

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CAPITOL RECORDS, LLC, : 12 Civ. 0095 (RJS)
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 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, pursuant to the Court’s August 2, 2012 endorsed letter order, in connection with the parties’ pending cross-motions for summary judgment: (1) Exhibit 3 to the Declaration of Richard S. Mandel, Esq. in Opposition to Defendant’s Motion for Summary Judgment (Docket No. 74); (2) Plaintiff’s Memorandum of Law in Opposition to Defendant’s Motion for Summary Judgment (Docket No. 76); (3) Plaintiff’s Response to Defendant’s Statement of Undisputed Facts Pursuant to Local Rule 56.1 (Docket No. 78); (4) Memorandum of Law in Further Support of ReDigi’s Summary Judgment Motion (Docket No. 90); and (5) Exhibit 1 to the Reply Declaration of Gary Adelman in Support of Defendant’s Motion for Summary Judgment (Docket No. 91). 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. Exhibit 3 to the Mandel opposition declaration and Exhibit 1 to the Adelman reply declaration both contain excerpts from EMI's 2003 "Digital Music Download Agreement" with Apple and various amendments to such agreement (collectively, the "EMI-Apple Agreement"). References to the terms of the EMI-Apple Agreement and/or Capitol's contractual relationship with Apple are also included in a detailed discussion on page 17 and more limited references on pages 18 and 19 of Capitol's opposition brief, footnote 4 on page 8 of ReDigi's reply brief, and paragraphs 64, 68 and 72 of Capitol's 56.1 response.

4. For the same reasons I set forth in my earlier declaration supporting Capitol's initial sealing motion in connection with the parties' summary judgment moving papers, the information disclosed in the parties' opposition and reply papers is highly confidential in nature and should be shielded from public disclosure in order to prevent harm to Capitol. The relevant excerpts at issue include specific terms and definitions governing the manner in which purchase of downloads of Capitol's recordings via the iTunes service may be made under the contractual arrangement between EMI and Apple. It would give EMI's 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 pursuant to which EMI has structured its key commercial arrangement with Apple.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED ON AUGUST 29, 2012 IN NEW YORK, NEW YORK.



MARK PIIBE