

**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)

**MEMORANDUM OF LAW IN SUPPORT OF CONSENT MOTION OF
HAUSFELD LLP TO WITHDRAW AS COUNSEL TO
DEFENDANTS JOHN OSSENMACHER AND LARRY RUDOLPH**

Hausfeld LLP (“Hausfeld”) submits this memorandum of law in support of its consent motion to withdraw for its representation of John Ossenmacher and Professor Larry Rudolph (“Individual Defendants”), the Chief Executive Officer and Chief Technology Officer, respectively of Defendant ReDigi Inc (“ReDigi”).¹

BACKGROUND

The Individual Defendants were added to this litigation on August 30, 2013. Declaration of James J. Pizzirusso at ¶ 5 (hereinafter “Pizzirusso Declaration”). Shortly thereafter, Individual Defendants retained the services of Hausfeld to represent them in this litigation. Pizzirusso Decl. at ¶ 6. Since being retained, Hausfeld has vigorously represented the interests of the Individual Defendants in this litigation. In particular, Hausfeld has undertaken numerous tasks on their behalf,

¹ Nothing in this memorandum or the accompany declaration are intended to nor do they waive the attorney-client privilege.

including, but not limited to, making multiple appearance in Court, drafting a motion to dismiss and supporting briefs, drafting a motion for reconsideration on the Court's motion to dismiss order, propounding discovery requests, briefing the availability of discovery, and liaising with defense counsel and ReDigi's counsel pursuant to Court orders. Pizzirusso Decl. at ¶ 7.

On October 13, 2015, the Court scheduled trial on all outstanding issues in this case for April 11, 2016. Order, ECF No. 177. On November 2, 2015, the Court endorsed a joint conditional stipulation as to the Individual Defendants' liability which, in relevant part, provided that "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." Joint Conditional Stipulation as to Liability, ECF No. 178. Thus, the only remaining issue to be decided at the April 2016 jury trial are the damages, if any, that ReDigi and the Individual Defendants should pay.

Because the Individual Defendants have conditionally stipulated that they will be jointly and severally liable with ReDigi for any damage award, the Individual Defendants believe that their interests at the damages trial can be adequately represented either *pro se* or by new counsel. Individual Defendants therefore consent to Hausfeld's withdrawal from this action. Pizzirusso Decl. at ¶ 9. And because there is only a single issue remaining to be tried such that the current schedule will not be impacted by Hausfeld's withdrawal from the action, ReDigi and the Plaintiffs do not object to Hausfeld's withdrawal. Pizzirusso Decl. at ¶¶ 10, 11.

ARGUMENT

A. Withdrawal is Appropriate Under Local Rule 1.4.

Rule 1.4 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York provides:

An attorney who has appeared as attorney of record for a party may

be relieved or displaced only by order of the court and may not withdraw from a case without leave of the court granted by order. Such an order may be granted only upon a showing by affidavit or otherwise of satisfactory reasons for withdrawal or displacement and the posture of the case, including its position, if any, on the calendar.

Where, as here, the represented parties do not object to the withdrawal, counsel's request to withdraw is routinely granted. *In re Air Crash Disaster Off the Coast of Nantucket Island, Mass. on Oct. 31, 1999*, No. MD-00-1344, 2008 WL 4426006, at *4 (E.D.N.Y. Aug. 15, 2008) is illustrative. In that case, plaintiffs' counsel sought to withdraw with the consent of the plaintiffs and with one of the defendants; the other defendants did not object to counsel's withdrawal. *Id.* The court found that withdrawal was appropriate, stating, "[P]laintiffs' unanimous consent to the withdrawal, combined with the consent or neutrality of defendants, weighs in favor of granting the motions." *Id.* Upon granting the motion, the court granted the plaintiffs roughly one month "to find new counsel to appear on their behalf or to begin prosecuting their case *pro se*." *Id.*

Consented motions to withdraw are granted regardless of whether the formerly-represented parties decide to proceed *pro se* or with new counsel.² For instance, in *Negrin v. Kalina*, counsel for the plaintiffs moved to withdraw with the "full[] consent" of the plaintiffs. No. 09 Civ. 6234, 2013 WL 1736470, at *1 (S.D.N.Y. Apr. 12, 2013). The only issue remaining to be decided in that case was the damages award, and because the individual plaintiff was "a sophisticated business person" the court permitted that plaintiff to proceed to the damages phase *pro se*. *Id.* Conversely, in *Altvater Gessler-J.A. Baczewski Int'l (USA) Inc. v. Sobieski Destylarnia S.A.*, defendant's counsel sought to withdraw with the consent of the defendant. No. 06 Civ. 6510, 2011 WL 2893087, at *8 (S.D.N.Y. July 14, 2011). In granting the request, the

² The Individual Defendants have not yet determined whether they will proceed *pro se* or retain new counsel. If the Individual Defendants retain new counsel, that counsel will inform the Court of its representation within 30 days of Hausfeld's withdrawal. The Individual Defendants do not believe that a stay of the proceedings is necessary in this 30-day period.

court noted that the defendant would have “continuity of counsel through lead trial counsel” *Id.* Thus, because the Individual Defendants consent to Hausfeld’s withdrawal, it is immaterial whether they decide to proceed *pro se* or through some other counsel through the damages phase of this case.

B. Withdrawing at this Stage of the Litigation Would Minimize Prejudice to the Individual Defendants.

Local Rule 1.4 also requires the Court to consider “the posture of the case, including its position, if any, on the calendar.” “In addressing motions to withdraw as counsel, district courts have typically considered whether ‘the prosecution of the suit is [likely to be] disrupted by the withdrawal of counsel.’” *Whiting v. Lacara*, 187 F.3d 317, 320-21 (2d Cir. 1999) (quoting *Brown v. Nat’l Survival Games, Inc.*, No. 91–CV–221, 1994 WL 660533, at *3 (N.D.N.Y. Nov. 18, 1994)) (alteration in original).

Hausfeld’s withdrawal in this case will not disrupt the resolution of the case. The only issue remaining to be tried, in April 2016, is the damages, if any, that are due to Plaintiffs from ReDigi and the Individual Defendants, and Individual Defendants are not requesting a stay of the case to secure new counsel. In cases even more progressed than this, courts have found no impediment to withdrawal. *See D.E.A.R. Cinestudi S.P.A. v. Int’l Media Films, Inc.*, No. 03 Civ. 3038, 2006 WL 1676485, at *1-2 (S.D.N.Y. June 16, 2006) (permitting counsel to withdraw after the close of discovery where trial was months away); *Spadola v. New York City Transit Auth.*, No. 00 Civ. 3262, 2002 WL 59423, at *1 (S.D.N.Y. Jan. 16, 2000) (same); *Promotica of Am., Inc. v. Johnson Grossfield, Inc.*, No. 98 Civ. 7414, 2000 WL 424184, at *1 (S.D.N.Y. Apr. 18, 2000) (permitting counsel to withdraw after the close of discovery and where the case was ready

for trial).³ Thus, Hausfeld's withdrawal will neither prejudice the Individual Defendants nor delay the case.

CONCLUSION

For the foregoing reasons, Hausfeld respectfully requests the Court grant its consent motion to withdraw.

Dated: November 5, 2015

HAUSFELD LLP

/s/ James. J. Pizzirusso

James J. Pizzirusso (admitted *pro hac vice*)

Seth R. Gassman (SG-8116)

Nathaniel C. Giddings (admitted *pro hac vice*)

HAUSFELD LLP

1700 K Street, N.W., Suite 650

Washington, D.C. 20006

(202) 540-7200

Counsel for John Ossenmacher & Larry Rudolph

³ Hausfeld has acted, and will continue to act, in a manner consistent with New York Rule of Professional Conduct 1.16(e) to further alleviate any potential prejudice to the Individual Defendants, including, *inter alia*, promptly delivering to Individual Defendants or their new counsel any papers and property to which they are entitled. Pizzirusso Decl. at ¶ 8.