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July 12, 2012

By E-mail (sullivanysdchambers@nysd.uscourts.gov)

Hon. Richard J. Sullivan, U.S.D.J.
United States Courthouse
Southern District of New York
500 Pearl Street
New York, NY 10007

MEMO ENDORSED

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

Dear Judge Sullivan:

We represent plaintiff Capitol Records, LLC ("Capitol") in the above-referenced action and write jointly with counsel for the defendant, ReDigi Inc. ("ReDigi"). The parties jointly request leave to file portions of their respective summary judgment motions next week under conditional seal, subject to subsequent submission of further papers by each party no later than July 27, 2012 addressing the justifications for the continued sealing of documents containing information that has been designated by that particular party as Confidential Discovery Material under the Stipulated Protective Order entered in this case (Docket No. 38) (the "Protective Order").

As Your Honor is aware, the deadline for the filing of summary judgment motions in this case is Friday, July 20, 2012. Based on discussions between counsel, it is apparent that each side intends to include as part of its motion for summary judgment documents and/or testimony that has been designated by the other side as Confidential Discovery Material in accordance with the Protective Order.

In order to respect the confidentiality designations of the designating party under the terms of the Protective Order, both sides would be required to file their summary judgment motions under seal inasmuch as they contain the other side's designated Confidential Discovery Material. However, under the Addendum to the Protective Order signed by the Court on May 14, 2012 (Docket No. 39) (the "Addendum"), a party may not file a document under seal without a further Court order addressing the documents to be sealed after an appropriate application to seal accompanied by a brief and affidavit.

Because it remains the burden of the designating party seeking to maintain the confidentiality of the designated information to support such designation (see, e.g., Koch v. Greenberg, 2012 WL 1449186 (S.D.N.Y. April 13, 2012); Lachica v. City of New York, 1995 WL 77928 (S.D.N.Y. Feb. 23, 1995)), and because it is that party which has the interest in

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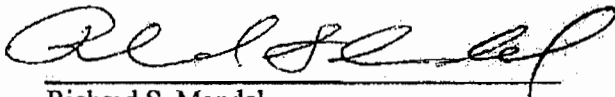
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preserving the confidentiality of its own information, the parties believe that the required motion to seal should actually be supported by the designating party whose information is included in the other side's summary judgment submission. However, because the designating party will not see the full scope of information included in the other side's summary judgment motion until the filing/service of such motions on July 20, 2012, the designating party will not be in a position to submit the necessary papers supporting sealing until after having an opportunity to review and analyze the other party's summary judgment motion, including the specific Confidential Discovery Material disclosed therein.

Accordingly, the parties believe that the most efficient procedure in these circumstances would be to permit the filings of their respective summary judgment motions to be made under seal initially on the July 20, 2012 deadline. Each side would then request one week in which to submit the affidavit and memorandum required under the Addendum justifying the continued sealing of the other side's summary judgment motion disclosing the designating party's own Confidential Discovery Material (or waiving any continued sealing). Such submissions could also propose appropriate redacted documents for public filing.

The parties would be available to discuss with the Court their proposed procedure or any alternative mechanisms the Court may prefer for handling next week's summary judgment filings. We thank the Court for its attention to this matter.

COWAN, LIEBOWITZ & LATMAN, P.C.



Richard S. Mandel

MEISTER SEELIG & FEIN LLP



Gary Adelman

SO ORDERED

Dated:



RICHARD J. SULLIVAN
U.S.D.J.

7/12/12