

**UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

**EIGHT MILE STYLE, LLC, and MARTIN
AFFILIATED, LLC,**

Plaintiffs,

vs.

**APPLE COMPUTER, INC. and
AFTERMATH RECORDS d/b/a
AFTERMATH ENTERTAINMENT**

Defendant.

Case No. 2:07-cv-13164

Hon. Anna Diggs Taylor

Magistrate Judge Donald A. Scheer

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**DECLARATION OF MARC R. GUILFORD IN OPPOSITION TO DEFENDANTS'
MOTION TO EXCLUDE PLAINTIFFS' CLAIM OF ENTITLEMENT TO PROFITS
FROM APPLE'S SALE OF IPODS**

I, Marc R. Guilford, having personal knowledge of the facts contained in this declaration, state as follows:

1. I am an attorney and associate in the law firm of King & Ballow, which represents plaintiffs Eight Mile Style, LLC and Martin Affiliated, LLC ("Plaintiffs") in the above-entitled action. I am familiar with the files in this litigation.

2. While the complaint was filed in this case on July 30, 2007, discovery did not begin until February 12, 2008.

3. Plaintiffs served document requests and interrogatories on both parties on or about February 12, 2008, and Defendants responded on March 20, 2008. A true and correct copy of Apple's responses to Plaintiffs' First Set of Document Requests is attached hereto as **Exhibit A**. A true and correct copy of Aftermath's responses to Plaintiffs' First Set of Document Requests is attached hereto as **Exhibit B**. Exhibits A and B also accurately reproduce the text of the document requests directed at Defendants.

4. Document Requests 14 through 19 directed at Apple asked for various documents related to Apple's profits from the infringing activity alleged in this case, and thus Plaintiffs' damages. Apple asserted various objections in response and indicated they would only produce the documents described in their answer to Document Request #4, showing the "number of permanent downloads" of the Eminem Compositions, and the amounts Apple paid to Universal Music Group as a result.

5. Apple produced the documents described above in paragraph 4, but did not produce at that time any documents showing any costs Apple was claiming, or their total income from the infringement alleged.

6. Aftermath produced nothing, objected that damages discovery was premature. *See Exhibit B hereto, Response Numbers 14-19.*

7. Defendants subsequently filed a motion to bifurcate and maintained their objections, refusing to produce documents showing their profits and losses, which Plaintiffs required to calculate their damages. That motion was heard on December 4, 2008, along with several other pending motions. At that time, Defendants still had not produced the requested documents.

8. Defendants served interrogatories on Plaintiffs on or about February 20, 2008. A true and correct copy of Plaintiff Eight Mile Style's responses to those interrogatories, served on Defendants on March 21, 2008, is attached hereto as **Exhibit C**. For ease of reference, a copy of the identical set of interrogatories served on Plaintiff Martin Affiliated is not attached. Interrogatory 4 asked Plaintiffs to identify the amount of damages suffered, including a detailed calculation. Plaintiffs objected that their damages were subject to expert opinion and reiterated the statement in their Initial Disclosures that they were entitled to Apple's profits attributable to the infringement at issue.

9. On February 26, 2009, I sent an email to counsel for Defendants in this case notifying Defendants that they owed Plaintiffs responses to certain outstanding discovery relating to Plaintiffs' damages. A true and correct copy of that email is attached hereto as **Exhibit D**. I sent another email to Defendants on April 24, 2009, again advising Defendants that we expected responses to outstanding discovery regarding damages. A true and correct copy of that email is attached hereto as **Exhibit E**.

10. Aftermath produced 44 profit and loss statements and certain supporting documentation in response to the outstanding discovery requests referred to in paragraph 9 above in early May 2009. Apple supplemented its written responses at that time but did not produce documents, stating it was still in the process of gathering responsive documents.

11. Apple finally produced documents on June 3, 2009, including the "profit and loss" statements Plaintiffs needed to calculate Apple's profits and thus Plaintiffs' damages from Apple. Two days later, on June 5, 2009, Plaintiffs deposed Apple's 30(b)(6) witness on the documents Apple produced.

12. After Apple's production of documents related to Plaintiffs' damages, the parties conferred and agreed that Plaintiffs' expert report on damages would be due July 3, 2009.

13. Plaintiffs' expert report was served on Defendants on July 3, 2009. That expert report contained Plaintiffs' claim of entitlement to a share of Apple's profits from sales of iPods.

14. On July 27, 2009, Plaintiffs deposed Charles Ciongoli, the witness Aftermath designated in response to Plaintiffs Rule 30(b)(6) deposition notice to testify concerning the financial documents Aftermath produced.

15. Pursuant to their prior agreement, Plaintiffs served on Defendants Mr. Cohen's supplemental expert report on August 10, 2009, and Mr. Cohen was then deposed on August 12, 2009.

16. At his deposition, Mr. Cohen was questioned on the claim for iPod profits in his July 3, 2009 report. By my estimation, over 30 pages of Mr. Cohen's 200-page deposition transcript concern Plaintiffs' claim to iPod profits.

17. On August 19, 2009, Defendants produced their "Expert Rebuttal Report," which dealt solely with Plaintiffs' claim to a portion of Apple's iPod profits.

18. Attached hereto as **Exhibit F** are Plaintiffs' responses and objections to Defendants' fourth set of Interrogatories. Interrogatory Number 31 again asked Plaintiffs to "identify and describe" their damages, despite Plaintiffs' expert report on damages not being due until a later date. Plaintiffs responded by referring Defendants to their response to Interrogatory 4 and Mr. Cohen's expert report.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 3rd day of September, 2009.

/s/ Marc R. Guilford
Marc R. Guilford

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served via the Court's Electronic Filing System:

Counsel	On behalf of
<p>Daniel D. Quick, Esq. Dickinson Wright PLLC 38525 Woodward Ave Suite 2000 Bloomfield Hills, MI 48304 (t): (248) 433-7200 (e): dquick@dickinsonwright.com</p> <p>Kelly M. Klaus, Esq. Munger, Tolles & Olson LLP 355 South Grand Ave Suite 3500 Los Angeles, CA 90071-1560 (t): (213) 683-9238 (e): kelly.klaus@mto.com</p>	<p>Apple Computer, Inc. and Aftermath Records d/b/a Aftermath Entertainment</p>

this 3rd day of September 2009.

s/ Richard S. Busch