

UNITED STATES DISTRICT COURT  
FOR 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

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

Defendants.

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**PLAINTIFFS' MOTION TO RESET TRIAL DATES**

Plaintiffs Eight Mile Style LLC ("Eight Mile") and Martin Affiliated LLC ("Martin") (collectively, "Plaintiffs") respectfully request that the Court reset the trial date in this matter from <sup>Doc. 29</sup>October 14, 2008 to an available date on or after October 28, 2008. Plaintiffs make this request because of unavoidable scheduling conflicts in other cases involving Plaintiff's counsel in the United States District Courts for the Middle District of Tennessee and the Central District of California.

**BACKGROUND**

**I. The *Bridgeport* Case**

Lead counsel for Plaintiffs, Richard S. Busch, is also lead counsel for the plaintiffs in the case of *Bridgeport Music Inc. v. Robert Hill Music, et al.*, Case No. 3:05-

00377, in the Middle District of Tennessee (hereinafter, the "*Bridgeport*" case). (*See* Declaration of Richard S. Busch, "Busch Decl.," ¶ 3.) Mr. Busch will have exclusive responsibility for handling the trial of this action because defendant Aftermath Records, d/b/a Aftermath Entertainment (Aftermath) insisted upon the withdrawal of plaintiffs' co-counsel Honigman Miller Schwartz and Cohn LLP (Honigman) because Honigman is representing Aftermath in a completely unrelated matter in state court, even though (a) Aftermath intervened in this action voluntarily and knew about Honigman's prior representation in the unrelated matter and so the conflict created was a thrust-upon conflict, (b) plaintiffs have asserted no claims against Aftermath in this action and (c) Honigman's representation of Aftermath in the state court action was, as mentioned, absolutely and completely unrelated to this action. Thus, it is Mr. Busch who will have to bear the lead responsibility for conducting the trial of this matter.

On January 22, 2008, counsel for Defendant Robert Hill Music filed a motion to continue the trial in Tennessee from May 13, 2008, to the earliest available date after August 31, 2008. (*Id.* ¶ 4, Exhibit A.) The grounds for the motion were that the former principal who operated and controlled Robert Hill Music was scheduled to be released from federal prison in August 2008. (*Id.*) In the motion, Robert Hill Music noted that due to the trial schedule in the case of *F.B.T. Productions, LLC, et. al. v. Aftermath Records et. al.*, CV 07-3314, in the Central District of California (hereinafter, the "*F.B.T.*" case, *see* Part II *infra*), along with a subsequent trial schedule in the case before this Court, plaintiffs requested that trial be continued to mid-July to early August. (*Id.*)

The court granted Robert Hill's motion on January 23, 2008, in part, and continued that trial to August 26, 2008, with the pretrial conference on August 18, 2008.

(See Busch Decl. ¶ 4, Exhibit B.) Bridgeport immediately filed a motion advising the court of the August 18, 2008 pretrial conference and the September 2, 2008 trial date set in the *F.B.T.* case, as well as the September 18, 2008 pretrial conference and October 14, 2008 trial date set by this Court, and requested trial be reset to an available date after November 5, 2008. (See *Id.* ¶ 5, Exhibit C.)

On January 24, 2008, the court granted in part and denied in part Bridgeport's motion. (See Busch Decl. ¶ 6, Exhibit D.) The court found a proposed trial date in November 2008 would be unacceptable, and reset trial to August 19, 2008 beginning at 9:00 a.m. in Nashville. (*Id.*)

Mediation in the Middle District of Tennessee has been unsuccessful, there are no pending motions for summary judgment that could dispose of the matter, and therefore it is likely that the action will proceed to trial. (Busch Decl. ¶ 7.) Trial is estimated to take as many as ten days, which would mean a concluding date of September 3, 2008. (*Id.* at ¶ 8.)

## II. The *F.B.T.* Case

Mr. Busch is also lead counsel for plaintiffs in the case of *F.B.T. Productions, LLC, et. al. v. Aftermath Records et. al.*, CV 07-3314, in the Central District of California (hereinafter, the "*F.B.T.*" case). (Busch Decl. ¶ 9.) Trial in that case is currently set for September 2, 2008. (*Id.*) Counsel for the defendants in the *F.B.T.* case also represents the Defendants in the case before this Court. (*Id.*)

Due to the conflict with the *Bridgeport* case, plaintiffs in the *F.B.T.* case are filing (contemporaneously with this motion) a motion to reset the trial date in that case from September 2, 2008 to a date on or after September 9, 2008. (Busch Decl. ¶ 10.) One of

the grounds for defendants' opposition to this motion is the mandatory pretrial conference in this case set for September 18, 2008. (*Id.*) Defendants also asserted that since trial in this case is set for October 14, 2008, under the proposed revised schedule in the *F.B.T.* case there would supposedly be no meaningful opportunity for counsel (who are the same in both cases) to transition from one trial site to another and to prepare for trial, and the same back-to-back trial schedule would be, allegedly, inconvenient for the witnesses. (*Id.*)

On February 12, 2008, plaintiffs' counsel sought the concurrence of defendants' counsel Kelly Klaus in the relief requested in this motion. Concurrence was not forthcoming, and so it is necessary to file this motion.

WHEREFORE, plaintiffs request that this Court:

- A. Grant their motion;
- B. Reset the trial of this matter from October 14, 2008 to a date on or after October 28, 2008, with a corresponding adjustment of the final pretrial date; and
- C. Grant any other appropriate relief.

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**MEMORANDUM IN SUPPORT OF PLAINTIFFS'  
MOTION TO RESET TRIAL DATES**

As explained above, the Middle District of Tennessee has set trial in the Bridgeport case for August 19, 2008, which may last until September 3, 2008. Although Plaintiffs have informed the Middle District of Tennessee of the conflicts that this date would cause with the trial schedules in this case and in the *F.B.T.* case, that court has refused to grant sufficient relief. Therefore, Plaintiffs were forced to ask the California court to reset its trial date from September 2, 2008 to a date on or after September 9, 2008.

Currently, this Court has set trial for October 14, 2008, with a pretrial conference on September 18, 2008. (Busch Decl. ¶ 2.) In order to avoid the conflict with the pretrial

conference in this case, and to alleviate Defendants' concerns regarding their ability to prepare for trial in this case, Plaintiffs respectfully request this Court reset the date of the pretrial conference and the trial date in this case by two weeks, allowing both parties the same amount of time to prepare for trial as originally scheduled. (*Id.* ¶ 11.)

Accordingly, Plaintiffs respectfully request that the Court reset the trial date in this matter to an available date on or after October 28, 2008, with other pretrial dates being reset accordingly.

Dated: February 26, 2008

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### **CERTIFICATE OF SERVICE**

I hereby certify that on February 26, 2008, I electronically filed the foregoing: with the clerk of the court using the ECF system which will send notification of such filing to all counsel of record.

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