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9 Attorneys for Non-Party Deponent
 Steve Jobs

10 **UNITED STATES DISTRICT COURT**
 11 **NORTHERN DISTRICT OF CALIFORNIA**
 12 **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 KEVIN SAUL IN
 SUPPORT OF NON-PARTY'S
 OBJECTION TO ORDER DENYING
 NON-PARTY'S MOTION FOR
 PROTECTIVE ORDER TO QUASH
 "APEX" DEPOSITION SUBPOENA**

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1 **DECLARATION OF KEVIN SAUL**

2 (1) I am Senior Director in the Legal Department of Apple Inc. ("Apple"). Among
3 other duties, I have the responsibility for providing legal support to the iTunes business. I am
4 licensed to practice law in the State of California. I have personal knowledge of the matters set
5 forth herein, and would competently testify thereto under oath if called as a witness. I submit this
6 declaration in support of the Objection to the Magistrate Judge's Order denying deponent's
7 motion for a protective order to prevent the deposition of Steve Jobs, Apple's founder, Chairman
8 and chief executive officer.

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

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

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

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

23 (6) The first Download Agreement was entered into on December 13, 2002.
24 Negotiations for this agreement began in the latter half of 2002. A team of negotiators was
25 assembled to work through the technical and legal details. The team consisted of Eddy Cue, Bud
26 Tribble, James Higa, Jeff Robbin and me. Steve Jobs was not part of the negotiating team and did
27 not attend the team's negotiating sessions.

28 (7) Apple's negotiating team represented a variety of disciplines. Eddy Cue was vice

1 president of Applications and Internet Services. Bud Tribble was vice president of Software
2 Technology. James Higa was Senior Director, Office of the CEO. Jeff Robbin was Vice
3 President of Engineering for the Applications Group. I was legal counsel to Apple. Apple did
4 not have the assistance of outside counsel in negotiating this agreement.

5 (8) The negotiations over the Download Agreement were complex and protracted.
6 My primary contact at UMG was David Weinberg, who was vice president, Business and Legal
7 Affairs for Universal's digital arm, eLabs. The negotiations covered all the details that appeared
8 in the final Download Agreement, including the legal terms governing the scope of authority
9 granted to Apple for the distribution of content owned by UMG.. The structure of the agreement,
10 its legal requirements, the definition of terms appearing in the agreement, and all other legal and
11 technical requirements were the responsibility of the negotiating team. Mr. Jobs, to the extent he
12 had any involvement in negotiating this agreement, was engaged solely providing direction in
13 determining business points such as price. Apple's negotiating team, and not Mr. Jobs, resolved
14 the form and legal content of the final agreement through extensive discussions with UMG. Mr.
15 Weinberg and I were responsible for drafting the final terms of the Download Agreement.
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17 I declare under penalty of perjury under the laws of the State of California that the
18 foregoing is true and correct.

19
20 Executed this ____ day of May, 2008 in Cupertino, California.
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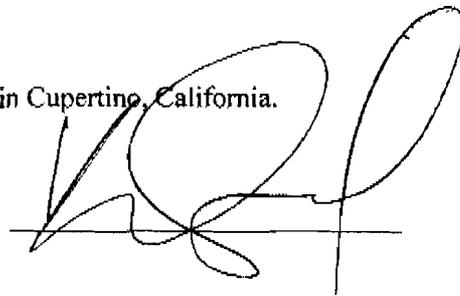
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Apple did not have **the** assistance of outside counsel in negotiating this agreement.

(8) The negotiations over the Download Agreement **were** complex and protracted. My primary contact at UMG was David Weinberg, who **was vice** president, Business **and** Legal **Affairs** for Universal's digital arm, eLabs. **The** negotiations covered all the details that appeared in the final Download **Agreement**, including **the legal** terms **governing** the scope of authority granted to Apple for **the** distribution of content owned by UMG.. The structure of **the** agreement, its **legal** requirements, the definition of terms appearing in the agreement, **and** all other legal and technical requirements were the responsibility of the **negotiating** team. Mr. Jobs, to the extent he had any involvement in negotiating this agreement, was engaged solely providing direction in **determining** business points such as price. Apple's **negotiating** team, and not Mr. **Jobs**, resolved the **form** and legal content of **the** final agreement through extensive discussions **with** UMG. Mr. **Weinberg** and I were responsible for drafting the final **terms** of the Download Agreement.

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

Executed this d a y of May, 2008 in Cupertino, California.

A handwritten signature in black ink, appearing to be 'David Weinberg', written over a horizontal line.