

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

EXHIBIT 22

**Declaration of Melinda LeMoine In Support of
Defendants' Reply Brief In Support of Defendants'
Revised Motion for 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 MELINDA E. LEMOINE IN SUPPORT OF DEFENDANTS'
REPLY BRIEF IN SUPPORT OF REVISED MOTION FOR SUMMARY JUDGMENT**

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DECLARATION OF MELINDA LEMOINE

I, Melinda LeMoine, declare as follows:

1. I am an attorney with the law firm of Munger, Tolles & Olson LLP, which represents Defendants Apple Inc. and Aftermath Records d/b/a Aftermath Entertainment in this matter. I am familiar with the documents and the court filings in this litigation. 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. Attached as Exhibit A is a true and correct copy of excerpts from the deposition transcripts of Patrick Sullivan, taken in this case on September 18, 2008 and October 1, 2008.

3. Attached as Exhibit B is a true and correct copy of excerpts from the deposition transcript of Todd Douglas, taken in this case on May 6, 2008.

4. Attached as Exhibit C is a true and correct copy of excerpts from the deposition transcript of Cynthia Oliver, taken in this case on July 17, 2008.

5. Attached as Exhibit D is a true and correct copy of excerpts from the deposition transcript of Chad Gary, taken in this case on May 6, 2008.

6. Attached as Exhibit E is a true and correct copy of excerpts from the deposition transcript of Patricia Blair, taken in this case on May 29, 2008.

7. Attached as Exhibit F is a true and correct copy of a letter sent on August 19, 2008 from Glenn Pomerantz, a partner at my firm, to Plaintiffs' counsel Richard Busch.

8. Attached as Exhibit G are true and correct copies of mechanical licenses issued by the Harry Fox Agency on behalf of Ensign Music Publishing ("Ensign") or its affiliate, Famous Music ("Famous"), authorizing the exploitation of certain compositions at issue in this case in the form of Digital Permanent Downloads, or DPDs. The licenses are arranged in Exhibit G alphabetically by composition title.

9. Attached as Exhibit H is a summary chart of compositions prepared to provide the Court with a list of the compositions at issue in this litigation, along with the corresponding grants of license relied upon by Defendants in their Revised Motion. This chart is the same as that previously provided as Revised Exhibit 1b to the Revised Motion, Docket No. 66-3, (filed July 28, 2008), but it has been updated to reflect additional licenses from Ensign and Famous authorizing the distribution of sound recordings embodying certain compositions as Digital Permanent Downloads, or DPDs. The additional licenses added to Revised Ex. 1b submitted in this Reply are noted on Exhibit H in red, italicized font.

10. Defendants rely on these additional licenses on Reply because, on August 28, 2008 and on September 15, 2008, long after Defendants filed this Revised Motion (and after the close of the discovery period), Plaintiffs produced documents acknowledging for the first time that Plaintiffs' members Jeff Bass and Mark Bass had granted rights to Ensign and Famous to license these compositions. *See* Defendants' Opp. to Pl's Mtn to Exclude, Docket No. 86 (filed September 19, 2008) at 13-14. Because Plaintiffs had not acknowledged Ensign's or Famous's interest in these compositions before Defendants filed their Revised Motion, Defendants were unable to rely on these licenses at the time that Revised Motion was filed. *See also* LeMoine Decl. Ex. M (co-publishing agreement between Ensign and Plaintiff Eight Mile).

11. Attached as Exhibit I is a true and correct copy of a February 22, 1999 Amendment to the 1995 Production Agreement between Plaintiffs' affiliate LLC F.B.T. Productions and Marshall Mathers p/k/a Eminem, which Plaintiffs produced at FBT-0042-0046.

12. Attached as Exhibit J is a true and correct copy of a summary chart I prepared in response to the chart Plaintiffs' counsel prepared and attached to the declaration of Patrick Sullivan as Exhibit C-2. This chart responds to the arguments made in that declaration and accompanying Exhibit C-2 as to the validity of each individual mechanical license Defendants submitted in their Exhibit 6b to Defendants' Alternative Motion for Summary Judgment, Docket

No. 62 (filed on July 16, 2008). For the Court's ease of reference, Exhibit J is organized in two ways. It is first organized by license, and then the same information follows organized by composition.

13. Attached as Exhibit K is a true and correct copy of a summary chart I prepared in response to the chart Plaintiffs' counsel prepared and attached to the declaration of Patrick Sullivan as Exhibit C-3. This chart responds to the arguments made in that declaration and the accompanying Exhibit C-3 as to the validity of the controlled composition clauses contained within the Co-Author Agreements submitted in connection with Defendants' Revised Motion. See Ex. 5b, Hoffman Decl. and Exhibits. For the Court's ease of reference, this chart is organized first by the recording artist to whom the particular agreements relate, with the agreements pertaining to the Shady Records, Inc./Interscope Records relationship at the end.

14. Attached as Exhibit L is a true and correct copy of excerpts from the deposition transcript of Eddy Cue, taken in this case on June 20, 2008.

15. Attached as Exhibit M is a true and correct copy of a document entitled Copyright Assignment and Co-Publishing Agreement dated February 4, 1999 between Ensign Music Corporation and Mark Bass and Jeff Bass, doing business as F.B.T. Productions and Eight Mile Style Music. Plaintiffs produced this document on August 28, 2008.

16. Attached as Exhibit N is a true and correct copy of a letter and check received on October 9, 2008 by Cynthia Oliver at UMG Recordings, Inc. from Kobalt Music Publishing America ("Kobalt"). In the letter, Kobalt's Executive Vice President, General Manager, and General Counsel writes that, at the request of Plaintiff Eight Mile Style, Kobalt is reimbursing publishing royalties paid by UMG Recordings, Inc. The back-up documentation included with the reimbursement check indicates that it is meant to reimburse UMG Recordings, Inc. for publishing royalties paid for the exploitation, through a compulsory license, of the composition "Lose Yourself."

17. Attached as Exhibit O is a true and correct copy of the Declaration of Richard Busch submitted on September 30, 2008 to the Court in the Central District of California in support of a motion to compel on behalf of Plaintiffs' affiliate F.B.T. Productions, LLC. In paragraph 14 of that declaration, Mr. Busch acknowledges that the artist royalty statements Plaintiffs' affiliated LLC receives "indicate royalties for. . . permanent downloads, streaming, ringtones, and mastertones." Mr. Busch includes a sample of such a royalty statement as Exhibit K, which I have incorporated within my Exhibit O. As Mr. Busch concedes, his Exhibit K does, in fact, indicate that royalties are being paid for permanent download exploitation. In a column entitled "Sales Type," the statements list "PermDload" repeatedly for multiple royalty payment entries.

18. Attached as Exhibit P is a true and correct copy of a cancelled check paid to Kobalt on behalf of Plaintiffs Eight Mile Style, LLC and Martin Affiliated, LLC. The check covered recent publishing royalties for the exploitation of Plaintiffs' compositions in sound recordings distributed in both physical and digital formats. Plaintiffs' administrator, Kobalt, cashed the check, accepting payment for the uses Plaintiffs claim in this action are unauthorized.

19. Attached as Exhibit Q is a true and correct copy of redacted excerpts from an "Administration Agreement" dated October 17, 2007 among Eight Mile Style LLC, Martin Affiliated LLC, certain other LLCs, and Music Resources, Inc. Plaintiffs produced this document on October 6, 2008. This agreement provides that Music Resources, Inc. (an affiliate of Kobalt) is an administrator for Eight Mile Style's copyright interests.

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 15th day of October, 2008 at Los Angeles, California.

/s Melinda E. LeMoine
Melinda LeMoine