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9 ALS SCAN, INC., WAYNE KIRN,
10 APIC WORLD-WIDE, INC. and
11 STEVE EASTON

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14 GLOBAL INNOVATIONS, INC., a Maryland
15 corporation, and RAMSEY LAMERSON, an
16 individual,
17 Plaintiff,
18 vs.
19 ALS Scan, Inc., a Maryland corporation, WAYNE
20 KIRN, an individual, APIC WORLD-WIDE,
21 INC., a Florida corporation and STEVE EASTON,
22 an individual,
23 Defendants.

Case No.: C03-1277 JSW

**DECLARATION OF ALEX KIRN IN
SUPPORT OF MOTION TO DISMISS FOR
LACK OF PERSONAL JURISDICTION
(FRCP 12(b)(2)); OR IN THE ALTERNATIVE
TO DISMISS PURSUANT TO THE COURT'S
DISCRETION UNDER 28 U.S.C. §2201; OR
IN THE ALTERNATIVE TO TRANSFER
FOR CONVENIENCE (28 USC §1404(a))**

Date: August 1, 2003
Time: 9:00 a.m.
Courtroom: 2, 17th Floor
Honorable Judge Jeffrey S. White presiding

24 I, Alex Kirn, do state as follows under penalty of perjury:

25 1. I am the Chief Executive Officer of ALS SCAN, INC. ("ALS"), and I have personal
26 knowledge of all matters stated herein. If called as a witness, I could testify competently regarding the
27 matters stated.
28

1 2. ALS is a corporation organized and existing under the laws of the State of Maryland with
2 its only place of business in Columbia, Maryland.

3 3. ALS regularly maintains and updates all necessary corporate records and filings. I have
4 personal knowledge of the status of the corporate records of ALS, which was formed in the state of
5 Maryland in 1996. At the time of this declaration, ALS is in good standing and licensed in Maryland.

6 4. ALS maintains up to date corporate records, maintains bank accounts in the corporate
7 name and files tax returns in the corporate name. ALS is not incorporated in California; nor has it
8 qualified to do business in California. ALS has no subsidiaries incorporated or qualified to do business
9 in California.

10 5. ALS has no officers or directors residing or domiciled in California.

11 6. ALS has no employees residing or domiciled in California nor has it contracted with
12 persons in California to act on its behalf with respect to marketing, distributing or servicing any of its
13 goods, services, or products.

14 7. ALS has no branch office or comparable facilities in California, and has no telephone
15 listings or mailing address in California.

16 8. ALS has no bank accounts or other tangible personal or real property in California.

17 9. ALS does not direct any of its advertising specifically toward California residents or
18 business, nor does it advertise in any publications that are directed primarily toward California residents
19 or businesses.

20 10. None of ALS's employees has attended business conferences or similar functions within
21 the state of California.

22 11. I have personally never even set foot in the state of California for any reason whatsoever.

23 12. ALS is primarily engaged in the business of publishing a the well known and successful
24 adult website *http://www.alsscan.com* which receives two million unique visitors each month.

25 13. The ALS Site is subscription based. In other words, consumers who are 21 years of age
26 or older may purchase access to content on the ALS Site in exchange for the payment of a membership
27 fee.

1 14. All of ALS' copyrighted images have a Certificate of Registration issued by the United
2 States Copyright Office and contain ©, the name "ALS Scan" and the copyright year, or some other
3 *indicia* of ALS' ownership. These Copyright Registrations are valid and subsisting.

4 15. ALS is the owner of the valuable and well-known ALS SCAN trademark. This mark is
5 used by ALS in connection with the sale of its copyrighted products. ALS has spent millions of dollars
6 advertising and promoting the ALS SCAN® mark and has sold millions of dollars of products and
7 services under the ALS SCAN® mark. ALS has built up and now owns valuable goodwill symbolized
8 by the ALS SCAN® trademark. (Attached hereto as Exhibit B is a true and correct copy of the
9 Certificate of Registration issued by the United States Patent and Trademark Office.)

10 16. ALS has invested, and continues to invest, substantial sums of money, as well as time,
11 effort and creative talent, to produce its copyrighted works. In order to produce such works, ALS must
12 make numerous payments including model, photographer, location, styling, make-up, film, processing,
13 travel, public relations, legal, and advertising expenditures. ALS is compensated for its creative efforts
14 and monetary investments largely from subscription fees to its website.

15 17. ALS has expended large sums of money in the establishment and maintenance of a
16 photography department for the creation of its original pictures, and its staff has created thousands of
17 new and original pictures.

18 18. ALS has additionally expended large sums of money in advertising and promoting its
19 products incorporating its original art work, designs, and photographs, and in building up public
20 recognition and demand thereof; and over the years ALS has built up a valuable business and enviable
21 reputation by reason of the distinct styling, and quality of its products, and by reason thereof, its original
22 art work, designs, art styles, and photographs are widely identified in the minds of the purchasing public
23 with ALS. ALS also spent additional large sums of money protecting its copyrights to all of the pictures
24 it creates.

25 19. ALS currently has five full time employees and it would be an economic burden for ALS
26 and its employees to travel to California in order to provide evidence and defend this lawsuit. Director
27 of Operations, Ms. Sarah Kiwak, runs the day to day operations of ALS, while Ms. Amy LaPerle is
28

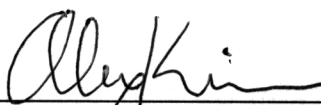
1 21. I had no personal knowledge of Ramsey Lamerson or Global Innovation, Inc. until
2 sometime in February of 2003, when they were brought to my attention by Robert Lombardo. At that
3 time, I was forwarded the link to two websites, www2.smuthosters.com and www.sexyfiber.com, that
4 were displaying hundreds of photographs of ALS models that had just recently been released in the
5 “members” section of the ALS website. I directed Amy LaPerle to document the violations and directed
6 Mr. Lombardo to send the persons responsible a stern cease and desist letter. If the copyright violations
7 continued on the websites, I authorized Mr. Lombardo to bring a legal action against the perpetrators. I
8 had no more involvement with the case from that point forward.

9 22. I have never met or spoken to Mr. Lamerson and, therefore, when I was served with the
10 Summons and Complaint at my residence in Ellicott City, Maryland on March 27, 2003, I had no
11 “personal animus towards plaintiffs” as alleged in paragraph 4 of the Complaint. Furthermore, I did not
12 “harbor the malicious intent to cause financial injury to Global” nor did I “harbor the malicious intent to
13 cause extreme emotional distress to Lamerson” as alleged in Paragraph 18 of the Complaint. In fact, I
14 had no idea what the case was about.

15 23. I understand that Mr. Lamerson and Global Innovations are in either Frederick,
16 Maryland or Walkersville, Maryland which are, in either case, less than 50 miles from the ALS offices
17 in Columbia, Maryland.

18
19 I declare under penalty of perjury that the foregoing is true and correct.

20
21 Executed on June 20, 2003.

22 
23 _____
24 Alex Kim