

FUNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X -----
CAPITOL RECORDS, LLC, CAPITOL : 12 Civ. 0095 (RJS)
CHRISTIAN MUSIC GROUP, INC. and :
VIRGIN RECORDS IR HOLDINGS, INC., :
Plaintiffs, : **DECLARATION OF**
: **RICHARD S. MANDEL, ESQ.**
-against- :
REDIGI INC., JOHN OSSENMACHER and :
LARRY RUDOLPH a/k/a LAWRENCE S. :
ROGEL, :
Defendants. ----- X -----

RICHARD S. MANDEL, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am a shareholder in the firm of Cowan, Liebowitz & Latman, P.C., which represents Plaintiffs in this action. Pursuant to this Court's order of April 7, 2022 (ECF No. 328) granting in part Plaintiffs' motion for attorneys' fees, I submit this declaration to provide a detailed accounting in support of Plaintiffs' request for an award of attorneys' fees in the amount of \$514,421.53. Those fees include \$500,000 in connection with the District Court action, the agreed cap on such a fee award pursuant to paragraph 6 of the final judgment in this case, plus \$14,421.53 reflecting 15% of the fees incurred by Plaintiffs in connection with Defendants' appeal to the Second Circuit, as allowed by the Court's April 7, 2022 order. I have personal knowledge of the facts set forth herein.

The Timekeepers and Billing Rates

2. Attached hereto as Exhibit A are invoices submitted by my firm and paid by Plaintiffs in this litigation for all relevant time periods covered by the Court's fee award. The invoices include detailed descriptions and time entries for all attorneys and paralegals who worked on the case. Entries for work not included as part of the fees application have been

redacted (except where necessary to provide context for the full amount of hours included in a day's time entry combining recoverable and non-recoverable fees without specific time divisions).

3. The bulk of the work reflected on the invoices was performed by my partner, Jonathan Z. King, and myself. I am a 1985 graduate of New York University Law School and had nearly thirty years of experience as a litigator focusing on intellectual property, including copyright law, as of the commencement of this case. My partner, Mr. King, is a 1991 graduate of Harvard Law School, with more than twenty years of experience as a litigator in the intellectual property field, including copyright, as of the time of this case. My billing rate was \$500/hour during the summary judgment stage of the case, varied between \$510/hour and \$540/hour during the post-summary judgment stage of the case (\$510/hour for 2013, \$520/hour for 2014 and 2015, and \$540/hour for 2016) and was \$550/hour during the appeal. Mr. King's billing rate was \$475/hour during the summary judgment stage of the case, varied between \$490/hour and \$530/hour during the post-summary judgment stage of the case (\$490/hour for 2013, \$495/hour for 2014 and 2015, and \$530/hour for 2016) and was \$545/hour during the appeal.

4. We also received substantial assistance during the case from Thomas Kjellberg, a counsel at our firm; Scott Ceresia, a former associate; and Nart-Anong Chinda, a former paralegal. Mr. Kjellberg is a 1998 graduate of Fordham Law School with extensive experience in copyright law. His billing rate was \$405/hour during the summary judgment phase of the case during which he provided most of his assistance, varied between \$415/hour and \$425/hour during the post-summary judgment phase in which he billed a little over two hours and was \$435/hour during the appeal for which he billed under an hour of time. Mr. Ceresia is a 2008

graduate of New York University Law School who is now in-house counsel at Google. His billing rate was \$260/hour during the summary judgment stage of the case and varied between \$270/hour and \$310/hour in the post-summary judgment stage of the case (\$270/hour for 2013, \$285/hour for 2014 and \$310/hour for 2016, the three years in which he assisted). Ms. Chinda worked as a paralegal at our firm for several years and her billing rate was \$215/hour during the summary judgment phase of the case, varied between \$220/hour and \$225/hour during the post-summary judgment phase of the case (\$220/hour for 2013-2015 and \$225/hour for 2016) and was \$230/hour during the appeal.

5. Several other attorneys and paralegals provided minimal assistance during the post-summary judgment phase of the case. Those included two corporate lawyers, Simon Gerson and Robert Giordanella, who billed a combined total of just over 6 hours in advising on corporate issues implicated by the case and its potential settlement; a patent lawyer, Mark Montague who billed fewer than 5 hours advising on patent issues implicated by the case and its potential settlement; two associates, Bridget Crawford and Ryan Ghiselli, who billed under an hour and a little over 2 hours on the case respectively; and three paralegals, Ignacio Duran, Sarah Guldan and Sandy Lubin, who billed a little over an hour, a little over eleven hours and two hours respectively. The total fees from all these individuals combined amounted to a little over \$11,000. As set forth in detail below, even if these amounts were to be discounted entirely from the current fees' application, the amount of fees incurred in the District Court for the phases covered by the Court's April 7, 2022 order would easily exceed the \$500,000 cap contained in the final judgment for a potential fee award. In addition, another paralegal, George Diaz billed an hour and a half of time during the appeal at a rate of \$230/hour.

Summary Judgment Motion

6. The Court's April 7, 2022 order awards fees in particular percentages for six different aspects of work performed in connection with the summary judgment phase of the litigation. Because our bills during the summary judgment stage of the case combined multiple tasks performed in a particular day as part of the same time entry, it is not possible to derive precise divisions of time spent on specific documents for all time entries. However, as detailed below, based on the descriptions provided, we have used conservative estimates for those entries that combine multiple tasks to derive reasonable summaries for fees incurred on each of the relevant parts of the summary judgment motion covered by the Court's order.

Summary Judgment Moving Brief

7. The Court awarded Plaintiffs 22% of their fees incurred in connection with their summary judgment moving brief (ECF No. 49). Based on review of the time entries shown in the attached Exhibit A, we have derived the following totals for myself, Jonathan King, Thomas Kjellberg and Scott Ceresia for work performed on the summary judgment moving brief:

| <u>Timekeeper</u> | <u>Hours</u> | <u>Rate</u> | <u>Fees</u> | <u>%</u> |
|-------------------|-------------------|-------------|--------------------|------------|
| Richard Mandel | 30.0 ¹ | 500 | \$15,000.00 | |
| Jonathan King | 12.5 ² | 475 | 5,937.50 | |
| Thomas Kjellberg | 14.2 ³ | 405 | 5,751.00 | |
| Scott Ceresia | 4.7 ⁴ | 260 | 1,222.00 | |
| TOTAL | | | \$27,910.50 | 22% |
| AWARD | | | \$6,140.31 | |

¹ Hours include full time entries listed on 8/6/12 invoice for 7/7 and 7/10, plus: 1.0 on 7/6, 4.2 on 7/9, 5.5 on 7/11, 3.5 on 7/12, 3.0 on 7/13, 4.0 on 7/15, 1.0 on 7/18 and 1.0 on 7/20.

² Hours include full time entries listed on 8/6/12 invoice for 7/14, 7/15 and 7/16, plus: 2.0 on 7/19.

³ Hours include all time entries listed on 8/6/12 invoice for 7/9, 7/10, 7/16 and 7/18.

⁴ Hours include full time entries listed on 8/6/12 invoice for 7/14, 7/15 and 7/16, plus 2.0 on 7/19.

Based on the above, the total amount of fees incurred for the moving summary judgment brief was \$27,910.50, and 22% of that amount is \$6,140.31.

Summary Judgment Reply Brief

8. The Court awarded Plaintiffs 60% of their fees incurred in connection with their summary judgment reply brief (ECF No. 87). Based on review of the time entries shown in the attached Exhibit A, we have derived the following totals for myself and Mr. King for work performed on the summary judgment reply brief:

| <u>Timekeeper</u> | <u>Hours</u> | <u>Rate</u> | <u>Fees</u> | <u>%</u> |
|-------------------|-------------------|-------------|--------------------|------------|
| Richard Mandel | 6.8 ⁵ | 500 | \$3,400.00 | |
| Jonathan King | 17.0 ⁶ | 475 | 8,075.00 | |
| Nart-Anong Chinda | 5.0 ⁷ | 215 | 1,075.00 | |
| TOTAL | | | \$12,550.00 | 60% |
| AWARD | | | \$7,530.00 | |

Based on the above, the total amount of fees incurred for the summary judgment reply brief was \$12,550, and 60% of that amount is \$7,530.00.

Summary Judgment Opposition Brief

9. The Court awarded Plaintiffs 33% of their fees incurred in connection with their summary judgment opposition brief (ECF No. 76). Based on review of the time entries shown in the attached Exhibit A, we have derived the following totals for myself and Mr. King for work performed on the summary judgment opposition brief:

⁵ Hours include full time entries listed on 9/11/12 invoice for 8/16 and 8/24, plus: 4.4 on 8/20 and .5 on 8/23.

⁶ Hours include full time entries listed on 9/11/12 invoice for 8/16, 8/17 and 8/20.

⁷ Hours include full time entries listed on 9/11/12 invoice for 8/22 and 8/23, plus 2.5 on 8/24.

| <u>Timekeeper</u> | <u>Hours</u> | <u>Rate</u> | <u>Fees</u> | <u>%</u> |
|-------------------|-------------------|-------------|--------------------|------------|
| Richard Mandel | 17.8 ⁸ | 500 | \$8,900.00 | |
| Jonathan King | 35.3 ⁹ | 475 | 16,767.50 | |
| Nart-Anong Chinda | 7.6 ¹⁰ | 215 | 1,634.00 | |
| TOTAL | | | \$27,301.50 | 33% |
| AWARD | | | \$9,009.50 | |

Based on the above, the total amount of fees incurred for the summary judgment opposition brief was \$27,301.50, and 33% of that amount is \$9,009.50.

Rule 56.1 Counterstatement of Facts

10. The Court awarded Plaintiffs 13% of their fees incurred in connection with their Rule 56.1 counterstatement of facts (ECF No. 78). Based on review of the time entries shown in the attached Exhibit A, we have derived the following totals for myself and Mr. King for work performed on the counterstatement of facts:

| <u>Timekeeper</u> | <u>Hours</u> | <u>Rate</u> | <u>Fees</u> | <u>%</u> |
|-------------------|--------------------|-------------|-------------------|------------|
| Richard Mandel | 12.0 ¹¹ | 500 | \$6,000.00 | |
| Jonathan King | 5.0 ¹² | 475 | 2,375.00 | |
| Nart-Anong Chinda | 3.0 ¹³ | 215 | 645.00 | |
| TOTAL | | | \$9,020.00 | 13% |
| AWARD | | | \$1,172.60 | |

Based on the above, the total amount of fees incurred for the counterstatement of facts was \$9,020, and 13% of that amount is \$1,172.60.

⁸ Hours include 1.5 on 7/31, 3.0 on 8/2, 3.0 on 8/3, .3 on 8/6, 3.5 on 8/7, 3.0 on 8/8, 1.5 on 8/9 and 2.0 on 8/10.

⁹ Hours include 8.0 on 7/26 (second entry), 3.0 on 7/27, 6.5 on 7/30, 6.0 on 8/1, 3.0 on 8/6, 3.5 on 8/7, 2.5 on 8/8, .8 on 8/9, 1.0 on 8/10, .5 on 8/13 and .5 on 8/14.

¹⁰ Hours include full time entries listed on 9/11/12 bill for 8/8, 8/9 (both entries) and 8/13.

¹¹ Hours include 2.5 on 7/27, 5.5 on 7/30, .5 on 7/31, 1.0 on 8/8, 1.5 on 8/9 and 1.0 on 8/10.

¹² Hours include .8 on 8/7, 1.7 on 8/8, 1.0 on 8/9, 1.0 on 8/10 and .5 on 8/14.

¹³ Hours include 3.0 on 8/14.

Engagement of Doug Jacobson

11. The Court awarded Plaintiffs the entirety of costs associated with engaging Doug Jacobson as an expert to refute ReDigi's data migration theory. Attached hereto as Exhibit B is a copy of the invoice issued by Mr. Jacobson and paid by Plaintiffs for his work in this matter. In addition, based on review of the time entries shown in the attached Exhibit A, we have derived the following totals for myself and Mr. King for work performed in connection with the Doug Jacobson declaration:

| <u>Timekeeper</u> | <u>Hours</u> | <u>Rate</u> | <u>Fees</u> | <u>%</u> |
|-------------------|--------------------|-------------|--------------------|-------------|
| Richard Mandel | 12.5 ¹⁴ | 500 | \$6,250.00 | |
| Jonathan King | 4.0 ¹⁵ | 475 | 1,900.00 | |
| Doug Jacobson | | | 3,631.79 | |
| TOTAL | | | \$11,781.79 | 100% |
| AWARD | | | \$11,781.79 | |

Based on the above, the total amount of incurred costs associated with engaging Doug Jacobson to refute ReDigi's data migration theory was \$11,781.79.

Oral Argument

12. The Court awarded Plaintiffs 25% of their fees incurred in preparing for and conducting oral argument on the summary judgment motions. Based on review of the time entries shown in the attached Exhibit A, we have derived the following totals for myself and Mr. King for work performed in preparing for and conducting oral argument:

¹⁴ Hours include the full time entry listed on the 9/11/12 invoice for 8/19, plus: 3.0 on 7/30, 3.5 on 7/31, 4.0 on 8/1, 1.3 on 8/2, .5 on 8/9, .5 on 8/17 and .5 on 8/20.

¹⁵ Hours include the full time entries listed on the 9/11/12 invoice for 8/19 and 8/27, plus: .5 on 7/26, .8 on 7/30, 1.0 on 8/1, .3 on 8/6, .8 on 8/19 and .2 on 8/20

| <u>Timekeeper</u> | <u>Hours</u> | <u>Rate</u> | <u>Fees</u> | <u>%</u> |
|-------------------|--------------------|-------------|--------------------|------------|
| Richard Mandel | 30.9 ¹⁶ | 500 | \$15,450.00 | |
| Jonathan King | 5.1 ¹⁷ | 475 | 2,422.50 | |
| TOTAL | | | \$17,872.50 | 25% |
| AWARD | | | \$4,468.13 | |

Based on the above, the total amount of fees incurred for preparing for and conducting oral argument on the summary judgment motions was \$17,872.50, and 25% of that amount is \$4,468.13.

Summary of Above Fees For Summary Judgment Stage

13. Adding up the above amounts permitted by the Court's order results in a total fees award for the summary judgment stage of \$40,102.33, as summarized below:

| <u>STAGE</u> | <u>FEES AWARD</u> |
|-------------------------------------|--------------------|
| Summary Judgment Moving Brief | \$6,140.31 |
| Summary Judgment Reply Brief | 7,530.00 |
| Summary Judgment Opposition Brief | 9,009.50 |
| Rule 56.1 Counterstatement of Facts | 1,172.60 |
| Engagement of Doug Jacobson | 11,781.79 |
| Oral Argument | 4,468.13 |
| TOTAL | \$40,102.33 |

Post-Summary Judgment Stage

14. The Court awarded Plaintiffs all fees incurred for litigating the case in the District Court after the Court's March 30, 2013 summary judgment opinion. Between the time of the Court's summary judgment ruling and the June 2016 entry of final judgment in the District Court, Plaintiffs incurred total fees of \$553,008. Details of those fees are contained in the invoices between May 2013 and June 2016 included within Exhibit A hereto, and the monthly

¹⁶ Hours include the full time entries listed on the 10/8/12 invoice between 9/13 and 9/28, the full time entries listed on the 11/6/12 invoice for 10/1, 10/2 and 10/5, plus: 3.3 on 10/3 and 3.0 on 10/4.

¹⁷ Hours include the full time entries listed on the 10/8/12 invoice for 9/25 and 9/28, and full time entries listed on the 11/6/12 invoice.

amounts of fees incurred are summarized below:

| <u>Month</u> | <u>Fees</u> | <u>%</u> |
|--------------|---------------------|-------------|
| May 2013 | \$12,933.00 | |
| June 2013 | 22,223.50 | |
| July 2013 | 21,253.95 | |
| Aug 2013 | 36,256.00 | |
| Sept 2013 | 19,235.00 | |
| Oct 2013 | 29,003.00 | |
| Nov 2013 | 26,882.50 | |
| Dec 2013 | 43,550.50 | |
| Jan 2014 | 20,338.00 | |
| Feb 2014 | 5,352.50 | |
| Mar 2014 | 5,172.50 | |
| Apr 2014 | 762.50 | |
| July 2014 | 572.00 | |
| Oct 2014 | 18,350.50 | |
| Nov 2014 | 16,768.00 | |
| Dec 2014 | 8,264.00 | |
| Jan 2015 | 23,800.50 | |
| Feb 2015 | 599.00 | |
| Mar 2015 | 1,349.00 | |
| Apr 2015 | 148.50 | |
| May 2015 | 299.50 | |
| June 2015 | 208.00 | |
| July 2015 | 2993.50 | |
| Aug 2015 | 416.00 | |
| Sept 2015 | 460.50 | |
| Oct 2015 | 5,103.00 | |
| Nov 2015 | 9,748.00 | |
| Dec 2015 | 1,954.44 | |
| Jan 2016 | 1,508.00 | |
| Feb 2016 | 5,076.00 | |
| Mar 2016 | 55,853.20 | |
| Apr 2016 | 139,024.00 | |
| May 2016 | 17,387.50 | |
| June 2016 | 162.00 | |
| TOTAL | \$553,008.00 | 100% |
| AWARD | \$553,008.00 | |

Summary of Permitted District Court Fees

15. Combining the \$40,102.33 in fees permitted by the Court's order for the summary judgment stage of the case with the \$553,008 in fees permitted by the Court's order for post-summary judgment proceedings in the District Court yields a total permitted recovery of \$593,110.33 for litigation before the District Court. Because the final judgment in this case caps the total potential attorneys' fees recovery at \$500,000, Plaintiffs seek an award for \$500,000 in fees incurred in litigating before the District Court, the maximum amount permitted by the stipulated final judgment in the case.

Fees on Appeal

16. The Court awarded Plaintiffs 15% of their fees incurred on appeal. Plaintiffs incurred total fees attributable to the appeal of \$96,143.50, as reflected on the non-redacted entries contained on the invoices included within Exhibit A hereto that were issued between February 2017 and September 2017. Fifteen percent of those fees amounts to \$14,421.53. Details of the hours billed by the various timekeepers in connection with the appeal are summarized below:

| <u>Timekeeper</u> | <u>Hours</u> | <u>Rate</u> | <u>Fees</u> | <u>%</u> |
|-------------------|--------------|-------------|--------------------|------------|
| Richard Mandel | 114.3 | 550 | \$62,865.00 | |
| Jonathan King | 56.7 | 545 | 30,901.50 | |
| George Diaz | 1.5 | 230 | 345.00 | |
| Nart-Anong Chinda | 7.7 | 230 | 1,771.00 | |
| Thomas Kjellberg | .6 | 435 | 261.00 | |
| TOTAL | | | \$96,143.50 | 15% |
| AWARD | | | \$14,421.53 | |

Conclusion

17. In sum, Plaintiffs request an award of \$514,421.53 reflecting the maximum permitted \$500,000 fee award for fees incurred in litigating the case before the District Court and an additional \$14,421.53 representing 15% of the fees incurred on appeal.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED ON MAY 6, 2022 AT NEW YORK, NEW YORK.



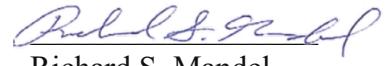
RICHARD S. MANDEL

CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2022, I caused a true and correct copy of the foregoing Declaration of Richard S. Mandel, Esq. to be served on Defendants John Ossenmacher and Lawrence Rogel by first class mail, postage prepaid, addressed as follows:

John Ossenmacher
102 NE 2nd Street, No. 261
Boca Raton, FL 33432

Lawrence Rogel
115 Stedman St.
Brookline, MA 02446


Richard S. Mandel