

MEMO ENDORSED

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November 13, 2015

**VIA ELECTRONIC MAIL AND ECF**

Hon. Richard J. Sullivan

[sullivannysdchambers@nysd.uscourts.gov](mailto:sullivannysdchambers@nysd.uscourts.gov)

Re: *Capitol Records, LLC v. ReDigi Inc., et al.* (12 Civ. 0095) (RJS)

Hon. Judge Sullivan:

Pursuant to I.D of Your Honor's Individual Practices, we write jointly on behalf of all parties to the above referenced matter, in connection with Your Honor's November 5, 2015 Order [DE 183] which re-scheduled the trial that was previously scheduled to begin on April 11, 2016, to February 22, 2016. The parties are jointly respectfully requesting that the trial on the issue of damages begin on April 11, 2016, as previously scheduled, and that the Court maintain the other pre-trial dates that were previously set in the October 13, 2015 Order [DE 177].

The reasons for this request are as follows. Counsel for ReDigi have conflicting engagements with the new February 22, 2016 trial date, that were confirmed around the previously scheduled April 11, 2016 trial date and accompanying pre-trial dates set forth in the Court's October 13, 2015 Order. The undersigned counsel Sarah Matz, will be in Oakland, California, from February 19, 2016 through February 27, 2016, to sit for the California Bar Examination that is being administered on February 23, 24 and 25 of 2016. In addition, my partner Gary Adelman, is planning to be in Los Angeles that week on business. Counsel for ReDigi have additional business travel commitments the week of March 14, 2016 and the beginning of the week of March 21, 2016, that were planned around the previously scheduled trial date.

Counsel for Plaintiffs join in this request. During the time scheduled for trial in the instant matter, Plaintiffs' attorneys, Richard Mandel and Jonathan King, will be completing a very complex trial before the Trademark Trial and Appeal Board ("TTAB"). The TTAB case is more than twelve years old and has a vast record, including testimony of well over 20 witnesses. Plaintiffs' final submission in the matter is due February 25, 2016, during the week scheduled for the instant trial. The original trial schedule set by the Court would allow Plaintiffs' counsel the time and resources to allocate to both matters.

The Individual Defendants John Ossenmacher and Larry Rudolph also join in this request. Due to the changes in counsel, and the time the Individual Defendants need to be fully prepared, the Individual Defendants respectfully agree with the request to keep the previously scheduled trial date. The Individual Defendants have been planning around the April 11, 2016 trial date, and respectfully submit that to accelerate the trial to February may not allow the Individual Defendants sufficient time to insure adequate preparation for all of their defenses.

In addition to the above, as set forth in the parties' joint letter dated October 9, 2015, all parties had requested that the parties be given a period of 120 days to conduct discovery relating to damages, which includes meeting informally to identify any gaps in production and other damages related discovery that may be needed and provide additional information necessary to facilitate an understanding of Plaintiff's claimed rights in the recordings alleged to have been infringed. As set forth in that letter, the hope is that through this process the parties can identify a stipulated universe

of recordings to present to a jury, to streamline the trial process. As also noted in said letter, because there are a large number of recordings at issue, some of which are very old, this process will take some time. The parties had requested the 120 day period in anticipation of submitting an acceptable stipulation regarding the Individual Defendants liability, and all parties believe that the 120 day period originally requested is still needed and to streamline the damages issues that need to be presented to a jury and continue the parties' settlement efforts in the hopes that a resolution can be reached.

In light of the Court's October 13, 2015 Order, the parties had anticipated having the 120 day period to try to accomplish the above goals so that the Joint Pretrial Order could be submitted by the March 11, 2016 date set forth in said order, if settlement efforts were not successful.

For the reasons set forth above, the parties are respectfully requesting that the Court begin the trial on the issue of damages on April 11, 2016, and that the Court maintain the other pre-trial dates that were previously set forth in the October 13, 2015 Order [DE 177].

In the alternative event that this Court is no longer available for a trial on damages on April 11, 2016, we respectfully request that the parties be allowed to submit mutually available alternative dates to the Court, along with a revised proposed scheduling order that is consistent with the time frames for a new trial date.

This is the parties' first request for a change in the trial schedule. The Individual Defendants John Ossenmacher and Larry Rudolph, and counsel for ReDigi and Plaintiffs have consented to this request.

We greatly appreciate the Court's time and consideration in this matter, and should the Court need any further information or wish to discuss any of the above, we are available at the Court's convenience.

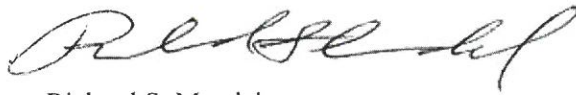
Respectfully submitted,

ADELMAN MATZ P.C.



Sarah M. Matz, Esq.  
Counsel for Defendant ReDigi

COWAN, LIEBOWITZ & LATMAN, P.C.



Richard S. Mandel  
Counsel for Plaintiffs

Cc: (Via Simultaneous Email)  
John Ossenmacher  
Larry Rudolph

SO ORDERED  
Dated:

11/13/15

  
RICHARD J. SULLIVAN  
U.S.D.J.