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12 Attorneys for Plaintiff and Counterdefendant  
 APPLE INC.

13  
 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  
 corporation,

22 Defendant.

23 AND RELATED COUNTERCLAIMS.

Case No. 08-3251 WHA

**NOTICE OF MOTION AND 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

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.  
16 JAMES G. GILLILAND, JR.

17 Attorneys for Plaintiff and Counterdefendant  
18 APPLE INC.

19 62254451 v1

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  
4 made. I am over the age of eighteen and not a party to this action. My business address is  
5 Townsend and Townsend and Crew LLP, Two Embarcadero Center, Eighth Floor, San Francisco,  
6 California, 94111.

7 I served the following documents exactly entitled: **NOTICE OF MOTION AND**  
8 **MOTION FOR SUMMARY JUDGMENT ON COPYRIGHT INFRINGEMENT, DMCA**  
9 **VIOLATIONS AND PSYSTAR’S AFFIRMATIVE DEFENSES**

10 on the interested parties in this action following the ordinary business practice of Townsend and  
11 Townsend and Crew LLP, as follows:

12 K.A.D. Camara 13 Kent Radford 14 Camara & Sibley LLP 15 2339 University Boulevard 16 Houston, TX 77005 17 Phone: 713-893-7973 18 Fax: 713-583-1131 19 Email: <a href="mailto:camara@camarasibley.com">camara@camarasibley.com</a> 20 <a href="mailto:radford@camarasibley.com">radford@camarasibley.com</a>	21 Eugene Action 22 1780 E. Barstow Avenue, #5 23 Fresno, CA 93710 24 Email: <a href="mailto:eugeneaction@hotmail.com">eugeneaction@hotmail.com</a>
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25  [By First Class Mail] I am readily familiar with my employer’s practice for  
26 collecting and processing documents for mailing with the United States Postal Service. On the date  
27 listed herein, following ordinary business practice, I served the within document(s) at my place of  
28 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**