

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

CAPITOL RECORDS, LLC, CAPITOL
CHRISTIAN MUSIC GROUP, INC., and
VIRGIN RECORDS IR HOLDINGS, INC.,

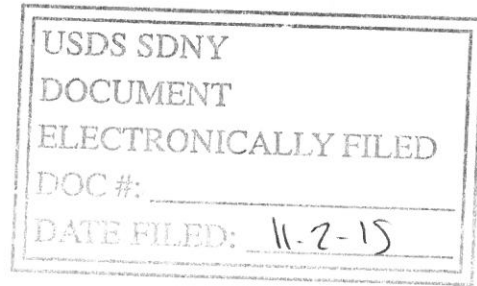
Plaintiffs,

v.

REDIGI INC., JOHN OSSENMACHER, and
LARRY RUDOLPH a/k/a LAWRENCE S.
ROGEL,

Defendants.

12-CV-00095 (RJS)



**JOINT CONDITIONAL STIPULATION AS TO
LIABILITY**

John Ossenmacher and Prof. Larry Rudolph (the “Individual Defendants”) and Capitol Records, LLC (“Capitol”), Capitol Christian Music Group, Inc., and Virgin Records IR Holdings, Inc. (collectively, “Plaintiffs”) hereby move the Court to enter the following joint stipulation:

1. In the interest of efficiency and judicial economy, the Individual Defendants and Plaintiffs agree that the Individual Defendants will stipulate that the Individual Defendants will waive their right to contest their liability so that this case can proceed to a trial on damages and then to the appeals stage. Nothing in this stipulation is intended to nor should be construed to act as a waiver of the Individual Defendants’ right to contest damages or their right to have the jury determine the amount of damages for which the Individual Defendants should be liable.

2. The Plaintiffs and Individual Defendants further stipulate that the Individual Defendants have expressly reserved their rights on appeal to challenge the Court’s interlocutory rulings on summary judgment against co-Defendant, ReDigi, Inc. (“ReDigi”) (ECF No. 109), the

Individual Defendants' motion to dismiss (ECF No. 148), and the affirmative defenses the Individual Defendants sought to assert (ECF No. 175). If the Second Circuit rules in favor of ReDigi and/or the Individual Defendants on any of those issues, the Plaintiffs and the Individual Defendants agree that the Individual Defendants have expressly reserved their right to withdraw from this stipulation so that they may argue any of those issues decided in their favor by the Second Circuit, including liability, on remand, if necessary.¹ If the Second Circuit rules against ReDigi and the Individual Defendants on all of those issues, the Plaintiffs and the Individual Defendants agree that this stipulation may not be withdrawn.

3. This stipulation is in the interest of judicial economy, as neither this Court nor a jury would have to determine the Individual Defendants' liability except in the case of a reversal and remand by the Second Circuit.

4. If the Second Circuit reverses this Court's decision in ECF Nos. 109, 148, or 175, the Plaintiffs and the Individual Defendants agree to file a joint motion for this stipulation to be withdrawn. Plaintiffs agree that in such circumstances, they will not be prejudiced by the withdrawal of this stipulation or the Individual Defendants' ability to contest their liability on remand, if necessary.

5. Plaintiffs and the Individual Defendants agree that *res judicata* does not apply to this stipulation to prevent the Individual Defendants from contesting their liability or any other issues on remand, if necessary, as this stipulation is expressly conditioned on the outcome of the appeal.

For these reasons, the Plaintiffs and the Individual Defendants respectfully ask that the

¹ If the Second Circuit reverses and remands the motion to dismiss order (ECF No. 148) with an instruction to dismiss the Individual Defendants from the action with prejudice, and if there is no further appeal or rehearing of such ruling, Plaintiffs and the Individual Defendants agree that the Individual Defendants cannot be individually or jointly and severally liable in this action, and they will file a joint motion to (a) withdraw this stipulation and (b) dismiss the action with prejudice against the Individual Defendants.

Court enter this conditional stipulation and allow the case to proceed to a trial on the issue of damages.

Dated: October 29, 2015

/s/ James J. Pizzirusso

James J. Pizzirusso (*pro hac vice*)
Seth R. Gassman (SG-8116)
Nathaniel C. Giddings (*pro hac vice*)
HAUSFELD LLP
1700 K Street, N.W., Suite 650
Washington, D.C. 20006
sgassman@hausfeldllp.com
jpizzirusso@hausfeldllp.com
ngiddings@hausfeldllp.com


Counsel for the Individual Defendants

/s/ Richard S. Mandel

Richard S. Mandel
Jonathan Z. King
COWAN, LIEBOWITZ, & LATMAN, P.C.
1133 Avenue of the Americas
New York, NY 10036
rsm@cll.com

Counsel for Plaintiffs

SO ORDERED



HONORABLE RICHARD J. SULLIVAN
UNITED STATES DISTRICT COURT
JUDGE

10/30/15