

EXHIBIT 1

DECLARATION OF RICHARD S. BUSCH IN SUPPORT OF REPLY TO 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 REPLY TO
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. The defendants in this case have never served initial disclosures.
3. I, as counsel for plaintiffs, and Kelly Klaus, counsel for defendants, did conduct a meeting to discuss discovery in this action. Among other items discussed were the following: 1)

the timing and sequence of document production, including that documents produced in this action would be able to be used in another action involving related parties, *F.B.T. Productions, LLC v. Aftermath Records d/b/a Aftermath Entertainment, et al.*, Case CV 07-3314 (C.D. Cal.); and 2) a deposition taken of an individual with knowledge of the facts of the two cases would be allowed testify about both actions, in order to avoid the cost of deposing the same person twice.

4. In connection with defendants' failure to provide initial disclosures, plaintiffs only became aware that Michael Ostroff, General Counsel and Executive Vice President of Business and Legal Affairs for UMG, might have knowledge relevant to this case when defendants identified him, in approximately late May 2008, as someone they might call to testify at trial. Attached hereto as **Exhibit A** are true and correct copies of the relevant pages from the deposition of Patricia Blair, in which Glenn Pomerantz, counsel for defendants, acknowledges that defendants had "just disclosed" Mr. Ostroff as a potential witness. (Ex. A, 7:21-24.)

5. When Mr. Ostroff's was first mentioned as a possible witness, plaintiffs immediately requested information concerning what subjects he might testify about and explicitly referenced defendants' initial disclosure obligation to provide that information. Attached hereto as **Exhibit B** are true and correct copies of emails that I and Marc Guilford, an associate in my office, sent to opposing counsel requesting this information. When I raised defendants' failure to provide initial disclosures orally to opposing counsel, and asked that they provide them, they replied that they were not required to do so.

6. Defendants replied to the emails in Exhibit B by denying they had any obligation to provide information about Ostroff (or, implicitly, about any other witness), whether through their initial disclosure obligation or in response to any other discovery. Attached hereto as


Exhibit C are true and correct copies of opposing counsel's response to the emails in Exhibit B. Ultimately, Mr. Ostroff was deposed on a mutually agreeable date.

7. The on-the-record discussion at the deposition of Ms. Blair of future depositions, contained in Exhibit A, was an attempt by the parties to establish what depositions were left to take. When, shortly after that discussion, plaintiffs advised defendants that they had neglected to mention two additional short depositions they wished to take of Mr. Leo Ferrante and Mr. Tim Hernandez, defendants protested, based both on the exclusion of these individuals from the prior discussion, and based on their opinion that plaintiffs had taken ten depositions, and any more would require leave of the court pursuant to Federal Rule of Civil Procedure 30(a)(2). This issue was raised before the Court during oral argument concerning an already-pending motion to compel and the court ruled that one of these depositions would be allowed to proceed, but denied leave to proceed with the other deposition in the face of defendants' objections absent a separate motion by plaintiffs. (*See* Doc. No. 50 ¶¶ 8-9.)

8. The documents produced by defendants, including agreements with at least 5 third party entities, and a number of purported "licenses" involving other third parties, would require depositions of many if not all of these entities, in order to discern the intent and understanding of the parties involved in these transactions.

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

Executed this 3rd day of October 2008, at Nashville, Tennessee.

A handwritten signature in black ink, appearing to read 'R. Busch', is positioned above a solid horizontal line.

Richard S. Busch