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 13 APPLE INC.

14 UNITED STATES DISTRICT COURT  
 15 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 16 SAN FRANCISCO DIVISION

18 APPLE INC.,

19 Plaintiff,

20 v.

21 PSYSTAR CORPORATION, a Florida  
 22 corporation,

23 Defendant.

24 AND RELATED COUNTERCLAIMS.  
 25

Case No. 08-3251 WHA

**DECLARATION OF MATTHEW R.  
 LYNDE IN SUPPORT OF APPLE INC.'S  
 MOTION FOR SUMMARY JUDGMENT  
 ON COPYRIGHT INFRINGEMENT,  
 DMCA VIOLATIONS AND PSYSTAR'S  
 AFFIRMATIVE DEFENSES**

Hearing Date: November 12, 2009  
 Hearing Time: 8:00 a.m.  
 Courtroom: 9  
 Judge: Hon. William Alsup  
 Trial Date: January 11, 2010

27 **[PUBLIC VERSION]**  
 28

1 I, Matthew R. Lynde, declare as follows:

2 1. I make this declaration on personal knowledge unless otherwise indicated and if  
3 called as a witness I am able to testify with respect to the matters stated herein. I am an economist  
4 and a Vice President of Cornerstone Research, an economic and financial consulting firm in San  
5 Francisco, California. I have been retained by the law firm of Townsend and Townsend and Crew  
6 LLP on behalf of Apple Inc. ("Apple") to provide testimony and expert opinion in the above-  
7 captioned matter. I have submitted an expert report and a supplemental expert report in this matter  
8 that I understand have been served on opposing counsel. Psystar Corporation did not take my  
9 deposition.

10 2. I earned a B.A. and a Ph.D. in economics from the University of California at  
11 Berkeley. As an undergraduate, I studied electrical engineering as well as economics. Between  
12 degrees, I worked at the President's Council on Wage and Price Stability, followed by research on  
13 small firm innovation at the Brookings Institution. After earning my Ph.D., I served on the faculty  
14 of the City University of New York where I taught corporate finance as well as microeconomics  
15 and econometrics courses. I then joined Price Waterhouse in New York and eventually became the  
16 partner in charge of that firm's intellectual property practice in the San Francisco Bay Area. I was  
17 invited to join Cornerstone Research in 2001 and was also asked to head its San Francisco office. I  
18 specialize in applied economic, financial, and statistical analysis of complex business matters,  
19 especially for intellectual property issues, including the calculation of damages. I have more than  
20 30 years of experience as a practicing applied economist for the government, academia, and  
21 business.

22 3. In preparing my testimony, among other things, I researched and analyzed both  
23 Apple and Psystar's business models, calculated Psystar's infringing units, revenues and ill-gotten  
24 gains, conducted independent research, and reviewed documents disclosed through discovery as  
25 well as deposition testimony. I also researched other companies that use an integrated product  
26 business model. Moreover, I determined, using a conservative methodology, the number of  
27 computers running Mac OS X that Psystar sold from April, 2008 until July, 2009. This information  
28 is summarized below.

1           4.       Founded in 1976, Apple is known as one of the original pioneers in the personal  
2 computer industry. It released the first Macintosh personal computer (“Mac”) in 1984. Today  
3 Apple designs, manufactures, and markets a variety of products, including Macs, portable digital  
4 music players (*i.e.*, iPod®), and mobile communication devices (*i.e.*, iPhone®), as well as a variety  
5 of related software, services, peripherals, and networking solutions. BusinessWeek named Apple as  
6 the most innovative company in the world in both 2008 and 2009.

7           5.       Apple competes with a number of other companies in the personal computer  
8 industry. During its 2008 fiscal year, Apple sold 3.7 million desktop computers and 6 million  
9 portable computers worldwide. According to IDC, a market research firm specializing in research  
10 about the information technology, telecommunications, and consumer technology markets, sales of  
11 Mac computers represented 7.6% of all new personal computer sales in the U.S. in the first quarter  
12 of 2009. Apple’s major competitors in the U.S. market for personal computers, according to IDC,  
13 include Hewlett-Packard and Dell Inc., whose respective market shares during the same period were  
14 27.6% and 26.3%.

15           6.       Apple’s success is due in part to its continuing large investment in research and  
16 development and advertising. According to Apple’s Form 10-Ks (1998-2008), Apple spent \$303  
17 million in research and development in 1998, an annual expense that had grown to over \$1.1 billion  
18 by 2008. In conjunction with this investment, Apple’s advertising budget has risen steadily  
19 throughout that time period, reaching \$500 million per year.

20           7.       Apple has always offered computers with the Mac OS and other Apple software  
21 applications preloaded onto Apple’s hardware. Currently, Apple offers Mac OS X preloaded on its  
22 computers. Customers can upgrade the version of Mac OS X on their Apple computers by  
23 purchasing a license to the latest version. The license agreement specifically states that Apple does  
24 not permit the installation or use of Mac OS X on non-Apple hardware. Apple’s business model is  
25 built on the integration of its software and hardware, achieved with a very substantial investment in  
26 research, development and design that over the years has amounted to billions of dollars. Apple  
27 develops and tests its own software and hardware together to create an integrated computer.  
28



1 Careful implementation and extensive testing are critical to providing the highest quality products  
2 and ensuring an outstanding customer experience.

3 8. The integration of hardware and software and the maintenance of a focused product  
4 line are central to Apple's business model and are vital to the company's success. This business  
5 model allows Apple to commit its resources more efficiently to ensure the high quality of its  
6 product line, enables it to provide fast and high quality support to customers, and increases the  
7 speed with which Apple is able to offer new innovations and bring them to the market. For  
8 example, Apple has released a major upgrade to Mac OS X every one or two years since its  
9 introduction, while competitors with non-integrated approaches have been unable to match this  
10 pace.

11 9. Other companies in the broader computer and consumer electronics industries also  
12 use the integrated product business model. One example in the computer server arena, where the  
13 quality and reliability of the product can be especially important, is IBM's POWER product line of  
14 integrated servers, which is based on IBM's POWER6 processor and runs IBM's AIX UNIX-based  
15 operating system. Research in Motion is another prominent example of a company that uses the  
16 integrated business model. It designs and manufactures the hardware for its BlackBerry® line of  
17 mobile phones, their operating system software, and also the software that allows them to access  
18 corporate email that relies on third-party software. The integrated product business model is also  
19 widely used in other segments of the consumer electronics industry. For example, three of the most  
20 popular current generation gaming consoles, the Nintendo Wii, the Sony Playstation 3, and the  
21 Microsoft Xbox 360, are integrated products. Another example is the Amazon Kindle electronic  
22 book reader, whose license agreement states: "You may use the Device Software only on the  
23 Device."

24 10. Apple's licensing of Mac OS X for use only on Apple hardware does not restrict  
25 competition or innovation in the operating system market. In fact, there are many successful  
26 operating systems in the marketplace. These include various Windows operating systems produced  
27 by Microsoft, proprietary UNIX operating systems such as Hewlett-Packard's HP-UX, IBM's AIX,  
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and the formerly proprietary Solaris from Sun. They also include various open source operating systems such as Free BSD, Linux, OpenSolaris, and Ubuntu. The competitive nature of the operating system market is also evidenced by Google's announcement in mid-2009 that it is launching a new operating system for personal computers, the Google Chrome® OS. Nor does Apple's business model restrict competition or innovation in the computer hardware market. As evidenced by H-P, Dell, Sony, Lenovo, Toshiba, Acer, Fujitsu and others, the computer industry is full of innovative companies that successfully offer different types of computer hardware.

11. [REDACTED]

[REDACTED]

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief.

Executed on October 8, 2009, at San Francisco, California.

  
Matthew R. Lynde, Ph.D.

**CERTIFICATE OF SERVICE**

I, **Esther Casillas**, declare I am employed in the City and County of San Francisco, 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 Townsend and Townsend and Crew LLP, Two Embarcadero Center, Eighth Floor, San Francisco, California, 94111.

I served the following documents exactly entitled: **DECLARATION OF MATTHEW R. LYNDE IN SUPPORT OF APPLE INC.'S MOTION FOR SUMMARY JUDGMENT ON COPYRIGHT INFRINGEMENT, DMCA VIOLATIONS AND PSYSTAR'S AFFIRMATIVE DEFENSES**, on the interested parties in this action following the ordinary business practice of Townsend and Townsend and Crew LLP, as follows:

K.A.D. Camara Kent Radford Camara & Sibley LLP 2339 University Boulevard Houston, TX 77005 Phone: 713-893-7973 Fax: 713-583-1131 Email: <u>camara@camarasibley.com</u> <u>radford@camarasibley.com</u>	Eugene Action 1780 E. Barstow Avenue, #5 Fresno, CA 93710 Email: <u>eugeneaction@hotmail.com</u>
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[By First Class Mail] I am readily familiar with my employer's practice for 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 deposited with the United States Postal Service that same day in the ordinary course of business.

[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).

[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 San Francisco, California.

\_\_\_\_\_  
/s/Esther Casillas  
**ESTHER CASILLAS**

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