

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: <u>5-15-12</u>

*Sullivan, J*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

CAPITOL RECORDS, LLC,

No. 12-cv-0095 (RJS)

Plaintiff,

~~PROPOSED~~ **STIPULATED  
PROTECTIVE ORDER  
GOVERNING THE USE AND  
DISCLOSURE OF CONFIDENTIAL  
INFORMATION**

-against-

REDIGI INC.,

Defendant.

-----X

WHEREAS, the parties desire to protect their trade secrets, privileged information, confidential data, proprietary documents, confidential information and testimony, and to limit the access to and use of such documents, information and testimony;

IT IS HEREBY ORDERED that the terms and conditions of this Protective Order Governing the Use and Disclosure of Confidential Information ("Protective Order") shall control the handling of all confidential information, documents and things exchanged in this litigation.

IT IS FURTHER ORDERED as follows:

1. Designation of Discovery Materials as Confidential. Any and all electronic data, depositions, testimony, interrogatory answers, transcripts, affidavits, exhibits, documents and tangible things as defined in Rule 34(a) of the Federal Rules of Civil Procedure (collectively, "Material"), produced or disclosed by any party or non-party in the course of this action are hereby deemed "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" if designated as such in accordance with the terms of this Stipulation. All Material deemed or designated "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES

ONLY" is hereafter referred to as "Confidential Discovery Material." All such Confidential Discovery Material is subject to the terms of this Stipulation, as set forth below.

(a) The designation of "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" shall be made on all Confidential Discovery Material by placing or affixing on the first page or cover page of each such document (or, if the information is not in a document, by any other reasonable means of giving notice of the protected status for the material in question) in a manner which will not interfere with its legibility, the word "CONFIDENTIAL" or the words "CONFIDENTIAL - ATTORNEYS' EYES ONLY," as appropriate. The producing party may make such designations as to information and Material that it reasonably believes in good faith contain proprietary information, trade secrets, or confidential research, development, or business information. Such designations shall be made prior to, or contemporaneously with, the production or disclosure of that information or Material, except as otherwise provided herein. There will be no waiver of confidentiality by the inspection of confidential documents before they are copied and marked "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" pursuant to this procedure.

(b) Questions and answers in depositions shall be deemed "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" if they are designated as such by counsel for the testifying party or non-party within thirty (30) days after receipt of the deposition transcript by such counsel. Any testimony which describes a document that has been designated as "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" also shall be deemed to be designated as such. Deposition transcripts shall be treated as "CONFIDENTIAL - ATTORNEYS' EYES ONLY" until the time for their designation as described above has passed.

(c) Information and Material designated as "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" under this Order shall not be used or disclosed for any purpose whatsoever, other than preparing for and conducting the litigation of this case (including appeals, mediations or settlement conferences).

(d) Unless this Court orders otherwise, the parties and their counsel shall not disclose or permit the disclosure of any Confidential Discovery Material to any person or entity, except that disclosures may be made to the following persons:

(i) Disclosure of Confidential Discovery Material designated as "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" may be made to outside counsel of record for the parties and their necessary clerical and legal support personnel; in-house counsel for the parties engaged in the prosecution or defense of this action and their necessary clerical and legal support personnel; consultants, investigators, or experts (hereinafter referred to collectively as "experts") retained by the parties or counsel for the parties to provide expert services or advice or to give expert testimony in this case, provided such consultants/experts have signed the Declaration of Agreement to Be Bound by the Protective Order attached hereto as Exhibit A; deponents and trial witnesses, provided that prior to being shown Material designated as "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY," such deponent/trial witness has signed Exhibit A; and judicial officers and court personnel, including stenographic reporters present at depositions or at trial.

(ii) Disclosure of Confidential Discovery Material designated as "CONFIDENTIAL" may be made to the parties and their principals, officers, and employees, so long as counsel for the disclosing party reasonably believes in good faith that disclosure is necessary to provide assistance in the conduct of the litigation of this case; and those persons, if

any, specifically engaged for the limited purpose of scanning or making photocopies of documents in this case.

(e) Confidential Discovery Material disclosed to any person listed in subparagraphs (d)(i) or (d)(ii) shall not be disclosed by him/her to any other person or entity not included within (d)(i) or (d)(ii). No Confidential Discovery Material may be used or disclosed by any such person for any purpose whatsoever, other than litigating this case (including appeals), or for activity related to this case, such as mediations and settlement conferences. Disclosure of Confidential Discovery Material designated as "CONFIDENTIAL - ATTORNEYS' EYES ONLY" is limited to persons included within (d)(i).

(f) The parties' counsel and all other individuals who receive Confidential Discovery Material shall keep all such material received under this Protective Order within their exclusive possession and shall take reasonable efforts to protect such confidential material from disclosure or exposure to persons and entities other than those listed in paragraphs (d)(i) and (d)(ii). Nothing in this section shall preclude counsel from giving advice to his or her client in this action that includes a general evaluation of Material designated "CONFIDENTIAL - ATTORNEYS' EYES ONLY," provided that counsel shall not disclose the contents of any Material designated "CONFIDENTIAL - ATTORNEYS' EYES ONLY" contrary to the terms of this Protective Order.

(g) All copies, scans, duplicates, extracts, summaries, or descriptions (hereinafter referred to collectively as "copies") of Confidential Discovery Material shall be immediately affixed with the word "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY," as the case may be, if such word or words do not already appear.

2. Confidential Information Filed with Court. To the extent that any Confidential Discovery Materials (or any pleading, motion, transcript or memorandum referring to, describing or disclosing them) are proposed to be filed or are filed with this Court, those materials and papers, or any portion thereof that refers to, describes or discloses confidential information, shall be filed under seal (by the filing party) with the Clerk of the Court

3. Challenging Designation of Confidentiality. In the event of a dispute concerning confidential designation(s), counsel for the objecting party shall notify opposing counsel of the objection. If the parties' dispute regarding the objection cannot be resolved by agreement, the designation may be challenged upon motion of the challenging party. The Confidential Discovery Material in question shall be kept confidential pending a ruling on the dispute.

4. Return of Confidential Material. At the conclusion of the litigation of this case (including appeals), all Confidential Discovery Material not received in evidence shall be returned to the designating party or, if agreed in writing, the material may be destroyed instead of being returned. In the event of destruction in lieu of return, the destroying party shall confirm destruction in writing. The Clerk of the Court may return to counsel or destroy any sealed material at the end of this case (including appeals).

5. Non-waiver of privilege or confidentiality for inadvertently disclosed materials. Pursuant to Federal Rule of Evidence 502(d), the inadvertent disclosure of any document that is subject to a legitimate claim that the document is subject to the attorney-client privilege, work-product protection or is otherwise confidential shall not waive the protection, the privilege or the confidentiality for either that document or for the subject matter of that document. Inadvertent disclosure or inadvertent failure to designate any Material as

“CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” also shall not waive confidentiality of trade secrets and other proprietary information that the disclosing party has a duty or desire to protect.

6. Return of inadvertently disclosed materials. Except in the event that the requesting party disputes the claim, any documents the producing party deems to have been inadvertently disclosed and to be subject to the attorney-client privilege, the work-product protection or is otherwise confidential shall be, upon written request, promptly returned to the producing party, or destroyed, at that party’s option. If the claim is disputed, a single copy of the materials may be retained by the requesting party for the exclusive purpose of seeking judicial determination of the matter pursuant to Federal Rule of Civil Procedure 26(b)(5)(B) and Federal Rule of Evidence 502.

7. Survival of protection. The provisions of this Protective Order shall not terminate at the conclusion of this action.

8. Use at trial. Any document, exhibit, or transcript deemed or designated “CONFIDENTIAL” or “CONFIDENTIAL - ATTORNEYS’ EYES ONLY” in accordance with this Protective Order, and which is otherwise admissible, may be used at trial of this case, provided, however, that the parties agree that they will work with the Court to identify trial procedures, such as filing under seal and/or in camera reviews, that will protect and maintain the non-public nature of Confidential Discovery Material.

9. Effect of compliance. Nothing contained in this Protective Order, nor any action taken in compliance with it, shall (a) operate as an admission or assertion by any witness or person or entity producing documents that any particular document or information is, or is not, confidential or (b) prejudice in any way the right of any party to seek a Court determination of

whether it should not remain confidential and subject to the terms of this Protective Order. Any party to this Protective Order may request that this Court grant relief from any provision of this Protective Order as to specific documents.

10. Notice. All notices required by this Protective Order are to be served via email to the appropriate attorney(s) at Meister Seelig & Fein LLP (gpa@msf-law.com and smm@msf-law.com) and Cowan, Liebowitz & Latman, P.C. (jzk@cll.com and rsm@cll.com). Any of the notice requirements herein may be waived in whole or in part, but only in writing signed by an attorney for the designating party.

11. Amendments and Exceptions. This Protective Order may be amended only by a written agreement signed by both parties or by an order of the Court, and is without prejudice to the rights of a party to move for relief from any of its provisions, or to seek or agree to different or additional protection for any particular material or information.

12. Binding Upon Execution. The parties agree that this Protective Order shall be binding as an agreement between the parties upon execution by the parties before entry by the Court, and that each party shall consider itself bound to this Protective Order while awaiting the signature of its counterparties. The parties further agree that if for any reason this Protective Order is not accepted by the Court, they will promptly execute and submit a revised Protective Order that addresses the Court's concerns.

13. Counterparts. This Protective Order may be signed in counterpart via facsimile or .pdf format, and such signatures shall be deemed original for all purposes.

//

//

//

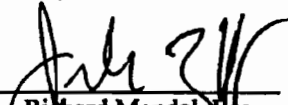
AGREED TO ON BEHALF OF THE PARTIES:

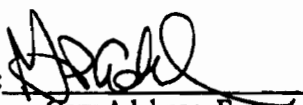
Dated: May 14, 2012

Dated: May 14, 2012

COWAN, LIEBOWITZ & LATMAN, P.C.

MEISTER SEELIG & FEIN LLP

By:   
Richard Mandel, Esq.  
Jonathan Z. King, Esq.  
Attorneys for Plaintiff  
1133 Avenue of the Americas  
New York, NY 10036-6799  
(212) 790-9200

By:   
Gary Adelman, Esq.  
Attorneys for Defendant  
140 East 45<sup>th</sup> Street 19<sup>th</sup> Floor  
New York, NY 10017  
(212) 655-3580

SO ORDERED:

Dated: May 14, 2012  
New York, New York

  
RICHARD J. SULLIVAN  
UNITED STATES DISTRICT JUDGE



**EXHIBIT A**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

No. 12-cv-0095 (RJS)

CAPITOL RECORDS, LLC,

Plaintiff,

-against-

REDIGI INC.,

Defendant.

-----X

**DECLARATION OF [REDACTED]**  
**IN AGREEMENT TO BE BOUND UNDER PROTECTIVE ORDER**

I, \_\_\_\_\_, pursuant to 28 U.S.C. § 1746, declares under the penalty of perjury, as follows:

1. My business address is \_\_\_\_\_  
\_\_\_\_\_.
2. My present employer is \_\_\_\_\_  
\_\_\_\_\_.
3. My present occupation or job description is \_\_\_\_\_  
\_\_\_\_\_.
4. [For experts and consultants only] Except as retained by \_\_\_\_\_ in

connection with the above-referenced action, I am currently not employed by any party to this lawsuit or engaged as an independent contractor or consultant by any party to this lawsuit, either directly or indirectly.

5. I hereby acknowledge and agree that any information or material designated as "CONFIDENTIAL" and/or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" that I receive or

review in this lawsuit is provided to me pursuant to the terms and restrictions of the PROTECTIVE ORDER GOVERNING USE AND DISCLOSURE OF INFORMATION dated \_\_\_\_\_ ("the Protective Order").

6. I have read the Protective Order, and agree to comply with and be bound by each of the applicable terms.

7. I hereby submit myself to the jurisdiction of the United States District Court for the Southern District of New York for the limited purpose of assuring my compliance with the Protective Order.

8. I understand that I am to handle all of the materials that I receive which have been designated as "CONFIDENTIAL" and/or CONFIDENTIAL - ATTORNEYS' EYES ONLY" in a manner consistent with this Protective Order. No later than thirty (30) days after final termination of this litigation, including any and all appeals, or resolution through settlement, I agree to return to the counsel of record who provided me with such materials all information and documents designated as "CONFIDENTIAL" and/or CONFIDENTIAL - ATTORNEYS' EYES ONLY," including all copies, extracts, and summaries thereof (and including those I prepared), or I will certify in writing that all such materials have been destroyed. Such return or destruction shall not relieve me from any of the continuing obligations imposed upon me by the Protective Order.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
(signature of declarant)

\_\_\_\_\_  
(printed name of declarant)