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14	UNITED STATES DISTRICT COURT				
15	FOR THE NORTHERN DISTRICT OF CALIFORNIA				
16	SAN FRANCISCO DIVISION				
17					
18	APPLE INC.,	Case No. 08-32	51 WHA		
19	Plaintiff,		MOTION AND MOTION RY JUDGMENT ON		
20	V.	COPYRIGHT	INFRINGEMENT, DMCA		
21	PSYSTAR CORPORATION, a Florida corporation,		VIOLATIONS AND PSYSTAR'S AFFIRMATIVE DEFENSES		
22	Defendant.	Hearing Date:	November 12, 2009		
23	AND RELATED COUNTERCLAIMS.	Hearing Time: Courtroom:	8:00 a.m.		
24		Judge: Trial Date:	Hon. William Alsup January 11, 2010		
25		Thu Dute.	Sundary 11, 2010		
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nd.	NOTICE OF MOTION AND MOTION FOR SUMMA CASE NO. 08-3251 WHA	RY JUDGMENT			

townsend.

1	PLEASE TAKE NOTICE that on November 12, 2009, at 8:00 a.m., or as soon thereafter			
2	as the matter can be heard, in the courtroom of the Honorable William Alsup, located at 450			
3	Golden Gate Avenue, Courtroom 9, San Francisco, California 94102, plaintiff and			
4	counterdefendant, Apple Inc. ("Apple") will, and hereby does, move for an order granting partial			
5	summary judgment that defendant and counterclaimant Psystar Corporation ("Psystar") has			
6	infringed Apple's copyrights and violated the Digital Millennium Copyright Act. Apple further			
7	seeks an order granting summary judgment dismissing Psystar's Eleventh and Thirty-Seventh			
8	Affirmative Defenses for First Sale/Exhaustion of Copyright and Copyright Misuse and Psystar's			
9	First and Second Counterclaims seeking a Declaration of Unenforceability for Copyright Misuse			
10	(EULA) and Copyright Misuse (DMCA).			
11				
12	DATED: October 8, 2009 Respectfully submitted,			
13	TOWNSEND AND TOWNSEND AND CREW LLP			
14				
15	By: /s/James G. Gilliland, Jr. JAMES G. GILLILAND, JR.			
16				
17	Attorneys for Plaintiff and Counterdefendant APPLE INC.			
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townsend.	NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT - 1 - CASE NO. 08-3251 WHA			

1	CERTIFICATE OF SERVICE			
2	I, Esther Casillas, declare I am employed in the City and County of San Francisco,			
3	California in the office of a member of the bar of this court at whose direction this service was made. I am over the age of eighteen and not a party to this action. My business address is			
4	Townsend and Townsend and Crew LLP, Two Embarcadero Center, Eighth Floor, San Francisco, California, 94111.			
5	I served the following documents exactly entitled: NOTICE OF MOTION AND			
6	MOTION FOR SUMMARY JUDGMENT ÓN COPYRIGHT INFRINGEMENT, DMCA VIOLATIONS AND PSYSTAR'S AFFIRMATIVE DEFENSES			
7	on the interested parties in this action following the ordinary business practice of Townsend and Townsend and Crow LLP, as follows:			
8	Townsend and Crew LLP, as follows:			
9	K.A.D. Camara Kent Radford	Eugene Action 1780 E. Barstow Avenue, #5		
10	Camara & Sibley LLP 2339 University Boulevard	Fresno, CA 93710 Email: <u>eugeneaction@hotmail.com</u>		
11	Houston, TX 77005	Email: <u>eugeneaetionagnotinan.com</u>		
	Phone: 713-893-7973 Fax: 713-583-1131			
12	Email: <u>camara@camarasibley.com</u> <u>radford@camarasibley.com</u>			
13				
14 [By First Class Mail] I am readily familiar with my employer's pract				
15 16	collecting and processing documents for mailing with the United States Postal Service. On the date listed herein, following ordinary business practice, I served the within document(s) at my place of business, by placing a true copy thereof, enclosed in a sealed envelope, with postage thereon fully prepaid, for collection and mailing with the United States Postal Service where it would be			
17	deposited with the United States Postal Service that same day in the ordinary course of business.			
18	[By Overnight Courier] I caused each envelope to be delivered by a commercial carrier service for overnight delivery to the offices of the addressee(s).			
19	[By Hand] I directed each envelope to the party(ies) so designated on the service list to be delivered by courier this date.			
20	20 [By Facsimile Transmission] I caused said document to be sent by facsimile			
21	transmission to the fax number indicated for the party(ies) listed above.			
22	[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			
23	notification system.			
24	<ul> <li>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 San Francisco, California.</li> </ul>			
26				
27	/s/Esther Casillas ESTHER CASILLAS			
28				
townsend.	NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT CASE NO. 08-3251 WHA			