seek reimbursement for its actual out of pocket  
28 expenses incurred.

1 If, and to the extent, Minato seeks compensation from the Debtor's estate in an amount in  
2 excess of the Annual Limit -- which, given the Compensation Terms, does not appear to be a  
3 possibility absent further order of this Court -- Minato will be required to seek Court approval of  
4 such excess compensation by way of application, pursuant to sections 330 and/or 331 of the  
5 Bankruptcy Code, consistent with any orders of this Court and applicable procedures established  
6 by the Office of the United States Trustee including, without limitation, the Guidelines for  
7 Compensation and Reimbursement of Professionals and Trustees.

8 **V.**

9 **MINATO IS DISINTERESTED AND DOES NOT HOLD OR REPRESENT AN**  
10 **ADVERSE INTEREST TO THE DEBTOR OR ITS ESTATE**

11 To the best of the Debtor's knowledge, based upon the accompanying Kawai Declaration,  
12 except as otherwise set forth below and in the Kawai Declaration, Minato and all of its  
13 accounting professionals comprising or employed by it are "disinterested persons" as that term  
14 is defined in the Bankruptcy Code and do not hold or represent an interest adverse to the  
15 estate. To the best of Debtor's knowledge, except as noted below and in the Kawai  
16 Declaration, Minato and all of its accounting professionals comprising or employed by it do  
17 not have any connection either with the Debtor, its creditors, or any other party in interest in  
18 this case or with their respective attorneys or accountants, or with the United States Trustee,  
19 or any person employed in the Office of the United States Trustee.

20 Based on the Kawai Declaration, the following disclosures are made with respect to  
21 Kawai's disinterestedness (references to Minato include all of its accounting professionals  
22 comprising or employed by it):

- 23 a. Minato is not and was not an equity security holder or an insider of the  
24 Debtor.
- 25 b. Minato is not and was not, within two years before the Petition Date, a  
26 director, officer, or employee of the Debtor.
- 27 c. Pursuant to the disclosures contained in the Kawai Declaration, Minato has  
28 no interest materially adverse to the interest of the estate or of any class of creditors or  
equity security holders, either by reason of any direct or indirect relationship to,

1 connection with, or interest in the Debtor or for any other reason.

2 **VI.**

3 **CONCLUSION**

4 The employment of Minato as the Debtor's tax accountant for its Japanese operations is  
5 in the best interest of creditors of this estate.

6 **THEREFORE**, the Debtor requests that it be authorized to employ Minato as its tax  
7 accountant for its Japanese operations nunc pro tunc as of the Petition Date, pursuant to sections  
8 327(a) and 328 of the Bankruptcy Code, and, without further application or order from the  
9 Court, compensate the firm for services rendered and expenses incurred in connection therewith  
10 in the ordinary course of business subject to the terms and conditions contemplated herein.

11  
12 DATED: October 19, 2006

PrediWave Corporation

13  
14 /s/ Vincent Lin

Vincent Lin

Vice President of Operations and General Counsel

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Presented By:

/s/ Jonathan S. Shenson  
Jonathan S. Shenson, a Member of  
KLEE, TUCHIN, BOGDANOFF & STERN LLP  
Reorganization Counsel for  
Debtor and Debtor in Possession



1           6.       In the one-year period preceding the Petition Date (i.e., from April 14, 2005 to  
2 April 14, 2006), Minato billed the Debtor \$1,907.11 for services rendered and costs incurred in  
3 connection with its representation of the Debtor on Japan-related tax and accounting services --  
4 all of which was paid by the Debtor, with one payment of \$636.46 on or about February 17,  
5 2006 and another payment of \$1,270.65 on or about March 24, 2006.

6           7.       Minato has agreed to accept as compensation from the Debtor only sums as may  
7 be allowed by this Court in accordance with law including, without limitation, the order  
8 approving the subject application. To the extent any fees or expenses paid to Minato are  
9 disallowed by this Court, Minato understands and agrees that such disallowed amounts may be  
10 ordered disgorged by Minato and returned to the Debtor.

11           8.       Minato utilizes a computer program to review its databases to determine its  
12 relationships, if any, to parties that may have connections to a case. In the instant case, Minato  
13 focused its inquiry on ascertaining whether the firm or any attorney thereof currently represents  
14 or otherwise currently has a relationship with any person or entity (i) listed on the creditor matrix  
15 maintained by the Court, (ii) identified to Minato as an officer, director or equity holder of  
16 PrediWave, and (iii) identified to Minato as a professional or other party involved in the case  
17 (collectively, the "Conflict List").

18           9.       Based on my review of the Conflicts List, except as otherwise set forth below,  
19 Minato and all of its accounting professionals comprising or employed by it are "disinterested  
20 persons" as that term is defined in the Bankruptcy Code, who do not hold or represent an  
21 interest adverse to the estate, and do not have any connection either with the Debtor, its  
22 creditors, or any other party in interest in this case or with their respective attorneys or  
23 accountants, or the United States Trustee, or any person employed in the Office of the United  
24 States Trustee.

25           10.      The following supplemental disclosures are made with respect to Minato's  
26 disinterestedness (references to Minato shall include Minato and all of its accounting  
27 professionals comprising or employed by it):

28           a.       Minato is not and was not an equity security holder or an insider of the

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Debtor.

b. Minato is not and was not, within two years before the Petition Date, a director, officer, or employee of the Debtor.

c. Minato has no interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, either by reason of any direct or indirect relationship to, connection with, or interest in the Debtor or for any other reason.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 19th day of October, 2006, at Tokyo, Japan.

/s/ Ichiro Kawai

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Ichiro Kawai

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**EXHIBIT 1**

**BIOGRAPHY OF ICHIRO KAWAI, CPA**

1992, B.A. from Yokohama National University, Business Management Department

1993, Iura Accounting Office

1997 Deloitte Tohmatsu, International Corporate Section

1999 SalomonSmithBarney Asia Securities, Internal Audit Department

2003, Founder of Minato International Accounting Office