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12 IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 13 SAN FRANCISCO DIVISION

14 APPLE INC., a California corporation,

15 *Plaintiff,*

16 v.

17 PSYSTAR CORPORATION,

18 *Defendants.*

19 AND RELATED COUNTERCLAIMS

CASE NO. CV-08-03251-WHA

**MISCELLANEOUS
 ADMINISTRATIVE REQUEST FOR
 AN ORDER PERMITTING THE
 FILING UNDER SEAL OF
 CONFIDENTIAL PORTIONS OF
 PSYSTAR CORPORATION'S
 MOTION FOR SUMMARY
 JUDGMENT**

20
 21 Out of an abundance of caution, Defendant Psystar Corporation submits this Administrative
 22 Request pursuant to Civil Local Rules 7–11 and 79–5(d) to file Psystar Corporation's Motion for
 23 Summary Judgment under seal. **Psystar has no interest in sealing the information contained in its**
 24 **motion for summary judgment and requests that this Court deny this motion to seal.** Psystar's

25 motion contains information designated by Apple as Confidential or Confidential Attorneys' Eyes

26 Only under the Stipulated Protective Order of March 2, 2009. These designations are wildly

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 28 MISCELLANEOUS ADMINISTRATIVE REQUEST FOR AN ORDER DENYING THE FILING
 UNDER SEAL OF CONFIDENTIAL PORTIONS OF PSYSTAR CORPORATION'S MOTION FOR
 SUMMARY JUDGMENT CV 08-03251 WHA

1 overbroad, in many cases encompassing entire deposition transcripts and documents that contain no
2 information not already available on the Internet. Apple’s love for the cloak and dagger has no place
3 in a federal court.

4 Psystar has complied with these designations by filing papers under seal throughout this
5 litigation. But this is inappropriate with respect to a dispositive motion like Psystar’s motion for
6 summary judgment. In its order granting the joint motion for a confidentiality order, this Court
7 explained that it was granting the joint motion subject to a list of four conditions. The fourth
8 condition, citing *Kamakana v. Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006), explains that a
9 “compelling reason” is necessary to seal any part of a dispositive motion and that such a compelling
10 reason will exist only with respect to trade secrets analogous to the recipe for Coca Cola. See Docket
11 No. 55 at 2. Certainly material that is publicly available on the Internet does not qualify for Coke-like
12 protection. Certainly this Court would not close the courtroom for essentially all of the trial in this
13 case, as would be required if all the material designated by Apple as Confidential or Attorneys’ Eyes
14 Only really merited sealing in a dispositive motion.

17 Psystar raised the issue of this Court’s condition four with counsel for Apple yesterday.
18 Psystar invited counsel for Apple to identify any particular materials that Apple believed qualified for
19 Coke-like protection. Apple responded by saying that it would stand by all its confidentiality
20 designations, even in the context of a dispositive motion and in the face of this Court’s order, and
21 threatened to pursue contempt proceedings against Psystar if Psystar filed any material designated as
22 confidential other than under seal. Out of an abundance of caution, Psystar is filing its motion for
23 summary judgment under seal to comply with Apple’s demands, but respectfully requests that this
24 Court enforce its order of March 2, 2009, and order that Psystar’s motion for summary judgment be
25 added to the public file without redaction. Under the local rules, Apple has five days to file with the
26
27

1 Court and serve a declaration in response to this motion should it seek to have the motion for summary
2 judgment remain under seal.

3
4 Dated: October 8, 2009

Respectfully submitted,

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6 CAMARA & SIBLEY LLP

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8 By: /s/ K.A.D. Camara _____
9 K.A.D. Camara

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12 *Attorneys for Defendant / Counterclaimant*
13 *Psystar Corporation*

1 **CERTIFICATE OF SERVICE**

2 I, Michael Wilson, declare I am employed in the City of Houston and County of Harris, Texas
3 in the office of Camara & Sibley. I am over the age of eighteen and not a party to this action. My
4 business address is Camara & Sibley, 2339 University Boulevard, Houston, Texas 77005.

5 I served the following document(s):

6 MISCELLANEOUS ADMINISTRATIVE REQUEST FOR AN ORDER PERMITTING THE
7 FILING UNDER SEAL OF CONFIDENTIAL PORTIONS OF PSYSTAR CORPORATION'S
8 MOTION FOR SUMMARY JUDGMENT
9 Case No. CV 08-03251 WHA

10 on the interested parties in this action by placing a true and correct copy thereof, on the above date,
11 enclosed in a sealed envelope, following the ordinary business practice of Camara & Sibley LLP. I
12 sent the document(s) to the following:

13 James G. Gilliland, Jr. 14 TOWNSEND AND TOWNSEND AND CREW LLP 15 Two Embarcadero Center, 8 th Floor 16 San Francisco, California 94111 17 Telephone: (415) 576-0200 18 Facsimile: (415) 576-0300	19 email: jggilliland@townsend.com
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20 [By First Class Mail] I am readily familiar with my employer's practice for collecting
21 and processing documents for mailing with the United States Postal Service. On the date listed herein,
22 following ordinary business practice, I served the within document(s) at my place of business, by
23 placing a true copy thereof, enclosed in a sealed envelope, with postage thereon fully prepaid, for
24 collection and mailing with the United States Postal Service where it would be deposited with the
25 United States Postal Service that same day in the ordinary course of business.

26 [By Overnight Courier] I caused each envelope to be delivered by a commercial carrier
27 service for overnight delivery to the offices of the addressee(s).

28 [By Hand] I directed each envelope to the party(ies) so designated on the service list to
be delivered by courier this date.

[By Facsimile Transmission] I caused said document to be sent by facsimile
transmission to the fax number indicated for the party(ies) listed above.

[By Electronic Transmission] I caused said document to be sent by electronic
transmission to the e-mail address indicated for the party(ies) listed above via the court's ECF
notification system.

I declare under penalty of perjury under the laws of the United States of America that the
foregoing is true and correct, and that this declaration was executed on October 8, 2009 at Houston,
Texas.

/s/ Michael Wilson

Michael Wilson