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14 Attorneys for Defendant
NAPSTER, INC.

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

19 A&M RECORDS, INC., a corporation, et al.
20 Plaintiffs,

21 v.

22 NAPSTER, INC., a corporation, and DOES 1
through 100,
23 Defendants.

24 JERRY LEIBER, individually and doing business
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 D.J. XEALOT
IN SUPPORT OF DEFENDANT
NAPSTER'S OPPOSITION TO
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

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

1 I, Lawrence W. Railey (A.K.A. "D.J. Xealot"), declar as follows:

2 1. I am a Disk Jockey who mixes songs in the genre of techno, trance, and dance.
3 Most of my songs are originals, and some are remixes. I know the matters stated herein of my
4 own personal knowledge and, if called to testify, could and would testify competently to them.

5 2. I am currently not signed to a major or independent label.

6 3. Before Napster was available to me, only a few local listeners were interested in
7 my music. Before November of 1999, I posted several of my tracks on MP3.com, which are
8 currently available at <http://www.mp3.com/DJXealot>. Although I received some hits and a few
9 people paid to download my music, neither the income nor the amount of traffic to my site was
10 substantial.

11 4. In November of 1999, I began making my tracks available on Napster so that
12 Napster users could download and trade my music. Napster's New Artist program allowed me to
13 attach the URL of my MP3.com site using the ID3 tag functionality so that users interested in my
14 music could link to my personal site, where they could actually purchase my CD's.

15 5. Within two weeks of posting my MP3's on Napster, my business improved by an
16 estimated 50%. There were over 50% more hits on my tracks and many more hits on my
17 MP3.com site.

18 6. In addition, I have made over \$4,000 in C.D. sales and downloads since August of
19 1999, which has helped me pay for my college tuition at University of Florida in Gainesville.

20 7. Within a few months of posting my MP3s on Napster, I started receiving e-mails
21 informing me that my music was being played in dance clubs, university radio stations, and
22 webcasts worldwide. I have also received solicitations from various independent labels.

23 8. Although most of my tracks are posted on Napster, loyal fans flooded to my
24 MP3.com site after listening to one or two tracks on Napster in order to purchase my albums.
25 Without Napster's ID3 linking functionality, users would not easily have been able to reach my
26 web site.

27 9. Napster is a great promotion tool that provides an affordable alternative to major
28 labels for artists like myself.

1 I declare under penalty of perjury that the foregoing is true and correct. Executed this ____
2 day of June 2000.

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Lawrence W. Railey
(A.K.A. "D.J. Xealot")

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