

EXHIBIT 5

**Declaration of Rand Hoffman in Support of Defendants'
Alternative Motion for Partial Summary Judgment**

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
Honorable Anna Diggs Taylor
Magistrate Judge Donald A. Scheer

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

Defendants.

**DECLARATION OF RAND HOFFMAN IN SUPPORT OF DEFENDANTS'
ALTERNATIVE MOTION FOR PARTIAL SUMMARY JUDGMENT**

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DECLARATION OF RAND HOFFMAN

I, Rand Hoffman, declare as follows:

1. I have worked as a lawyer in the music business since 1981. Starting in January 1999, I have been employed by the Universal Music Group as the head of Business and Legal Affairs for Interscope Geffen A&M, a division of UMG Recordings, Inc. ("UMG"). As part of my job duties and responsibilities, I negotiate and draft, and supervise a staff of attorneys who negotiate and draft, artist and joint venture agreements by which UMG and its affiliates acquire the rights to exploit sound recordings and musical compositions. Except as otherwise indicated, I have personal knowledge of the facts set forth herein. If called as a witness in this action, I could and would testify competently to the contents of this declaration.

2. UMG and ARY, Inc. ("ARY") are joint venture partners of defendant Aftermath Records ("Aftermath"). ARY is owned by Andre Young (p/k/a Dr. Dre), a prominent recording artist and producer. UMG is responsible for, among other things, the distribution and exploitation of the sound recordings created by the artists signed to Aftermath, including the immensely popular artist Marshall B. Mathers III (p/k/a Eminem) and Dr. Dre himself.

3. UMG is also a joint venture partner in G-Unit Records LLC, along with Rotten Apple Records, Inc., a company whose principal is the recording artist Curtis Jackson (p/k/a 50 Cent). UMG is responsible for, among other things, the distribution and exploitation of certain sound recordings created by the artists signed to G-Unit, including artists like Christopher Lloyd (p/k/a Lloyd Banks).

4. UMG also partners with other labels to distribute and exploit sound recordings created by artists signed to those labels. One of those labels is Shady Records, Inc. ("Shady"). Shady artists distributed by UMG include Obie Trice and the rap group D12.

5. Recording artists are subject to recording agreements, pursuant to which UMG distributes and exploits sound recordings created by those artists. The applicable agreements

through which UMG distributes and exploits sound recordings by the recording artists Curtis Jackson (p/k/a 50 Cent), Andre Young (p/k/a Dr. Dre), D12, Obie Trice, and Christopher Lloyd (p/k/a Lloyd Banks) are attached to this declaration as Exhibits as described in paragraphs 10-14 below.

6. In their simplest terms, the recording agreements described in paragraphs 10-14 contemplate that the artist would write musical compositions, make recordings embodying those musical compositions, and grant to UMG the worldwide right to exploit those compositions and recordings in exchange for royalties. More specifically, the agreements provide, in relevant part, for the following.

7. Each of the attached agreements includes a “controlled composition” clause. Controlled composition clauses are contained in almost every recording agreement. The purpose of the controlled composition clause is to ensure that when UMG distributes a recording by one of these artists, it also has the right to distribute the compositions embodied in the recordings written in whole or in part by the artists. The clause also establishes the mechanical royalty rate which UMG will pay for the exploitation of recordings embodying the compositions.

8. Pursuant to those clauses, compositions “wholly or partly written, owned or controlled” by the artists are licensed to UMG, so that UMG may reproduce and distribute sound recordings embodying those compositions in “Phonograph Records of Master Recordings made under” the respective agreements. Phonograph Records are defined in the agreements as “all forms of reproduction . . . now or hereafter known.” The agreements further provide for the distribution of records by “Electronic Transmission,” which specifically includes distribution in permanent download format.

9. Through these provisions, these recording artists have granted to UMG and its licensees and designees the right to reproduce and distribute compositions in permanent download form.

10. A true and correct copy of the applicable agreement with Curtis Jackson (p/k/a 50 Cent) is attached as Exhibit A. Financial terms of the agreement have been redacted because they are highly sensitive and confidential and to protect the privacy of the artist. The controlled composition clause appears in paragraph 12.01(a)(1). The term “controlled composition” is defined in paragraph 14.08, the term “Phonograph Record” is defined in paragraph 14.24(a), and the “Electronic Transmission” provision is found in paragraph 14.12.

11. A true and correct copy of the applicable agreement with Andre Young (p/k/a Dr. Dre) is attached as Exhibit B. Financial terms of the agreement have been redacted because they are highly sensitive and confidential and to protect the privacy of the artist. The controlled composition clause appears in paragraph 12.01(a)(1). The term “Controlled Composition” is defined in paragraph 14.08, the term “Phonograph Record” is defined in paragraph 14.24(a), and the “Electronic Transmission” provision is found in paragraph 14.12. The controlled composition clause in this agreement applies to compositions Andre Young co-produces through paragraph 5(d)(iv) of the Joint Venture Agreement for Aftermath, a true and correct copy of which is attached as Exhibit B-1. In this copy, the terms of the Joint Venture Agreement that do not relate to the controlled composition clause in Andre Young’s artist agreement have been redacted.

12. True and correct copies of the applicable agreements with the members of the group D12—whose members are Deshawn Holton, Rufus Johnson, Denaun Porter, Von Carlisle, and Ondre Moore—are attached as Exhibits C-1 and C-2. Financial terms of the agreement have been redacted because they are highly sensitive and confidential and to protect the privacy of the artist. These agreements provide a grant of rights for, among other things, compositions included on the album D12 World, which The controlled composition clauses appear in paragraphs 12.01(a)(1). In each agreement, the term “Controlled Composition” is defined in paragraphs defined in paragraph 14.13, and the term “Phonograph Record is defined in

paragraph 14.05(a). The “Electronic Transmission” provision appears in Exhibit C-2 at paragraph 14.29.

13. True and correct copies of the applicable agreements with Obie Trice are attached as Exhibits D-1 and D-2. Financial terms of the agreement have been redacted because they are highly sensitive and confidential and to protect the privacy of the artist. The controlled composition clause appears in each agreement in paragraph 12.01(a)(1). The term “Controlled Composition” is defined in each agreement in paragraph 14.13, the term “Phonograph Record” is defined in each agreement in paragraph 14.05(a), and each agreement includes an “Electronic Transmission” provision at paragraph 14.31.

14. A true and correct copy of the applicable agreement with Christopher Lloyd (p/k/a Lloyd Banks) is attached as Exhibit E. Financial terms of the agreement have been redacted because they are highly sensitive and confidential and to protect the privacy of the artist. The controlled composition clause appears in paragraph 12.01(a)(1). The term “Controlled Composition” is defined in paragraph 14.08, the term “Phonograph Record” is defined in paragraph 14.24, and the Electronic Transmission provision is contained in paragraph 14.12(a)-(d).

15. The albums by 50 Cent entitled “Get Rich or Die Trying” and “The Massacre” are distributed in “Phonograph Records of Master Recordings made under” the agreement attached as Exhibit A, as amended.

16. The album by D12 entitled “D12 World” is reproduced and distributed in “Phonograph Records of Master Recordings made under” the agreements attached as Exhibits C-1 and C-2, as amended.

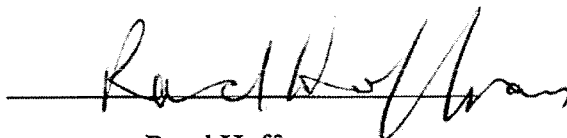
17. The album by Obie Trice entitled “Cheers” is reproduced and distributed in “Phonograph Records of Master Recordings made under” the agreements attached as Exhibits D-1 and D-2, as amended.

18. The album by Lloyd Banks entitled "Hunger for More" is reproduced and distributed in "Phonograph Records of Master Recordings made under" the agreement attached as Exhibit E, as amended.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Executed this 11 day of ~~June~~, 2008 at Santa Monica, California.

July
RH


Rand Hoffman

CERTIFICATE OF SERVICE

I hereby certify that on July 16, 2008, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to the all counsel.

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INDEX OF EXHIBITS TO DECLARATION OF RAND HOFFMAN

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INDEX OF EXHIBITS

- Exhibit A: Agreement re Curtis Jackson (p/k/a 50 Cent) dated June 14, 2002
(Filed Under Seal)
- Exhibit B: Agreement re Andre Young (p/k/a Dr. Dre) dated October 1, 2000
(Filed Under Seal)
- Exhibit B-1: Joint Venture Agreement providing for producer services of Andre
Young (p/k/a Dr. Dre) dated December 9, 2005 (Filed Under Seal)
- Exhibit C-1: Agreement re D12 (a/k/a Dirty Dozen) dated December 1999
(Filed Under Seal)
- Exhibit C-2: Agreement re D12 (a/k/a Dirty Dozen) dated January 19, 2000
(Filed Under Seal)
- Exhibit D-1: Agreement re Obie Trice dated May 24, 2001 (Filed Under Seal)
- Exhibit D-2: Agreement re Obie Trice dated May 24, 2001 (Filed Under Seal)
- Exhibit E: Agreement re Christopher Lloyd p/k/a Lloyd Banks dated January
10, 2004 (Filed Under Seal)