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9 ALS SCAN, INC., ALEX 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
22 EASTON, an individual,

23 Defendants.

Case No.: C03-1277 JSW

**DECLARATION OF SARAH KIWAK IN
SUPPORT OF REPLY TO OPPOSITION TO
MOTION TO DISMISS**

Date: August 1, 2003

Time: 9:00 a.m.

Courtroom: 2, 17th Floor

Honorable Judge Jeffrey S. White presiding

24 I, Sarah Kiwak, do state as follows under penalty of perjury:

25 1. I am over the age of eighteen years and am competent and authorized to make this
26 declaration; which I make voluntarily and freely based on my own personal knowledge of all matters
27 stated herein. I have personal knowledge of all matters stated herein and if called as a witness, I could
28 testify competently regarding the matters stated.

2. I am employed as the Director of Operations for ALS SCAN, INC. ("ALS"), at its offices
in Columbia, Maryland. In addition to being responsible for day-to-day operations, I handle all

1 advertisement sales and am the Custodian of Records for ALS. I have been employed by ALS since
2 1997.

3 3. I have had an opportunity to review the Requests for Admissions propounded upon ALS
4 by Plaintiffs.

5 4. By my declaration below I am providing responses to the majority of the Requests for
6 Admissions. Certain Requests are difficult to understand, thus I have attempted below to respond to
7 what appears to be the gist of the Requests.

8 5. The website referred to as www.heartbreakers.com in the Request for Admissions is not
9 owned or operated by ALS. ALS does own and operate the Website http://www.heartbreaker.com/, but
10 that website is NOT a "paysite."

11 6. ALS does not know how much revenue has been generated from the sale of website
12 memberships to California. The credit card processor does send ALS an e-mail receipt of each
13 transaction which contains a postal zip code. ALS does not view any of the receipts unless there is a
14 problem with the transaction or a customer has a problems accessing a website. The receipts are keep in
15 a database for approximately a year, at which time they are purged from the system. Therefore, in order
16 for ALS to determine how many memberships were purchased from a Californian postal zip code, ALS
17 would have examine each and every receipt to determine the zip code and then determine if that zip code
18 is located in California. ALS sells approximately 50,000 memberships per year and, therefore I
19 estimate, that it would take ALS over 250 hours to determine how many members used a California zip
20 code when placing an order in the past year.

21 7. ALS purchases banner advertising which is posted on various sites on the Internet. ALS
22 does not track membership sales through banner advertisement and, therefore, it is not possible to
23 conclude that the advertising ALS has purchased has generated sales from California residents.

24 8. No advertisement ALS has sold has ever been marketed directly to residents of
25 California.

26 9. ALS only has, and can only readily obtain the names, telephone numbers and email
27 addresses of the persons or businesses to whom ALS has sold advertising for the past six months. In
28 those months, ALS has not sold advertisement to any persons or businesses located in California.

1 10. ALS only records IP addresses of persons purchasing a membership to an ALS website.
2 An IP address provides no indication of the geographic location of the individual utilizing that IP
3 address.

4 11. Although members may provide a street address and postal zip code, that information is
5 only used by the credit card processor to confirm a match with the credit card number provided in order
6 to reduce fraudulent transactions.

7 12. ALS does not ship CDs, videos or DVDs. Contrary to the reckless allegations made in
8 paragraph 14 of the Declaration of Charles Carreon, ALS does not offer videos, DVDs, and CDs directly
9 to any California residents. At this time, all of ALS's "products" are in digital format and are located on
10 its servers in Maryland or Virginia. Anyone wishing to purchase those products must "go" to the ALS
11 servers and "pick them up" via digital transmission. In short, ALS Scan, Inc. does not ship any
12 products.

13 13. ALS does not know whether the company that processes transactions for ALS Paysites
14 maintain records of the addresses of any purchasers of any ALS memberships.

15 14. Neither Alex Kim nor ALS Scan, Inc. has any ownership interest in WQM.

16 15. ALS has no access to the business records of WQM. Furthermore, Mr. Carreon's
17 assertion, made in paragraph 14 of the Declaration of Charles Carreon, that ALS has a "distribution
18 arrangement with another Maryland company" is false.

19 16. ALS has NO records identifying any retail or wholesale sales of DVDs or videos that
20 identify any persons and businesses in California.

21 17. ALS maintains the records required by 18 U.S.C. § 2257. By statute, those records are
22 maintained for inspection by the Attorney General only.

23 18. Despite the baseless representations made in paragraph 15 of the Declaration of Charles
24 Carreon, ALS does not maintain records of where its members reside.

25 19. APIC is an authorized agent of ALS for the express (and sole) purpose of sending out
26 cease and desist notices to copyright infringers pursuant to the Digital Millennium Copyright Act.
27 Although, APIC is authorized to send out cease and desist notices on behalf of ALS, it does not need
28 ALS's approval before sending a notice. Additionally, ALS only knows the e-mail addresses to where

1 the notices were sent. Those notices can end up anywhere in the world, especially since copyright
2 infringers, such as the Plaintiffs, go to great lengths to hide their true identities.

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

Executed on July 18, 2003.



Sarah Kiwak