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 Steve Jobs

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 11 **UNITED STATES DISTRICT COURT**
 12 **NORTHERN DISTRICT OF CALIFORNIA**
 13 **SAN JOSE DIVISION**

14 IN THE MATTER OF A DEPOSITION
 SUBPOENA SERVED IN:

15 F.B.T. PRODUCTIONS, LLC AND EM2M,
 16 LLC,

17 Plaintiffs,

18 v.

19 AFTERMATH RECORDS, INTERSCOPE
 RECORDS, UMG RECORDING, INC., and
 20 ARY, INC.,

21 Defendants.

Case No. 08-80040 Misc. RMW (PVT)

[Related to Case No. CV 07-3314 PSG
 (MANx) (C.D. Cal.)]

**DECLARATION OF EDDY CUE IN
 SUPPORT OF NON-PARTY'S
 OBJECTION TO ORDER DENYING
 NON-PARTY'S MOTION FOR
 PROTECTIVE ORDER TO QUASH
 "APEX" DEPOSITION SUBPOENA**

DECLARATION OF EDDY CUE

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2 (1) I am Vice President of iTunes at Apple Computer, Inc. (“Apple”). I have been
3 employed by Apple since 1989. I am responsible for all aspects in relation to operating iTunes
4 Music Store. I have personal knowledge of the matters set forth herein, and would competently
5 testify thereto under oath if called as a witness. I submit this declaration in support of the
6 Objection to the Magistrate Judge’s Order denying deponent’s motion for a protective order to
7 prevent the deposition of Steve Jobs, Apple’s founder, Chairman and chief executive officer.

8 (2) Apple is not a party to the underlying proceeding, *F.B.T. Productions, LLC v.*
9 *Aftermath Records*, Case No. CV07-3314 PSG (MANx) (C.D. Cal.) (the “FBT Action”).

10 (3) Mr. Jobs and Apple are not parties to any agreements (the “UMG Agreements”)
11 between Plaintiffs and Defendants Aftermath Records, Interscope Records, UMG Recordings,
12 Inc. and Ary, Inc. (the “UMG Defendants”) regarding master recordings of performances by
13 Marshall Mathers (the “Eminem Masters”).

14 (4) Neither Jobs nor Apple had any role in negotiating, drafting, or executing the
15 UMG Agreements between Plaintiffs and Defendants.

16 (5) Apple has no agreements with Plaintiffs regarding the Eminem Masters for the
17 delivery of music purchased on iTunes. Content owned or controlled by UMG Defendants is sold
18 through iTunes pursuant to a series of confidential master online distribution agreements with
19 Apple entitled “Digital Music Download Sales Agreements” (“Download Agreements”). The
20 Download Agreements relate generally to the large catalog of records owned or controlled by
21 UMG and do not specify Eminem or any other particular individual artists or specific content.

22 (6) The first Download Agreement was entered into on December 13, 2002. I was a
23 member of the team of negotiators that was assembled to work through the technical and legal
24 details. The team consisted of Bud Tribble, James Higa, Jeff Robin, Kevin Saul, and myself.
25 Steve Jobs was not part of the negotiating team.

26 (7) Mr. Jobs was not involved with negotiations relating to the legal terms governing
27 the transfer of rights associated with the UMG Defendants’ sound recordings.

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1 (8) Since the inception of the iTunes Music Store in 2002, I have been and continue to
2 be the senior business negotiator of agreements between Apple and all of the major record labels
3 relating to the sale of music on the iTunes Music Store.

4 (9) On behalf of Apple, I signed the Amended and Restated Download Agreement,
5 dated April 26, 2006, which is the current and effective iteration of the Download Agreement. I
6 also signed the First through Fourth Amendments to the Amended and Restated Download
7 Agreement.

8 (10) On June 18, 2007, my deposition was taken by the plaintiffs in *Bridgeport Music*
9 *Group, Inc., and Southfield Music, Inc., v. UMG Recordings, Inc., Napster, LLC, Apple*
10 *Computer, Inc., and Yahoo!, Inc.*, Case No. 05 Civ. 6430 (VM) (KNF) (S.D.N.Y) (the
11 "Bridgeport Action"). The attorneys for plaintiffs were King & Barrow. My deposition was
12 taken by Richard S. Busch.


13 (11) During the Bridgeport Action deposition I was questioned at some length about the
14 essay written by Steve Jobs, entitled *Thoughts on Music*. As I explained at my deposition, I
15 reviewed the essay before it was published and provided comments to Mr. Jobs. Some of my
16 comments were incorporated into the published essay. I answered all of the questions that were
17 asked of me about *Thoughts on Music* during my Bridgeport Action deposition fully and
18 completely.

19 (12) During the Bridgeport Action deposition I was also questioned about the structure
20 of the agreement between UMG and Apple. I answered those questions fully and completely.

21 (13) The Bridgeport Action, in which Apple is a defendant, is still ongoing.

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23 I declare under penalty of perjury under the laws of the State of California that the
24 foregoing is true and correct.

25 Executed this 15 day of May, 2008 in Cupertino, California.

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