

EXHIBIT 1

DECLARATION OF RICHARD S. BUSCH IN SUPPORT OF PLAINTIFFS' MOTION TO EXCLUDE LATE PRODUCED DOCUMENTS

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

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

**EIGHT MILE STYLE, LLC, and MARTIN
AFFILIATED, LLC,**

Plaintiffs,

vs.

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

Defendant.

**Case No. 2:07-cv-13164
Hon. Anna Diggs Taylor
Magistrate Judge Donald A. Scheer**

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**DECLARATION OF RICHARD S. BUSCH IN SUPPORT OF
PLAINTIFFS' MOTION TO EXCLUDE LATE PRODUCED DOCUMENTS**

I, Richard S. Busch, having personal knowledge of the facts contained in this declaration, state as follows:

1. I am an attorney and partner in the law firm of King & Ballow, which represents Plaintiffs Eight Mile Style, LLC and Martin Affiliated, LLC ("Plaintiffs") in the above-entitled action. I am familiar with the files in this litigation.
2. Plaintiffs served Defendants with Initial Disclosures pursuant to Fed. R. Civ. P. 26(a)(1) on February 12, 2008. To date, Defendants have not submitted Rule 26(a)(1) Initial Disclosures to Plaintiffs. The parties have not stipulated that Rule 26(a)(1) Initial Disclosures

will not apply in this case, and this Court has not ordered that Initial Disclosures will not apply in this case.

3. Plaintiffs submitted Interrogatories and Requests for Production of Documents to Defendants on February 12, 2008.

4. Plaintiffs made specific requests in their First Set of Interrogatories for answers relating to facts that support Defendants' affirmative or complete defenses, communications regarding the Eminem Compositions, Defendants' licensing, reproduction, distribution, or sale of Eminem Compositions, and Defendants' basis for authority to reproduce, license, distribute, or sell the Eminem Compositions in Interrogatory numbers 2-10 and 16-18. Such requests serve to incorporate the very documents that Defendants have produced after the close of discovery.

5. Defendants responded to these Interrogatories. My office received Aftermath's Responses to Interrogatories on March 27, 2008. A true and accurate copy of relevant portions of the interrogatories and responses is attached hereto as **Exhibit A**. My office also received Apple's Responses to Interrogatories on March 27, 2008. A true and accurate copy of relevant portions of the responses is attached hereto as **Exhibit B**.

6. Plaintiffs also made specific requests in their First Set of Requests for Production of Documents for documents that support Defendants' affirmative or complete defenses, support Defendants' answers to Plaintiffs' First Set of Interrogatories, relate to communications regarding the Eminem Compositions, relate to licensing, reproduction, distribution, or sale of Eminem Compositions, and relate to the basis for Defendants' authority to reproduce, sell, license, or distribute the Eminem Compositions in Request numbers 1-13 and 22-26. Such

requests serve to incorporate the very documents that Defendants have produced after the close of discovery.

7. Defendants responded to these Requests for Production of Documents. My office received Aftermath's Responses to Requests for Production of Documents on March 27, 2008. A true and accurate copy of relevant portions of the requests and responses is attached hereto as **Exhibit C**. My office also received Apple's Responses to Requests for Production of Documents on March 27, 2008. A true and accurate copy of relevant portions of the responses is attached hereto as **Exhibit D**.

8. Defendants originally filed a motion for summary judgment on May 5, 2008. With that motion Defendants filed Exhibit 9, a declaration of Rand Hoffman with Exhibits A through D, being agreements with Eminem. The agreements, filed under seal were not served upon my office as Plaintiffs' lead counsel.

9. A second declaration by Wenchan Wang, Exhibit 10, also was filed with Exhibits E through G. These exhibits, filed under seal, likewise were not served on my office as Plaintiffs' lead counsel.

10. I had several meet and confer sessions with counsel for Defendants discussing document production, interrogatories, and requests for production of documents. We met via teleconference on April 8, 2008 and April 9, 2008. We met again on June 10, 2008 to discuss discovery issues. Afterwards, I attended a hearing on June 12, 2008 regarding outstanding discovery issues. On June 19, 2008, I attended another meet and confer session via telephone to discuss discovery issues.

11. Subsequently, my office received Aftermath's Supplemental Responses to Interrogatory number 18 and Request for Production of Documents number 6 on July 8, 2008. A true and accurate copy of relevant portions of the responses is attached hereto as **Exhibit E**.

12. Additionally, we received Apple's Supplemental Responses to Interrogatory numbers 6 and 19 on July 8, 2008. A true and accurate copy of relevant portions of the responses is attached hereto as **Exhibit F**.

13. I also had a separate conversation with Kelly Klaus, counsel for Defendants, wherein I asked Defendants about producing licenses in discovery. Mr. Klaus responded that he did not believe Defendants had any licenses other than what they had already produced, but would check and produce additional documents if they located any. Mr. Klaus did state that Defendants would be relying on the controlled composition clause in the Eminem contract as a license.

14. Discovery in this case closed on June 2, 2008. This Court extended discovery to June 27, 2008 solely for the purpose of conducting limited depositions previously agreed to by the parties.

15. Defendants failed to produce 1,629 pages of documents until after the close of discovery. Defendants now attempt to rely upon those documents in their present Revised Motion for Summary Judgment.

16. Documents responsive to Plaintiffs' First Set of Interrogatories and First Set of Requests for Production of Documents existed and were in possession, custody, or control of the Defendants, but yet they failed to produce these documents in a timely fashion. Defendants also failed to provide any justification for the late production. Now they seek to rely on these late

produced documents in their Revised Motion for Summary Judgment. A true and accurate copy of a summary produced by my office of the late produced documents, their respective Bates numbers, and the corresponding exhibits that Defendants rely upon in their Motion is attached hereto as **Exhibit G**.

17. To demonstrate the volume of late production, my office received the following production of documents following the June 2, 2008 discovery deadline. On June 9, 2008, Defendants produced documents Bates numbered AFT 057459 through AFT 057938. On June 11, 2008, Defendants produced documents Bates numbered AFT 057939 through AFT 058016. On June 16, 2008, Defendants produced documents Bates numbered APP 00000001 through APP 00000071.

18. In addition, Defendants produced specific documents after the close of discovery that they rely upon in their Revised Motion for Summary Judgment. On July 8, 2008, Defendants produced documents Bates numbered AFT 058017 through AFT 058447. This production includes recording agreements that Defendants rely on in their Motion. On July 14, 2008, Defendants produced documents Bates numbered AFT 058448 through AFT 058744. This production includes licenses and recording agreements that Defendants rely on in their Motion. On July 24, 2008, Defendants produced documents Bates numbered APP 00000001 through APP 00000046, which includes a license that Defendants rely on in their Motion. Also on July 24, 2008, Defendants produced documents Bates numbered AFT 058745 through AFT 058852. This production includes agreements that Defendants rely on in their Motion. On July 25, 2008, Defendants produced documents Bates numbered AFT 058853 through AFT 059012. This production includes agreements that Defendants rely on in their Motion. On July 26, 2008,

Defendants produced documents Bates numbered AFT 059013 through AFT 059016. This production includes an agreement that Defendants rely on in their Motion.

19. Defendants have never explained the reason these documents were not produced during discovery.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 28th day of August 2008, at Nashville, Tennessee.



Richard S. Busch