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14 Attorneys for Defendant  
NAPSTER, INC.

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

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 ERIK  
GILBERT 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, Erik Gilbert, declare pursuant to 28 U.S.C. Section 1746 as follows:

2 1. I am the Vice President / General Manager for 75 Ark Entertainment, a  
3 nicheMusic.com, inc. company. I know the matters stated herein of my own personal knowledge  
4 and, if called to testify, could and would testify competently to them.

5 2. 75 Ark, first released commercial recordings in January 2000, is a new  
6 entertainment group focused primarily on releasing Hip-Hop, DJ Culture, and Turntablism  
7 products. 75 Ark is based in New York City and San Francisco and is comprised of industry  
8 veterans from Asphodel Records, ILS/PolyGram, Bill Graham Presents, and Profile. 75 Ark is  
9 distributed domestically by the Alternative Distribution Alliance (ADA), the independent  
10 distribution arm of Warner Bros

11 3. I write this declaration in support of Napster because, based on my 16 years of  
12 experience in the music industry, it is clear to me that Napster is a great promotion tool for artists  
13 and labels alike.

14 4. I began my career in the entertainment industry in 1984, when I became the legal  
15 beneficiary to some 300 published compositions written by my grandfather, Joseph George  
16 Gilbert. These included numerous number one pop hits from the 1920's and 1930's, many co-  
17 written with American composers Lawrence Wright & Edgar Leslie. I managed the worldwide  
18 administration of these compositions, securing covers (advertising, theatrical performance etc.),  
19 and negotiating sundry publishing deals.

20 5. Concurrently, I was a Director of Markham Research Services Limited, a company  
21 specializing in shareholder relations on behalf of major corporations in the UK. I have extensive  
22 experience in international marketing and distribution, contractual and business affairs, and I am a  
23 specialist in the field of intellectual property.

24 6. Before joining 75 Ark, I was General Manager of the successful New York and  
25 San Francisco-based independent label Asphodel Records (working with artists like Mix Master  
26 Mike, DJ Spooky, Diamanda Galas and Ryuichi Sakamoto), named one of the top 15 independent  
27 record labels in the World by Rolling Stone magazine in 1998. While at Asphodel, I developed a  
28 successful worldwide distribution network, building upon the experience I garnered in my

1 previous position of Label Manager for San Francisco independent label Heyday Records.

2 7. In my current role as the Vice President and General Manager, I am responsible  
3 for overseeing day-to-day label operations including domestic and international distribution, sales  
4 and marketing, legal and business affairs.

5 8. 75 Ark owns or has exclusive rights to music the sound recording by Encore, Anti-  
6 Pop Consortium, Beans, Mista Sinista, Nextmen, Dan the Automator, and Deltron 3030.

7 9. 75 Ark has released work from: Encore (approximately 30,000 units shipped); the  
8 infamous under-underground New York City hip-hop group Anti-Pop Consortium (approximately  
9 20,000 units shipped); Beans (approximately 3,000 units shipped), Mista Sinista (approximately  
10 7,500 units shipped), and Nextmen (approximately 15,000 units shipped).

11 10. 75 Ark will shortly release work from The Coup (who previously sold  
12 approximately 250,000 units); Dan the Automator (expected to ship 20,000 to 30,000 units);  
13 Deltron 3030, featuring Dan the Automator, Del tha Funkee Homosapien [Hieroglyphics] and  
14 Kid Koala [Ninja Tune] (expected to ship 80,000 – 100,000 units); and a project featuring Dan  
15 the Automator with El-P of Company Flow.

16 11. 75 Ark has made some artists' recordings available to Napster users for sharing on  
17 the Napster system because Napster is a powerful promotional and marketing tool. Napster  
18 allows the number of MP3s made available to grow exponentially. Every Napster user that  
19 downloads our artist's music becomes another source for that music. The trading of the bands'  
20 music by Napster users will help spread the word about the artists' music and is sure to increase  
21 the artists' fan base. Based on my experience in the music industry and marketing and  
22 promotion, it is clear that the inclusion of 75 Ark files in Napster's New Artist Program will drive  
23 more viewers to the artists' website, drive the artists' fans to purchase more music from the  
24 website and other retailers, and drive the artists' fans to attend live performances. A technology  
25 like Napster provides new artists with a potential for inexpensive promotion this industry has  
26 never before witnessed. 75 Ark will use and exploit the Napster system to promote and distribute  
27 its artists' music. Any action that suspends the availability of this technology to artists will be a  
28 severe blow to the plans and creative visions fueled by Napster's file sharing technology.

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I declare under penalty of perjury that the foregoing is true and correct. Executed this 26<sup>th</sup> day of June, 2,000.

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Erik Gilbert

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