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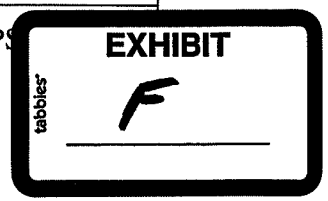
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 16 Attorneys for Plaintiffs F.B.T. Productions, LLC and Em2M, LLC

17 **UNITED STATES DISTRICT COURT**
 18 **CENTRAL DISTRICT OF CALIFORNIA**

19 F.B.T. PRODUCTIONS, LLC, et	)	Case No. CV 07-03314 PSG (MANx)
20 al.,	)	MEMORANDUM OF POINTS
21 Plaintiffs,	)	AND AUTHORITIES IN
22 v.	)	SUPPORT OF PLAINTIFFS'
23 AFTERMATH RECORDS doing	)	MOTION TO RESET TRIAL
24 business as AFTERMATH	)	DATE
25 ENTERTAINMENT, et al.,	)	JURY DEMAND
26 Defendants.	)	Date: March 24, 2008
27	)	Time: 1:30 p.m.
28	)	Courtroom: 790 – Roybal
	)	Hon. Gutierrez

CV 07-03314 PS



1 Plaintiffs F.B.T. Productions, LLC (“F.B.T.”) and Em2M, LLC (“Em2M”)
2 (collectively, “Plaintiffs”) respectfully request that the Court reset the trial date in
3 this matter from September 2, 2008 to the first available date on or after September
4 9, 2008. Plaintiffs make this request because of a conflicting trial date in the
5 United States District Court for the Middle District of Tennessee.
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8 BACKGROUND

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10 Lead counsel for Plaintiffs, Richard S. Busch, is also lead counsel for the
11 plaintiffs in the case of *Bridgeport Music Inc. v. Robert Hill Music, et al.*, Case No.
12 3:05-00377, in the Middle District of Tennessee (hereinafter, the “*Bridgeport*”
13 case). (See Declaration of Richard S. Busch, “Busch Decl.,” ¶ 3.) UMG
14 Recordings, one of the Defendants in the instant case, is also a Defendant in the
15 *Bridgeport* case. (*Id.*)
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17

18 On January 22, 2008, counsel for Defendant Robert Hill Music filed a
19 motion to continue the trial from May 13, 2008, to the earliest available date after
20 August 31, 2008. (*Id.* ¶ 4, Exhibit A.) The grounds for the motion were that the
21 former principal who operated and controlled Robert Hill Music was scheduled to
22 be released from federal prison in August 2008. (*Id.*) In the motion, Robert Hill
23 Music noted that due the scheduling order in this case, along with a subsequent
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1 trial currently set for October 14, 2008 in the Eastern District of Michigan,¹
2 Bridgeport requested that trial be continued to mid-July to early August. (*Id.*)
3

4 The court granted Robert Hill's motion on January 23, 2008, and continued
5 that trial to August 26, 2008, with the pretrial conference on August 18, 2008. (*See*
6 *Busch Decl.* ¶ 4, Exhibit B.) Bridgeport immediately filed a motion advising the
7 court of the August 18, 2008 pretrial conference and the September 2, 2008 trial
8 date set by this Court, as well as the trial date in the Eastern District of Michigan
9 (*see Note 1 supra*), and requested trial be reset to an available date after November
10 5, 2008. (*See Busch Decl.* ¶ 5, Exhibit C.)
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14 On January 24, 2008, the court granted in part and denied in part
15 Bridgeport's motion. (*See Busch Decl.* ¶ 6, Exhibit D.) The court found a
16 proposed trial date in November 2008 would be unacceptable, and reset trial to
17 August 19, 2008 beginning at 9:00 a.m. in Nashville. (*Id.*) Trial is estimated to
18 take as many as ten days, which would mean a concluding date of September 3,
19 2008. (*Id.* at ¶ 8.)
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21

22 ARGUMENT

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24 Currently, this Court has set trial for September 2, 2008, with a pretrial
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26
27 ¹ Mr. Busch is also lead counsel for the plaintiffs in the case of *Eight Mile Style, LLC v.*
28 *Apple Computer, Inc.* in the Eastern District of Michigan (hereinafter the "*Eight Mile Style*"
action), which is currently set for trial on October 14, 2008, and the pretrial conference is set for
September 18, 2008. (*See Busch Decl.*, ¶ 10, Exhibit E.) Lead counsel for Defendants is also
counsel for the defendants in the *Eight Mile Style* action.

1 conference on August 18, 2008. (Busch Decl. ¶ 2.) As explained above, the
2 Middle District of Tennessee has set trial in the *Bridgeport* case for August 19,
3 2008, which may last until September 3, 2008. Lead counsel for plaintiffs cannot
4 attend a scheduling conference in this Court on August 18, 2008, and appear for
5 trial in Nashville by 9:00 a.m. the following morning. (*Id.* at ¶ 9.) Further, if trial
6 in the *Bridgeport* case lasts as long as estimated – ten days – there will be a direct
7 conflict with the commencement of trial in this Court. (*Id.*) Although Plaintiffs
8 have informed the Middle District of Tennessee of this conflict (even attaching a
9 copy of this Court’s scheduling order to its motion), that court has refused to grant
10 relief.
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15 Plaintiffs have conferred with counsel for Defendants regarding this issue.
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17 Defendants object to Plaintiffs’ filing this motion on two grounds. First,
18 Defendants believe that Plaintiffs’ motion is premature and would rather notify the
19 Court at a later date whether the Plaintiffs’ case in the Middle District of
20 Tennessee will proceed to trial as currently scheduled. Second, Defendants oppose
21 the motion because the postponing the trial even for as little as two weeks would
22 according to defendants, supposedly create a conflict with the *Eight Mile Style*
23 case, which is set for an October 14, 2008 trial. Defendants claim there would be
24 no meaningful opportunity for counsel (who are the same in both cases) to
25 transition from one trial site to another and to prepare for trial. Defendants’
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1 counsel also pointed out that there is a September 18 pretrial conference set in the
2 *Eight Mile Style* case. While Plaintiffs disagree that postponing this trial for
3 merely two weeks would conflict with the October 14 trial date in *Eight Mile Style*,
4 Plaintiffs are nonetheless filing, concurrently herewith, a motion in the Eastern
5 District of Michigan asking that court to adjourn the trial date in that action by at
6 least two weeks, in order to remedy the Defendant's objections, and asking that
7 Court to postpone the pretrial conference until after this trial concludes. (Busch
8 Decl. ¶ 10, Exhibit F.)²

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11
12 Plaintiffs believe it is necessary to bring this matter to the Court's attention
13 now, rather than wait as Defendants suggested.³ Mediation in the Middle District
14 of Tennessee has been unsuccessful, there are no pending motions for summary
15 judgment that could dispose of the matter, and therefore it is likely that the action
16 will proceed to trial as scheduled. (Busch Decl. ¶ 7.) Plaintiffs are not asking for a
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21 ² At first, when Plaintiffs conferred with counsel for Defendants, who are the same in both
22 cases, defense counsel advised that they did not have a conflict with moving this action two
23 weeks, but preferred that Plaintiffs only give notice of the potential conflict now, and wait until
24 summer to move the trial. However, Defendants' counsel later stated that it did not notice the
September 18, 2008 pretrial conference in the *Eight Mile Style* case, and stated that it opposed
this motion for the reasons stated above, unless the trial in *Eight Mile Style* was correspondingly
moved.

25
26 ³ Plaintiffs also wish to bring to the Court's attention a discovery dispute that has arisen
27 with regard to their third-party subpoena to Apple Computers, Inc. ("Apple"), which was served
28 on January 11, 2008. Apple responded on February 7, 2008. Plaintiffs served a meet and confer
letter pursuant to Local Rule 37-1 on February 11, 2008. Pursuant to the local rules, however,
the earliest date that this dispute can be heard by the Magistrate Judge is April 1, 2008. The
parties are also attempting to resolve disputes related to the Protective Order to be submitted to
the Court in this matter, which has delayed the production of documents from Defendants.

1 lengthy adjournment, but only a week or two so that lead counsel can complete the
2 conflicting trial.
3

4 CONCLUSION

5 Plaintiffs respectfully request that the Court reset the trial date in this matter
6 to the Court's first available trial date on or after September 9, 2008, with other
7 pretrial dates being reset accordingly.
8

9 DATED: February 25, 2008

Respectfully submitted,

11 KING & BALLOW

12 /s/ Paul Duvall

14 Richard S. Busch (TN Bar No. 014594)

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28 Attorneys for Plaintiffs

CV 07-03314 PSG (MANx)

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19 Attorneys for Plaintiffs F.B.T. Productions, LLC and Em2M, LLC

20 **UNITED STATES DISTRICT COURT**
21 **CENTRAL DISTRICT OF CALIFORNIA**

22 F.B.T. PRODUCTIONS, LLC, et)	Case No. CV 07-03314 PSG (MANx) PLAINTIFFS' NOTICE OF MOTION AND MOTION TO RESET TRIAL DATE JURY DEMAND Date: March 24, 2008 Time: 1:30 p.m. Courtroom: 790 – Roybal Hon. Gutierrez
23 al.,)	
24 Plaintiffs,)	
25 v.)	
26 AFTERMATH RECORDS doing)	
27 business as AFTERMATH)	
28 ENTERTAINMENT, et al.,)	
Defendants.)	
)	
)	
)	
)	

Motion to Reset Trial Date

CV 07-03314 PSG (MANx)

1 TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on March 24, 2008, at 1:30 p.m. or as soon
3
4 thereafter as the matter may be heard in the above entitled court, located at 255
5 East Temple Street, Los Angeles, California, 90012, Courtroom 790, Plaintiffs
6 F.B.T. Productions, LLC ("F.B.T.") and Em2M, LLC ("Em2M") (collectively,
7 "Plaintiffs") will and hereby do move the court to reset the trial date in this matter
8
9 to the Court's first available date on or after September 9th, 2008. Plaintiffs' make
10
11 this motion because a scheduling conflict has arisen with respect to the September
12 2nd, 2008 trial date and the August 18th, 2008 pretrial conference date in this
13
14 matter.

15 This motion is made following the conference of counsel pursuant to L.R. 7-
16
17 3 which took place on Monday, January 28, 2008.

18
19 DATED: February 26, 2008

Respectfully submitted,

20 KING & BALLOW

21 /s/ Paul Duvall

22
23 Richard S. Busch (TN Bar No. 014594)

24 rbusch@kingballow.com

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- and -

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17 Attorneys for Plaintiffs F.B.T. Productions, LLC and Em2M, LLC

17 **UNITED STATES DISTRICT COURT**
18 **CENTRAL DISTRICT OF CALIFORNIA**

19 F.B.T. PRODUCTIONS, LLC, et) 20 al.,) 21 Plaintiffs,) 22 v.) 23 AFTERMATH RECORDS doing) 24 business as AFTERMATH) 25 ENTERTAINMENT, et al.,) 26 Defendants.) 27) 28)	Case No. CV 07-03314 PSG (MANx) DECLARATION OF RICHARD S. BUSCH IN SUPPORT OF PLAINTIFFS' MOTION TO RESET TRIAL DATE JURY DEMAND Date: March 24, 2008 Time: 1:30 p.m. Courtroom: 790 – Roybal Hon. Gutierrez
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CV 07-03314 PSG (MANx)

1 I, Richard S. Busch, make the following statements upon personal
2 knowledge:
3

4 1. I am lead counsel for Plaintiffs F.B.T. Productions, LLC, and Em2M,
5 LLC in the above captioned matter. My application to appear and participate in
6 this action *pro hac vice* has been approved by the Court.
7

8 2. This Court has set trial for this matter on September 2, 2008, and the
9 pretrial conference on August 18, 2008.
10

11 3. I am also lead counsel for the plaintiffs in the case of *Bridgeport*
12 *Music Inc. v. Robert Hill Music, et al.*, Case No. 3:05-00377, in the Middle District
13 of Tennessee (hereinafter, the "*Bridgeport*" case). UMG Recordings, Inc., one of
14 the Defendants in the instant case, is also a defendant in the *Bridgeport* case.
15

16 4. On January 22, 2008, counsel for Defendant Robert Hill Music in the
17 *Bridgeport* case filed a motion to continue the trial from May 13, 2008, to the
18 earliest available date after August 31, 2008. (*See* Exhibit A hereto.) The grounds
19 for the motion were that the former principal who operated and controlled Robert
20 Hill Music was scheduled to be released from federal prison in August 2008. (*Id.*)
21 In the motion, Robert Hill Music noted that due the scheduling order in this case,
22 along with a subsequent trial currently set for October 14, 2008 in the Eastern
23 District of Michigan (*see* paragraph 10 *infra*), *Bridgeport* requested any resetting
24 occur mid-July to early August. (*Id.*) The court granted Robert Hill's motion on
25
26
27
28

1 January 23, 2008, continuing trial to August 26, 2008, with the pretrial conference
2 on August 18, 2008. (See Exhibit B hereto.)
3

4 5. Bridgeport immediately filed a motion advising the court of the
5 August 18, 2008 pretrial conference and the September 2, 2008 trial date set by
6 this Court, as well as the trial date in the Eastern District of Michigan, and
7 requested trial be reset to an available date after November 5, 2008. (See Exhibit C
8 hereto.)
9

10
11 6. On January 24, 2008, the court granted in part and denied in part
12 Bridgeport's motion. (See Exhibit D hereto.) The court found a proposed trial
13 date in November 2008 would be unacceptable, and reset trial to August 19, 2008
14 beginning at 9.00 a.m. in Nashville. (*Id.*)
15

16
17 7. The parties have attempted mediation in the *Bridgeport* case, which
18 was unsuccessful. There are no pending motions for summary judgment that
19 would dispose of the *Bridgeport* case. Therefore, I believe it is likely that case will
20 proceed to trial.
21

22 8. Trial in the *Bridgeport* case is estimated to take as much as ten days,
23 which would mean a concluding date of September 3, 2008.
24


25 9. It would not be possible for me to attend a scheduling conference in
26 this Court on August 18, 2008, and to appear for trial in Nashville by 9:00 a.m. the
27 following morning. Similarly, it would not be possible for me to attend trial in
28

1 Nashville, possibly until September 3, 2008, and to prepare for and appear for trial
2 in this Court on September 2, 2008. As a result, Plaintiffs are requesting that this
3 trail be moved a week or to the Court's earliest available date after September 9,
4 2008.
5

6
7 10. I am also lead counsel for the plaintiffs in the case of *Eight Mile Style,*
8 *LLC v. Apple Computer, Inc.*, Case No. 2:07-cv-13164, in the Eastern District of
9 Michigan, which is currently set for trial on October 14, 2008, and the pretrial
10 conference is set for September 18, 2008. (See Exhibit E hereto.) Plaintiffs are
11 filing, concurrently herewith, a motion in the Eastern District of Michigan asking
12 that court to adjourn the trial date in that action by at least two weeks. (See Exhibit
13 F hereto.)
14
15

16
17 I declare under penalty of perjury that the foregoing is true and correct.

18 Executed this 25th day of February, 2008.
19
20

21 
22 _____
23 Richard S. Busch
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