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 APPLE INC.

9  
 10 UNITED STATES DISTRICT COURT  
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 12 SAN FRANCISCO DIVISION  
 13

14 APPLE INC., a California corporation,  
 15 Plaintiff,  
 16 v.  
 17 PSYSTAR CORPORATION,  
 a Florida corporation, and DOES 1-10,  
 18 inclusive,  
 19 Defendants.

Case No. CV 08-03251 WHA

**DECLARATION OF MEHRNAZ  
 BOROUMAND SMITH IN SUPPORT OF  
 APPLE INC.'S ADMINISTRATIVE  
 MOTION SEEKING LEAVE OF COURT  
 TO FILE A REPLY TO PSYSTAR  
 CORPORATION'S SUPPLEMENTAL  
 BRIEFING ON THE RELEVANCE OF  
 TOPIC 3 TESTIMONY, DEFENDANT'S  
 MOTION TO COMPEL AND  
 PLAINTIFF'S CROSS-MOTION FOR A  
 PROTECTIVE ORDER**

20 AND RELATED COUNTERCLAIMS  
 21

22  
 23 I, Mehrnaz Boroumand Smith, declare as follows:

24 1. I am an attorney licensed to practice law in the State of California and am admitted to  
 25 practice before this Court. I am a partner in the law firm of Townsend and Townsend and Crew LLP  
 26 ("Townsend"), and am one of the attorneys representing plaintiff and counterdefendant Apple Inc.  
 27 ("Apple") in the above captioned matter. I make this declaration on personal knowledge and if called  
 28 as a witness could and would competently testify with respect to the matters stated herein.

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1           2.       On September 1, 2009, I asked Tyler Gee, an associate at Townsend, to meet and  
2 confer with opposing counsel and seek a stipulation regarding Apple's Administrative Motion For  
3 Leave To File a Reply Brief.

4           3.       After his call with Kiwi Camara, counsel for Psystar, Mr. Gee reported that Psystar was  
5 willing to so stipulate, provided that Apple agreed to file the reply by noon on September 2, 2009, so  
6 that Psystar would have time to reply should Apple raise any new issues in the Reply.

7           4.       Subsequently, another associate at Townsend, Jeb Oblak, sent Mr. Camara a copy of  
8 the proposed stipulation by email and copied me on that email. A true and correct copy of Mr.  
9 Oblak's September 1, 2009, email is attached hereto as Exhibit 1. A true and correct copy of the  
10 proposed stipulation attached to that email is attached hereto as Exhibit 2.

11          5.       After having left Mr. Camara a follow-up voicemail, I sent an email to Mr. Camara and  
12 his team members at Camara and Sibley asking again whether they would agree to Townsend's filing  
13 the stipulation. A true and correct copy of that email is attached hereto as Exhibit 3.

14          6.       Several minutes later, I received an email from Tim Nyberg of Camara and Sibley  
15 offering an explanation that Psystar would not stipulate, but noting that the response was not  
16 "official," and stating that an official response would be forthcoming from Mr. Camara. However,  
17 Mr. Nyberg stated that Psystar could not agree that it had raised new issues in its Supplemental Brief.  
18 A true and correct copy of Mr. Nyberg's email is attached hereto as Exhibit 4.

19          7.       At 10:12 pm, I still had not received a response from Mr. Camara, so I sent Camara and  
20 Sibley an email explaining that Apple "disagreed with Psystar's position . . . [t]here were several  
21 issues brought up in [Psystar's] supplemental brief that were never raised in any meet and confer or at  
22 the hearing before the court." A true and correct copy of that email to Mr. Nyberg is attached hereto  
23 as Exhibit 5.

24          8.       Apple's basis for seeking leave of the Court to file its reply brief is that Psystar's  
25 Supplemental Brief raised new issues not discussed either at the August 20, 2009, hearing, or in any  
26 meet and confer. Psystar has stated that it cannot agree that it raised new arguments in its  
27 supplemental brief. Consequently, Apple and Psystar cannot reach agreement on this issue through  
28 any further engagement in the meet and confer process.

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