

## **EXHIBIT A-4**

**August 19, 2008 Letter from Defendants**

Case No. 2:07-cv-13164: Eight Mile Style, LLC, et al. v. Apple Computer Inc., et al.

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Re: Eight Mile Style & Martin Affiliated v. Apple Inc. and Aftermath Records (E.D. Mich)

Dear Richard:

In their discovery responses, Plaintiffs, Eight Mile Style, LLC and Martin Affiliated, LLC represented that they would produce all non-privileged documents that are responsive to numerous document requests served by Defendants. There are several categories of documents, however, that we have not found in Plaintiffs' production, even though it is apparent that Plaintiffs should have such documents in their possession, custody or control. The purpose of this letter is to meet and confer on these deficiencies in Plaintiffs' production, and to ask that Plaintiffs immediately produce the requested documents.

First, it appears that Plaintiffs have failed to produce all documents that relate to their claim that they have "exclusive ownership" of the copyrights covering each of the compositions in issue (the "Compositions"). See Plaintiffs' Responses to First Set of Interrogatories Nos. 5, 10 (claiming "exclusive ownership" of the Compositions) The relevance of documents relating to Plaintiffs' claim of ownership is beyond dispute: Ownership of a valid

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copyright is one of the core elements of Plaintiffs' case-in-chief. See Bridgeport Music, Inc. v. WB Music Corp., 508 F.3d 394, 398 (6th Cir. 2007).

Plaintiffs' assertion that they have exclusive ownership over copyrights covering all of the Compositions must be reconciled with the fact that persons other than Plaintiffs authored the Compositions. Plaintiffs cannot validly claim "exclusive ownership" of the copyright for any Composition unless there is a written agreement that effectuates the transfer of that copyright from the Composition's author(s) to one or both of the Plaintiffs. See 17 U.S.C. § 204(a). To date, Plaintiffs have produced some of their agreements with Eminem purporting to transfer his interest in certain rights pertaining to musical compositions. But these agreements do not transfer any copyright interest to either of the Plaintiffs. Rather, these agreements purport to transfer rights to F.B.T. Productions, LLC. Plaintiffs have not produced any document purporting to effectuate a transfer of rights from F.B.T. to Eight Mile Style or Martin Affiliated. This is not the only apparent deficiency in Plaintiffs' production of documents relating to their claim of copyright ownership. It is not clear that Plaintiffs have produced all agreements with Eminem that may relate to the question whether he has transferred his copyright interests in the Compositions to Plaintiffs. (We return to this point below, regarding the deficiencies in Plaintiffs' production of documents relating to Eminem.) And Plaintiffs have not produced any written agreements with a number of Eminem's co-authors on one or more of the Compositions, including Obie Trice, Christopher Lloyd p/k/a Lloyd Banks, Andre Young p/k/a Dr. Dre, Curtis Jackson p/k/a 50 Cent, Rufus Johnson, Von Carlisle, Deshawn Holton, Ondre Moore, and Denaun Porter.

Documents relating to Plaintiffs' claim of "exclusive ownership" of the copyrights in issue are responsive to several of Defendants' previously served discovery requests. See, e.g., Request Nos. 1, 6, 13, 14 and 18 in Defendants' First Set of Requests for Production ("Defendants' First RFPs"), and Requests Nos. 21, 22 and 23 in Defendants' Second Set of Requests for Production ("Defendants' Second RFPs"). As you know, Plaintiffs have agreed to produce all non-privileged documents responsive to these requests. The time is long overdue for Plaintiffs to produce all such documents. If Plaintiffs have possession, custody or control of any as-yet un-produced written agreements or other documents relating to Plaintiffs' claim of "exclusive ownership" over copyrights covering the Compositions, please produce these documents immediately. If Plaintiffs do not have possession, custody or control of any such documents, we request that you provide us with written certification attesting to that fact.

Second, it appears that Plaintiffs have failed to produce all of their agreements or communications with Famous Music, Ensign Music or any other music publisher that may have an interest in any of the Compositions. Such documents are responsive to several of Defendants' requests, including requests for documents that relate to the dissemination of the Compositions or to any person or entity's interest in the Compositions. Plaintiffs agreed to produce such documents and purported to identify entities with an interest in the Compositions in their Schedule 1 to the First Set of Interrogatory Responses. See Plaintiffs' Responses to Defendants' First RFPs, No. 18; Plaintiffs' Responses to Defendants' First Set of Interrogatories No. 1 & 2; Letter from Richard Busch to Kelly Klaus dated April 21, 2008.

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It appears, however, that Plaintiffs have not produced all documents and information responsive to the aforementioned requests. For example, neither Famous Music nor Ensign Music is listed on Plaintiffs' "Schedule 1." In addition, the February 22, 1999 Amendment to the Eminem-F.B.T. Production Agreement expressly refers to an agreement dated February 4, 1999, among F.B.T., Eight Mile Style, and Ensign Music relating to ownership of some of the Compositions in issue. See FBT-0045 ¶ 4(g). That same agreement is referenced in correspondence from Famous Music to F.B.T. and Eight Mile (care of Mr. Martin). See LEVIN-006 and LEVIN-007. Plaintiffs, however, have not produced the February 4, 1999 Agreement. Nor have Plaintiffs produced any other agreement involving Famous Music, Ensign Music or any other music publisher that may have an interest in any of the Compositions, including without limitation any co-administration agreement that may exist between Plaintiffs and any other persons or entities that claim rights with respect to the Compositions.

If Plaintiffs have in their possession, custody or control any as-yet un-produced agreements or communications (including without limitation co-administration agreements) with other publishers that relate to the Compositions, please produce all such documents immediately. If Plaintiffs do not have any such documents, please provide your certification of that fact.

Third, it appears that Plaintiffs have failed to produce all documents concerning Eminem that relate to the subject matter of this lawsuit. The entire case concerns musical compositions that Eminem is expressly alleged to have authored in whole or in part. See Compl. ¶ 8. And Plaintiffs' have agreed to produce documents concerning Eminem that relate to this suit. See Plaintiffs' Responses to Defendants' First RFPs, Nos. 13 & 14.

Notwithstanding their agreement, it appears that Plaintiffs have not produced multiple categories of documents involving one or more of Plaintiffs and their affiliated entities, on the one hand, and Eminem, on the other. For example:

- The February 22, 1999 Amendment to the Eminem-F.B.T. Production Agreement purports to require Eminem to execute additional agreements. Specifically, for each composition where Eminem has a co-author, paragraph 4(f) of the Amendment requires Eminem to execute a "separate agreement in Company's customary form with respect to each Composition written and recorded hereunder specifying the portion that Artist and each other writer composed." Any such agreements would be responsive to Defendants' requests for documents concerning Eminem. Those same documents (as well as F.B.T.'s "customary form") also would be responsive to Defendants' requests relating to the ownership of the Compositions. Plaintiffs, however, have yet to produce any such documents. Please either produce the documents or certify that Plaintiffs do not have them.
- The 2000 Novation among Aftermath, F.B.T. and Eminem refers to "separate producing agreements between F.B.T. and [Eminem]." See FBT-0054. Plaintiffs

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have not produced any such producing agreements. Please either produce the documents or certify that Plaintiffs do not have them.

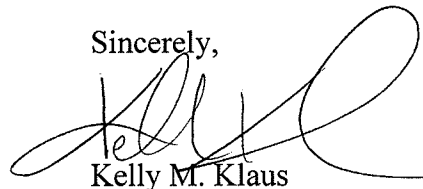
- A number of the Compositions appear to have been created in connection with Shady Records and other Eminem "Side Projects." But Plaintiffs' production contains no communications with Eminem or Eminem's representatives relating to such Side Projects. Nor have Plaintiffs produced any agreements between Plaintiffs or their affiliates and Eminem that relate to such Side Projects. If such documents exist, they have been called for by multiple requests, including Request Nos. 13, 14, and 17 in Defendants' First RFPs. Once again, Plaintiffs have agreed to produce responsive, non-privileged documents but have not done so. Please either produce the documents or certify that Plaintiffs do not have them.

\* \* \*

Plaintiffs' failure to produce the documents described above is prejudicing Defendants' ability to defend this case. Such documents could be very important in replying to Plaintiffs' opposition to the pending summary judgment motion. We need Plaintiffs to produce all responsive documents before our reply brief is due. Please provide either the documents, or the requested certification that Plaintiffs do not have such documents, by no later than Friday, August 29. If Plaintiffs have not produced the requested information by that date, we will file a motion to compel and request an expedited briefing and hearing schedule.

Thank you for your prompt attention to these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Kelly M. Klaus", with a large, stylized flourish extending to the right.

Kelly M. Klaus