

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CAPITOL RECORDS, LLC, :

12 Civ. 0095 (RJS)

Plaintiff, :

-against- :

**DECLARATION  
OF MARK PIIBE**

REDIGI INC., :

Defendant. :

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MARK PIIBE, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am Executive Vice-President, Global Business Development for EMI Music North America, where I have been employed since 2007. In that capacity, I am responsible for the negotiation, structuring and analysis of the digital distribution deals of EMI and its related entities (collectively, "EMI"), including Plaintiff Capitol Records, LLC ("Capitol").

2. I submit this declaration in support of Capitol's motion to permit the continued sealing of the following documents conditionally filed under seal by Defendant ReDigi Inc. ("ReDigi") pursuant to the Court's July 12, 2012 endorsed letter order: (1) Memorandum of Law in Support of ReDigi Inc.'s Motion for Summary Judgment ("ReDigi Brief"); (2) Defendant's Statement of Undisputed Facts Pursuant to Local Rule 56.1 ("ReDigi 56.1 Statement"); and (3) Exhibit 6 to the Declaration of Gary Adelman in Support of Defendants' (sic) Motion for Summary Judgment ("Adelman Declaration"). I have personal knowledge of the facts set forth herein, and if called upon to do so, I could and would testify competently to the matters stated herein.

3. ReDigi's papers contain certain documents and references that we respectfully request remain sealed because they disclose confidential business information of EMI with

respect to EMI's contractual arrangement with Apple Computer, Inc. ("Apple") concerning the distribution of EMI's content via Apple's iTunes service. Exhibit 6 to the Adelman Declaration contains copies of excerpts of EMI's 2003 "Digital Music Download Agreement" with Apple and a 2011 amendment to such agreement (collectively, the "EMI-Apple Agreement"). References to terms of the EMI-Apple Agreement are also included at page 17 of the ReDigi Brief and page 11 of the ReDigi 56.1 Statement (paragraphs 64, 65 and 68).

4. The EMI-Apple Agreement governs a complex commercial relationship between EMI and Apple with respect to the sale of downloads of Capitol's sound recordings, music videos, and ringtones through Apple's iTunes Store, and various services offered by Apple to iTunes Store end users with respect to EMI content. The terms of the EMI-Apple Agreement are of a highly competitively sensitive nature, are not publicly available, are subject to a strict confidentiality provision (described below), and should remain shielded from public disclosure.


5. The specific excerpts annexed to ReDigi's papers include references in the original 2003 agreement to key contractual definitions, the scope of Apple's authorization to distribute EMI's content, specific pricing and accounting terms, and Apple's obligations regarding end user restrictions. The excerpts from the 2011 amendment further disclose additional authorizations for Apple to exploit EMI content as part of certain new iTunes services, additional payment/pricing terms, and further obligations imposed upon Apple regarding restrictions to be imposed upon end users.

6. It would give competitors, who have their own separately negotiated and confidential relationships with Apple, an unfair business advantage, causing EMI substantial harm, if such competitors were able to ascertain such specifically negotiated terms, definitions, pricing arrangements and restrictions pursuant to which EMI has structured its key commercial

arrangement with Apple. These terms are entirely ancillary to the present lawsuit, but competitively sensitive for both EMI and Apple.

7. The sensitive nature of these terms is reflected in a specific confidentiality provision in the EMI-Apple Agreement prohibiting their disclosure. The confidentiality provision provides that its contractual terms themselves are deemed "Confidential Information," which may not be disclosed by either party without the other's consent or "unless required by law or Governmental Order." Apple has enforced this provision in this case. Thus, separate and apart from its own concerns of confidentiality, EMI is duty bound to respect the confidentiality of these provisions.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED ON JULY 27, 2012 IN NEW YORK, NEW YORK.

  
MARK PIIBE