

Exhibit 1

(FILED UNDER SEAL PENDING RULING ON MOTION)

EXHIBIT 2

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
-----x

3 CAPITOL RECORDS, et al.,
4 Plaintiffs,

5 v. 12 Civ. 95 (RJS)

6 REDIGI INC., et al.,
7 Defendants.

8 -----x

9 April 4, 2016
10 12:05 p.m.

10 Before:

11 HON. RICHARD J. SULLIVAN,
12 District Judge

13 APPEARANCES

14
15 COWAN, LIEBOWITZ & LATMAN, P.C.
16 Attorneys for Plaintiffs
17 BY: RICHARD S. MANDEL
18 JONATHAN Z. KING

19 ADELMAN MATZ, P.C.
20 Attorneys for Defendant Redigi
21 BY: GARY P. ADELMAN
22 SARAH M. MATZ

23 MISCHON DE REYA NEW YORK, LLP
24 Attorneys for Defendants
25 BY: VINCENT FILARDO
MICHAEL S. DeVINCENZO

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1 (Case called)

2 THE COURT: Let me take appearances for the plaintiff.

3 MR. MANDEL: Richard Mandel, Cowan, Liebowtiz &
4 Latman.

5 THE COURT: Okay, Mr. Mandel.

6 MR. KING: Jonathan King, Cowan, Liebowtiz & Latman.

7 THE COURT: All right, Mr. King.

8 And for the defendants?

9 MR. ADELMAN: Gary Adelman.

10 THE COURT: Good afternoon.

11 MS. MATZ: Good afternoon, your Honor. Sarah Matz,
12 Adelman Matz for Redigi.

13 THE COURT: Ms. Matz, good afternoon.

14 MR. FILARDO: Good afternoon, your Honor. Vincent
15 Filardo for John Ossenmacher, Larry Rudolph, and Redigi.

16 THE COURT: Mr. Filardo, this is our first time
17 meeting, right?

18 MR. FILARDO: Yes, it is, your Honor.

19 MR. DeVINCENZO: Michael DeVincenzo for Jon
20 Ossenmacher, Larry Rudolph, and Redigi.

21 THE COURT: Okay, Mr. DeVincenzo. It is my first time
22 meeting you as well?

23 THE DEFENDANT: Yes.

24 THE COURT: So, we are all set for trial, right?
25 That's what I thought. I thought we were going to talk about

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1 trial today but I am informed that the parties have settled; is
2 that right?

3 MR. ADELMAN: That's correct, your Honor.

4 THE COURT: Okay. So, are you prepared to put the
5 terms of the settlement on the record?

6 MR. ADELMAN: We actually have signed agreements.

7 THE COURT: Oh, you do.

8 MR. ADELMAN: Yes. If you don't mind, we will talk
9 about it.

10 MR. MANDEL: We have signed agreements as of this
11 morning. The only sort of logistical issue is that in order to
12 submit a final judgment, basically what's been agreed to is the
13 remedy phase which was going to go to trial, so the amount of
14 damages and the form of an injunction that would resolve the
15 case in the District Court while reserving the defendant's right
16 to appeal to the Second Circuit from the summary judgment
17 ruling that formed the basis for liability.

18 And so, what the parties have done is reached an
19 agreement. [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED] [REDACTED]

25 [REDACTED] [REDACTED]

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1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]

4 THE COURT: So, it is turning on contingencies that
 5 are not yet fully known but this is not just basically an
 6 agreement to agree?

7 MR. MANDEL: No, no. There is a form of judgments:
 8 If X happens we file this; if Y happens we file this. [REDACTED]

9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]

14 THE COURT: I am a little fuzzy as to what those
 15 contingencies are.

16 Go ahead.

17 MR. ADELMAN: The [REDACTED] agreements are signed,

18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]

23 [REDACTED] The damages in this case
 24 have been fully stipulated, [REDACTED]

25 [REDACTED]

1 THE COURT: What's the contingency?

2 MR. ADELMAN: [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 THE COURT: I see. Okay. So it really turns on [REDACTED]

13 [REDACTED]

14 MR. ADELMAN: That's right. There is nothing left to
15 chance as far as your Honor is concerned.

16 THE COURT: And there is a payment schedule that is
17 worked out in the agreements? Is that right?

18 MR. MANDEL: [REDACTED]

19 [REDACTED]

20 THE COURT: Pending the appeal, you mean?

21 MR. MANDEL: Yes, pending the appeal. [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 THE COURT: Okay.

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1 Mr. Filardo, did you want to say something.

2 MR. FILARDO: Just to make it clear, that strictly
3 speaking these are stipulated judgments, it is an aside
4 agreement to effectuate what has just been discussed before
5 your Honor. I wouldn't necessarily call it a settlement
6 agreement given the fact that all of these are going to be
7 pending appeal so we still need to have an opportunity to have
8 the appeal. It is not a final judgment debt.

9 THE COURT: Well, I haven't seen the papers so maybe
10 it will all be clear once I look at those. So, what are you
11 suggesting? That this would be an interlocutory appeal?

12 MR. FILARDO: No, your Honor. Excuse me.

13 It is just that, it is a stipulated judgment with the
14 right of appeal.

15 THE COURT: Okay. Yeah. That's what I understood
16 from the beginning. [REDACTED]

17 [REDACTED]

18 [REDACTED], right?

19 MR. ADELMAN: Correct.

20 MR. FILARDO: Correct.

21 MR. ADELMAN: Yes, sir.

22 THE COURT: Okay. All right. Well, it seems like the
23 only thing you folks could agree on was that you didn't want to
24 try this case in front of me. I guess it is good that I
25 brought you together.

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1 Well, it was an interesting case I am candidly a
2 little disappointed because I thought it would be an
3 interesting trial, too, just on the damages side of this --
4 but -- it seems like you know what you are doing. No reason to
5 doubt that. Even if he did, I really wouldn't have the
6 authority or the inclination to look under the hood of your
7 settlement. It is very rare that Courts ever do that and a
8 certain small segment of cases where that is the case, but some
9 part of me is a little disappointed.

10 Nonetheless, so you will give me the written
11 agreements now, you will hand those up? Is that the plan?

12 MR. MANDEL: [REDACTED]
13 [REDACTED]
14 [REDACTED] There is
15 obviously nothing left to try, and to maybe by the order, [REDACTED]
16 [REDACTED]

17 THE COURT: So what is it that is signed now?

18 MR. MANDEL: It is a private settlement agreement that
19 basically provides the mechanics [REDACTED]
20 [REDACTED] that will be entered and other issues that are
21 resolved between the parties.

22 THE COURT: So you are not talking about docketing
23 that?

24 MR. MANDEL: No. No.

25 MR. ADELMAN: Your Honor, we have no objection to

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1 showing you the agreements in camera if your Honor would like
2 to review it.

3 THE COURT: I am not sure I really need to. This is
4 not the case where I need to approve a settlement but you have
5 said here on the record certain terms that you have agreed
6 upon, not all of them, obviously, but there is no plan to make
7 that part of the record. That's what you are saying.

8 MR. ADELMAN: That's correct, and we would like the
9 transcript to remain confidential until we have actually filed
10 the judgments.

11 THE COURT: [REDACTED]

12 MR. MANDEL: I think we would prefer.

13 MR. ADELMAN: Yes, we would prefer it.

14 MR. MANDEL: A judgment obviously would be submitted,
15 that will be public --

16 MR. ADELMAN: Correct.

17 MR. MANDEL: -- [REDACTED]

18 THE COURT: Look. There is a presumption of open
19 records and open proceedings and this is not a sealed
20 proceeding, so what would overcome that presumption with
21 respect to what's been said here on the record?

22 MR. ADELMAN: Only that the -- there are -- I think
23 both parties would prefer [REDACTED]

24 [REDACTED]

25 [REDACTED], the judgment that we ultimately

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1 filed.

2 THE COURT: But why? The fact that the parties prefer
3 it is generally not going to get you over the presumption so
4 you need to have something more than that.

5 MR. MANDEL: I think it is a private settlement
6 agreement that would not have been publicly filed. We weren't
7 really planning to go into the terms of it. Mr. Adelman didn't
8 state them.

9 THE COURT: The reason that I a Judge will ask for the
10 terms is to make sure this thing is really settling as opposed
11 to just a ploy for an adjournment. I'm not saying that's what
12 you are doing.

13 MR. MANDEL: Right.

14 MR. ADELMAN: Right.

15 THE COURT: But that is always the worry, [REDACTED]
16 [REDACTED]. And you can come back and, Funny thing. We
17 didn't reach a settlement and we will take a trial now.

18 MR. ADELMAN: That's why I was suggesting that you
19 review the sides element document, in camera. [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 THE COURT: Okay. Well, that's the sort of thing that
23 I can hang a hat on. That makes more sense.

24 MR. ADELMAN: I'm sorry I didn't say that in the first
25 place.

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1 THE COURT: Well, you don't have to apologize but I
2 think there is a presumption of open records and open
3 proceedings that is pretty serious, and so there has to be a
4 good reason to seal things or redact things and it sounds like
5 what you are saying is [REDACTED]

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8 MR. ADELMAN: Correct, your Honor.

9 THE COURT: -- in the preferred way.

10 MR. ADELMAN: Yes.

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14 THE COURT: Well, look. I would be issuing what I
15 would typically call a 60-day order which just says that this
16 case is closed. However, within 60 days the parties can reopen
17 it but I am not planning that are you going to reopen it and
18 say let's go to trial because that's come and gone.

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MR. MANDEL: I think the one concern, because we
anticipated that somebody might want to obviously, you know,
that it is common to file those kind of orders; I mean, we did
want to alert your Honor to the fact that we definitely are
going to want to present a final judgment.

I mean, obviously from the plaintiff's perspective
there is an injunction that we are seeking that that is not in

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1 place at this point in addition to damages.

2 THE COURT: Right. So, it will be a final judgment
3 that lays out sort of injunctive relief and also I guess
4 explicitly the carve outs for an appeal.

5 MR. MANDEL: Yes. The final judgment will explicitly
6 carve out the appeal and have formal judgment and amount of
7 damages.

8 THE COURT: Why don't we do this then. Why don't you
9 folks get a copy of the transcript. I will give you a week to
10 figure out whether there are portions of it that should be
11 redacted because I don't think the whole thing probably needs
12 to be redacted, right?

13 MR. ADELMAN: Probably not.

14 THE COURT: The facts of the settlement is pretty
15 clear and if anybody wasn't, it certainly would be by Monday
16 morning. So, why don't you then submit to me a proposed
17 redacted version, or if you think the whole thing needs to be
18 sealed you can articulate that, but with citation and reference
19 to the key case law on this, which I guess the key civil case
20 is Lugosch, which is the key Second Circuit case on the
21 subject.

22 MR. ADELMAN: Yes, your Honor. We have made this
23 motion with you before.

24 THE COURT: Yes, so you know what you are doing but
25 let's do that. A week is enough time to do that?

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1 MR. ADELMAN: I believe so, yes.

2 THE COURT: Okay. All right.

3 Anything else we should cover today?

4 MR. MANDEL: I don't think so, your Honor.

5 THE COURT: So, I don't think I need to review in
6 camera the terms. I just think it would be interesting. I
7 would love to do it but I don't think it is necessary for
8 anything that I have to do. If it is relevant to the issue of
9 sealing or redacting, then you can attach it or send it to me,
10 but I think otherwise what I have heard so far suggests that
11 there are good reasons to redact at least portions of this
12 transcript and some of the terms of the settlement at this
13 point. Okay?

14 MR. ADELMAN: Thank you, your Honor.

15 MR. MANDEL: Thank you, your Honor.

16 THE COURT: All right. That's it, then.

17 So, I will hear from you I guess in a couple of months
18 and I will see what the Court of Appeals has to say about it
19 which will be interesting. Okay?

20 Good luck. Thanks to all of you.

21 MR. MANDEL: Thank you.

22 THE COURT: Let me thank the court reporter as always.

23 OFFICIAL REPORTER: You are welcome.

24 THE COURT: You will need a copy of this so you can
25 buy it now or later through the website but might as well do it

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1 now.

2 MR. ADELMAN: Thank you, your Honor.

3 MR. MANDEL: Thank you, your Honor.

4 THE COURT: Good. Take care.

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