

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CAPITOL RECORDS, LLC,

Plaintiff,

v.

REDIGI INC., JOHN OSSENMACHER,
and LARRY RUDOLF

Defendants.
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Civil Action No.: 12CIV0095 (RJS)

DECLARATION OF JOHN
OSSENMACHER IN RESPONSE TO
MOTION FOR LEAVE TO
WITHDRAW AS COUNSEL BY
ADELMAN MATZ, P.C.

JOHN OSSENMACHER, pursuant to 28 U.S.C. §1746, declares as follows:

1. I am an individual defendant in the above captioned action, and I am the Chief Executive Officer of defendant ReDigi, Inc. (“ReDigi”) I make this declaration in response to the motion for leave to withdraw as counsel of record that has been filed by the law firm Adelman Matz, P.C. (the “Adelman firm”). I have personal knowledge of the facts set forth herein, and I could and would testify competently to these facts if called upon to do so.

2. Neither I nor ReDigi objects to the Adelman firm being allowed to withdraw as counsel of record in this action. The reason that I am submitting this Declaration is to inform the Court that I, ReDigi and co-defendant Larry Rudolf, each of us now appellants in the appeal from summary judgment that we have filed in the Second Circuit Court of Appeal, urgently need the Adelman firm to provide certain case files to our counsel on the appeal, Baker & Hostetler, LLP, so that they can properly prepare and prosecute the appeal on our behalf.

3. To date, the Adelman firm has flatly refused to turn over any of its files to our counsel on the appeal, asserting an attorney’s lien against the entire case file because it claims unpaid fees. However, I am advised by our counsel on the appeal that they have no practical

way to obtain certain of these case files, described in more detail below, except from the Adelman firm. I am further advised that our Appellants' Opening Brief is currently due to be filed on or before September 29, 2016, and that unless our appeal counsel receive these files very soon, their ability to develop the arguments and to prepare appellants' brief with a full and correct understanding of the record in the District Court will be severely and perhaps fatally handicapped.

3. The particular files in issue are those which our appeal counsel are not able to obtain from the Court's docket, either because (1) the pleading in the docket has been redacted to remove trade secret, proprietary or other confidential information, (2) the docket only identifies a document "filed under seal," with no indication of the nature or contents of that document, or (3) the document was not filed with the Court, e.g., deposition transcripts, written discovery requests and responses, and document production. The defendants have searched our records, and to the extent that we have copies of any of these documents, we have provided them to our appeal counsel.

4. While we dispute that the full amount of fees and costs claimed by the Adelman firm is properly owing, we have made a number of good faith proposals seeking to achieve a voluntary resolution that will allow our appeal counsel to receive the case files that are so urgently needed, while giving the Adelman firm the best possible prospect for eventually receiving the compensation to which it is due. These proposals have included an offer to grant stock options in ReDigi, and an offer to give the firm a promissory note convertible to ReDigi stock. These written offers have been rejected. What we have not been able to do is to offer any current payment to the Adelman firm, because there is simply no money with which to pay them. ReDigi has been out of business since the adverse summary judgment ruling in 2013. The only

prospect for the Adelman firm to receive payment is if ReDigi is able to secure a reversal of the summary judgment ruling and resume operation of its revolutionary online technology.

5. Given this situation, one would expect that we and the Adelman firm would share a common interest in supporting the efforts of our appeal counsel to prosecute the most effective, penetrating and well informed appeal possible. But however the Adelman firm sees that matter, the fact remains that unless it promptly turns over those critically important case files that our appeal counsel cannot otherwise obtain, our prospects on the appeal will be severely prejudiced. I respectfully implore the Court not to allow the Adelman firm's attorney's lien claim to be exercised in a way that will immediately and perhaps permanently damage the rights of its client. To avoid this damage, I respectfully urge the Court to condition the Adelman firm's withdrawal as counsel of record on its immediate coordination with our appeal counsel to identify and make available those limited case file materials that are urgently needed and cannot otherwise be obtained.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED THIS 15TH DAY OF JULY, 2016, IN BOCA RATON, FLORIDA.



JOHN OSSENMACHER