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13 Attorneys for Defendant
14 NAPSTER, INC.

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION

18 A&M RECORDS, INC., a corporation, et al.,
19 Plaintiffs,
20 v.
21 NAPSTER, INC., a corporation, and DOES 1
through 100,
22 Defendants.

23 JERRY LEIBER, individually and doing business
24 as JERRY LEIBER MUSIC, et al.,
25 Plaintiffs,
26 v.
27 NAPSTER, INC.,
28 Defendants.

Case Nos. C 99-5183 MHP (ADR)
C 00-0074 MHP (ADR)

**DECLARATION OF RANDY J.
NICHOLS IN SUPPORT OF
OPPOSITION OF DEFENDANT
NAPSTER, INC. TO PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION**

Date: July 26, 2000
Time: 2:00 p.m.
Courtroom: 15
Hon. Marilyn H. Patel

1 I, Randy J. Nichols, declare, pursuant to 28 U.S.C. § 1746, as follows:

2 1. I am the Manager of the band known as The Pilfers and authorized to speak on
3 behalf of the band. I know that matters stated herein of my own personal knowledge and, if
4 called to testify, could and would testify competently to them.

5 2. The Pilfers have released two albums. The first album, which was self-titled, was
6 self-released in January 1998. The second album, *Chawalaleng*, was released on September 21,
7 1999, under the MoJo label, which is a subsidiary of Universal Music.

8 3. The Pilfers have toured the United States with national acts such as Bad Brains,
9 Zebrahead, , Reel Big Fish , The Specials, Madness, The Mighty Mighty Bosstones, Amazing
10 Royal Crowns, the Mr. T Experience, Mustard Plug and Goldfinger. The band also embarked on
11 tours of Europe and South America, all before ever releasing their major label debut.

12 5. MoJo and Universal Music have not released our album internationally. Because
13 of this and the label's unwillingness to promote us, the band has turned to the Internet and
14 technologies like Napster, which allow bands to reach a global audience.

15 6. I first learned about Napster in November of 1999, through one of The Pilfers'
16 fans. It immediately occurred to me that Napster would be a great tool for promotion,
17 distribution, and research. The Napster software and website attracts millions of music lovers and
18 its chat-rooms provide a great forum of discussions and "word of mouth" promotions. Further,
19 Napster's file sharing technology makes it possible for The Pilfer music to proliferate at an
20 exponential rate and with minimal expenditure. This proliferation is sure to lead to increased
21 recognition and a larger base of fans willing to attend the band's live performance and buy the
22 band's merchandise and CD's.

23 7. Besides being an efficient, effective, and inexpensive distribution tool, Napster is
24 a great research tool, allowing bands to "look into" their fan's playlist to determine the fan's
25 musical tastes. I have accessed the song lists of the Napster users who are trading The Pilfers in
26 order to gain insight into that fan's musical taste and identify what bands, or what types of bands,
27 The Pilfers should perform and tour with.

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1 8. When I initially searched Napster for The Piffers' music, I found that only a few
2 files were being traded. I have encouraged the trading of The Piffers' music as part of my
3 continuing effort to promote this band. A search on Napster now returns the maximum 100 files.
4 This increase in the sharing of The Piffers' music means that more people are listening to their
5 work. Based on my experience in the music industry, the increase in the number of people
6 listening to music means a better chance in an increase in the demand for the music and for live
7 performances. Napster is an ideal service allowing us to reach a global community of music
8 lovers.

9 I declare under penalty of perjury that the foregoing is true and correct. Executed this
10 27th day of June 2000.

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Randy J. Nichols

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