

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

EXHIBIT 1

**Excerpt of transcript pages from the
Deposition of Howard Abrams
taken on October 8, 2008**

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

EIGHT MILE STYLE, LLC and
MARTIN AFFILIATED, LLC,

Plaintiffs,

vs.

Case No. 2:07-CV-13164

Hon. Anna Diggs Taylor

Magistrate Judge Donald A. Scheer

APPLE COMPUTER, INC.

and AFTERMATH RECORDS d/b/a

AFTERMATH ENTERTAINMENT,

Defendants.

The Videoconference and Videotaped Deposition of

HOWARD B. ABRAMS,

Taken at 500 Woodward Avenue, Suite 4000,

Detroit, Michigan,

Commencing at 2:04 p.m.,

Wednesday, October 8, 2008,

Before Denise M. Kizy, CSR-2466, RPR, CRR.

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1 vague statement that, oh, we're going to want to use
2 you as an expert witness in this case we've got and
3 telling me nothing about the case or anything,
4 probably would have been some time towards the end of
5 July.

6 Q. How long have you known Mr. Martin?

7 A. I would guess 15, 20 years.

8 Q. Are you friends?

9 A. Our relationship is cordial, yes.

10 Q. Have you ever worked with Mr. Martin in any
11 professional capacity?

12 A. Matter of fact, yes.

13 Q. What -- in what situation have you worked with
14 Mr. Martin in the past?

15 A. This was many years ago, and a gentleman named Armen
16 Boladian was in the midst of one of his interminable
17 lawsuits with George Clinton, and it involved a number
18 of songs and music publishing rights and sampling
19 rights and Joel owned a half interest, was a
20 co-publisher of one of the songs involved, and Joel --
21 the case was in court and Joel asked me if I would
22 appear for him to give him enough time to sell his
23 co-publishing interest to Armen Boladian and get the
24 heck out of the case, and that's what happened.

25 Q. So you represented Mr. Martin in that situation?

1 A. Yes.

2 Q. And did Mr. Martin pay you for your services?

3 A. Yes, he did.

4 Q. Do you recall when that occurred?

5 A. Oh, God. 10, 15 years ago.

6 Q. Have you ever represented Mr. Martin at any other
7 time?

8 A. No.

9 Q. Have you ever served as an expert witness in any
10 matter that Mr. Martin has been involved in other than
11 this case?

12 A. No. Oh, wait a minute.

13 Q. How did it come about that -- I'm sorry.

14 A. Wait one minute. There was a case. Joel was not a
15 party to the case, but I think he was advising the
16 plaintiffs, and it was a case involving the Romantics
17 suing their former manager, and the Romantics lawyer,
18 a gentleman named Norm Ankers, asked me if I would be
19 an expert witness in that case. I said yes, and
20 nothing else ever happened. No expert report, no
21 deposition, nothing. I don't think Joel was a party.
22 I think he was just friends with some of the guys in
23 the Romantics.

24 Q. How did it -- how did it come about that you met
25 Mr. Martin approximately 15 years ago?

1 A. You know, I'm really not sure. The music industry in
2 Detroit compared to Los Angeles, New York or Nashville
3 is really pretty small, and you sort of -- if you --
4 if you're at all involved in it, you sooner or later
5 bump into lots of -- you know, to most of the people.
6 How I first met Joel, I don't know. Somewhere it
7 sticks in the back of my mind that a mutual friend who
8 was going to law school, he was a promotion man, and
9 decided to become a lawyer. His name was Mike
10 diamond, if I recall correctly. I think at some point
11 he's the guy who introduced us, but I could be wrong,
12 and this was 15, 20 years ago.

13 Q. And over the course of the last 15 years, have you
14 ever gotten together socially with Mr. Martin?

15 A. Well, if, for example, you're saying are there social
16 events we've both been at, for example, a little while
17 ago there was a fund-raiser for a group called the
18 Deaf Performing Arts Network where I had purchased a
19 table and where Joel Martin was present, and Joel may
20 have even been on the planning committee. Also --
21 that was the most recent social occasion. Before
22 that, I think you'd have to go back to December of
23 last year. Every year Joel's studio throws sort of a
24 Christmas party that's an open house for just about
25 everyone in the music industry. They take over a

1 bowling alley, and I remember going to that last year
2 and then maybe once in some previous year.

3 Q. Have you ever been to Mr. Martin's home?

4 A. Once quite a while ago. It was before he was married.
5 He was living with his wife to be over in a suburb
6 called Pleasant Ridge, and I was over at their house
7 on that occasion.

8 Q. What was that occasion?

9 A. I can't remember the exact date or exactly the
10 circumstances. I know I was there, I know it was
11 before they were married, and I stopped by there or
12 came by there, and that was it. I can't even remember
13 what it was about.

14 Q. Have you had Mr. Martin over to your home?

15 A. No. He knows where it is, but to the best of my
16 recollection Joel and/or Deneen have never been a
17 guest in our house.

18 Q. Has Mr. Martin helped you in any way in any of your
19 professional activities?

20 A. Not really.

21 MR. BUSCH: Just for the record, let me
22 just say that the teleconference has been interrupted.
23 We've lost the connection with Mr. Pomerantz, so we're
24 going to go off the record until we can reestablish
25 the connection.

1 VIDEO TECHNICIAN: Going off the record.

2 The time is 2:16 and 30 seconds p.m.

3 (Recess taken at 2:16 p.m.)

4 (Back on the record at 2:29 p.m.)

5 VIDEO TECHNICIAN: We're now on the record.

6 The time is 2:29 and 20 seconds p.m.

7 BY MR. POMERANTZ:

8 Q. Mr. Abrams, have you ever worked with Mr. Busch in any
9 prior lawsuit?

10 A. No.

11 Q. Do you know a gentleman named Howard Hertz?

12 A. Yes.

13 Q. Have you ever worked with Mr. Hertz in the past?

14 A. I think I can remember two incidents. One involved --
15 I don't know if you'd call this working with him. One
16 involved a band called Sponge that had had some
17 success initially and then broke up, and they were
18 fighting over who had the rights to the name Sponge,
19 and I was representing two of the former members, and
20 he was representing the other two, and we tried to
21 negotiate an agreement of some -- of that and of some
22 of the other issues, and ultimately nothing much
23 happened. That was one.

24 Then the other -- let me see if I've got
25 this right. He represented a journalist who had

1 written an article about drug dealers and sort of
2 tongue-in-cheek in a side bar included a column on the
3 Ten Commandments of being a drug dealer. You know, it
4 was sort of tongue-in-cheek humor, and then Biggie
5 Smalls, or The Notorious B.I.G., recorded a record
6 based on that, and Howard threatened suit. They
7 finally settled the matter, but in the process he
8 talked to me about it and asked my -- I know he asked
9 my opinion, but I don't know that much else ever came
10 of it.

11 Q. Have you ever met Mark or Jeff Bass?

12 A. Once I met one of them. I'm trying to remember where.
13 I'm trying to remember where. I know I've been
14 introduced to at least one of them, but I really don't
15 know them. I've been at events, you know, for
16 example, the Motor City Music Foundation sponsors an
17 annual program called the Detroit Music Awards, which
18 is sort of like the local answer to the Grammys, and I
19 know they've been there. I may have been introduced
20 to them there, and so on, but certainly whatever our
21 relationship is it is not at all close.

22 Q. What experience have you had in the music industry?

23 A. Okay. Before I went into the academy, I was in
24 private practice in Chicago. I represented a number
25 of clients in the music industry, artists and some

1 local producers and record labels. Then after I
2 joined the faculty at the University of Detroit, I
3 don't particularly look for clients, but sometimes
4 through a student or mutual friend they'll come to me
5 and ask me for advice.

6 The usual scenario is a student comes up to
7 me and they've got a brother or sister or cousin or
8 boyfriend or girlfriend who is in a band, and would I
9 please give them advice, and so on. I've sort of
10 developed a routine of saying have them meet me in the
11 school cafeteria, we'll have some coffee and we'll
12 talk, and I try to explain ASCAP and BMI and some of
13 the things to them, and then inevitably they leave me
14 with a tape and it's usually somewhere between
15 mediocre and God awful, but every now and then
16 somebody with real talent has asked me to then
17 represent them. I think --

18 Q. You joined the faculty --

19 MR. BUSCH: Hold on, Glenn.

20 BY MR. POMERANTZ:

21 Q. -- at the university -- I'm sorry, you're not done?

22 MR. BUSCH: No, Glenn.

23 I want to say I don't think his question
24 was limited to your private practice, but also any
25 societies and your experience in the music industry

1 from a scholarly perspective as well.

2 THE WITNESS: Well, I've certainly written
3 about entertainment law related topics and copyright.
4 The piece on Who's Sorry Now certainly came out of the
5 music industry. I've tried to remain in contact with
6 a lot of my friends in the music industry so I can
7 stay current. I can -- you know, I go pretty
8 regularly to meetings of groups like the Copyright
9 Society of the USA, the entertainment law forum of the
10 American Bar Association, where it's a question of
11 staying up-to-date and staying current. Also I try to
12 read some of the stuff that's written in the area.

13 BY MR. POMERANTZ:

14 Q. Any other experience you have in the music industry?

15 A. In other words, have I ever worked for a record
16 company or anything like that?

17 Q. Any experience whatsoever in the music industry? Have
18 you basically given me a description of your
19 experience in the music industry or is there anything
20 more you'd like to add?

21 MR. BUSCH: Do you teach copyright or
22 anything?

23 THE WITNESS: Oh, yeah, I teach courses in
24 copyright. I teach courses in entertainment law. In
25 fact, I've broken that down into two courses. One is

1 entertainment law/film and television. The other is
2 entertainment law/music. I've certainly spoken on a
3 number of panels about the music industry. You know,
4 I'm sure other things will come to me, but the clients
5 I had before I became a professor included artist
6 producers, even one small record label in Chicago, and
7 then I've done some work since then, granted, on a
8 more selective basis, but, yeah, I've stayed in touch.

9 BY MR. POMERANTZ:

10 Q. Anything else?

11 A. Not that I can recall at the moment.

12 Q. Now you said that you were in private practice for a
13 while, and at that point in time you did represent
14 some clients in the music industry.

15 When were you in private practice?

16 A. Let's see. Graduated law school in '66. '67 and '68
17 I was basically with the Office of the Public Defender
18 in Cook County, Illinois. So, let's see, that would
19 have been '67, '68. So basically from '69 --

20 Q. Let me help you a little bit, Mr. Abrams. Mr. Abrams,
21 let me try to speed this up.

22 Your resume says you were with a law firm
23 called Abrams, Mix and London from 1969 to 1977. Is
24 that the private practice period that you were
25 referring to?

1 A. Yes, it is.

2 Q. And you stopped being in private practice then in 1977
3 and joined the University of Detroit Mercy School of
4 Law; correct?

5 A. That is correct.

6 Q. Since 1977, when you joined the law school faculty,
7 have you been involved in the negotiation or drafting
8 of any artist agreement?

9 A. Yes.

10 Q. How many?

11 A. Two or three.

12 Q. Can you identify each of those artist agreements that
13 you were involved in?

14 A. Yes. One was for a group called The Verve Pipe.
15 Another was for an artist named Gia Warner. I know
16 there was one more. I'm blocking on the name right
17 now, and then also I did some work for a little indie
18 label here in Detroit that I set up their form
19 contract for them.

20 Q. What was the name of that indie label?

21 A. Let's see, it was Chaos and then -- then Sony wanted
22 the name for some reason or other and bought the name
23 out from them and they changed it. Sue Sommers is the
24 personal involved.

25 Joel, do you know the name of her record

1 company?

2 I'd have to check. It's escaping me.

3 Q. How do you spell Sommers?

4 A. I believe it's S-o-m-m-e-r-s.

5 Q. Where is that label located?

6 A. In Detroit, maybe just -- maybe in Grosse Pointe which
7 is just the other side of the city line.

8 Q. Is it still in business?

9 A. Yes, it is.

10 Q. When did you work with that label to develop their
11 form contract?

12 A. I would say about five years ago.

13 Q. The first artist that you mentioned, was it -- was it
14 The Verve Pipe?

15 A. Yes.

16 Q. Could you spell that, please?

17 A. T-h-e V-e-r-v-e P-i-p-e.

18 Q. And who were you representing in that negotiation?

19 A. The artist.

20 Q. Can you give me the names of the artists who you were
21 working with?

22 A. The lead singer was -- and rhythm guitar was Brian
23 Vander Ark. The drummer, Donny -- gosh, I'm blocking
24 on the name. Jeff Dunning was the lead guitarist.
25 The other Vander Ark brother was the bass player.

1 Okay, let's see. Rhythm guitar, lead guitar, vocalist
2 was the rhythm guitar, bass player, drummer, that was
3 the group, and then they added a keyboard
4 percussionist later on named Doug.

5 Q. Who was the other party to the contract?

6 A. RCA records.

7 Q. What year was that?

8 A. That would have been in the late '90s.

9 Q. Do you recall the name of any of the individuals who
10 were sitting on the opposite side of the negotiation
11 table from you?

12 A. Whoever was the chief in-house counsel for RCA Records
13 at the time, and I -- I forget her name.

14 Q. And you're sure that the name of the label was RCA
15 Records?

16 A. It may have been RCA Records, Inc., or RCA, Inc., but
17 it was RCA, what everyone knows as RCA.

18 Q. What kind of music does The Verve Pipe engage in?

19 A. Rock, alternative rock.

20 Q. Do you recall what any of the points of discussion
21 were in the negotiation of The Verve Pipe contract?

22 A. There were a lot of them. Pretty much all the
23 financial terms were points of discussion. The number
24 of albums committed, what the recording funds would
25 be, mutual approval of producers, so on. There were

1 other things, too. You know, just timing issues as to
2 when things were to be delivered.

3 Q. Have you heard of something called a controlled
4 composition clause?

5 A. Oh, yes.

6 Q. What is a controlled composition clause?

7 A. Controlled composition clause is basically when a
8 record company says to the recording artist that we do
9 not want to pay full price for mechanical licenses for
10 songs you own or control or have written, so that we
11 are going to ask you to give us typically both a
12 discount on the rate of the mechanical license and a
13 limit on the number of songs per album on which we
14 have to pay mechanical royalties.

15 Q. Anything else -- strike that.

16 Do you have an understanding whether a
17 controlled composition clause is anything other than
18 what you just described?

19 MR. BUSCH: Objection to form, asked and
20 answered.

21 THE WITNESS: Well, a controlled
22 composition clause technically speaking is one of two
23 forms. One, it can be a promise to the record company
24 that mechanical licenses will be issued on certain
25 terms, and the other is an absolute issuing of the

1 The time is 2:47 and 31 seconds p.m.

2 (Recess taken at 2:47 p.m.)

3 (Back on the record at 2:52 p.m.)

4 VIDEO TECHNICIAN: Back on the record. The
5 time is 2:52 and 12 seconds p.m.

6 BY MR. POMERANTZ:

7 Q. Mr. Abrams, did The Verve Pipe contract have a
8 controlled composition clause in it?

9 A. As I recall, yes.

10 Q. Was that the subject of negotiation with RCA Records?

11 A. Yes, it was.

12 Q. What specifically do you recall discussing with RCA
13 Records regarding the controlled composition clause?

14 A. The number of compositions that would be subject to
15 the cap. We also discussed the percentage of
16 statutory that would be paid on the compositions that
17 were paid for. We also discussed whether it would be
18 based on date of when the recording was finished or
19 when the recording was distributed or when the -- the
20 individual phono records were sold. Those were the
21 primary issues we discussed.

22 Q. Do you remember any other issues regarding the
23 controlled composition clause that you discussed with
24 RCA Records in connection with The Verve Pipe
25 contract?

1 A. No, I don't.

2 Q. Did The Verve Pipe contract contain a controlled
3 composition clause that granted rights to RCA Records?

4 A. I'd have to look -- find a copy of the document and
5 look at it to tell you.

6 Q. Well, did it use a word like "is hereby licensed"?
7 Was that term in the contract?

8 A. It may have been. Without the contract in front of
9 me, I can't tell you exactly what it said.

10 Q. Did it use the term "will license"?

11 A. It may have. Again, without the contract in front of
12 me, I'm not going to be able to tell you what the
13 contract said.

14 Q. When was the last time that you looked at The Verve
15 Pipe contract?

16 A. Some years ago.

17 Q. Now you said that another contract that you
18 participated in negotiating and drafting was a
19 contract involving the artist Gia Warner; is that
20 correct?

21 A. That is correct.

22 Q. Could you spell the name of that artist, please?

23 A. G-i-a W-a-r-n-e-r.

24 Q. When did you get involved in negotiating and drafting
25 that contract?

1 document.

2 BY MR. POMERANTZ:

3 Q. You don't recall as you sit here today?

4 A. No, I do not.

5 Q. Did it use the term "is hereby licensed"?

6 MR. BUSCH: Asked and answered.

7 THE WITNESS: I'd have to look at the
8 document to tell you.

9 BY MR. POMERANTZ:

10 Q. Did it use the term "will license"?

11 A. I would have to look at the document to tell you.

12 Q. Now since 1977, have you been involved in the
13 negotiation or drafting of any agreement containing a
14 controlled composition clause other than what you've
15 already testified to today?

16 A. Yes.

17 Q. What other contracts have you been involved in
18 negotiating or drafting that contained controlled
19 composition clauses?

20 A. There was a local production company, producer, who
21 was signing a band to the -- to his production company
22 where the deal was he was going to produce some
23 records and try to sell them to a major, and, if not,
24 put them out himself, and in that event there was to
25 be a split in the publishing, and that the clause was

1 that if he had to make any concessions to a major
2 label in terms of capping or reducing the rate on the
3 compositions, then he was free to do so and they would
4 be bound by it.

5 Q. And is that what you would consider to be a controlled
6 composition clause?

7 A. No, but it implicates a possible future one. That in
8 and of itself, I don't know if that's controlled
9 composition clause. You know, in the sense that it
10 gave him power to enter into a controlled composition
11 clause if he sold or licensed the masters, in that
12 sense I suppose you could say it is; though, by itself
13 I think it's just a grant of authority.

14 Q. And the only contract you were involved in was the one
15 that gave that grant of authority?

16 A. Yes.

17 Q. What was the name of the local production company?

18 A. Work Ethic Productions.

19 Q. Where is it located?

20 A. Royal Oak, Michigan.

21 Q. What is the name of the individual or individuals who
22 you worked with there?

23 A. The principal is a guy named Nolan Mendenhall.

24 Q. And what was the name of the other party to the
25 contract?

1 A. It was actually a group of individuals under the
2 professional name of Riot in Progress.

3 Q. Do you remember the names of any of those individuals?

4 A. Yeah, the lead singer, chief songwriter was a guy
5 named Steve Hopton. The drummer was named Michael
6 Darowski. The bass player kept changing, and the
7 guitarist was John -- again, I'd have to look at the
8 documents to tell you John's last name.

9 Q. When -- was that agreement actually signed?

10 A. Yes, it was.

11 Q. When was the agreement negotiated and signed?

12 A. In the 1990s.

13 Q. Can you be any more specific?

14 A. Not without looking at the document.

15 Q. And the individual band members that you mentioned,
16 are they all residing somewhere in the Detroit area?

17 A. Steve and Mike still are. John I believe has moved to
18 Texas.

19 Q. Are there any other contracts that you have been
20 involved in the negotiation and drafting in the last
21 30 years that contain controlled composition clauses?

22 A. The last 30 years, that's basically since I've been in
23 Detroit. Not that I can think of.

24 Q. Now let me go back to the time when you were at the
25 law firm from 1969 to 1977.

1 Were you involved during that time period
2 in negotiating and drafting artist agreements that
3 contained controlled composition clauses?

4 A. Yes.

5 Q. How many?

6 A. I'm not sure.

7 Q. Can you give me an estimate?

8 MR. BUSCH: This is 30 years ago. Just do
9 your best. I mean this is not a memory test.

10 THE WITNESS: Well, I'm trying to
11 distinguish between artists I represented who already
12 had a recording contract and artists where I was asked
13 to negotiate the contract in the first place, and
14 where I was actually involved in the drafting or
15 negotiating, I would say probably somewhere between
16 three to five.

17 BY MR. POMERANTZ:

18 Q. And do you recall the names of any of those artists
19 who you were representing in the negotiation and
20 drafting of those agreements?

21 A. Yes.

22 Q. Can you give me those names, please?

23 A. One would be Tom Powers, and that was a contract with
24 Arista. One would be a band called The Flock and that
25 was a contract with Mercury Records. One would be a

1 contract for a band called J.C. Hartsfield and that
2 would have been with Mercury Records as well.

3 MR. BUSCH: Glenn, at this pace, man, we're
4 never going to get out of here by 5:30. Is this
5 really all relevant information? I mean we're talking
6 about 30 --

7 MR. POMERANTZ: Very.

8 MR. BUSCH: Okay. Keep going.

9 THE WITNESS: Those are the names I can
10 remember at the moment.

11 BY MR. POMERANTZ:

12 Q. Do -- strike that.

13 Did any of those contracts contain a
14 controlled composition clause that used the phrase "is
15 hereby licensed"?

16 A. Again, I would have to find the documents, if I still
17 have copies, and look at them to tell you.

18 Q. Did any of those contracts contain a controlled
19 composition clause that used the phrase "will
20 license"?

21 A. Once again, I would have to locate the documents, if I
22 still have them, look at them, read them to be able to
23 answer that question.

24 Q. What other experience do you have in connection with
25 the interpretation of controlled composition clauses?

1 Abrams 40-41, and let's also put in Abrams 42-43 as
2 Exhibit 256. These are your statements for services,
3 Mr. Abrams. I just want to put those in front of you
4 right now.

5 MARKED BY THE REPORTER:

6 DEPOSITION EXHIBIT NUMBERS 255-256

7 3:38 p.m.

8 Q. Mr. Abrams, do you have Exhibits 255 and 256 in front
9 of you?

10 A. Yes.

11 Q. Can you tell me what Exhibit 255 is?

12 A. Yes. It's a statement for services rendered that I
13 sent to the plaintiffs in this case.

14 Q. And can you tell me what Exhibit 256 is?

15 A. It's a statement for subsequent services rendered that
16 I sent to the plaintiffs in this case.

17 Q. And do these statements accurately reflect the time
18 you spent on this matter and the tasks that you
19 undertook?

20 A. I believe so.

21 Q. All right. So the first entry on Exhibit 255 is on
22 July 31, 2008?

23 A. Yes.

24 Q. Is that the date when you were first formally retained
25 in this matter?

1 A. It may have been that day, it may have been a day or
2 two earlier.

3 Q. Is that the date when you had the first substantive
4 conversation on this matter?

5 A. It was either that date or within a couple of days
6 prior to that.

7 Q. All right. And on July 31, you spent one-and-a-half
8 hours speaking with Mr. Busch, Mr. Levinsohn and
9 Mr. Martin and then reviewing some documents; correct?

10 A. No, that's a misstatement of what the document says.
11 What the document says is --

12 Q. All right. Then why --

13 MR. BUSCH: He's answering. He's in the
14 middle of his answer.

15 THE WITNESS: What the document says is --

16 BY MR. POMERANTZ:

17 Q. Go ahead.

18 A. -- is through Thursday, July 31st, 2008. So included
19 in that hourly summary is some conversations that may
20 have been prior to that by a couple of days or several
21 days, and there were --

22 Q. How much of that one-and-a-half hours was spent in --
23 I'm sorry, were you finished, Mr. Abrams?

24 MR. BUSCH: No, he wasn't.

25 THE WITNESS: It includes a number of

1 different telephone conversations, not just one.

2 BY MR. POMERANTZ:

3 Q. How much of that hour-and-a-half was spent in the
4 telephone conversations compared to the review of
5 documents?

6 A. Let's see. I would say half to two-thirds was review
7 of the documents.

8 Q. Do you recall what the initial documents were that
9 were provided to you by Mr. Martin?

10 A. Yes, he provided me with a copy of the license for
11 Lose Yourself. He provided me with copies of some
12 other proposed licenses that weren't entered into, and
13 he provided me with a copy of one of the -- I think it
14 was the original F.B.T./Aftermath agreement.

15 Q. Do you recall what you discussed with Mr. Busch,
16 Mr. Levinsohn and Mr. Martin in the conversations that
17 occurred either just prior to July 31 or on July 31?

18 A. Not the precise words, but the gist of the
19 conversation was the issue in the case was whether
20 Joel's companies or the companies he manages, Eight
21 Mile Style and Martin Affiliated, should be licensing
22 Apple directly for their permanent digital downloads.

23 Q. Anything else you recall being discussed?

24 A. My hourly rate, what kind of time pressure this
25 involved, that there were two cases and I was only to

1 be involved in this one, so on.

2 Q. By the way, have you ever negotiated an agreement with
3 Apple?

4 A. No.

5 Q. Have you ever negotiated or drafted an agreement with
6 any provider of music on-line?

7 A. No.

8 Q. Prior to this engagement had you ever reviewed any
9 contract between Apple and any record company?

10 A. No.

11 Q. Prior to this engagement, had you ever reviewed an
12 agreement between any record company and any on-line
13 digital provider?

14 A. No.

15 Q. Then according -- I'm back on Exhibit 255. Then from
16 Friday through Sunday, August 1 -- from Friday, August
17 1 through Sunday, August 10, you had another half hour
18 of conversations and e-mailing on this matter;
19 correct?

20 A. Yes, that's what I billed for.

21 Q. All right. And do you recall what was discussed
22 during that time period?

23 A. I think it was mostly about timing, getting documents,
24 things of that nature. If it had been -- if it had
25 been very substantive it wouldn't have been quite so

1 and working on the draft expert report?

2 A. The great majority.

3 Q. Do you recall approximately what time of the day on
4 August 11 you began working on this matter?

5 A. Probably around nine o'clock in the morning.

6 Q. Do you recall who prepared the first draft of the
7 expert report?

8 A. Yes. The prior phone conversations prior to that date
9 were all of a sudden I found out that the expert
10 report was like due, you know, tomorrow or the next
11 day. I had some general conversation with Mr. Busch
12 and Mr. Guilford about what the expert report should
13 contain, and in the interest of time I think I
14 suggested to them that -- or they suggested to me that
15 they would do a first draft and send it on to me and I
16 would go over it, modify it, and take it from there,
17 and we, you know, worked towards getting an expert
18 report done.

19 Q. So you got the first draft of the expert report from
20 Mr. Busch; correct?

21 A. Yes.

22 Q. All right. Let me ask if we could have Abrams 74
23 marked as Exhibit 257, please.

24 VIDEO TECHNICIAN: Would this be a good
25 time to change videotape?

1 composition clause?

2 A. I'd have to go look at the forms and see what they
3 said.

4 Q. As you sit here today, you're not sure?

5 A. As I sit here today, I'm not sure.

6 Q. Do any of the controlled composition clauses that
7 you've been involved in negotiating and drafting use
8 the phrase "will license"?

9 A. I'd have to go back and look at the clauses.

10 MR. BUSCH: All of this has been asked and
11 answered at the beginning of this deposition. I
12 object to it as asked and answered.

13 BY MR. POMERANTZ:

14 Q. Are you certain, Mr. Abrams, that you've ever read a
15 contract that uses the phrase "will license" in a
16 controlled composition clause other than what you've
17 read in this case?

18 A. Am I 100 percent dead certain? No.

19 Q. Did you read Mr. Paterno's deposition transcript for
20 the first time before or after you signed the expert
21 report in this case?

22 A. No, I'm not sure. Let me --

23 Q. Let me see if I can refresh your recollection.

24 A. You know, there's something here which can clarify
25 that for me.

1 Q. Yeah, look at Exhibit 262, Mr. Abrams.

2 A. Hold on a minute. I'm trying to get the answer to
3 your question.

4 I did not list it in Exhibit A attached to
5 my expert report, so I probably didn't read it until
6 after I had submitted the expert report.

7 Q. All right. If you'll look at Exhibit 262 in front of
8 you.

9 A. Wait a minute. Let me find it.

10 262, okay.

11 Q. And you see that's an e-mail from Mr. Guilford to you
12 on August 13 that is attaching the Paterno deposition
13 transcript; do you see that?

14 A. Yes, I do.

15 Q. And August 13 is the day after you signed your expert
16 report; correct?

17 A. That is correct.

18 Q. So is it fair to say that the first time you even
19 received the Paterno deposition transcript was the day
20 after you signed the report?

21 A. Yes.

22 Q. When did you receive for the first time the deposition
23 transcript of Mr. Martin?

24 A. I'm not sure.

25 Q. Okay. Look at Exhibit 260.

1 BY MR. POMERANTZ:

2 Q. All right. Do you see -- let me go down to your
3 conclusions at the bottom of page one of your report,
4 and we'll go to paragraph number one there first.

5 Do you see that?

6 A. Yes.

7 Q. All right. And in the first sentence you refer to the
8 '98 and 2003 agreements, and then you put in quotes
9 the words "will license."

10 Do you see that?

11 A. Yes.

12 Q. What is your basis for your understanding of what the
13 words "will license" mean in paragraph 6(a) of the
14 1998 contract?

15 A. That because will is future tense, it's something they
16 will do in the future.

17 VIDEO TECHNICIAN: Mr. Abrams, your mike
18 fell off.

19 THE WITNESS: Oh, okay.

20 BY MR. POMERANTZ:

21 Q. All right. And then you see that you put the words
22 "distributors/licensees" in quotes in the same
23 sentence?

24 A. Mm-hmm, yes.

25 Q. Is that yes?

1 product, that the entire controlled composition clause
2 is vitiated or that just that rate is vitiated?

3 A. The application of the clause to digital downloads is
4 vitiated. The application of the clause to let's say
5 something like, you know, Aftermath manufacturing the
6 records is not.

7 Q. What is the support for your position that the entire
8 clause is vitiated with respect to any digital
9 products?

10 MR. BUSCH: Asked and answered.

11 THE WITNESS: The support is, again, the
12 section of the statute and the portion of the Senate
13 Report that I cited.

14 BY MR. POMERANTZ:

15 Q. All right. Could you turn to page three of your
16 report.

17 At the very top you're discussing paragraph
18 6(a) and you state the following: This is not a,
19 quote, self-effectuating, close quote, controlled
20 composition clause as that term is known and
21 understood within the music industry and under
22 copyright.

23 Do you see that?

24 A. Yes.

25 Q. Okay. In that phrase, that term, are you referring to

1 the term "self-effectuating"?

2 A. Yes.

3 Q. Okay. And you put the term "self-effectuating" in
4 quotes.

5 Why did you put that in quotes?

6 A. Because it was the term that was being used in the
7 depositions.

8 Q. Had you ever heard the term "self-effectuating"
9 applied to controlled composition clauses before you
10 got involved in this case?

11 A. I've heard the term used before. Whether or not it
12 was in connection with the controlled composition
13 clause, I cannot say.

14 Q. Well, as you sit here today can you recall a single
15 time when you heard the expression "self-effectuating"
16 used in connection with controlled composition
17 clauses?

18 A. Other than in the deposition transcripts and in the
19 conversations with different people about this case, I
20 cannot say that I've heard it used in connection with
21 the controlled composition clause. I don't -- I have
22 I don't remember.

23 Q. Self-effectuating --

24 A. If I have --

25 Q. I'm sorry, let me start over again.

1 A. If I have heard it, I don't remember.

2 Q. When you say in your report that the term
3 "self-effectuating" has a known and understood meaning
4 within the music industry, what did you mean that by?

5 A. That basically I would think that music industry
6 lawyers, copyright types, music publishers, would
7 understand that. I did not mean to say, you know,
8 that the road crew on, you know, some itinerant rock
9 band would understand it.

10 Q. Well, if you've never heard the term
11 "self-effectuating" applied to controlled composition
12 clauses before this case, why do you think that that
13 term is known and understood within the music industry
14 in that context?

15 A. Because self-effectuating is a term that is fairly
16 regularly used in legal discourse to apply to things
17 like contracts, trusts, wills, assignments,
18 franchising, licenses, so I would --

19 Q. Have you ever used the term "self-effectuating" in
20 anything that you've written?

21 A. No.

22 Q. Now you say that the term "self-effectuating" is also
23 a term that is known and understood under copyright.
24 What were you referring to there?

25 A. For example, in copyright transfers sometimes there

1 are an agreement and then a separate transfer
2 document. Sometimes the transfer is built right into
3 the agreement. It's the difference between "I hereby
4 transfer" and "I will transfer."

5 Q. Have you ever seen the term "self-effectuating" used
6 in any copyright publication describing anything in
7 the copyright business?

8 A. Not off the top of my head.

9 Q. All right. The next sentence says: Self-effectuating
10 controlled composition clauses will say that the
11 controlled compositions are hereby licensed.

12 Do you see that?

13 A. Yes.

14 Q. What's the basis of that opinion?

15 A. Well, for a clause to be self-effectuating or to use a
16 couple of synonyms, self-fulfilling, self-enforcing,
17 you would say something like "I hereby license" or "I
18 license." You would not say "I will license." You
19 would not put it in the future tense.

20 Q. What other terminology do you think would satisfy your
21 standard as a self-effectuating license?

22 A. If they had said "I hereby license" or "we hereby
23 license" or even use the -- left out the word "hereby"
24 and said "we license."

25 Q. How about if it says that you and the artist grant an

1 Q. Can the licensing record label license the composition
2 to the third party licensee under the controlled
3 composition clause in the contract with the artist?

4 MR. BUSCH: Object to form, incomplete
5 hypothetical, vague and ambiguous, calls for a legal
6 conclusion, and you're asking him a question about an
7 unknown contract with unknown terms between unknown
8 parties, and I object to the -- I object to it.

9 THE WITNESS: Well, the basic point,
10 because you've got to read this in context with the
11 both preceding and subsequent sentences, is that these
12 clauses in terms of being a license in and of
13 themselves do not apply to unaffiliated third parties.
14 The practice of the industry has been these
15 unaffiliated third parties must get separate
16 mechanical licenses.

17 BY MR. POMERANTZ:

18 Q. What's your basis of your knowledge about that
19 particular practice in the industry?

20 A. From reading about it, from talking to people.

21 Q. Could you turn to the top of page four of your report?

22 A. Mm-hmm.

23 Q. At the top of that page, you have clauses one through
24 five.

25 Do you see that?

1 BY MR. POMERANTZ:

2 Q. Did you do anything as part of your engagement to
3 investigate any of the industry practices and customs
4 that you referred to in this report?

5 A. Yes. I spoke with --

6 Q. What did you do?

7 A. I spoke with a number of people, mostly lawyers, but
8 not entirely, and asked them, you know, what their
9 understanding was.

10 Q. When did you do that?

11 A. Late July, early August. I'm not sure of the exact
12 dates, but when it first became clear to me what the
13 issue was, there were several people I called who I
14 consider extremely knowledgeable or experienced and
15 asked them.

16 Q. Are any of those conversations reflected on your time
17 statements?

18 MR. BUSCH: Objection. That document
19 speaks for itself.

20 THE WITNESS: I don't think so.

21 BY MR. POMERANTZ:

22 Q. Why not?

23 A. Because I didn't feel that that was appropriate to
24 bill the client for. I mean I --

25 Q. Why?

1 A. Just sort of a -- a gut feeling. I don't -- I have
2 the luxury of not having to follow the billing rules
3 of, you know, a law firm, and when I call a friend --

4 Q. Who did --

5 A. -- and we talk, you know, how are your kids, how's
6 your family, blah, blah, blah, by the way, I have a
7 question, and that takes about two, three minutes, you
8 know, let it slide. God knows I've let slide a lot of
9 time on this case.

10 Q. How many conversations of two or three minutes did you
11 have as part of this engagement?

12 A. Several. I don't know the exact number.

13 Q. Who did you speak with?

14 A. One person was Mike Milom. He's a music attorney in
15 Nashville, Tennessee. Another was Don Engel. He's a
16 music attorney out in California. Another was a guy
17 named Bob Paletz who had worked for K-tel in terms of
18 putting their compilation albums together, and also
19 had worked for both Sony and Capital in terms of
20 trying to get their stuff placed on things like
21 compilation albums and so on and so forth. John
22 Luneau in New York. Noel Silverman in New York. Mike
23 Novak here in Detroit. There may have been others.
24 Some of the conversations were short.

25 Q. Are all of these people --

1 EIGHT MILE STYLE, LLC and
2 MARTIN AFFILIATED, LLC,
3 Plaintiff,

4 vs.

Case No. 2:07-CV-13164

5 APPLE COMPUTER, INC.
6 and AFTERMATH RECORDS d/b/a
7 AFTERMATH ENTERTAINMENT,
8 Defendants.

9
10
11 VERIFICATION OF DEPONENT
12

13 I, having read the foregoing deposition
14 consisting of my testimony at the aforementioned time
15 and place, do hereby attest to the correctness and
16 truthfulness of the transcript.
17
18

19 _____
20 HOWARD B. ABRAMS

21 Dated:
22
23
24
25

CERTIFICATE OF NOTARY

STATE OF MICHIGAN)

) SS

COUNTY OF OAKLAND)

I, DENISE M. KIZY, a Notary Public in
and for the above county and state, do hereby
certify that the above deposition was taken before
me at the time and place hereinbefore set forth;
that the witness was by me first duly sworn to
testify to the truth, and nothing but the truth;
that the foregoing questions asked and answers made
by the witness were duly recorded by me
stenographically and reduced to computer
transcription; that this is a true, full and correct
transcript of my stenographic notes so taken; and
that I am not related to, nor of counsel to either
party nor interested in the event of this cause.

DENISE M. KIZY, CSR-2466

Notary Public,

Oakland County, Michigan

My Commission expires: July 28, 2013