UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CAPITOL RECORDS, LLC,

Plaintiff,

Civil Action No: 12 CIV 0095 (RJS)

- against -

REDIGI, INC.,

Defendant.

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DECLARATION LARRY RUDOLPH (aka Lawrence S. Rogel)
IN SUPPORT OF DEFENDANT'S OPPOSITION TO
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

I, **LARRY RUDOLPH** (aka Lawrence S. Rogel), pursuant to 28 U.S.C. § 1746, declare under the penalty of perjury, as follows:

1. I am Chief Technical Officer and a founder of ReDigi Inc ("ReDigi").

2. This declaration is submitted in support of ReDigi's opposition to Capitol Records LLC's ("Capitol") motion for summary judgment.

3. Capitol has taken many of the statements from ReDigi's previous papers, including the statement in paragraph 6 of my declaration dated January 27, 2012, out of context and tried claim that they should be admitted as judicial admissions of infringement against ReDigi. But Capitol's interpretation of these statements is wrong.

4. [redacted]

[redacted]

5. The sentence Capitol has pulled out cannot be read independently of the rest of the paragraph –the sentences must be read together. The following sentence in paragraph 6 of my January 27, 2012 declaration, which Capitol omitted from their motion, makes the meaning

[redacted]

. As previously described in my July 20, 2012 declaration there are many instances in which a pre-existing copy of an Eligible File would exist on a user's hard drive prior to ReDigi's installation. *See* 7/20/12 Rogel Decl. ¶30.

6. ReDigi's system is highly technical and complicated and in opposing the motion for a preliminary injunction, ReDigi sought to explain to the Court in the best way possible how its system worked. However without a protective order in place, ReDigi was also concerned about going into detail as to the details and workings of its technology, as it is highly sensitive, proprietary information.

7. In executing many different user commands, computers move the location of files all the time. For example, computers move the location of electronic files when they go through defragmenting processes or when a person moves their music files from one directory to another because they want to use a new media player. Many editors often make backup copies of files (even editing the MP3 tags, such as changing the ratings or title of the track may cause it to be

copied). Installing a new music player on a machine (which changes the default music player) and double clicking on a music file may make a copy of the file.

8. [redacted]

9. To the extent that the patent uses the word "copied," this was not meant to describe the transfer technique. ReDigi's patent sought protection for its business process not over the specific method of uploading files to the cloud. Moreover at the time the patent was filed, prior to ReDigi's launch, the data migration program was not finished.

WHEREFORE, for the foregoing reasons ReDigi respectfully requests that this court deny Capitol's motion.

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

Executed on August 14, 2012 in Cambridge Massachusetts

LARRY RUDOLPH (aka Lawrence S. Rogel)