

**EXHIBIT A**

**TO**

**DECLARATION OF MARC GUILFORD**

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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F.B.T. PRODUCTIONS, LLC, )  
and EM2M, LLC, )  
Plaintiffs,)

v. ) Case No. CV 07-03314  
AFTERMATH RECORDS doing ) PSG (MANx)  
business as AFTERMATH )  
ENTERTAINMENT; INTERSCOPE )  
RECORDS; UMG RECORDINGS, )  
INC., and ARY, INC., )  
Defendants.)

-----x  
UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

-----x  
EIGHT MILE STYLE, LLC and )  
MARTIN AFFILIATED, LLC, )  
Plaintiffs,)

vs. ) Case No. 2:07-cv-13164  
APPLE COMPUTER, INC. and ) Hon. Anna Diggs Taylor  
AFTERMATH RECORDS d/b/a )  
AFTERMATH ENTERTAINMENT, )  
Defendants.)

-----x  
July 15, 2008  
10:31 a.m.

Deposition of MARK A. LEVINSOHN,  
held at the law offices of Jenner & Block, 919  
Third Avenue, New York, New York, pursuant to  
subpoena, before Donald R. DePew, an RPR, CRR and  
Notary Public within and for the State of  
New York.

1 Mark A. Levinsohn

12:31:55 2 calls for a legal opinion and it calls for a  
12:31:57 3 legal conclusion.

12:32:01 4 A. It is generally a provision contained  
12:32:06 5 within a recording agreement that speaks to  
12:32:14 6 certain terms that the record company would like  
12:32:28 7 to have apply to the mechanical licenses that it  
12:32:37 8 obtains in order to manufacture and distribute the  
12:32:48 9 recordings by the artist who is being signed to  
12:32:52 10 the label pursuant to that recording agreement.

12:32:58 11 Q. Do controlled composition clauses  
12:32:59 12 typically grant a license to use the compositions  
12:33:04 13 in those recordings?

12:33:06 14 MR. BUSCH: Objection to form, lack of  
12:33:08 15 foundation, and it calls for a legal  
12:33:11 16 conclusion, and it is vague and ambiguous as  
12:33:14 17 well.

12:33:16 18 MR. POMERANTZ: Let me rephrase the  
12:33:17 19 question.

12:33:18 20 Q. Does a controlled composition clause  
12:33:19 21 typically grant a license for the compositions?

12:33:22 22 MR. BUSCH: The same objections.

12:33:26 23 A. In some cases, yes.

12:33:30 24 Q. Well, you said you have drafted  
12:33:35 25 hundreds of recording agreements, correct?

1 Mark A. Levinsohn

12:34:53 2 because in all of those cases the company that I  
12:34:59 3 represented also was acquiring the music  
12:35:08 4 publishing rights, ownership in the underlying  
12:35:12 5 musical compositions from the artist, and also  
12:35:23 6 separately from the cowriters or coproducers of  
12:35:29 7 that artist's recordings. And as such controlled  
12:35:36 8 the ownership and the administration of the  
12:35:38 9 publishing rights and would be the party to be  
12:35:47 10 able in those cases to grant those licenses.

12:35:55 11 Q. So in those situations why did you have  
12:35:57 12 a controlled composition clause in the recording  
12:36:00 13 agreement?

12:36:01 14 MR. BUSCH: Note my objection. It  
12:36:02 15 calls for a legal conclusion.

12:36:03 16 And with respect to all of these  
12:36:05 17 questions -- go ahead.

12:36:07 18 Just note my objection.

12:36:09 19 A. As I've said, the controlled  
12:36:12 20 compositions clause established a -- certain  
12:36:21 21 conditions and terms, particularly with regard to  
12:36:29 22 rates of mechanical royalties and caps on  
12:36:35 23 mechanical royalties.

12:36:40 24 Record companies in an attempt to  
12:36:42 25 mitigate the costs that they have, relative costs

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12:39:51 2

MR. BUSCH: Again, note my objection.

12:39:53 3

You're not distinguishing between

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physical and digital.

12:39:56 5

Your question is vague and ambiguous.

12:39:58 6

It calls for a legal conclusion. I object to

12:40:00 7

the form of the question.

12:40:03 8

A. Um...

12:40:06 9

MR. BUSCH: And it assumes facts not in

12:40:07 10

evidence.

12:40:10 11

A. Without having agreements that I may

12:40:11 12

have worked on in front of me it's difficult to

12:40:14 13

tell you precisely what language I used. But I

12:40:25 14

believe that the language that I would have

12:40:29 15

used -- pardon me -- would say that the artist

12:40:37 16

hereby licenses to the record company the right to

12:40:42 17

mechanically reproduce the compositions written or

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composed by the writer. Obviously to the extent

12:40:56 19

only that the writer involved is the artist and to

12:40:59 20

the extent that the artist involved is not

12:41:00 21

assigned to a publishing company who controls his

12:41:06 22

or her publishing and would have the exclusive

12:41:10 23

authority to grant such a license.

12:41:14 24

Q. As you sit here today, can you identify

12:41:17 25

any recording agreements that you worked on for

1 Mark A. Levinsohn

12:41:20 2 any of your record company clients in which you  
12:41:24 3 believe that the artist granted a license through  
12:41:28 4 the controlled composition clause?

12:41:30 5 MR. BUSCH: The same objection, no  
12:41:32 6 definition of what type of license you are  
12:41:34 7 talking about, whether for digital or for  
12:41:36 8 physical. It's vague and ambiguous, it calls  
12:41:38 9 for a legal conclusion. I object to the form  
12:41:40 10 of the question.

12:41:45 11 A. No.

12:41:46 12 Q. Have you worked on any agreements  
12:41:47 13 within the last month?

12:41:49 14 A. No.

12:41:58 15 Q. Have you negotiated and drafted a  
12:42:00 16 recording agreement for any of your record company  
12:42:03 17 clients in which you believe that the record  
12:42:07 18 company agreed to share net receipts on a 50/50  
12:42:15 19 basis for permanent downloads?

12:42:18 20 MR. BUSCH: Just note my objection.  
12:42:21 21 Object to form. It calls for a legal  
12:42:23 22 conclusion. It assumes facts not in  
12:42:25 23 evidence, namely that he's made that  
12:42:28 24 analysis. And it may also implicate  
12:42:30 25 attorney-client privilege to the extent this

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18:22:16

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the attorney work product privilege regarding

18:22:19

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his mental impressions with respect to any

18:22:22

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questions you ask about what provisions mean

18:22:25

5

what.

18:22:28

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So I'm just letting you know,

18:22:30

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Mr. Pomerantz, to shortcut this. And I'm

18:22:33

8

happy to address this with the court later,

18:22:35

9

if you so choose.

18:22:37 10

But our view of this is that he can

18:22:39 11

testify about what he communicated to

18:22:40 12

Universal. He's already testified about

18:22:43 13

various things that he has said, and actions

18:22:46 14

he has taken, and conversations he has had

18:22:50 15

that are not privileged, and his activities

18:22:59 16

in general.

18:23:00 17

But beyond that, when he gets to his

18:23:02 18

mental opinions and conclusions, we are going

18:23:05 19

to instruct him not to answer. And I ask you

18:23:09 20

to move on.

18:23:12 21

Q. Could you get Exhibit 10 in front of

18:23:14 22

you and turn to page 8.

18:23:26 23

I'm sorry -- yeah, page 8, I'm sorry.

18:23:29 24

Do you see paragraph 6, "Mechanical

18:23:32 25

Royalties"?

1 Mark A. Levinsohn

18:23:33 2 A. Yes.

18:23:33 3 Q. And you see in the first sentence there  
18:23:35 4 it states, and I'll delete the parenthetical, "All  
18:23:38 5 Controlled Compositions will be licensed to  
18:23:41 6 Aftermath and its distributors/licensees," and  
18:23:45 7 then it goes on.

18:23:47 8 Do you see that?

18:23:48 9 A. Yes.

18:23:49 10 Q. Have you ever drafted a controlled  
18:23:52 11 composition clause which has the language will be  
18:23:55 12 licensed in it?

18:23:59 13 A. I don't believe so.

18:24:08 14 Q. Have you ever been involved in  
18:24:10 15 negotiating a controlled composition clause which  
18:24:12 16 has the language will be licensed in it?

18:24:15 17 A. I don't recall.

18:24:16 18 Q. Have you ever had a conversation with  
18:24:17 19 anyone at -- strike that.

18:24:21 20 Have you ever had any conversation with  
18:24:24 21 anyone that was involved in the drafting or  
18:24:28 22 negotiation of either the 1998 or 2003 agreement  
18:24:32 23 about what the phrase will be licensed was  
18:24:36 24 intended to mean?

18:24:48 25 A. To the extent Rand Hoffman may have



1 Mark A. Levinsohn

18:24:51 2 been involved in the negotiation or the drafting  
18:24:53 3 of the 1998 or 2003 agreement, I can testify about  
18:25:01 4 conversations that I had with Rand Hoffman.

18:25:06 5 Q. And you've already testified to that  
18:25:08 6 conversation, correct?

18:25:12 7 A. It's been a long day and I -- you'll  
18:25:15 8 know better than I do whether I have testified  
18:25:18 9 about conversations with Rand Hoffman on the  
18:25:22 10 mechanical royalties paragraph.

18:25:24 11 Q. Okay. Well, I want to make sure we  
18:25:26 12 have a complete record so you don't come into  
18:25:28 13 trial and say something different. So I'm going  
18:25:30 14 to go back over it since you don't remember your  
18:25:32 15 testimony. I do believe we've had some  
18:25:35 16 questioning on it, but I may be wrong.

18:25:40 17 Did you have a conversation with  
18:25:41 18 Mr. Hoffman about what the phrase will be licensed  
18:25:45 19 means in the agreements between F.B.T. and  
18:25:50 20 Aftermath?

18:25:53 21 A. The conversation that I had with  
18:25:55 22 Mr. Hoffman concerned that Universal knew that  
18:26:11 23 Joel believed that the mechanical royalties  
18:26:15 24 paragraph did not cover digital reproductions and  
18:26:24 25 that Joel objected to the digital distribution of

1 Mark A. Levinsohn

18:26:34 2 his song catalogue in the form of digital  
18:26:42 3 downloads and other digital distribution.

18:26:47 4 And that with the exception of the  
18:26:49 5 Lose Yourself license that he was willing to enter  
18:26:54 6 into as an experiment, and with the exception of  
18:26:59 7 the mastertones agreement that the paragraph 6,  
18:27:05 8 "Mechanical Royalties" paragraph, did not cover  
18:27:12 9 digital rights.

18:27:15 10 Q. And you testified that Mr. Hoffman  
18:27:17 11 disagreed with you on that, correct?

18:27:18 12 A. Correct.

18:27:19 13 Oh, that's right. So then I -- you  
18:27:22 14 remind me that I did testify about that.

18:27:27 15 Q. Did you explain to Mr. Hoffman why you  
18:27:29 16 thought that the controlled composition clause in  
18:27:34 17 the agreements did not apply to digital  
18:27:40 18 distribution of the compositions?

18:27:44 19 MR. BUSCH: Just objection to the  
18:27:45 20 extent you mischaracterized his testimony.

18:27:47 21 I believe Mr. Levinsohn said he was  
18:27:51 22 communicating Joel's position to Mr. Hoffman.

18:27:55 23 Q. Did you explain to Mr. Hoffman why  
18:27:57 24 Mr. Martin believed that the controlled  
18:28:01 25 composition clause did not apply to the digital