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January 24, 2017

**VIA ECF and EMAIL**

Hon. Richard J. Sullivan  
United States Courthouse  
40 Foley Square, Room 2104  
New York, NY 10007

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

Dear Judge Sullivan:

We represent Plaintiffs in the above-referenced action. In connection with preparing the joint appendix to be submitted to the Second Circuit on Defendants' appeal from the Court's summary judgment order in this case (Docket No. 109), an issue has arisen regarding the docketing of one of Capitol's declarations submitted in support of its summary judgment motion. While our records indicate that the declaration of Colleen Hall, Capitol's paralegal, was served on opposing counsel and included in the Court's courtesy copies, we have discovered that Plaintiff inadvertently failed to file the declaration via ECF at the time of the motion. We write to request the Court's permission to file such declaration via ECF now so that the docket can accurately reflect the full set of materials considered by the Court on the motion.

On July 20, 2012, Capitol served and filed its summary judgment motion and submitted courtesy copies of its moving papers to your Honor's chambers. As indicated by the cover letter to the Court and the certificate of service filed electronically (Docket No. 48-1), the Hall declaration was included in the service copies delivered to ReDigi's counsel<sup>1</sup> and the courtesy copies sent to your Honor's chambers. The underlying facts referenced in the declaration concerning the ability of Capitol's paralegal to purchase certain Capitol recordings on the ReDigi website were not in dispute, as confirmed by ReDigi's admission of such facts in response to paragraphs 68 and 69 of Capitol's 56.1 statement referencing the Hall declaration. See Docket Nos. 50, 83 ¶¶ 68-69; see also Docket No. 109 (Court summary judgment opinion) at 8 (citing 56.1 statements in holding "[t]here is no dispute that sales occurred on ReDigi's website").

Because the Hall declaration was part of the materials made available to the Court in connection with the summary judgment motion, Plaintiffs respectfully submit that it is appropriate to permit it to be added to the docket and included in the joint appendix for the

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<sup>1</sup>The full set of papers were served on counsel by hand because the publicly filed documents were redacted due to the inclusion of certain confidential information.

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Second Circuit. We have conferred with Defendants' counsel and they have indicated they have no objection to Plaintiffs' request so long as the declaration was made available to the Court in connection with the summary judgment motion.

Respectfully,



Richard S. Mandel

cc: All Parties Receiving Notice via ECF