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VIA ECF

Hon. Richard J. Sullivan, U.S.D.J.
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: Capital Records, LLC v. ReDigi Inc., et al.
Case No. 12 cv. 0095 (RJS): Defendants' Pre-Motion Letter to Unseal All Documents
Previously Filed by ReDigi, Inc. Under Seal or in Redacted Form

Dear Judge Sullivan:

We represent defendants and appellants ReDigi, Inc. ("ReDigi"), John Ossenmacher and Larry Rogel, aka Larry Rudolf (collectively, "Appellants") for the limited purpose of prosecuting Appellants' appeal from the judgment entered in this action, including all actions necessary and appropriate to that undertaking.

In that regard, we write in accordance with Rule 2.A. of the Court's Individual Practices, to request that all documents that were originally filed by ReDigi under seal and/or in redacted form (the "ReDigi Sealed Documents"), now be unsealed and made available to the public in full, un-redacted form. The ReDigi Sealed Documents, when initially filed, were confidential and warranted protection against unrestricted public disclosure under the principles articulated in *Lugosh v. Pyramid Co. of Onondag*, 435 F.3d 110, 119-20 (2d Cir. 2006).¹ ReDigi now makes this request on the grounds that (1) the technical information that was confidential in 2012, has now become publicly available as a consequence of the issuance of patent protection on certain ReDigi technology and the public availability of other ReDigi technology involved in applications for patent protection that are still being prosecuted; and (2) other of the ReDigi Sealed Documents disclosed information about ReDigi business operations and plans that,

¹ ReDigi filed motions to permit the ReDigi Sealed Documents, conditionally filed under seal and, in part, in redacted form, to remain filed under seal (see Docket Nos. 67, 68 and 69 and Nos. 99, 100 and 101). The Court granted ReDigi's motions (See Docket Nos. 71 and 102). All of the ReDigi Sealed Documents remain under seal.

through the passage of time, has ceased to be proprietary or significant, and no longer requires protection against public disclosure.

In particular, Appellants seek to have the full, un-redacted versions of each of the following ReDigi Sealed Documents unsealed and made part of the publicly available record in this matter: Docket Nos. 17, 49, 50, 52, 53, 57 (Declaration of Gary Adelman, unseal Exhibits 8, 9, 10 and 11; Exhibit 6 to remain under seal); 58, 59, 60, 62, 74, 75, 76, 77, 78, 79, 80, 82, 83, 85, 87, 88, 89, 90, 91, 92, 94, 171 (Mandel Declaration, unseal Exhibit B), and 173 (Mandel Declaration, unseal Exhibit B).

We acknowledge that plaintiff Capitol Records also moved to authorize the continued filing under seal or in redacted form of certain limited information proprietary to Capitol Records relating to the contractual relationship between Capitol Records parent company EMI Music and Apple Computer, Inc. (See Docket Nos. 63, 64 and 65 and 96, 97 and 98.) These motions were granted. (See Docket Nos. 71 and 102.) Appellants do not seek to have any of the Capitol Records confidential information identified in its motions for sealing to be unsealed at this time. However, Appellants do require access to the full, un-redacted versions of the Capitol Records confidential information in order to fully prepare for and prosecute the appeal. Appellants therefore further request that the Court direct that Appellants' counsel become bound by the Stipulated Protective Order in this action (Docket No. 38) and that plaintiffs' counsel be directed to provide full, un-redacted copies of the Capitol Records information currently filed under seal as "Confidential – Attorneys Eyes Only" material under the Protective Order,

For the foregoing reasons, Appellants respectfully request that all of the ReDigi Sealed Documents identified above be unsealed and that full, un-redacted versions of those Documents now be made part of the public record in this action, and that Appellants' counsel be provided un-redacted copies of the Capitol Records information on the terms described above.

Sincerely,

Baker & Hostetler LLP

/s/ C. Dennis Loomis

C. Dennis Loomis
Partner

cc: All Parties Receiving Notice via ECF