Exhibit 11

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CAPITOL RECORDS, LLC, Plaintiff, -against- REDIGI INC., JOHN OSSENMACHER and LARRY RUDOLPH a/k/a LAWRENCE S. ROGEL, Defendants.	:	12 CV 00095 (RJS) **PLAINTIFF'S RESPONSES TO DEFENDANTS JOHN OSSENMACHER AND LARRY RUDOLPH'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Plaintiff Capitol Records, LLC ("Plaintiff" or "Capitol") responds to Defendants John Ossemacher and Larry Rudolph's First Set of Requests for Production of Documents and Things as follows.

GENERAL OBJECTIONS

A. Capitol objects to the requests, including the definitions and instructions set forth therein, to the extent that they purport to impose a greater obligation upon Capitol than those imposed by the Federal Rules of Civil Procedure or by the Local Civil Rules of the United States District Court for the Southern District of New York.

B. Capitol objects to the requests to the extent they purport to require disclosure of information subject to the attorney-client privilege, the attorney's work product privilege or any applicable privilege on the ground that such discovery is impermissible under Rule 26(b) of the Federal Rules of Civil Procedure.

C. Capitol objects to the requests to the extent they seek disclosure of confidential commercial, financial or business information or trade secrets. Capitol will provide the requested documents and information only subject to the protective order entered in this case.

D. Capitol objects to the requests insofar as they purport to require providing documents or information not within its possession, custody or control.

E. Capitol objects to the definition of "You" and "Your" to the extent they are broader in scope than permitted by Local Civil Rule 26.3(a) and (c)(5).

F. Capitol objects to the definition of "Communication" to the extent it is broader in scope than permitted by Local Civil Rule 26.3(a) and (c)(5).

G. Capitol objects to the definitions of "Software Architecture," "Digital Content Providers," "Digital Exploitation," "Press," "Policy," "Royalty Statement" and "Audit" as vague, overbroad and unduly burdensome.

H. Capitol objects to the definitions of "Person" and "Persons" to the extent they are broader in scope than permitted by Local Civil Rule 26.3(a) and (c)(6).

I. Capitol objects to the definitions of "Allegedly Copyrighted Songs" and "Pre-72 Songs," because the works in question are sound recordings, not musical compositions.

J. Where Capitol indicates that it will respond to any request to which it has objected on the basis that the request is vague or ambiguous or overbroad or unduly burdensome, Capitol, without waiving such objections, will respond to such request as reasonably construed.

K. Capitol states that it has made a good faith effort to respond fully to the requests but reserves the right to produce any additional documents that might be located at any future time.

L. Without waiving these general objections and the additional objections set forth below in response to specific requests, Capitol responds, subject to these objections, as set forth below.

RESPONSES TO REQUESTS

REQUEST FOR PRODUCTION NO. 1: All COMMUNICATIONS that refer or relate to REDIGI between YOU and:

a. REDIGI;
b. YOUR Parent Companies;
c. YOUR Subsidiaries;
d. DIGITAL CONTENT PROVIDERS;
e. Other RECORD LABELS;
f. RECORDING ARTISTS;
g. PRODUCERS; and
h. The PRESS.

RESPONSE TO REQUEST NO. 1:

Capitol objects to this request on the grounds that it is overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving those objections, Capitol has already produced to the Individual Defendants copies of any non-privileged pre-complaint documents responsive to this request that were previously produced in discovery to ReDigi.

REQUEST FOR PRODUCTION NO. 2: All COMMUNICATIONS that refer or relate to REDIGI's exploitation of the ALLEGEDLY COPYRIGHTED SONGS or PRE-1972 SONGS between YOU and:

a. REDIGI;
b. YOUR Parent Companies;
c. YOUR Subsidiaries;
d. DIGITAL CONTENT PROVIDERS;
e. Other RECORD LABELS;
f. RECORDING ARTISTS; and
g. PRODUCERS.

RESPONSE TO REQUEST NO. 2:

Capitol objects to this request (as modified by agreement of the parties) on the grounds that it is overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without

waiving those objections, Capitol has already produced to the Individual Defendants copies of any responsive documents that were previously produced in discovery to ReDigi.

REQUEST FOR PRODUCTION NO. 3: All COMMUNICATIONS that refer or relate to reversion rights on the PRE-1972 SONGS and:

a. REDIGI;
b. YOUR Parent Companies;
c. YOUR Subsidiaries;
d. DIGITAL CONTENT PROVIDERS;
e. Other RECORD LABELS;
f. RECORDING ARTISTS; and
g. PRODUCERS.

RESPONSE TO REQUEST NO. 3:

Capitol objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving those objections, Capitol states that to the best of its knowledge and belief there are no documents responsive to this request as reasonably construed. Capitol further states that it has produced or will produce documents supporting its ownership of the PRE-1972 SONGS.

REQUEST FOR PRODUCTION NO. 4: ALL COMMUNICATIONS that refer or relate to YOUR alleged rights in the ALLEGEDLY COPYRIGHTED SONGS or PRE-1972 SONGS between YOU and ---

a. REDIGI;
b. YOUR Parent Companies;
c. YOUR Subsidiaries;
d. DIGITAL CONTENT PROVIDERS;
e. Other RECORD LABELS;
f. RECORDING ARTISTS; and
g. PRODUCERS.

RESPONSE TO REQUEST NO. 4:

Capitol objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving those objections,

Capitol has produced or will produce documents supporting its ownership of the ALLEGEDLY COPYRIGHTED SONGS and the PRE-1972 SONGS.

REQUEST FOR PRODUCTION NO. 5: ALL of YOUR internal COMMUNICATIONS that refer or relate to REDIGI

RESPONSE TO REQUEST NO. 5:

Capitol objects to this request on the grounds that it is overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving those objections, Capitol has already produced to the Individual Defendants copies of any non-privileged pre-complaint documents responsive to this request that were previously produced in discovery to ReDigi.

REQUEST FOR PRODUCTION NO. 6: All contracts or agreements, including drafts thereof, between YOU and any third party that refer or relate to the DIGITAL EXPLOITATION of the PRE-1972 SONGS or the ALLEGEDLY COPYRIGHTED SONGS.

RESPONSE TO REQUEST NO. 6:

Capitol objects to this request on the grounds that it is overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving those objections, Capitol has already produced to the Individual Defendants copies of any responsive documents that were previously produced in discovery to ReDigi.

REQUEST FOR PRODUCTION NO. 7: All contracts or agreements, including drafts thereof, between YOU and any DIGITAL CONTENT PROVIDER that refer or relate to the payment of mechanical royalties to RECORDING ARTISTS or PRODUCERS for the DIGITAL EXPLOITATION of the PRE-1972 SONGS or the ALLEGEDLY COPYRIGHTED SONGS

RESPONSE TO REQUEST NO. 7:

Capitol objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated

to lead to the discovery of admissible evidence. In any event, by agreement of the parties, this document request has been withdrawn by defendants.

REQUEST FOR PRODUCTION NO. 8: All contracts or agreements, including drafts thereof, between YOU and any third party that refer or relate to the payment of mechanical royalties to RECORDING ARTISTS or PRODUCERS for the DIGITAL EXPLOITATION of the PRE-1972 SONGS or the ALLEGEDLY COPYRIGHTED SONGS.

RESPONSE TO REQUEST NO. 8:

Capitol objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. In any event, by agreement of the parties, this document request has been withdrawn by defendants.

REQUEST FOR PRODUCTION NO. 9: All contracts or agreements, including drafts thereof, between YOU and RECORDING ARTISTS or PRODUCERS that refer or relate to the PRE-1972 SONGS or the ALLEGEDLY COPYRIGHTED SONGS.

RESPONSE TO REQUEST NO. 9:

Capitol objects to this request on the grounds that it is overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving those objections, Capitol has produced or will produce documents supporting its ownership of the ALLEGEDLY COPYRIGHTED SONGS and the PRE-1972 SONGS.

REQUEST FOR PRODUCTION NO. 10: YOUR POLICY or POLICIES, including drafts thereof, that refer or relate to the use of the PRE-1972 SONGS or the ALLEGEDLY COPYRIGHTED SONGS for DIGITAL EXPLOITATION

RESPONSE TO REQUEST NO. 10:

Capitol objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST FOR PRODUCTION NO. 11: YOUR POLICY or POLICIES, including drafts thereof, that refer or relate to the payment of mechanical royalties to RECORDING ARTISTS and PRODUCERS for the DIGITAL EXPLOITATION of the PRE-1972 SONGS or the ALLEGEDLY COPYRIGHTED SONGS.

RESPONSE TO REQUEST NO. 11:

Capitol objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. In any event, by agreement of the parties, this document request has been withdrawn by defendants.

REQUEST FOR PRODUCTION NO. 12: YOUR POLICY or POLICIES, including prior versions and drafts thereof, that refer or relate to the payment of mechanical royalties to RECORDING ARTISTS or PRODUCERS for the non-DIGITAL EXPLOITATION of the PRE-1972 SONGS or the ALLEGEDLY COPYRIGHTED SONGS.

RESPONSE TO REQUEST NO. 12:

Capitol objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. In any event, by agreement of the parties, this document request has been withdrawn by defendants.

REQUEST FOR PRODUCTION NO. 13: YOUR POLICY or POLICIES, including prior versions and drafts thereof, that refer or relate to the payment of mechanical royalties to RECORDING ARTISTS or PRODUCERS when the PRE-1972 SONGS or the ALLEGEDLY COPYRIGHTED SONGS are sold or otherwise distributed by REDIGI

RESPONSE TO REQUEST NO. 13:

Capitol objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. In any event, by agreement of the parties, this document request has been withdrawn by defendants.

REQUEST FOR PRODUCTION NO. 14: ROYALTY STATEMENTS generated by YOU for RECORDING ARTISTS or PRODUCERS showing the payment of mechanical royalties from the DIGITAL EXPLOITATION of the PRE-1972 SONGS or the ALLEGEDLY COPYRIGHTED SONGS.

RESPONSE TO REQUEST NO. 14:

Capitol objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. In any event, by agreement of the parties, this document request has been withdrawn by defendants.

REQUEST FOR PRODUCTION NO. 15: Royalty Statements generated by YOU for RECORDING ARTISTS and PRODUCERS showing the payment of mechanical royalties for the sale or distribution of the PRE-1972 SONGS or the ALLEGEDLY COPYRIGHTED SONGS by REDIGI.

RESPONSE TO REQUEST NO. 15:

Capitol objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. In any event, by agreement of the parties, this document request has been withdrawn by defendants.

REQUEST FOR PRODUCTION NO. 16: All AUDITS YOU have been subject to that refer or relate to the alleged non-payment of mechanical royalties to RECORDING ARTISTS or PRODUCERS for the DIGITAL EXPLOITATION of the PRE-1972 SONGS or the ALLEGEDLY COPYRIGHTED SONGS.

RESPONSE TO REQUEST NO. 16:

Capitol objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

SECOND REQUEST NO. 16: All of YOUR analyses on the impact REDIGI could have on the amount of money YOU or other RECORD LABELS could make.

RESPONSE TO SECOND REQUEST NO. 16:

Capitol objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving such objections, Capitol states that to the best of its knowledge and belief there are no documents responsive to this request as reasonably construed.

REQUEST FOR PRODUCTION NO. 17: All DOCUMENTS relating to YOUR plans or intentions to develop SOFTWARE ARCHITECTURE for reselling of songs originally purchased from DIGITAL CONTENT PROVIDERS.

RESPONSE TO REQUEST NO. 17:

Capitol objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST FOR PRODUCTION NO. 18: All DOCUMENTS relating to RECORD LABELS' plans or intentions to develop SOFTWARE ARCHITECTURE for reselling of songs originally purchased from DIGITAL CONTENT PROVIDERS.

RESPONSE TO REQUEST NO. 18:

Capitol objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

REQUEST FOR PRODUCTION NO. 19: All contracts or agreements between YOU and any third party that refer or relate to the storage, maintenance or compilation of ESI

RESPONSE TO REQUEST NO. 19:

Capitol objects to this request on the grounds that it is overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery

of admissible evidence. Subject to and without waiving those objections, Capitol will produce documents concerning its document retention policy.

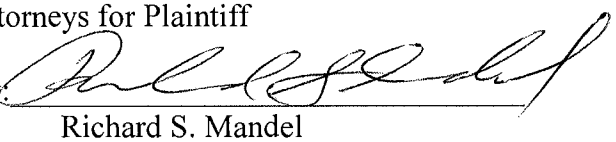
REQUEST FOR PRODUCTION NO. 20: All contracts or agreements that YOU contend prohibits or limits YOU from producing DOCUMENTS requested by the INDIVIDUAL DEFENDANTS in this above-entitled litigation

RESPONSE TO REQUEST NO. 20:

Capitol objects to this request on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks documents which are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. In any event, by agreement of the parties, this document request has been withdrawn by defendants.

Dated: New York, New York
October 15, 2014

COWAN, LIEBOWITZ & LATMAN, P.C.
Attorneys for Plaintiff

By: 

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CAPITOL RECORDS, LLC, Plaintiff, -against- REDIGI INC., JOHN OSSENMACHER and LARRY RUDOLPH a/k/a LAWRENCE S. ROGEL, Defendants.	:	12 CV 00095 (RJS) **PLAINTIFF'S RESPONSES TO DEFENDANTS JOHN OSSENMACHER AND LARRY RUDOLPH'S FIRST SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Plaintiff Capitol Records, LLC ("Plaintiff" or "Capitol") responds to Defendants John Ossemacher's and Larry Rudolph's First Set of Interrogatories as follows.

GENERAL OBJECTIONS

A. Capitol objects to the interrogatories, including the definitions and instructions set forth therein, to the extent that they purport to impose a greater obligation upon Capitol than those imposed by the Federal Rules of Civil Procedure or by the Local Civil Rules of the United States District Court for the Southern District of New York.

B. Capitol objects to the interrogatories to the extent they purport to require disclosure of information subject to the attorney-client privilege, the attorney's work product privilege or any applicable privilege on the ground that such discovery is impermissible under Rule 26(b) of the Federal Rules of Civil Procedure.

C. Capitol objects to the interrogatories to the extent they seek disclosure of confidential commercial, financial or business information or trade secrets. Capitol will provide the requested documents and information only subject to the protective order entered in this case.

D. Capitol objects to the interrogatories insofar as they purport to require providing documents or information not within its possession, custody or control.

E. Capitol objects to the definition of "You" and "Your" to the extent they are broader in scope than permitted by Local Civil Rule 26.3(a) and (c)(5).

F. Capitol objects to the definition of "Communication" to the extent it is broader in scope than permitted by Local Civil Rule 26.3(a) and (c)(5).

G. Capitol objects to the definitions of "Software Architecture," "Digital Content Providers," "Digital Exploitation," "Press," "Policy," "Royalty Statement" and "Audit" as vague, overbroad and unduly burdensome.

H. Capitol objects to the definitions of "Person" and "Persons" to the extent they are broader in scope than permitted by Local Civil Rule 26.3(a) and (c)(6).

I. Capitol objects to the definitions of "Allegedly Copyrighted Songs" and "Pre-72 Songs," because the works in question are sound recordings, not musical compositions.

J. Where Capitol responds to any interrogatory to which it has objected on the basis that the interrogatory is vague or ambiguous or overbroad or unduly burdensome, Capitol, without waiving such objections, provides its response to such interrogatory as reasonably construed.

K. Capitol states that it has made a good faith effort to respond fully to the interrogatories, but reserves the right to provide any additional responsive information that might be identified at any future time.

L. Without waiving these general objections and the additional objections set forth below in response to specific interrogatories, Capitol responds, subject to these objections, as set forth below.

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1 IDENTIFY each current or former employee of CAPITOL RECORDS LLC who had any interaction with REDIGI and/or the INDIVIDUAL DEFENDANTS, and IDENTIFY the date, time, and location of each COMMUNICATION any such individual had with REDIGI and/or the INDIVIDUAL DEFENDANTS.

RESPONSE TO INTERROGATORY NO. 1

Capitol objects to this interrogatory on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving those objections, Capitol has produced or will produce documents, pursuant to Fed. R. Civ. P. 33(d), from which the answer to this interrogatory as reasonably construed can be derived. Capitol also respectfully refers the Individual Defendants to the Reply Declaration of Alasdair J. McMullan, Esq. and Declaration of Mark Piibe submitted in support of Plaintiff's motion for a preliminary injunction in this case, as such documents summarize the pre-complaint communications between Plaintiff and ReDigi.

INTERROGATORY NO. 2 For each ALLEGEDLY COPYRIGHTED SONG and each PRE-1972 SONG, IDENTIFY the date, time, and location of each act that you allege results in the INDIVIDUAL DEFENDANTS' liability in this action, along with an explanation for why and how each act infringed on each ALLEGEDLY COPYRIGHTED SONG and each PRE-1972 SONG.

RESPONSE TO INTERROGATORY NO. 2

Plaintiff objects to this interrogatory on the grounds that it is overbroad and unduly burdensome and seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Capitol also objects to this interrogatory to the extent it seeks information which is in the exclusive possession, custody and control of the Defendants in this action. Subject to and without waiving those objections, Capitol respectfully refers the Individual Defendants to documents REDIGI001768-REDIGI001887 and REDIGI001889-

001924 produced in this case by ReDigi, as such documents set forth details concerning the date and time of each infringement that occurred through the reproduction and distribution of Capitol's sound recordings via the ReDigi service. A detailed explanation of why and how such acts infringed upon Capitol's rights is set forth in the Court's summary judgment opinion in this case finding Defendant ReDigi liable.

Defendants Ossenmacher and Rudolph participated in, exercised control over and benefited from all of ReDigi's infringing acts in a fashion that renders them liable for all of ReDigi's infringements. Among other things:

- Ossenmacher and Rudolph jointly founded ReDigi as a startup company they control in all material respects.

- Ossenmacher and Rudolph jointly conceived of, implemented, and marketed the business model, software and website that the Court found infringing.

- Ossenmacher and Rudolph serve respectively as ReDigi's Chief Executive and Chief Technology Officer.

- Ossenmacher and Rudolph collectively own 60% of ReDigi.

- Ossenmacher and Rudolph are the named inventors in the ReDigi patent that sets out the system the Court found infringing.

- Ossenmacher and Rudolph personally determined to operate ReDigi as a for-profit enterprise that earns commissions on the resale of unauthorized recordings.

- Rudolph personally wrote or supervised the writing of the software by which ReDigi operated its infringing marketplace.

- Rudolph had final authority over each and every aspect of ReDigi's technical functionality found to be infringing, including the processing of uploads, offers for sale, and "resale" of unauthorized copies of Capitol's recordings.

- Ossenmacher is responsible for approving all of ReDigi's marketing materials, website content, and day-to-day business operations.

- Ossenmacher, in consultation with Rudolph, conceived and approved the various incentives offered to consumers to urge them to participate in ReDigi's infringing marketplace, such as coupons to encourage unlawful uploads.

- Ossenmacher personally raised ReDigi's starting capital from investors, who contribute funds but do not play any role in the "day-to-day operations of the company," which are determined solely by Ossenmacher and Rudolph.

- Ossenmacher and Rudolph jointly make all personnel, hiring and firing decisions for ReDigi.

- Ossenmacher and Rudolph personally and solely made the decision to continue with the infringing service after the RIAA asserted a claim of infringement.

- Ossenmacher and Rudolph personally and solely made the decision to continue with the infringing service after Capitol commenced this lawsuit.

As the Court has held, "ReDigi's founders built a service where only copyrighted work could be sold," "programmed their software to choose copyrighted content," and "presumably understood the likelihood that use of ReDigi's service would result in infringement." Docket No. 109 at 14-

15 (emphasis added). ReDigi committed its infringing acts acting through the only two people, Ossenmacher and Rudolph, who exercised complete control over its operations.

INTERROGATORY NO. 3 For each COMMUNICATION identified in response to Interrogatory Number 1, IDENTIFY any action YOU took as a result of or related to each COMMUNICATION.

RESPONSE TO INTERROGATORY NO. 3

Capitol objects to this interrogatory on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving those objections, Capitol states that its pre-complaint discussions with ReDigi failed to result in any business arrangement or settlement of Capitol's asserted copyright infringement claim, and as a result Capitol filed this lawsuit.

INTERROGATORY NO. 4 For all ALLEGEDLY COPYRIGHTED SONGS and PRE-1972 SONGS, IDENTIFY each prior copyright infringement claim, as well as the outcome of that claim *(i.e.,* whether YOU were successful, and if so, the amount of COMPENSATION that you were able to obtain to compensate for the alleged infringement), that YOU have pursued against alleged infringers other than RED1GI or the INDIVIDUAL DEFENDANTS.

RESPONSE TO INTERROGATORY NO. 4

Capitol objects to this interrogatory on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 5 For each ALLEGEDLY COPYRIGHTED SONG and PRE-1972 SONG, IDENTIFY the contractual language in each RECORDING ARTIST or PRODUCER contract that YOU contend provides YOU an interest in the copyright to each of these songs. If no such language exists, IDENTIFY the language, provision, statute or other means that YOU contend provides YOU an interest in the copyright of each song.

RESPONSE TO INTERROGATORY NO. 5

Capitol objects to this interrogatory on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks information which is irrelevant and not reasonably

calculated to lead to the discovery of admissible evidence. Subject to and without waiving such objections, Capitol has produced or will produce documents, pursuant to Fed. R. Civ. P. 33(d), from which the answer to this interrogatory, as reasonably construed to seek documents demonstrating Capitol's ownership of each sound recording at issue in this case, can be derived.

INTERROGATORY NO. 6 For each affirmative defense identified below, state all facts that YOU contend render each inapplicable, as to the INDIVIDUAL DEFENDANTS, in this litigation:

a. The fair use doctrine;

b. The estoppel doctrine;

c. The waiver doctrine;

d. The unclean hands doctrine;

e. The first-sale doctrine as codified in 17 U.S.C. § 109;

f. The substantial-non-infringing use doctrine;

g. The essential steps defense;

h. Each of the safe harbor provisions of the DMCA, 17 U.S.C. § 512; and

i. The common law doctrine of exhaustion.

RESPONSE TO INTERROGATORY NO. 6

Capitol objects to this interrogatory on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subjection to and without waiving such objections, Capitol states that defenses a, e, f and i have already been adjudicated as lacking merit in the Court's summary judgment opinion in this case, and Capitol respectfully refers Ossenmacher and Rudolph to such opinion for a detailed explanation of why such defenses have no merit. Ossenmacher and Rudolph are bound by such decision under principles of collateral estoppel and/or law of the case, which prevent them from relitigating the merits of such defenses.

Ossenmacher and Rudolph do not have any separate factual or legal basis on which to assert such defenses, which have already been found to lack merit as defenses to the infringing acts at issue in this case.

Defenses g and h were abandoned by ReDigi at the summary judgment stage of the case (see Docket No. 109 at 4-5 n.4). Ossenmacher and Rudolph are barred under principles of res judicata from now asserting such defenses. There is also no factual or legal basis on the merits for either of these defenses for the reasons set forth in detail in Capitol's moving memorandum of law in support of its motion for summary judgment (Docket No. 49) at 18-20 and 23. In addition, Ossenmacher and Rudolph cannot properly claim DMCA immunity for themselves based on ReDigi's purported status as a qualifying internet service provider ("ISP"). Apart from the fact that Ossenmacher and Rudolph are not themselves ISPs, neither they nor ReDigi designated an agent to receive infringement notices, as required by 17 U.S.C. § 512(c)(1)(B). Moreover, this Court has already held that ReDigi received a financial benefit directly attributable to the infringing activity and had the right and ability to control such activity, based on its intimate involvement in examining the content sold and supervising the sales process. Given this finding, Ossenmacher and Rudolph cannot claim a defense based on ReDigi's alleged immunity, even if they were otherwise somehow allowed to assert a defense belonging to ReDigi.

Defenses b, c and d were waived by ReDigi, which could have asserted them, but chose not to, before being adjudicated liable for infringement. Ossenmacher and Rudolph are barred under principles of res judicata from now asserting such defenses. Even if they could be asserted, there is no factual or legal basis on the merits for any of these defenses. Where Capitol sued ReDigi within three months of the launch of the service, and ReDigi had already received a

prior cease and desist letter from the RIAA on behalf of all the record companies less than a month after its launch, Ossenmacher and Rudolph cannot possibly show that they reasonably relied on any delay by Capitol in taking action. Nor did ReDigi, Ossenmacher or Rudolph ever receive any indication from Capitol that it intended to relinquish its right to assert copyright infringement. There is thus no possible basis for a defense of waiver or estoppel.

With respect to unclean hands, Capitol has not committed any misconduct, let alone the kind of egregious misconduct directly related to the subject matter of the case, that is required for the extremely limited circumstances in which unclean hands can apply as a defense. To the extent this defense is based on a claim that Capitol's paralegal acted as a private investigator, there is no basis for such a position. Capitol's paralegal was not engaged in the business of a private investigator, but simply purchased recordings from a publicly accessible website in the same manner that any other member of the public was free to do. Moreover, even if these activities fell within section 70 of the NYGBL, on which Ossenmacher and Rudolph apparently rely, the status of Capitol's paralegal as a regular employee within Capitol's legal department working exclusively under the supervision of attorneys would bring her within the exemption of NYGBL § 83 and exempt her from any requirement to have a license. In any event, Ossenmacher and Rudolph suffered no harm or prejudice from being made to answer for acts of infringement, which could be readily observed on ReDigi's own public website, and thus Capitol has clearly not committed any kind of unconscionable act of the kind needed to trigger the unclean hands defense.

INTERROGATORY NO. 7 State all facts that YOU contend demonstrate that the INDIVIDUAL DEFENDANTS did not act with innocent intent, as that terms has been defined by the courts interpreting 17 U.S.C. § 504(c)(2), of the ALLEGEDLY COPYRIGHTED SONGS and PRE-1972 SONGS.

RESPONSE TO INTERROGATORY NO. 7

Capitol objects to this interrogatory on the grounds that it is overbroad and unduly burdensome and seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving those objections, Capitol states that ReDigi warned investors in its subscription agreements that "the law cannot be said to be well settled in this area" and that it could not guarantee ReDigi would prevail on its copyright defenses. The RIAA sent ReDigi a cease and desist letter in November 2011, advising ReDigi that its website violated Capitol's and other RIAA members' copyrights. Ossenmacher and Rudolph, as owners of the business responsible for its day-to-day management, were clearly aware of the statements in the subscription agreement and the RIAA demand letter. They were also aware that copyright protected content was being sold on the ReDigi website – a fact central to the business model and promotional campaigns they developed and implemented. Indeed, Ossenmacher and Rudolph built a service where only copyrighted work could be sold. As this Court stated in its summary judgment ruling, ReDigi's officers "presumably understood the likelihood that use of ReDigi's service would result in infringement." Given this finding, it is clear that Ossenmacher and Rudolph knew or should have known that the use of the ReDigi service they developed would result in infringement, and thus there is no possible basis on which they could have acted with an innocent intent within the meaning of 17 U.S.C. § 504(c)(2).

In any event, the defense is unavailable to an infringer who had access to phonorecords bearing a proper copyright notice. Capitol's published CDs bear proper copyright notices, and iTunes downloads contain copyright information in metadata which Defendants review.

INTERROGATORY NO. 8 State all facts that YOU contend entitle YOU to statutory damages against, and/or attorneys' fees from, the INDIVIDUAL DEFENDANTS.

RESPONSE TO INTERROGATORY NO. 8

Capitol objects to this interrogatory on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving those objections, Capitol states that it was the owner of an exclusive right under copyright and owned copyright registration certifications for each of the federally copyrighted sound recordings at issue in this case at the time of ReDigi's, Ossenmacher's and Rudolph's infringements of those sound recordings. Capitol is entitled under the Copyright Act to an award of statutory damages in these circumstances. Moreover, as set forth above in response to Interrogatory No. 2, Ossenmacher and Rudolph are personally liable and jointly and severally liable with ReDigi for each such infringement.

Capitol states that it is premature at this stage to address the issue of its entitlement to attorneys' fees, but that it will seek such an award at the appropriate time based on Ossenmacher's and Rudolph's knowing acts of infringement, as described above, and frivolous conduct in this litigation, including assertion of numerous affirmative defenses without any possible factual or legal basis and filing of unnecessary and unfounded motions.

INTERROGATORY NO. 9 State all facts that YOU contend demonstrate that the INDIVIDUAL DEFENDANTS made "distributions," as that term is used in 17 U.S.C. § 106(3), of the ALLEGEDLY COPYRIGHTED SONG and PRE-1972 SONG.

RESPONSE TO INTERROGATORY NO. 9

Capitol objects to this interrogatory on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving those objections, Capitol states that as found in the Court's summary judgment opinion, it was undisputed that sales of Capitol's copyrighted recordings occurred on the ReDigi website,

resulting in distribution of such works under the Copyright Act. Capitol also contends that by allowing Capitol's recordings to be made available for sale on the ReDigi website through offers for sale, ReDigi, Ossenmacher and Rudolph also engaged in distributions. As described in detail in response to interrogatory no. 2 above, Ossenmacher and Rudolph participated in, exercised control over and benefited from the foregoing acts constituting distributions of the sound recordings in question.

INTERROGATORY NO. 10 State all facts that YOU contend demonstrate that the INDIVIDUAL DEFENDANTS intentionally induced or encouraged direct infringement of each ALLEGEDLY COPYRIGHTED SONG and PRE-1972 SONG

RESPONSE TO INTERROGATORY NO. 10

Capitol objects to this interrogatory on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving those objections, Capitol states that Ossenmacher and Rudolph participated in, exercised control over and benefited ReDigi's willful inducement of infringement, as set forth above in response to Interrogatory No. 2. Ossenmacher and Rudolph deliberately developed a business model so as to ensure that only infringing activity could occur on the site by limiting eligible files to iTunes tracks. They knowingly and deliberately encouraged users to make unauthorized reproductions and distributions of Capitol's copyrighted recordings by urging users – with coupons, prizes, credits and solicitations – to copy and sell recordings without the requisite permission. They erroneously advised users on the ReDigi website that the service was legal, despite knowing that ReDigi was likely to be found unlawful, in an effort to encourage continued infringing activity that would build the site's user base.

INTERROGATORY NO. 11 State all facts that YOU contend demonstrate YOUR mitigation of damages with respect to REDIGI or the INDIVIDUAL DEFENDANTS' alleged infringement of the ALLEGEDLY COPYRIGHTED SONGS and PRE-1972 SONGS

RESPONSE TO INTERROGATORY NO. 11

Capitol objects to this interrogatory on the grounds that it is vague, ambiguous and generally unintelligible inasmuch as it is based on a legal doctrine that has no application to copyright infringement generally and the statutory damages in particular that are sought in this case. Subject to and without waiving such objections, Capitol states that to the extent the Individual Defendants claim Capitol failed to mitigate damages because its paralegal purchased more recordings than necessary through the ReDigi service, as alleged in ReDigi's summary judgment letter of November 12, 2013, such contention fails to recognize that ReDigi and the Individual Defendants already committed copyright infringement with respect to every single recording at issue, whether such recordings were ultimately sold or not, by virtue of the reproduction of such recordings for the purposes of offering them for sale, as found by the Court in its summary judgment ruling finding ReDigi liable for copyright infringement.

INTERROGATORY NO. 12 State all facts that YOU contend demonstrate that a statutory damage award in this action would not be wholly disproportionate to the YOUR actual harm such that statutory damages would be punitive and unconstitutional.

RESPONSE TO INTERROGATORY NO. 12

Capitol objects to this interrogatory on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Capitol further objects to this interrogatory as calling for a legal conclusion. Subject to and without waiving such objections, Capitol states that one of the purposes of statutory damages under the Copyright Act is to discourage and deter wrongful conduct. For the reasons set forth in response to Interrogatory No. 7 above, Ossenmacher and Rudolph knew or should have known that their conduct was unlawful under the Copyright Act. Accordingly, an award of statutory damages that appropriately takes into account the wrongful nature of the conduct at issue here would not be so

severe and oppressive as to be disproportionate to the tortious conduct at issue, and thus would not be so obviously unreasonable as to offend the Constitution of the United States.

INTERROGATORY NO. 13 IDENTIFY the contractual language in each of YOUR AGREEMENTS with DIGITAL CONTENT PROVIDERS that YOU contend prohibits the re-sale of the ALLEGEDLY COPYRIGHTED SONGS and PRE-1972 SONGS.

RESPONSE TO INTERROGATORY NO. 13

Capitol objects to this interrogatory on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving such objections, Capitol states that its claims for copyright infringement in this case are not based upon alleged violations of provisions in its contracts with its digital content providers, but rather on violation of its rights under the Copyright Act.

INTERROGATORY NO. 14 IDENTIFY the characteristics or attributes of REDIGI's SOFTWARE ARCHITECTURE and the INDIVIDUAL DEFENDANTS' role in developing each of those characteristics or attributes that YOU contend gives rise to the INDIVIDUAL DEFENDANTS' liability in this action

RESPONSE TO INTERROGATORY NO. 14

Capitol objects to this interrogatory on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving such objections, Capitol respectfully refers Ossenmacher and Rudolph to the Court's summary judgment opinion in this case as well as Capitol's response to interrogatory no. 2 above, which set forth the reasons why the ReDigi service is infringing and the manner in which Ossenmacher and Rudolph participated in, exercised control over and benefitted from such infringing activities.

INTERROGATORY NO. 15 For each ALLEGEDLY COPYRIGHTED SONG, state all facts that YOU contend demonstrate that each song was validly copyrighted

RESPONSE TO INTERROGATORY NO. 15

Capitol objects to this interrogatory on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving those objections, Capitol states that it has produced certificates of registration with respect to each of the federally copyrighted sound recordings in question, and that such registrations constitute prima facie proof of the facts stated therein, including the copyright owner's ownership of a valid copyright. In addition, Capitol has produced or will produce relevant contracts showing its ownership of each of those recordings.

INTERROGATORY NO. 16 For each PRE-1972 SONG, state all facts that YOU contend demonstrate that the copyright interest in each song has not reverted to the RECORDING ARTIST or PRODUCER.

RESPONSE TO INTERROGATORY NO. 16

Capitol objects to this interrogatory on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving such objections, Capitol states that there are no contractual provisions in any of its agreements concerning the pre-1972 recordings in question which would operate to cause a reversion of copyright rights.

INTERROGATORY NO. 17

State all facts that YOU contend demonstrate that REDIGI is not sufficiently capitalized to pay a monetary judgment against it in this action.

RESPONSE TO INTERROGATORY NO. 17

Capitol objects to this interrogatory on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks information which is irrelevant and not reasonably

calculated to lead to the discovery of admissible evidence. Capitol further objects to this interrogatory on the grounds that it seeks information which is exclusively within the possession, custody or control of ReDigi, Ossenmacher and/or Rudolph. Subject to and without waiving such objections, Capitol states that Mr. Ossenmacher testified in July 2013 that ReDigi had approximately $300,000 in cash, had outstanding debts in excess of $1 million and was operating at a loss of approximately $75,000 per month.

INTERROGATORY NO. 18 IDENTIFY the amount of net revenue that YOU contend REDIGI makes off of each resale of a musical recording, along with the total amount of net revenue YOU contend that REDIGI has made of the resale of the ALLEGEDLY COPYRIGHTED SONGS and PRE-1972 SONGS.

RESPONSE TO INTERROGATORY NO. 18

Capitol objects to this interrogatory on the grounds that it is vague and ambiguous, and seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Capitol further objects to this interrogatory on the grounds that it seeks information which is exclusively within the possession, custody or control of ReDigi, Ossenmacher and/or Rudolph. Subject to and without waiving such objections, Capitol states that ReDigi earns a transaction fee of 60% of the sales price of each recording "resold" via its infringing system, with the remaining 40% allegedly split between the seller and an artist "escrow" fund.

INTERROGATORY NO. 19 State all facts that YOU contend demonstrate that the INDIVIDUAL DEFENDANTS have made money from REDIGI's resale of the ALLEGEDLY COPYRIGHTED SONGS and PRE-1972 SONGS, and IDENTIFY the total amount of money YOU contend the INDIVIDUAL DEFENDANTS have made from REDIGI's resale of the ALLEGEDLY COPYRIGHTED SONGS and PRE-1972 SONGS, including through any COMPENSATION that YOU contend the INDIVIDUAL DEFENDANTS have received from REDIGI.

RESPONSE TO INTERROGATORY NO. 19

Capitol objects to this interrogatory on the grounds that it is vague and ambiguous, and seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Capitol further objects to this interrogatory on the grounds that it seeks information which is exclusively within the possession, custody or control of ReDigi, Ossenmacher and/or Rudolph. Moreover, as majority owners of ReDigi, Ossenmacher and Rudolph were in a position to benefit from the commissions earned from resale of Capitol's recordings.

INTERROGATORY NO. 20 Outside of the acts IDENTIFIED in response to Interrogatory Number 2, IDENTIFY each act taken by the INDIVIDUAL DEFENDANTS that YOU contend gives rise to their liability in this action.

RESPONSE TO INTERROGATORY NO. 20

Capitol objects to this interrogatory on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Capitol further objects to this interrogatory as cumulative of other interrogatories. Subject to and without waiving such objections, Capitol incorporates by reference its response to Interrogatory No. 2 above.

INTERROGATORY NO. 21 For each ALLEGEDLY COPYRIGHTED SONG and PRE-1972 SONG, IDENTIFY the total mechanical royalties that have paid to the RECORDING ARTISTS or PRODUCERS with the original copyright interest in each song that arise from the DIGITAL EXPLOITATION of each song.

RESPONSE TO INTERROGATORY NO. 21

Capitol objects to this interrogatory on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. In any event, by agreement of the parties, this interrogatory has been withdrawn by defendants.

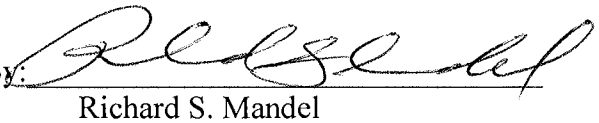
INTERROGATORY NO. 22 IDENTIFY each RECORDING ARTIST or PRODUCER that has contested the amount of mechanical royalties that have been paid to them for the exploitation of the ALLEGEDLY COPYRIGHTED SONGS and PRE-1972 SONGS, whether through an AUDIT or not, along with the result of that contest *(i.e.,* whether more mechanical royalties were found to be owed to the RECORDING ARTIST or PRODUCER and whether such mechanical royalties were paid).

RESPONSE TO INTERROGATORY NO. 22

Capitol objects to this interrogatory on the grounds that it is vague and ambiguous, overbroad and unduly burdensome and seeks information which is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. In any event, by agreement of the parties, this interrogatory has been withdrawn by defendants.

Dated: New York, New York
October 15, 2014

COWAN, LIEBOWITZ & LATMAN, P.C.
Attorneys for Plaintiff

By: 

Richard S. Mandel
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VERIFICATION

On behalf of Plaintiff, Sheryl Gold declares as follows: I am Senior Vice President of Plaintiff Capitol Records, LLC and am authorized to make this verification on behalf of Plaintiff; I have read the foregoing Plaintiff's Responses to Defendants John Ossenmacher and Larry Rudolph's First Set Of Interrogatories and know the responses set forth therein to be true and accurate to the best of my knowledge and belief. I declare under penalty of perjury that the foregoing is true and accurate.

Dated: New York, New York
October 15, 2014

SHERYL GOLD

Exhibit 12

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October 22, 2014

By E-mail (sullivannysdchambers@nysd.uscourts.gov)

Hon. Richard J. Sullivan, U.S.D.J.
40 Foley Square
New York, NY 10007

Re: Capitol Records, LLC v. ReDigi Inc., 12 cv. 0095 (RJS)

Dear Judge Sullivan:

We represent plaintiff Capitol Records, LLC ("Capitol") in this action and write jointly with counsel for defendants Ossenmacher and Rudolph ("IDs" or "Individual Defendants"), pursuant to the Court's order of September 22, 2014 requiring the parties to update the Court on the status of their remaining discovery disputes. The parties have resolved a number of the disputes previously outlined to the Court in letters during October and November of last year, and Capitol has served written responses to the IDs' first set of interrogatories and document requests (as narrowed by agreement of the parties). However, the parties still have a number of disagreements concerning certain interrogatories and document requests, as outlined below. The parties jointly request a conference to address these disputes and an appropriate schedule for the completion of remaining discovery.

In addition, the parties wish to inform the Court that while the Individual Defendants have agreed to narrow certain requests to facilitate the efficient management of this case (and indicated a willingness to continue that process) they have made clear that they have not waived their right to assert any of their affirmative defenses or seek additional discovery not covered by the requests now before the Court. For instance, Individual Defendants have stated that they intend to pursue (a) discovery made necessary by their review of documents produced by Capitol in response to their first set of document requests and interrogatories, (b) depositions of current and former Capitol employees, and (c) discovery of third parties with relevant information (*e.g.*, RIAA). Thus, the letter only concerns the issues raised by Individual Defendants' first set of document requests and interrogatories.

Capitol's Position

While IDs have voluntarily withdrawn certain interrogatories and document requests, they continue to seek massive amounts of irrelevant information and documentation well beyond the scope of anything reasonably required to defend the case. Counsel for IDs contend that the discovery is relevant to various affirmative defenses they have asserted, such as unclean hands

and copyright misuse. However, as explained in prior correspondence in this case, because IDs are in privity with ReDigi, they are barred under principles of res judicata from litigating defenses that ReDigi could have asserted but chose to omit, such as unclean hands and copyright misuse. See, e.g., Marine Midland Bank v. Slyman, 995 F.2d 362, 365-66 (2d Cir. 1993) (principals of corporation barred by res judicata from asserting affirmative defenses that could have been raised by corporation in prior action since principals in privity with corporation) (applying Ohio law). IDs are also barred by collateral estoppel and law of the case doctrine from relitigating issues the Court has already adjudicated, such as fair use or first sale. See, e.g., In re: Teltronics Servs., Inc., 762 F.2d 185, 190-91 (2d Cir. 1985); Kreager v. Gen. Elec. Co., 497 F.2d 468, 472 (2d Cir. 1974); Moran v. City of New Rochelle, 346 F. Supp. 2d 507, 515 (S.D.N.Y. 2004). Contrary to IDs' assertions, preclusive effect may be given to the Court's grant of partial summary judgment. See, e.g., U.S. Dept. of Justice v. Hudson, 2007 U.S. Dist. LEXIS 62749 (N.D.N.Y. 2007) ("federal courts have expanded application of collateral estoppel . . . to decisions including partial summary judgment"); Creed Taylor, Inc. v. CBS, Inc., 718 F.Supp. 1171, 1177 (S.D.N.Y. 1989) (granting preclusive effect to partial summary judgment); Harris Trust & Sav. Bank v. John Hancock Mut. Life Ins. Co., 722 F. Supp. 998, 1007-09 (S.D.N.Y. 1989) (same), aff'd in part and reversed in part on other grounds, 970 F.2d 1138 (2d Cir. 1992).

IDs continue to seek extensive documents concerning Capitol's agreements and policies relating to exploitation of more than 500 recordings (many of them huge sellers), see Requests 6, 10, and documents concerning Capitol's and the other record companies' own plans for "reselling" digital recordings. See Request Nos. 17-18. Capitol's authorized exploitation of its own recordings has no bearing on whether the IDs participated in ReDigi's infringing acts, and collecting such information for hundreds of world famous recordings would be an insuperable burden. See SJ Opinion (Docket No. 109) at 11 ("Of course, Capitol, as copyright owner, does not forfeit its right to claim copyright infringement merely because it permits certain uses of its works."). Moreover, Capitol previously produced in discovery significant documentation concerning its agreement with Apple regarding iTunes and other digital distributors of Capitol's recordings. At this juncture of the case, there is no need for additional discovery regarding this extraneous issue. IDs' fishing expedition for documents to support a supposed copyright misuse defense should be rejected, as there is no plausible basis for such a defense where Capitol has already successfully established its right to prevent ReDigi from engaging in the underlying conduct at issue. ReDigi and IDs have no right to participate in digital exploitation of Capitol's recordings to the extent they do so in a manner that violates Capitol's copyrights.

There are also two interrogatories in dispute. Interrogatory 4 asks about every copyright infringement claim Capitol has asserted with respect to the hundreds of recordings at issue. Capitol's extensive anti-piracy efforts have involved claims and lawsuits against numerous individuals and entities implicating thousands of different recordings. It would also be extremely burdensome to compile the requested information, none of which has any bearing on what damages Capitol is entitled to in this particular case or any other remaining issue in dispute here.

Interrogatory 19 asks for information about the amount of money made by the IDs from the resale of Capitol's recordings. However, Capitol is not pursuing recovery of any profits earned by any defendants in this case, but only seeks an award of statutory damages. Moreover, the requested information is entirely within IDs' own knowledge and is not a subject on which Capitol has any independent knowledge. Capitol has answered the interrogatory to the extent possible by indicating that as majority owners of ReDigi, the IDs were in a position to benefit from the commission earned from the resale of Capitol's recordings. No further response should be required.

Individual Defendants' Position

Regarding the current discovery dispute, Individual Defendants have the right to seek discovery on any of their asserted affirmative defenses regardless of whether ReDigi also claimed that defense, abandoned the defense, or could have claimed that defense but chose not to. Collateral estoppel does not, as Capitol claims, bar the Individual Defendants from seeking discovery on any of their asserted affirmative defenses.

As explained in prior letters, collateral estoppel does not apply to defenses not actually decided by the Court (e.g., the fair use doctrine, estoppel, waiver, unclean hands, DMCA, etc.), Yoon v. Fordham Univ. Faculty & Admin. Retirement Plan, 263 F.3d 196, 202 n.7 (2d Cir. 2001), nor does it apply where there has not been a "valid final judgment," as is the case with a partial summary judgment order. Ball v. A.O. Smith Corp., 451 F.3d 66, 69 (2d Cir. 2006).[1] Even if collateral estoppel could apply, "privity under such a theory depends on a finding that the person against whom collateral estoppel is applied actively participated in the previous litigation" and "controlled" the other defendant's trial strategy. Stichting Ter Behartiging Van De Belangen Van Oudaandeelhouders in Het Kapitaal Van Saybolt Int'l B.V. v. Phillippe S.E. Schreiber, 327 F.3d 173, 187 (2d Cir. 2003). Plaintiff has provided this Court with no such evidence. Thus, collateral estoppel is not grounds to deny Individual Defendants' their requested discovery on any of their asserted affirmative defenses.

Nor does res judicata or law of the case apply to the Individual Defendants' asserted affirmative defenses. Res judicata bars principals in privity with a corporation from asserting defenses that could have been raised by the corporation ***in a prior action***. Marine Midland Bank,

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[1] Capitol's cases regarding the preclusive effect of partial summary judgment orders involve issues raised in prior litigations, not the same litigation. See Creed, 718 F. Supp. at 1173-74 (discussing the prior action in which the summary judgment order was rendered); Hudson, 1:06-CV-763, 2007 WL 2461783, at *1-2 (N.D.N.Y. Aug. 24, 2007) (same), opinion vacated in part on reh'g sub nom. U.S. Dep't of Justice, Tax Div. v. Hudson, 1:06-CV-763 FJS, 2009 WL 7172812 (N.D.N.Y. July 8, 2009) (vacating application of non-mutual offensive collateral estoppel against U.S. government); Harris Trust, 722 F. Supp. 1007 (same). Because this is the same litigation, there can be no preclusive effect to the partial summary judgment order. See also note 2, supra, and accompanying text.

995 F.2d at 365. This is the ***same*** action, such that this doctrine does not apply to preclude any of Individual Defendants' intended discovery. Law of the case does not apply to parties that were added to the litigation after an issue was decided, see In re W.R. Grace & Co., 591 F.3d 164, 174 (3d Cir. 2009), cert. denied, 131 S. Ct. 200 (2010), or to issues never actually decided by the court. See Pescatore v. Pan Am. World Airways, Inc., 97 F.3d 1, 7-8 (2d Cir. 1996). Because the Individual Defendants were not parties to the litigation when issues were decided and certain defenses were never decided by the Court, this doctrine does not apply.[2]

Capitol also argues that IDs' discovery requests are unduly burdensome and overbroad. But, the party opposing production must provide sufficient detail and explanation about the nature of the burden in terms of time, money, and procedure which would be required. See Edwards v. Ford Motor Co., 2012 WL 553383, at *3 (S.D. Cal. Feb. 17, 2012). Capitol's failure to provide any specificity as to its alleged burden is fatal to this argument. Moreover, Capitol seeks potentially millions of dollars in damages from the IDs. IDs have a right to fully develop the evidence to defend themselves as to both liability and damages, especially when they were added so late in the litigation.

With respect to the specific discovery requests at issue, each seeks relevant materials or is likely to lead to relevant evidence, see Fed. R. Civ. P. 26(b)(1):

- Requests 6, 10, 17, and 18 relate to Capitol's digital exploitation of the allegedly infringed songs and its plans to develop its own system for digital resale. These requests go to Individual Defendants' copyright misuse and consent defenses, among others, and the appropriate amount of the requested statutory damages award. In particular, ReDigi was in the late stages of negotiating deals with several record labels to partner on a digital resale system, but, in near simultaneous fashion and just a short period before ReDigi's launch, all of the labels backed out of those talks and Capitol proceeded to sue ReDigi. See Basic Books, Inc. v. Kinko's Graphics Corp., 758 F. Supp. 1522, 1538 (S.D.N.Y. 1991) ("'[M]isuse of a copyright, in violation of the antitrust laws, may be asserted as a defense in copyright infringement cases.'") (quoting United Tel. Co. of Missouri v. Johnson Pub. Co., 855 F.2d 604, 611 (8th Cir.1988)).

- Interrogatory 4 seeks information regarding Capitol's prior enforcement of its

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[2] The cases Capitol cites for its collateral estoppel and law of the case argument are inapposite. Two of these cases actually involved res judicata, not collateral estoppel or law of the case (these terms do not even appear in the cases), and in any event, those cases made clear that res judicata only applied in repetitious suits, not in the same action. See In re Teltronics Servs., Inc., 762 F.2d at 190; Kreager, 497 F.2d at 472. Capitol's third case involved collateral estoppel (but not law of the case), and it turned on findings from two prior proceedings. Moran, 346 F. Supp. 2d at 515 ("Issue preclusion can be applied against a party in privity with a litigant in ***the prior case***.") (emphasis added) (citation omitted). Thus, Capitol's cases actually support Individual Defendants' position that they are not barred from litigating defenses that ReDigi may be precluded from arguing.

alleged copyright interest in each of the allegedly infringed songs, which is relevant to multiple defenses, including copyright misuse, see Malibu Media, LLC v. Miller, No. 13-CV-02691-WYD-MEH, 2014 WL 2619558, at *5 (D. Colo. June 12, 2014), as well the appropriate amount of the requested statutory damages award.

- Interrogatory 19 seeks information regarding the Individual Defendants' alleged financial interest in the allegedly copyrighting acts, which is directly relevant to Capitol's vicarious liability claim. This claim requires, among other things, the defendant to have an "obvious and direct" financial interest in the infringing conduct. Apparently, Capitol had a sufficient factual basis to include this claim against the Individual Defendants when it added them to the action, and it cannot now claim ignorance of those facts. In addition, this request goes to the appropriate amount of the requested statutory damages award

Therefore, each of the requests has the requisite basis, and Capitol should provide appropriate responses.

Respectfully,

COWAN, LIEBOWITZ & LATMAN, P.C.

Richard S. Mandel

HAUSFELD LLP

James Pizzirusso

Exhibit 13

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James J. Pizzirusso
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November 6, 2013

VIA E-MAIL (sullivannysdchambers@nysd.uscourts.gov)

Honorable Richard J. Sullivan, U.S.D.J.
United States District Court
Southern District of New York
40 Foley Square
New York, New York 10007

RE: *Capitol Records, LLC v. ReDigi Inc.*, No. 12-cv-00095 (RJS)

Dear Judge Sullivan,

We represent Defendants John Ossenmacher and Larry Rudolph a/k/a Lawrence Rogel ("Individual Defendants") in the above-captioned matter. We write pursuant to Rule 1.D of Your Honor's Individual Practices to request an extension in the discovery schedule in the event that Your Honor denies the Individual Defendants' pending motion to dismiss. Individual Defendants have made no previous formal requests for an extension of the discovery schedule and Defendant ReDigi Inc ("ReDigi") consents to the requested extension.

Capitol consents to a limited extension for the sole purpose of allowing Individual Defendants to take a 30(b)(6) deposition of Capitol on December 6, 2013, and to complete two other depositions the Individual Defendants have noticed (RIAA and Chris Horton) on mutually convenient dates prior to December 6, without prejudice to its assertion that the outstanding document requests and interrogatories served by the Individual Defendants are untimely. Capitol also consents to adjourning the deadline for pre-summary judgment motion letters until after the completion of all discovery by December 6, 2013. Capitol otherwise opposes the requested extension on the grounds that the discovery sought is excessive, untimely and directed to defenses that are substantively baseless and have already been adjudicated or waived. Capitol plans to submit a separate response elaborating as to these issues.

Discovery is currently scheduled to be completed by November 8, 2013, pre-summary judgment motion letters are due November 12, 2013, and a post-discovery conference is scheduled for November 22, 2013 at 2:30 pm. Second Amended Joint Case Management Plan and Scheduling Order, ECF No. 129 (filed Sept. 25, 2013). The Individual Defendants were only added to this action on August 30, 2013. By the time the Motion to Dismiss briefing was complete, they had only 31 days (18 of which were week days) to plan, serve, and complete all of their discovery; thus, an extension of the discovery schedule is warranted.

Specifically, Individual Defendants' propose the following schedule:

- **Discovery Deadline**: January 16, 2013 (45 week days, excluding federal holidays, from November 8, 2013).
- **Pre-Summary Judgment Motion Letters**: January 29, 2013
- **Post Discovery Conference**: February 7, 2013

Because the requested extension will affect the already scheduled dates, a proposed revised scheduling order reflecting the above is enclosed.

Individual Defendants are submitting this letter at this point in time so that their request to extend discovery is made prior to the currently scheduled close of discovery. Should the Court grant their pending Motion to Dismiss with prejudice, however, the discovery extension requested in this letter will be moot.

Discovery Received by Individual Defendants

Individual Defendants did not receive Capitol's prior document production until October 24, 2013 (just 15 days before the presently scheduled close of discovery). Consequently, Individual Defendants' counsel has not yet had a sufficient opportunity to fully review Capital's documents and the extensive record in this case.

Discovery Outstanding to Individual Defendants

Individual Defendants served twenty-two interrogatories and twenty additional requests for production to Capital. Capital objected that these requests were untimely and burdensome, and the Court has not yet ruled on the parties' discovery dispute. *See* October 25, 2013 Joint Letter to Hon. Richard J. Sullivan. Should the Court order Capitol to comply with these discovery requests, Capitol's production will undoubtedly extend beyond the current discovery deadline. In addition, Individual Defendants will need to review Capital's responses and this may lead to further discovery requests or disputes before this Court.

In addition to the written discovery, Individual Defendants have served a 30(b)(6) deposition notice on Capitol, deposition notices on two current employees of Capitol, a subpoena and deposition notice on a former Capitol employee, and a subpoena for testimony and production of documents on the Recording Industry Association of America ("RIAA"). Despite their best efforts to schedule all of these depositions prior to the present close of discovery, Individual Defendants and Capitol have only been able to agree on a date and location for the 30(b)(6) deposition (currently scheduled for December 6, 2013). Individual Defendants have agreed to hold the other depositions requests until the Court rules on the pending document discovery dispute and the 30(b)(6) deposition takes place. RIAA has indicated that it is going to assert privilege over many (if not all) of the subpoenaed documents, and Individual Defendants

will likely seek court intervention prior to taking that deposition. Consequently, that deposition will also have to extend beyond the current discovery deadline.

Individual Defendants' Purpose for Requesting the Above Discovery

Despite still not knowing the full contours of the claims being asserted against them given the unsettled state of the pleadings, Individual Defendants believe they have defenses that are unique to whatever defenses Defendant ReDigi may have. In addition, as set forth in the October 25 letter, Individual Defendants believe they are not foreclosed from litigating defenses previously raised by ReDigi. Further, Individual Defendants are contemplating potential counterclaims. Individual Defendants' discovery has been carefully tailored at developing these defenses and potential counterclaims, and as demonstrated above, Individual Defendants have been diligent in seeking discovery on these topics despite the exceedingly tight discovery schedule.

Legal Standard for Extending Discovery

Federal Rule of Civil Procedure 16(b)(4) provides that "[a] schedule may be modified only for good cause and with the judge's consent." In general, courts consider the following factors: "(1) whether trial is imminent, (2) whether the request is opposed, (3) whether the non-moving party would be prejudiced, (4) whether the moving party was diligent in obtaining discovery within the guidelines established by the court, (5) the foreseeability of the need for additional discovery in light of the time allowed for discovery by the district court, and (6) the likelihood that the discovery will lead to relevant evidence." *Id*. (citing cases); *see also Bernstein v. Bernstein*, No. CV 91-0785, 1993 WL 466402, at *1 (E.D.N.Y. Aug. 13, 1993)).

Of these factors, courts generally consider whether the moving party had an adequate opportunity for discovery and whether the moving party pursued discovery in a diligent manner to be the most important. *See Bakalar v. Vavra*, 851 F. Supp. 2d 489, 493 (S.D.N.Y. 2011) (citing *Trebor Sportswear Co., Inc. v. The Limited Stores, Inc.*, 865 F.2d 506 (2d Cir. 1989)) ("A significant consideration is whether there has already been adequate opportunity for discovery."); *Corkrey v. Internal Rev. Serv.*, 192 F.R.D. 66, 67 (N.D.N.Y. 2000) (stating that good cause can be established where the moving party demonstrates "that the deadlines cannot reasonably be met despite the diligence of the party needing the extension.").

Although the court may consider whether amending the scheduling order will prejudice the non-moving party, the moving party's diligence is the primary consideration. *See Wolk v. Kodak Imaging Network, Inc.*, 840 F. Supp. 2d 724, 736 (S.D.N.Y. 2012). Thus, the 1983 Advisory Committee noted that "the court may modify the schedule on a showing of good cause if it cannot reasonably be met despite the diligence of the party seeking the extension." Fed. R. Civ. P. 16, advisory committee note of 1983; *see also Parker v. Columbia Pictures Indus.*, 204

F.3d 326, 340 (2d Cir. 2000) (joining other circuits in holding that "good cause" depends on the diligence of the moving party).

Courts have readily found good cause to exist where, as here, a new party is added late in the litigation. *See generally Paragon Office Servs., LLC v. Aetna Inc.*, 3:11-CV-1898-L, 2013 WL 1842273 (N.D. Tex. May 2, 2013) ("A request to add new parties virtually always requires additional discovery to be taken, which necessarily prolongs the resolution of the case."); *see also, e.g., Vegas Diamond Properties, LLC v. La Jolla Bank, FSB*, 10CV1205-WQH-BGS, 2011 WL 2633590, at *3 (S.D. Cal. July 5, 2011); *Sigros v. Walt Disney World Co.*, 190 F. Supp. 2d 165, 169 (D. Mass. 2002).

As stated, Individual Defendants were added to this case with little time to conduct discovery into their defenses and potential counterclaims. In addition, Individual Defendants' proffered their discovery requests just days after they completed the briefing on their motion to dismiss. Further, Individual Defendants did not receive Capitol's prior production in this matter until *after* they had already served their discovery requests. Quite simply, Individual Defendants have not had an opportunity to fully conduct necessary discovery, but have, nonetheless, acted as diligently as they could have in the narrow discovery window that has been afforded to them.

In addition, the requested extension will not prejudice Capitol, and to the extent it does, the prejudice to the Individual Defendants in denying an extension far outweighs whatever prejudice Capitol may face. Capitol made the decision to add the Individual Defendants to this action at this very late stage in the litigation for the singular reason that ReDigi is allegedly unable to satisfy a judgment against it. Consequently, Capitol cannot now credibly argue that it would be prejudiced by these *new* defendants' need to obtain discovery as to their potential defenses and counterclaims. Indeed, without such discovery, Individual Defendants' are concerned about their ability to adequately defend themselves.

Therefore, a limited extension of the discovery schedule under Rule 16(b) is warranted.

Sincerely,

James J. Pizzirusso

CC: Gary Adelman, Esq.
Richard S. Mandel, Esq.

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November 6, 2013

By E-mail (sullivannysdchambers@nysd.uscourts.gov)

Hon. Richard J. Sullivan, U.S.D.J.
40 Foley Square
New York, NY 10007

Re: Capitol Records, LLC v. ReDigi Inc., 12 cv. 0095 (RJS)

Dear Judge Sullivan:

We represent plaintiff Capitol Records, LLC ("Capitol") and write in response to the November 6, 2013 request for an extension of the discovery schedule submitted by individual defendants John Ossenmacher and Larry Rudolph ("IDs"). Capitol does not oppose a limited extension until December 6, 2013 to permit IDs to conduct certain depositions that cannot practicably be scheduled before the current deadline. Capitol also agrees to adjourn its submission of a pre-motion summary judgment letter until after those depositions are concluded. However, Capitol does object to IDs' belated demand to open a new extended discovery period so that they can search pointlessly for evidence to support imagined defenses that have either already been adjudicated or were waived, and are in any case not even colorable. IDs, the founders, majority owners, and operators of corporate defendant ReDigi Inc. ("ReDigi"), continue to pursue the fiction that they are somehow strangers to this dispute, with no prior access to or understanding of the ample evidentiary record in this case.

As a preliminary matter, IDs' description of events allegedly necessitating an extension is critically incomplete and inaccurate. When Capitol first proposed adding IDs to the complaint, ReDigi's attorney, Mr. Adelman, then speaking on their behalf, candidly admitted that no further discovery would be required on the issue of their individual liability. See Transcript of 8/9/13 Conf., Docket No. 116, at 4. That position was hardly surprising, as ReDigi had already been adjudged to infringe Capitol's copyrights, and the sole remaining issue necessary to establish the IDs' joint and several liability with ReDigi for such infringements was that the IDs participated in, exercised control over or benefitted from such infringement. See, e.g., Sygma Photo News, Inc. v. High Society Magazine, 778 F.2d 89, 92 (2d Cir. 1985); Arista Records LLC v. Lime Group LLC, 784 F. Supp. 2d 398, 437 (S.D.N.Y. 2011); Arista Records LLC v. Usenet.com, Inc., 633 F. Supp. 2d 124, 158-59 (S.D.N.Y. 2009). Significantly, facts concerning that issue are within the exclusive control of IDs and require no further discovery.

Nevertheless, after representing on September 16, 2013 that the IDs might seek "limited discovery," new counsel for the IDs served a barrage of belated discovery aimed at defenses that

are no longer available and are in any event legally unsupportable. The IDs began on October 9, 2013 by serving the document requests and interrogatories that are already the subject of an October 25, 2013 joint letter to the Court. Since serving those requests, the IDs have served six deposition notices between October 22, 2013 and October 29, 2013 purporting to schedule these depositions to occur simultaneously in various locations on November 6, 7 or 8. The notices were plainly served with no realistic expectation that the depositions could all occur before the November 8, 2013 cutoff, and from the outset of discussions, counsel for the IDs has made clear that its preference is to postpone the depositions to later dates outside the current cutoff.

Capitol is prepared to accommodate the IDs within reason, and has agreed to produce a 30(b)(6) witness in New York, subject to its stated objections, on December 6, 2013. Capitol also does not object to the scheduling of a deposition of the RIAA (whom the undersigned does not represent) on a mutually convenient date before December 6, 2013. Capitol has also offered to produce Chris Horton, an employee of Universal Music (which is now under the same ownership as Capitol), as it may seek to call him as a witness at trial. The IDs have not determined whether they wish to pursue such a deposition at this time, and wish to await the completion of the 30(b)(6) deposition before deciding. However, any further depositions beyond those identified above are clearly excessive and unnecessary in view of the present posture of the case, and there is no reason to extend the discovery period beyond December 6.

While IDs justify their delay by claiming they did not receive Capitol's prior document production until October 24, 2013, they ignore that ReDigi's counsel requested on September 9, 2013 that new counsel for the IDs be added to the protective order so new counsel could obtain access from ReDigi's counsel to certain confidential materials, including those provided by Capitol in discovery. Capitol complied with that request the same day, and an amended order was promptly filed with the Court. It is simply inexplicable why counsel for IDs would not thereafter have immediately obtained from ReDigi, the company that Mr. Ossenmacher runs as CEO, a full copy of the prior document production made by Capitol. Indeed, until counsel for the IDs requested such documents from us in late October, we assumed such materials had been provided by ReDigi a month earlier. We promptly provided a disk containing the production.

More to the point, there is no need for broad discovery aimed at potential defenses and subject matters that are simply no longer available or at issue in this case. Based on both their written discovery requests and the numerous 30(b)(6) topics they list, IDs apparently intend to pursue defenses and issues the Court has already adjudicated, such as what aspects of ReDigi's software infringe or whether they are entitled to a fair use defense. Because they are in privity with Redigi, IDs are barred by collateral estoppel and the law of the case doctrine from relitigating such issues the Court has already resolved. See, e.g., In re: Teltronics Servs., Inc., 762 F.2d 185, 190-91 (2d Cir. 1985); Kreager v. Gen. Elec. Co., 497 F.2d 468, 472 (2d Cir. 1974); Moran v. City of New Rochelle, 346 F. Supp. 2d 507, 515 (S.D.N.Y. 2004). Indeed, even if such defenses were still technically available, there is no plausible basis for the contention that the IDs have a "unique" or separate fair use defense or means of excusing ReDigi's infringement. All they can adjudicate is whether they participated in conduct already determined to be infringing, an issue to which none of their discovery seems directed.

Likewise, IDs are precluded from litigating various other substantive defenses which ReDigi either abandoned at the summary judgment stage (such as the essential step doctrine and DMCA immunity, see Summary Judgment Order, Docket No. 109, at 4-5 n.4) or could have asserted but chose to omit, such as unclean hands, estoppel, laches and the like. Again, because the IDs are in privity with ReDigi, they are barred under principles of res judicata from now asserting such defenses. See, e.g., Marine Midland Bank v. Slyman, 995 F.2d 362, 365-66 (2d Cir. 1993) (principals of corporation barred by res judicata from asserting affirmative defenses that could have been raised by corporation in prior action since principals in privity with corporation) (applying Ohio law).

In any event, there is no possible basis for any such defenses even if the IDs were permitted to assert them at this point. The IDs cannot possibly establish the prejudicial delay or reliance elements needed to support defenses such as estoppel and laches, where Capitol sued ReDigi during the service's beta testing period, fewer than three months after ReDigi's October 2011 launch, and ReDigi had previously been put on notice of the record companies' objections via a November 2011 demand letter from the RIAA. This period of time is too brief to support a laches defense. Additionally, IDs had no possible basis to believe that Capitol considered their conduct permissible in the face of Capitol's objections and lawsuit, and they clearly proceeded at their own risk in moving forward. See, e.g., National Football League v. Coors Brewing Co., 1999 U.S. App. LEXIS 32547, at *5 (2d Cir. Dec. 15, 1999) (no prejudicial reliance to support laches where defendant actually foresaw that NFL would aggressively defend its mark as it had in past); Lottie Joplin Thomas Trust v. Crown Publishers, Inc., 456 F. Supp. 531, 535 (S.D.N.Y. 1977) (no estoppel where plaintiff promptly asserted rights, eliminating any claim of reliance), aff'd, 592 F.2d 651 (2d Cir. 1978).

Similarly, IDs' attempt to construct an unclean hands defense based on Capitol's supposed unfair practices toward its recording artists generally, is without any legal basis, because such alleged conduct is extraneous to and bears no relation to the subject matter of this suit. See, e.g., Bentley v. Tibbals, 223 F. 247, 252 (2d Cir. 1915); Price v. Fox Entm't Group, Inc., 2007 WL 241387 (S.D.N.Y. Jan. 26, 2007); Coleman v. ESPN, Inc., 764 F. Supp. 290, 296 (S.D.N.Y. 1991); Wojnarowicz v. American Family Ass'n, 745 F. Supp. 130, 146 n.12 (S.D.N.Y. 1990). Likewise, IDs' attempt to concoct a counterclaim based on "violations of federal and state antitrust laws for conspiring with other record labels to corner the digital download market" (see October 25, 2013 joint letter) flies in the face of this Court's holding that Capitol has properly enforced its copyrights in accordance with the law. In short, IDs should not be permitted to extend the discovery period for the purpose of a fishing expedition into facts unrelated to the remaining issues to be adjudicated in this case.

Respectfully,

Richard S. Mandel

cc: James Pizzirusso, Esq. (via email)
Gary Adelman, Esq. (via email)

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HAUSFELD LLP

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James J. Pizzirusso
jpizzirusso@hausfeldllp.com

November 7, 2013

VIA E-MAIL (sullivannysdchambers@nysd.uscourts.gov)

Honorable Richard J. Sullivan, U.S.D.J.
United States District Court
Southern District of New York
40 Foley Square
New York, New York 10007

RE: *Capitol Records, LLC v. ReDigi Inc.*, No. 12-cv-00095 (RJS)

Dear Judge Sullivan,

We represent Defendants John Ossenmacher and Larry Rudolph a/k/a Lawrence Rogel ("Individual Defendants") in the above-captioned matter and write in response to Plaintiff Capitol Records, LLC's ("Capitol") November 6, 2013 letter responding to our letter of the same date requesting an extension in the discovery schedule (the "Response Letter"). The Response Letter was improper under Your Honor's Individual Practices, and therefore, should be stricken. Unfortunately, Capitol's letter appears to be nothing more than a thinly veiled attempt to subvert the Court's practices and put arguments made in the October 25, 2013 joint discovery letter impermissibly before the Court a second time without a response from the Individual Defendants. *See* Rule 1.G.

Individual Defendants' request for an extension in the discovery letter was written pursuant to Rule 1.D of Your Honor's Individual Practices, which provides the procedure for requesting extensions of time and provides that the request must state "whether the adversary consents, and, if not, the reasons given by the adversary for refusing to consent." This Rule, by its clear language, does not provide for a separate response letter such as Capital submitted. Individual Defendants' November 6 letter sought an extension under this Rule and properly included Capitol's position (which Capitol wrote). Therefore, Capital's Response Letter detailing new arguments relevant to another discovery dispute was inappropriate and should be stricken.[1]

[1] In comparison, Rule 1.G of Your Honor's Individual Practices provides that discovery disputes should be described "in a single letter, jointly composed, not to exceed five pages. Separate and successive letters will be returned, unread." (emphasis in original). Rule 1.G does not apply here, as a request for an extension in discovery is not a discovery dispute. Nonetheless, even if Rule 1.G did apply, the Response Letter is inappropriate inasmuch as the Individual Defendants' November 6 letter provided Capitol's position, and the Response Letter is a "successive letter[]" that should be "returned, unread."

Individual Defendants are not going to respond to the substantive arguments made in Capital's Response Letter unless the Court would like them to do so. Nevertheless, Individual Defendants feel it is necessary to correct one of the many inaccuracies in this letter. Namely, it is simply untrue that Mr. Adelman represented the Individual Defendants at the August 9, 2013 hearing. Moreover, the Individual Defendants were not parties to the case at that point in time. Your Honor asked Mr. Adelman a question, and not having the benefit of seeing Capitol's Amended Complaint, Mr. Adelman answered as candidly as possible. Capitol's attempt to impute Mr. Adelman's statement on the Individual Defendants now is highly prejudicial to the Individual Defendants' ability to defend themselves in this action and warrants correction.

Therefore, Individual Defendants respectfully request that Your Honor strike the Response Letter or allow Individual Defendants an opportunity to more fully respond to the legal arguments asserted therein.

Sincerely,

James J. Pizzirusso

CC: Gary Adelman, Esq.
Richard S. Mandel, Esq.

Exhibit 14

HAUSFELD LLP

202.540.7200 ph
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1700 K Street, NW
Suite 650
Washington, DC 20006

James J. Pizzirusso
jpizzirusso@hausfeldllp.com

October 22, 2013

VIA FEDERAL EXPRESS & EMAIL

Mr. Gary Philip Adelman
Ms. Sarah Michal Matz
Davis Shapiro Lewit & Hayes LLP
414 West 14th Street, 5th Floor
New York, NY 10014
(212) 230-5500

RE: *Capitol Records, LLC V. Redigi Inc., John Ossenmacher, and Larry Rudolph, a/k/a Lawrence S. Rogel*, Case No. 12-CV-00095 (RJS) (S.D.N.Y.)

Dear Gary and Sarah,

Enclosed please find a Notice of Deposition Pursuant to Federal Rule of Civil Procedure 30(b)(6) in the above-captioned matter. Please note that due to the Court's tight discovery timeline, we have noticed the deposition for November 7, 2013 at 9:00 am.

Please call me at your convenience to set a convenient location for this deposition.

Sincerely,

James J. Pizzirusso

Enclosures

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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CAPITOL RECORDS, LLC, Plaintiff, v. REDIGI INC., JOHN OSSENMACHER, and LARRY RUDOLPH a/k/a LAWRENCE S. ROGEL, Defendants.	12-CV-00095 (RJS)

NOTICE OF DEPOSITION PURSUANT TO FED. R. CIV. P. 30(b)(6)

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD

PLEASE TAKE NOTICE that, pursuant to Federal Rule of Civil Procedure 30(a) and 30(b)(6), Defendants John Ossenmacher and Larry Rudolph a/k/a Lawrence S. Rogel ("Individual Defendants") will take the following deposition(s) at the date, time and place indicated below before a notary public or some other person authorized by law to administer oaths. You are invited to attend and cross-examine. The examination will continue from day to day until completed.

DEPONENT	DATE AND TIME	LOCATION
Capitol Records, LLC	November 8, 2013 9:00 am	Cowan, Liebowitz & Latman, PC 1133 Avenue of the Americas New York, NY 10036

In accordance with Rule 30(b)(6), the deponent is advised of its duty to designate one or more of its officers, directors, or other persons to testify on its behalf with respect to the matters

known or reasonably available to the deponent and referred to in the annexed Exhibit A. The Individual Defendants request that Capitol Records LLC provide written notice at least five (5) business days before the deposition of the name(s) and employment position(s) of the individual(s) designated to testify on Capitol Records, LLC's behalf.

DATED: October 25, 2013

HAUSFELD LLP

Seth R. Gassman

Seth R. Gassman
HAUSFELD LLP
1700 K Street, N.W., Suite 650
Washington, D.C. 20006

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served this 22nd day of October, 2013 upon the following via email and Federal Express:

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Attorney of Record for Defendant, ReDigi Inc.

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Email: smatz@davisshapiro.com

Attorney of Record for Defendant, ReDigi Inc.

DATED: October 25, 2013

Seth R. Gassman
Seth R. Gassman
HAUSFELD LLP
1700 K Street, N.W., Suite 650
Washington, D.C. 20006

EXHIBIT A

Definitions

1. "DOCUMENT[S]" has the same full meaning as construed by Federal Rule of Civil Procedure 34 and includes without limitation the original (or identical duplicate when the original is not available) and all non-identical copies (whether non-identical because of notes made on copies or attached comments, annotations, marks, transmission notation, or highlighting of any kind) and drafts of all writing, whether handwritten, typed, printed or otherwise produced, and includes, without limitation, letters, correspondence, memoranda, legal pleadings, notes, reports, agreements, calendars, diaries, travel or expense records, summaries, records, messages or logs of telephone calls, conversations or interviews, telegrams, mailgrams, facsimile transmissions (including cover sheets and confirmations), electronically stored information (see definition number two below), minutes or records of meeting, compilations, notebooks, laboratory notebooks, work papers, books, pamphlets, brochures, circulars, manuals, instructions, sales, advertising or promotional literature or materials, ledgers, graphs, charts, blue prints, drawings, sketches, photographs, film and sound reproductions, tape recordings, or any other tangible materials on which there is any recording or writing of any sort. The term also includes the file, folder tabs, and/or containers and labels appended to, or associated with, any physical storage device associated with each original and/or copy of all DOCUMENTS requested herein.

2. "YOU," "YOUR" means Plaintiff CAPITOL RECORDS, LLC, its parent corporations, subsidiaries and affiliates, including but not limited to Universal Music Group Recordings, Inc. and Capitol Music Group, and each of their employees, agents, representatives, attorneys or any person acting or purported to act on behalf of the responding Defendant.

3. INDIVIDUAL DEFENDANTS means Defendants John Ossenmacher and Larry

Rudolph a/k/a Lawrence S. Rogel.

4. COMMUNICATIONS means any disclosure, transfer, or exchange of information or opinion, however made, including but not limited to through email, letter, instant messaging and text messaging. COMMUNICATIONS shall include DOCUMENTS and ESI.

5. REDIGI means the online marketplace for pre-owned digital music that is a Defendant in this matter and its employees, officers, and directors other than the INDIVIDUAL DEFENDANTS.

6. SOFTWARE ARCHITECTURE means the structure or structures of a computer system that comprise software components, the externally visible properties of those components, and the relationships between them.

7. DIGITAL CONTENT PROVIDERS means any entity, other than REDIGI, that sells or distributes to end-users digital versions, whether in whole or in part, of music recordings that end-users download or stream over the Internet to or on their computers or other electronic devices (*e.g.*, cell phones).

8. DIGITAL EXPLOITATION means the process by which DIGITAL CONTENT PROVIDERS sell or distribute digital versions, whether whole or in part, of music recordings to end-users.

9. RECORDING ARTISTS means any individual or performing group that recorded master recordings for YOU.

10. PRODUCERS means any individual or performing group that produced master recordings for YOU.

11. COMPENSATION means remuneration, whether in money or in kind.

12. RECORD LABEL means any brand and/or trademark associated with the marketing of music recordings or music videos other than CAPITOL RECORDS, LLC and including but not limited to Warner Music Group, EMI, Sony, BMG, Universal Music Group, and Polygram.

13. ALLEGEDLY COPYRIGHTED SONGS means the 512 songs listed in Exhibit A

to YOUR Amended Complaint in this litigation.

14. PRE-1972 SONGS means the 55 songs listed in Exhibit B to YOUR Amended Complaint in this litigation.

15. PRESS means any news dissemination service and their agents and employees, including but not limited to established news services (*i.e.*, CNN, Fox, MSNBC), websites, RSS feeds, podcasts and blogs.

16. "PERSON" and "PERSONS" shall include both the singular and plural, and shall mean and refer to any natural human being, firm, proprietorship, partnership, corporation, joint venture, shareholder, investors, members, limited liability company, limited liability partnership, general partnership, limited partnership, trust, loan – out company, government agent or government body, association, employers, employees, agents, partners, officers, directors, representatives, affiliates and all other forms of organization or entity or other group or combination of the foregoing acting as one.

17. POLICIES means any official standard(s), procedure(s), or protocol(s), whether written or not.

18. "Including" is used to illustrate a Request for particular types of DOCUMENTS requested, and shall not be construed as limiting the Request in any way. "Or" should be construed to require the broadest possible response, and should be read as "and/or."

Matters for Examination

Witness(es) with knowledge of the following matters between January 2010 and present, unless a time period is specified otherwise:

A. Your Relationship with ReDigi and the Individual Defendants

1. YOUR COMMUNICATIONS that refer, relate to, or involve REDIGI and/or the INDIVIDUAL DEFENDANTS.

2. The identify of each of YOUR current or former employees who had any

interaction with REDIGI and/or the INDIVIDUAL DEFENDANTS and the nature of those COMMUNICATIONS, and any actions YOU took as a result of those interactions.

3. Your analyses on the impact REDIGI could have on the amount of money YOU or other RECORD LABELS could make.

4. Your plans or intentions to develop SOFTWARE ARCHITECTURE for reselling of songs originally purchased from DIGITAL CONTENT PROVIDERS.

B. Your Alleged Copyrights

5. YOUR basis for believing that you own the copyrights for each ALLEGEDLY COPYRIGHTED SONG.

6. YOUR basis for believing that the copyright to each PRE-1972 SONG has not reverted to the RECORDING ARTIST or PRODUCER.

7. The contractual language in each RECORDING ARTIST or PRODUCER contract covering each ALLEGEDLY COPYRIGHTED SONG and PRE-1972 song that provides YOU with an interest in the copyright to each of these songs.

C. The Alleged Infringement

8. For each ALLEGEDLY COPYRIGHTED SONG and each PRE-1972 SONG, the date, time, and location of each act that you allege results in the INDIVIDUAL DEFENDANTS' liability in this action, along with an explanation for why and how each act infringed on each ALLEGEDLY COPYRIGHTED SONG and each PRE-1972 SONG.

9. The characteristics or attributes of REDIGI's SOFTWARE ARCHITECTURE and the INDIVIDUAL DEFENDANTS' role in developing each of those characteristics or attributes that YOU believe gives rise to the INDIVIDUAL DEFENDANTS' liability.

10. YOUR past copyright infringement actions, other than the present action, that YOU have brought based on the ALLEGEDLY COPYRIGHTED SONGS and PRE-1972 SONGS, including whether YOU were successful and the amount of COMPENSATION that you were able to obtain as a result of each action.

11. The amount of actual harm YOU allegedly suffered as a result of the INDIVIDUAL DEFENDANTS' alleged infringement.

12. YOUR assertion that REDIGI is not sufficiently capitalized to pay a monetary judgment against it in this action.

13. The amount of net revenue that YOU believe REDIGI makes off of each resale of a music recording, along with the total amount of net revenue YOU believe that REDIGI has made from the resale of the ALLEGEDLY COPYRIGHTED SONGS and PRE-1972 SONGS.

14. The amount of COMPENSATION that YOU believe the INDIVIDUAL DEFENDANTS have made off of each resale of a music recording, along with the total amount of COMPENSATION YOU believe that the INDIVIDUAL DEFENDANTS have made from the resale of the ALLEGEDLY COPYRIGHTED SONGS and PRE-1972 SONGS.

D. Your Digital Exploitation Policies

15. YOUR POLICIES regarding the use of the PRE-1972 SONGS or the ALLEGEDLY COPYRIGHTED SONGS for DIGITAL EXPLOITATION.

16. YOUR POLICIES regarding the payment of royalties to RECORDING ARTISTS and PRODUCERS for the exploitation of the PRE-1972 SONGS or the ALLEGEDLY COPYRIGHTED SONGS.

17. YOUR contracts or agreements between YOU and any third party that refer or relate to the DIGITAL EXPLOITATION of the PRE-1972 SONGS or the ALLEGEDLY COPYRIGHTED SONGS.

18. The language in YOUR contracts with DIGITAL CONTENT PROVIDERS that YOU believe prohibits the re-sale of the ALLEGEDLY COPYRIGHTED SONGS and the PRE-1972 SONGS.

E. Your Payment of Royalties

19. Your failure to pay appropriate royalties to RECORDING ARTISTS or PRODUCERS for the DIGITAL EXPLOITATION of the PRE-1972 SONGS or the ALLEGEDLY COPYRIGHTED SONGS.

20. The identity of each RECORDING ARTIST or PRODUCER that has contested the amount of royalties that have been paid to them for the DIGITAL EXPLOITATION of the ALLEGEDLY COPYRIGHTED SONGS and PRE-1972 SONGS, whether through an AUDIT or not, along with the result of that contest.

F. General Topics

21. YOUR DOCUMENT preservation policies.

22. All contracts or agreements that YOU contend prohibit or limit YOU from producing DOCUMENTS requested by the INDIVIDUAL DEFENDANTS in this above-entitled litigation.

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AO 88A (Rev. 06/09) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of New York

Capitol Records, LLC
Plaintiff
v.
ReDigi Inc., et al.
Defendant

Civil Action No. 12-cv-00095 (RJS)

(If the action is pending in another district, state where:

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Mr. Colin Finkelstein, 400 East 70th Street; Apartment 390; New York, New York 10021

☑ *Testimony:* **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place:	Date and Time:
Davis Shapiro & Lewit LLP 414 West 14th Street: 5th Floor New York, New York 10014	11/08/2013 9:00 am

The deposition will be recorded by this method: Stenograph

☐ *Production:* You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 10/25/2013

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing *(name of party)* John Ossenmacher and Larry Rudolph a/k/a Lawrence S. Rogel, who issues or requests this subpoena, are:

Seth R. Gassman; Hausfeld LLP; 1700 K Street, NW; Suite 650; Washington, DC 20006;
Phone: 202-540-7200; Email: sgassman@hausfeldllp.com

Civil Action No. 12-cv-00095 (RJS)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

❒ I served the subpoena by delivering a copy to the named individual as follows: _____

_____

_____ on *(date)* _____ ; or

❒ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of

$ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____ _____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CAPITOL RECORDS, LLC, Plaintiff, v. REDIGI INC., JOHN OSSENMACHER, and LARRY RUDOLPH a/k/a LAWRENCE S. ROGEL, Defendants.	12-CV-00095 (RJS)

NOTICE OF DEPOSITION OF COLIN FINKELSTEIN

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD

PLEASE TAKE NOTICE that, pursuant to Federal Rule of Civil Procedure 45, Defendants John Ossenmacher and Larry Rudolph ("Individual Defendants"), by their attorneys will take the deposition of Colin Finkelstein upon oral examination at 9:00 a.m. on November 8, 2013, at Davis Shapiro & Lewit LLP, 414 West 14th Street: 5th Floor, New York, New York 10014.

The deposition will continue from day to day until completed. The deposition will be taken before a certified shorthand reporter authorized by law to administer oaths and will be recorded stenographically.

DATED: October 25, 2013

HAUSFELD LLP

/s/ Seth R. Gassman

Seth R. Gassman
HAUSFELD LLP
1700 K Street, N.W., Suite 650
Washington, D.C. 20006

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served this 25th day of October, 2013 upon the following via email:

Richard Stephen Mandel
Cowan, Liebowitz & Latman, P.C.
1133 Avenue of the America's
New York, NY 10036
(212) 790-9291
Email: rsm@cll.com

Attorney of Record for Plaintiff, Capitol Records, LLC

Jonathan Zachary King
Cowan, Liebowitz & Latman, P.C.
1133 Avenue of the America's
New York, NY 10036
(212) 790-9200
Email: jzk@cll.com

Attorney of Record for Plaintiff, Capitol Records, LLC

Gary Philip Adelman
Davis Shapiro Lewit & Hayes LLP
414 West 14th Street, 5th Floor
New York, NY 10014
(212) 230-5500
Email: garya@davisshapiro.com

Attorney of Record for Defendant, ReDigi Inc.

Sarah Michal Matz
Davis Shapiro & Lewit LLP
414 West 14th Street, 5th Floor
New York, NY 10014
(212)-230-5500
Email: smatz@davisshapiro.com

Attorney of Record for Defendant, ReDigi Inc.

DATED: October 25, 2013

/s/ Seth R. Gassman
Seth R. Gassman
HAUSFELD LLP
1700 K Street, N.W., Suite 650
Washington, D.C. 20006

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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CAPITOL RECORDS, LLC, Plaintiff, v. REDIGI INC., JOHN OSSENMACHER, and LARRY RUDOLPH a/k/a LAWRENCE S. ROGEL, Defendants.	12-CV-00095 (RJS)

NOTICE OF DEPOSITION OF CHRISTOPHER HORTON

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD

PLEASE TAKE NOTICE that, pursuant to Federal Rule of Civil Procedure 30, Defendants John Ossenmacher and Larry Rudolph ("Individual Defendants"), by their attorneys, will take the deposition of Christopher Horton upon oral examination at 9:00 a.m. on November 7, 2013, at Davis Shapiro & Lewit LLP, 414 West 14th Street: 5th Floor, New York, New York 10014.

The deposition will continue from day to day until completed. The deposition will be taken before a certified shorthand reporter authorized by law to administer oaths and will be recorded stenographically.

DATED: October 25, 2013

HAUSFELD LLP

/s/ Seth R. Gassman

Seth R. Gassman
HAUSFELD LLP
1700 K Street, N.W., Suite 650
Washington, D.C. 20006

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served this 25th day of October, 2013 upon the following via email:

Richard Stephen Mandel
Cowan, Liebowitz & Latman, P.C.
1133 Avenue of the America's
New York, NY 10036
(212) 790-9291
Email: rsm@cll.com

Attorney of Record for Plaintiff, Capitol Records, LLC

Jonathan Zachary King
Cowan, Liebowitz & Latman, P.C.
1133 Avenue of the America's
New York, NY 10036
(212) 790-9200
Email: jzk@cll.com

Attorney of Record for Plaintiff, Capitol Records, LLC

Gary Philip Adelman
Davis Shapiro Lewit & Hayes LLP
414 West 14th Street, 5th Floor
New York, NY 10014
(212) 230-5500
Email: garya@davisshapiro.com

Attorney of Record for Defendant, ReDigi Inc.

Sarah Michal Matz
Davis Shapiro & Lewit LLP
414 West 14th Street, 5th Floor
New York, NY 10014
(212)-230-5500
Email: smatz@davisshapiro.com

Attorney of Record for Defendant, ReDigi Inc.

DATED: October 25, 2013

/s/ Seth R. Gassman
Seth R. Gassman
HAUSFELD LLP
1700 K Street, N.W., Suite 650
Washington, D.C. 20006

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CAPITOL RECORDS, LLC, Plaintiff, v. REDIGI INC., JOHN OSSENMACHER, and LARRY RUDOLPH a/k/a LAWRENCE S. ROGEL, Defendants.	12-CV-00095 (RJS)

NOTICE OF DEPOSITION OF PAT SHAH

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD

PLEASE TAKE NOTICE that, pursuant to Federal Rule of Civil Procedure 30, Defendants John Ossenmacher and Larry Rudolph ("Individual Defendants"), by their attorneys, will take the deposition of Pat Shah upon oral examination at 9:00 a.m. on November 7, 2013, at Davis Shapiro & Lewit LLP, 414 West 14th Street: 5th Floor, New York, New York 10014.

The deposition will continue from day to day until completed. The deposition will be taken before a certified shorthand reporter authorized by law to administer oaths and will be recorded stenographically.

DATED: October 25, 2013

HAUSFELD LLP

/s/ Seth R. Gassman

Seth R. Gassman
HAUSFELD LLP
1700 K Street, N.W., Suite 650
Washington, D.C. 20006

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served this 25th day of October, 2013 upon the following via email:

Richard Stephen Mandel
Cowan, Liebowitz & Latman, P.C.
1133 Avenue of the America's
New York, NY 10036
(212) 790-9291
Email: rsm@cll.com

Attorney of Record for Plaintiff, Capitol Records, LLC

Jonathan Zachary King
Cowan, Liebowitz & Latman, P.C.
1133 Avenue of the America's
New York, NY 10036
(212) 790-9200
Email: jzk@cll.com

Attorney of Record for Plaintiff, Capitol Records, LLC

Gary Philip Adelman
Davis Shapiro Lewit & Hayes LLP
414 West 14th Street, 5th Floor
New York, NY 10014
(212) 230-5500
Email: garya@davisshapiro.com

Attorney of Record for Defendant, ReDigi Inc.

Sarah Michal Matz
Davis Shapiro & Lewit LLP
414 West 14th Street, 5th Floor
New York, NY 10014
(212)-230-5500
Email: smatz@davisshapiro.com

Attorney of Record for Defendant, ReDigi Inc.

DATED: October 25, 2013

/s/ Seth R. Gassman
Seth R. Gassman
HAUSFELD LLP
1700 K Street, N.W., Suite 650
Washington, D.C. 20006

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AO 88A (Rev. 06/09) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of California

Capitol Records, LLC
Plaintiff
v.
ReDigi Inc., et al.
Defendant

Civil Action No. 12-cv-00095 (RJS)

(If the action is pending in another district, state where: Southern District of New York)

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Mr. Ronn Werre, 115 Ketch Mall, Marina Del Rey, California 90292

☑ *Testimony:* **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place:	Date and Time:
Pearson, Simon & Warshaw 15165 Ventura Blvd., Suite 400 Sherman Oaks, CA 91403	11/08/2013 9:00 am

The deposition will be recorded by this method: Stenograph

☐ *Production:* You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 10/25/2013

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing *(name of party)* John Ossenmacher and Larry Rudolph a/k/a Lawrence S. Rogel, who issues or requests this subpoena, are:

Bruce J. Wecker, Hausfeld LLP, 44 Montgomery Street, Suite 3400, San Francisco, CA 94104
Phone: 415-633-1907; Email: bwecker@hausfeldllp.com

Civil Action No. 12-cv-00095 (RJS)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

❒ I served the subpoena by delivering a copy to the named individual as follows: _____

_____

_____ on *(date)* _____ ; or

❒ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CAPITOL RECORDS, LLC, Plaintiff, v. REDIGI INC., JOHN OSSENMACHER, and LARRY RUDOLPH a/k/a LAWRENCE S. ROGEL, Defendants.	12-CV-00095 (RJS)

NOTICE OF DEPOSITION OF RONN WERRE

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD

PLEASE TAKE NOTICE that, pursuant to Federal Rule of Civil Procedure 45, Defendants John Ossenmacher and Larry Rudolph ("Individual Defendants"), by their attorneys will take the deposition of Ronn Werre upon oral examination at 9:00 a.m. on November 8, 2013, at Pearson, Simon & Warshaw, 15165 Ventura Blvd., Suite 400, Sherman Oaks, CA 91403.

The deposition will continue from day to day until completed. The deposition will be taken before a certified shorthand reporter authorized by law to administer oaths and will be recorded stenographically.

DATED: October 25, 2013

HAUSFELD LLP

/s/ Seth R. Gassman
Seth R. Gassman
HAUSFELD LLP
1700 K Street, N.W., Suite 650
Washington, D.C. 20006

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served this 25th day of October, 2013 upon the following via email:

Richard Stephen Mandel
Cowan, Liebowitz & Latman, P.C.
1133 Avenue of the America's
New York, NY 10036
(212) 790-9291
Email: rsm@cll.com

Attorney of Record for Plaintiff, Capitol Records, LLC

Jonathan Zachary King
Cowan, Liebowitz & Latman, P.C.
1133 Avenue of the America's
New York, NY 10036
(212) 790-9200
Email: jzk@cll.com

Attorney of Record for Plaintiff, Capitol Records, LLC

Gary Philip Adelman
Davis Shapiro Lewit & Hayes LLP
414 West 14th Street, 5th Floor
New York, NY 10014
(212) 230-5500
Email: garya@davisshapiro.com

Attorney of Record for Defendant, ReDigi Inc.

Sarah Michal Matz
Davis Shapiro & Lewit LLP
414 West 14th Street, 5th Floor
New York, NY 10014
(212)-230-5500
Email: smatz@davisshapiro.com

Attorney of Record for Defendant, ReDigi Inc.

DATED: October 25, 2013

/s/ Seth R. Gassman
Seth R. Gassman
HAUSFELD LLP
1700 K Street, N.W., Suite 650
Washington, D.C. 20006

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AO 88A (Rev. 06/09) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

Capitol Records, LLC
Plaintiff
v.
ReDigi Inc. et al.
Defendant

Civil Action No. 12-cv-00095 (RJS)

(If the action is pending in another district, state where:
Southern District of New York
Case No. 4:09-CV-01967 CW)

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Recording Industry Association of America; 1025 F Street, N.W., 10th Floor, Washington, DC 20004

☑ *Testimony:* **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

See Attached

Place:	Date and Time:
Hausfeld LLP 1700 K Street, NW, Suite 650 Washington, DC 20006	11/06/2013 9:00 am

The deposition will be recorded by this method: Stenograph

☑ *Production:* You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

See Attached

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 10/29/2013

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing *(name of party)* John Ossenmacher & Larry Rudolph a/k/a Lawrence Rogel, who issues or requests this subpoena, are:

James J. Pizzirusso; Hausfeld LLP; 1700 K Street, NW, Suite 650; Washington, DC, 20006.
Phone: 202-540-7200; Email: jpizzirusso@hausfeldllp.com

Civil Action No. 12-cv-00095 (RJS)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

❒ I served the subpoena by delivering a copy to the named individual as follows: _____

_____

_____ on *(date)* _____ ; or

❒ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

(c) Protecting a Person Subject to a Subpoena.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(d) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) Contempt. The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CAPITOL RECORDS, LLC, Plaintiff, v. REDIGI INC., JOHN OSSENMACHER, and LARRY RUDOLPH a/k/a LAWRENCE S. ROGEL, Defendants.	12-CV-00095 (RJS)

NOTICE OF DEPOSITION OF
RECORDING INDUSTRY ASSOCIATION OF AMERICA

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD

PLEASE TAKE NOTICE that, pursuant to Federal Rule of Civil Procedure 45, Defendants John Ossenmacher and Larry Rudolph a/k/a Lawrence S. Rogel ("Individual Defendants"), by their attorneys, will take the deposition of the Recording Industry Association of America upon oral examination at 9:00 am on November 6, 2013 at Hausfeld LLP, 1700 K Street, NW, Suite 650; Washington, DC 20006.

The deposition will continue from day to day until completed. The deposition will be taken before a certified shorthand reporter authorized by law to administer oaths and will be recorded stenographically.

In accordance with Rule 45, the deponent is advised of its duty to designate one or more of its officers, directors, or other persons to testify on its behalf and produce documents, as defined by Federal Rule of Civil Procedure 34, with respect to the matters known or reasonably available to the deponent and referred to in the annexed Exhibit A. The Individual Defendants

request that the Recording Industry Association of America provide written notice at least five (5) business days before the deposition of the name(s) and employment position(s) of the individual(s) designated to testify on its behalf.

DATED: October 29, 2013

HAUSFELD LLP

Seth R. Gassman

Seth R. Gassman
HAUSFELD LLP
1700 K Street, N.W., Suite 650
Washington, D.C. 20006

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served this 22nd day of October, 2013 upon the following via email and Federal Express:

Richard Stephen Mandel
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(212) 790-9291
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Attorney of Record for Defendant, ReDigi Inc.

DATED: October 29, 2013

Seth R. Gassman
Seth R. Gassman
HAUSFELD LLP
1700 K Street, N.W., Suite 650
Washington, D.C. 20006

EXHIBIT A

Definitions

1. "DOCUMENT[S]" has the same full meaning as construed by Federal Rule of Civil Procedure 34 and includes without limitation the original (or identical duplicate when the original is not available) and all non-identical copies (whether non-identical because of notes made on copies or attached comments, annotations, marks, transmission notation, or highlighting of any kind) and drafts of all writing, whether handwritten, typed, printed or otherwise produced, and includes, without limitation, letters, correspondence, memoranda, legal pleadings, notes, reports, agreements, calendars, diaries, travel or expense records, summaries, records, messages or logs of telephone calls, conversations or interviews, telegrams, mailgrams, facsimile transmissions (including cover sheets and confirmations), electronically stored information (see definition number two below), minutes or records of meeting, compilations, notebooks, laboratory notebooks, work papers, books, pamphlets, brochures, circulars, manuals, instructions, sales, advertising or promotional literature or materials, ledgers, graphs, charts, blue prints, drawings, sketches, photographs, film and sound reproductions, tape recordings, or any other tangible materials on which there is any recording or writing of any sort. The term also includes the file, folder tabs, and/or containers and labels appended to, or associated with, any physical storage device associated with each original and/or copy of all DOCUMENTS requested herein.

2. "YOU," "YOUR" means Plaintiff CAPITOL RECORDS, LLC, its parent corporations, subsidiaries and affiliates, including but not limited to Universal Music Group Recordings, Inc. and Capitol Music Group, and each of their employees, agents, representatives, attorneys or any person acting or purported to act on behalf of the responding Defendant.

3. INDIVIDUAL DEFENDANTS means Defendants John Ossenmacher and Larry

Rudolph a/k/a Lawrence S. Rogel.

4. COMMUNICATIONS means any disclosure, transfer, or exchange of information or opinion, however made, including but not limited to through email, letter, instant messaging and text messaging. COMMUNICATIONS shall include DOCUMENTS and ESI.

5. REDIGI means the online marketplace for pre-owned digital music that is a Defendant in this matter and its employees, officers, and directors other than the INDIVIDUAL DEFENDANTS.

6. RECORD LABEL means any brand and/or trademark associated with the marketing of music recordings or music videos other than CAPITOL RECORDS, LLC and including but not limited to Warner Music Group, EMI, Sony, BMG, Universal Music Group, and Polygram.

7. "Including" is used to illustrate a Request for particular types of DOCUMENTS requested, and shall not be construed as limiting the Request in any way. "Or" should be construed to require the broadest possible response, and should be read as "and/or."

Matters for Examination

Witness(es) with knowledge of the following matters between January 2010 and present, unless a time period is specified otherwise:

1. YOUR COMMUNICATIONS with REDIGI and/or the INDIVIDUAL DEFENDANTS regarding REDIGI, including identification of each of YOUR current or former employees who had any interaction with REDIGI and/or the INDIVIDUAL DEFENDANTS, the nature of those COMMUNICATIONS, and any actions YOU took as a result of those interactions.

2. YOUR COMMUNICATIONS with CAPITOL RECORDS, LLC or any other RECORD LABEL that refer, relate to, or involve REDIGI and/or the INDIVIDUAL DEFENDANTS, including the time, place, location, and participants of each such

COMMUNICATION.

3. Your analyses on the impact REDIGI could have on the amount of money RECORD LABELS could make.

Exhibit 15

From:	Mandel, Richard
To:	Nathaniel C. Giddings; James J. Pizzirusso
Cc:	King, Jonathan; Gary Adelman (g@adelmanmatz.com); "Sarah Matz"
Subject:	FW: Discovery Disputes
Date:	Wednesday, October 15, 2014 7:49:08 PM
Attachments:	10152014194118.pdf 10152014192729.pdf

Further to our email exchange below, attached please find copies of Capitol's responses to the individual defendants' first set of document requests and interrogatories. We will proceed to prepare a draft joint letter for your review that attempts to outline the discovery issues that remain in dispute following our exchange. If you have additional issues based on our responses, we can discuss and include in the letter to the extent we are unable to resolve any such disputes that may exist.

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From: Mandel, Richard
Sent: Friday, October 10, 2014 3:56 PM
To: 'Nathaniel Giddings'; James Pizzirusso
Cc: 'Sarah Matz'; g@adelmanmatz.com; King, Jonathan
Subject: RE: Discovery Disputes

Thank you for your email. We are ok with points 1 and 2.

With respect to the interrogatories, our client will agree also to answer (subject to objections) interrogatories 11, 13, 18 and 20.

With respect to document requests, we are agreeable to producing documents (subject to our objections) to your revised request 2, but believe that all documents responsive to this request as reasonably construed have already been produced. Similarly, with respect to request no. 6, we believe the documents regarding digital exploitation that have already been produced in the litigation are sufficient and that no further production is required. We continue to object to the other requests which you are reiterating.

At this point, as discussed with James, we think what makes the most sense is for us to provide you with our responses next week based on the foregoing exchange, and then present any narrowed set of disputed issues that remain to Judge Sullivan in our October 22 letter.

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From: Nathaniel Giddings [mailto:ngiddings@hausfeld.com]
Sent: Friday, October 10, 2014 12:45 PM
To: Mandel, Richard; James Pizzirusso
Cc: 'Sarah Matz'; g@adelmanmatz.com; King, Jonathan
Subject: RE: Discovery Disputes

Richard,

Individual Defendants are generally okay with your discovery proposal, with the following exceptions and caveats:

1. Our agreement to withdraw certain discovery requests is without prejudice to our right to seek additional discovery in this matter.

2. Our agreement to withdraw certain discovery requests is without prejudice to our position that res judicata, collateral estoppel, law of the case, or any other doctrine Capitol believes limits the scope of our discovery rights do not apply in this case.

3. RFPD #2: We would agree to narrow this to request to "All COMMUNICATIONS that refer or relate to REDIGI's exploitation of the ALLEGEDLY COPYRIGHTED SONGS or PRE-1972-SONGS between YOU and . . . ." Will do not agree to withdraw it entirely.

4. RFPD #6: We do not agree to withdraw this request.

5. RFPD #10: We do not agree to withdraw this request.

6. RFPD ## 16-18: We do not agree to withdraw these requests.

7. ROG #4: We do not agree to withdraw this request.

8. ROG #11: We do not agree to withdraw this request.

9. ROG #13: We do not agree to withdraw this request.

10. ROG ## 18-20: We do not agree to withdraw these requests.

11. We do not agree to withdraw any of our deposition notices and reserve our right to seek additional depositions of current and former Capitol and Capitol-affiliate employees as well as third parties.

We remain open to discussing our discovery requests with Capitol in good faith. Please let me know if you would like to set up a call sometime next week to further discuss.

Regards,
Nathaniel

Nathaniel Giddings, Associate

ngiddings@hausfeld.com

HAUSFELD LLP

1700 K Street, NW, Suite 650, Washington, DC 20006
202.540.7200 main / 202.540.7201 fax / www.hausfeldllp.com

From: Mandel, Richard [mailto:RSM@cll.com]
Sent: Friday, October 03, 2014 3:05 PM
To: James Pizzirusso; Nathaniel Giddings
Cc: 'Sarah Matz'; Gary Adelman (g@adelmanmatz.com); King, Jonathan
Subject: Discovery Disputes

Further to our previous conversations regarding the various discovery items remaining in dispute, Capitol is prepared to agree to respond to interrogatories 1-3, 5-10, 12, and 14-17 (subject to objections) in exchange for your agreement to withdraw interrogatory nos. 4, 11, 13, and 18-22.

With respect to document requests, Capitol is willing to agree to respond to requests 1, 3-5, 9 and 19 (subject to objections) in exchange for your agreement to withdraw requests 2, 6-8, 10-18 and 20.

We are willing to produce a 30(b)(6) witness on behalf of Capitol (subject to our objections) as well as Chris Horton, and will not object to the requested deposition of the RIAA, but request that you agree not to proceed with depositions of Pat Shah, Colin Finkelstein or Ronn Were.

Let us know your thoughts on this as soon as possible, and if you think a further discussion would be useful about these issues, let us know and we can set something up for next week. Thanks.

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