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TOWNSEND AND TOWNSEND AND CREW LLP
JAMES G. GILLILAND, JR. (State Bar No. 107988)
MEHRNAZ BOROUMAND SMITH (State Bar No. 197271)
MEGAN M. CHUNG (State Bar No. 232044)
J. JEB B. OBLAK (State Bar No. 241384)
Two Embarcadero Center Eighth Floor
San Francisco, CA 94111
Telephone: (415) 576-0200
Facsimile: (415) 576-0300
Email: jggilliland@townsend.com
Email: mboroumand@townsend.com
Email: mmchung@townsend.com
Email: jboblak@townsend.com

O'MELVENY & MYERS LLP
GEORGE RILEY (State Bar No. 118304)
Two Embarcadero Center, 28th Floor
San Francisco, CA 94111
Telephone: (415) 984-8700
Facsimile: (415) 984-8701
Email: griley@omm.com

Attorneys for Plaintiff and Counterdefendant
APPLE INC.

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

APPLE INC.,

Plaintiff,

v.

PSYSTAR CORPORATION, a Florida
corporation, and DOES 1-10, inclusive,

Defendants.

AND RELATED COUNTERCLAIMS.

Case No. 08-3251 WHA

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

1 I, Megan M. Chung, declare as follows:

2 1. I am an attorney licensed to practice law in the State of California and am admitted
3 to practice before this Court. I am an associate in the law firm of Townsend and Townsend and
4 Crew LLP, and am one of the attorneys representing Plaintiff and Counterdefendant Apple Inc.
5 (“Apple”) in the above-captioned matter. I make this declaration on individual knowledge, and if
6 called as a witness, I can and will competently testify with respect to the matters stated herein.

7 2. Attached hereto as Exhibit 1 is a true and correct copy of excerpts from Apple’s 10-
8 K for period ending September 29, 2001, produced with a beginning Bates Number
9 APP_PSY0021291.

10 3. Attached hereto as Exhibit 2 is a true and correct copy of portions of Apple’s 10-K
11 for period ending September 27, 2008, produced with a beginning Bates Number
12 APP_PSY0022299.

13 4. Attached hereto as Exhibit 3 is a true and correct copy of excerpts from the
14 deposition of Hector Benavides, taken in this matter on August 6, 2009.

15 5. Attached hereto as Exhibit 4 is a true and correct copy of excerpts from the
16 deposition of Michael Culbert, taken in this matter on August 14, 2009.

17 6. Attached hereto as Exhibit 5 is a true and correct copy of excerpts from the
18 deposition of David Elliott, taken on May 8, 2009.

19 7. Attached hereto as Exhibit 6 is a true and correct copy of excerpts from the
20 deposition of Bob Mansfield, taken in this matter on August 21, 2009.

21 8. Attached hereto as Exhibit 7 is a true and correct copy of excerpts from the
22 deposition of Simon Patience, taken on August 19, 2009.

23 9. Attached hereto as Exhibit 8 is a true and correct copy of excerpts from the
24 deposition of Roberto Pedraza taken on April 24, 2009.

25 10. Attached hereto as Exhibit 9 is a true and correct copy of excerpts from the 30(b)(6)
26 deposition of Psystar Corporation taken on March 19, 2009. Psystar designated its Rodolfo Pedraza
27 for this 30(b)(6) deposition.

28 11. Attached hereto as Exhibit 10 is a true and correct copy of excerpts from the 30(b)(6)

1 deposition of Psystar Corporation taken on August 7, 2009

2 12. Attached hereto as Exhibit 11 is a true and correct copy of excerpts from the 30(b)(6)
3 deposition of Rodolfo Pedraza, taken on August 26, 2009. Psystar designated Rodolfo Pedraza for
4 this 30(b)(6) deposition.

5 13. Attached hereto as Exhibit 12 is a true and correct copy of excerpts from the
6 deposition of Philip W. Schiller, taken on August 13, 2009.

7 14. Attached hereto as Exhibit 13 is a true and correct copy of excerpts from the
8 deposition of Kevin Van Vechten taken on August 12, 2009.

9 15. Attached hereto as Exhibit 14 is a true and correct copy of excerpts from the 30(b)(6)
10 deposition of Apple Inc. taken on August 12, 2009. Apple designated Kevin Van Vechten for this
11 30(b)(6) deposition.

12 16. Attached hereto as Exhibit 15 is a true and correct copy of excerpts from the
13 deposition of John Wright taken in this matter on August 7, 2009.

14 17. Attached hereto as Exhibit 16 is a true and correct copy of excerpts from the 30(b)(6)
15 deposition of Apple Inc. taken in this matter on August 7, 2009. Apple designated John Wright for
16 this 30(b)(6) deposition.

17 18. Attached hereto as Exhibit 17 are true and correct copies of Psystar Corporation's
18 Responses to Apple Inc.'s Second Set of Request for Admissions (Set Nos. 30-100) dated
19 December 11, 2008.

20 19. Attached hereto as Exhibit 18 are true and correct copies of Psystar Corporation's
21 Supplemental Responses to Apple Inc.'s Second Set of Request for Admissions dated January 9,
22 2009.

23 20. Attached hereto as Exhibit 19 are true and correct copies of Psystar Corporation's
24 Responses to Apple Inc.'s Third Set of Requests for Admission (Nos. 101-161) dated January 16,
25 2001.

26 21. Attached hereto as Exhibit 20 are true and correct copies of Psystar Corporation's
27 Second Supplemental Responses to Apple Inc.'s Requests for Admission Nos. 14-18 and 23-27; and
28 Psystar Corporation's First Supplemental Responses to Apple Inc.'s Request for Admission No. 19

1 and 20-22, all dated March 6, 2009.

2 22. Attached hereto as Exhibit 21 is a true and correct copy of Psystar Corporation's
3 Response to Apple Inc.'s Fourth (Corrected) Set of Requests for Admission (Nos. 162-226) dated
4 August 6, 2009.

5 23. Attached hereto as Exhibit 22 is a true and correct copy of Psystar Corporation's
6 Response to Apple Inc.'s Fifth (Corrected) Set of Requests for Admission (Nos. 227-306) dated
7 August 19, 2009.

8 24. Attached hereto as Exhibit 23 are true and correct copies of Psystar Corporation's
9 Second Supplemental Responses to Apple Inc.'s First Set of Interrogatories dated March 6, 2009.

10 25. Attached hereto as Exhibit 24 are true and correct copies of Psystar Corporation's
11 Responses to Apple Inc.'s Second Set of Interrogatories (Nos. 16-25) dated August 17, 2009.

12 26. Attached hereto as Exhibit 25 are true and correct copies of Psystar Corporation's
13 Responses to Court Ordered Interrogatories (Nos. 1-15) dated August 31, 2009.

14 27. Attached hereto as Exhibit 26 is a true and correct copy of Apple Inc.'s Software
15 License Agreement for Mac OS X produced with Bates Numbers APP_PSY0002759-761.

16 28. Attached hereto as Exhibit 27 is a true and correct copy of Apple Inc.'s Copyright
17 Registration No. TX5-401-457 produced by Apple with Bates Numbers APP_PSY0050611-613.
18 The effective date of the registration is June 22, 2001.

19 29. Attached hereto as Exhibit 28 is a true and correct copy of Apple Inc.'s Copyright
20 Registration No. TX6-849-489 produced by Apple with Bates Numbers APP_PSY0050614-616.
21 The effective date of the registration is January 24, 2008.

22 30. Attached hereto as Exhibit 29 is a true and correct copy of Apple Inc.'s Copyright
23 Registration No. TX6-336-643 produced by Apple with Bates Numbers APP-PSY0050608-610.
24 The effective date of the registration is March 29, 2006.

25 31. Attached hereto as Exhibit 30 is a true and correct copy of Microsoft's Software
26 License Terms, produced with Bates Numbers APP_PSY0038972-986.

27 32. Attached hereto as Exhibit 31 is a true and correct copy of Amazon Kindle: License
28 Agreement and Terms of Use (last updated on February 9, 2009), produced with Bates Numbers

1 APP_PSY0038961-971.

2 33. Attached hereto as Exhibit 32 is a true and correct copy of Interface Software
3 License Agreement for National Semiconductor Corporation (effective as of August 7, 2008),
4 produced with Bates Numbers APP_PSY0038987-988.

5 34. Attached hereto as Exhibit 33 is a true and correct copy of an End User Software
6 License Agreement for Epson America, Inc., produced with Bates Numbers APP_PSY0055967-
7 969.

8 35. Attached hereto as Exhibit 34 is a true and correct copy of a Pantech End User
9 License Agreement, produced with Bates Numbers APP_PSY0038992-998.

10 36. Attached hereto as Exhibit 35 is a true and correct copy of an End User License
11 Agreement for Hewlett-Packard Co. produced with Bates Numbers APP_PSY0055970-971.

12 37. Attached hereto as Exhibit 36 is a true and correct copy of the Wii Network
13 Services User Agreement for Nintendo (last updated on March 25, 2009). It was produced with
14 Bates Numbers APP_PSY0055972-976.

15 38. Attached hereto as Exhibit 37 are a true and correct copies of Systems Software
16 License Agreements (version 1.2 and 2.0) for Sony Computer Entertainment's Playstation® 3
17 System dated June 18, 2008. They were produced with Bates Numbers APP_PSY0055977-986.

18 39. Attached hereto as Exhibit 38 is a true and correct copy of the Xbox LIVE and
19 Games for Windows LIVE Terms of Use (last updated on September 2008) for Microsoft Corp. It
20 was produced with Bates Numbers APP_PSY0055987-999.

21 40. Attached hereto as Exhibit 39 is a true and correct copy of an End User License
22 Agreement for Cisco Systems, Inc., produced by Apple as Bates Numbers APP_PSY0056084-087.

23 41. Attached hereto as Exhibit 40 is a true and correct copy of the Blackberry Software
24 License Agreement for Research in Motion Limited, produced with Bates Numbers
25 APP_PSY0039413-425.

26 42. Attached hereto as Exhibit 41 is a true and correct copy of excerpts from a
27 Presentation entitled "Psystar Open Computing" that made by Psystar Corporation to various
28 venture capital firms. It was produced with beginning Bates Number PS009258.

1 43. Attached hereto as Exhibit 42 is a true and correct copy of a review of Apple's New
2 Operating System dated October 25, 2007, from MIT's Technology Review. It was produced by
3 Psystar with Bates Numbers PS002944-ud946.

4 44. Attached hereto as Exhibit 43 is a true and correct copy of an article from New York
5 Times entitled "Apple Offers New Goodies In Leopard System" dated October 25, 2007. It was
6 produced by Psystar with Bates Numbers PS002986-2989.

7 45. Attached hereto as Exhibit 44 is a true and correct copy of CNet's review of Mac OS
8 X 10.5 Leopard dated November 2, 2007. It was produced by Psystar with Bates Numbers
9 PS0002925-2929.

10 46. Attached hereto as Exhibit 45 is a true and correct copy of an article from
11 MacWorld.com entitled "Apple tops Consumer Reports tech support rating" dated May 5, 2008. It
12 was produced with Bates Numbers APP_PSY0002915-2918.

13 47. Attached hereto as Exhibit 46 is a true and correct copy of a page from Psystar
14 Corporation's website (www.psystar.com) entitled "Open Computer: The Apple Alternative"
15 produced with Bates Numbers APP_PSY0020988-20991.

16 48. Attached hereto as Exhibit 47 is a true and correct copy of a page from Psystar
17 Corporation's website (www.psystar.com) entitled "Take control of your choices Open Computer
18 products from Psystar" produced with Bates Number APP_PSY0003497.

19 49. Attached hereto as Exhibit 48 is a true and correct copy of Psystar Corporation's
20 Psystar Meta Update Newsletter dated July 2009. It was produced by Psystar with Bates Numbers
21 PS017924-926.

22 50. Attached hereto as Exhibit 49 is a true and correct copy of a page from Psystar
23 Corporation's website (www.psystar.com) entitled "Open Computer: The Smart Alternative to an
24 Apple" produced with Bates Number APP_PSY0020992.

25 51. Attached hereto as Exhibit 50 is a true and correct copy of Psystar Corporation's
26 advertisement used with Google content network entitled "Installing Mac OS on your PC" produced
27 with Bates Number APP_PSY0021063.

28 52. Attached hereto as Exhibit 51 is a true and correct copy of an email string between

1 Psystar and a customer dated June 17, 2008 produced by Psystar with Bates Number PS003503.

2 53. Attached hereto as Exhibit 52 is a true and correct copy of an email string between
3 Psystar and a customer dated July 15, 2008 produced by Psystar with Bates Number PS002046.

4 54. Attached hereto as Exhibit 53 is a true and correct copy of an email string between
5 Psystar and a customer dated June 11, 2008 produced by Psystar with Bates Number PS003542.

6 55. Attached hereto as Exhibit 54 is a true and correct copy of an email string between
7 Psystar and a customer dated October 3, 2008 produced by Psystar with Bates Number PS007865.

8 56. Attached hereto as Exhibit 55 is a true and correct copy of an email string between
9 Psystar and a customer dated November 8, 2008 produced by Psystar with Bates Numbers
10 PS002268-272.

11 57. Attached hereto as Exhibit 56 is a true and correct copy of an email from a customer
12 to Psystar dated May 7, 2008 produced by Psystar with Bates Number PS007237.

13 58. Attached hereto as Exhibit 57 is a true and correct copy of an email from a customer
14 to Psystar dated November 7, 2008 produced by Psystar with Bates Number PS003021.

15 59. Attached hereto as Exhibit 58 is a true and correct copy of an email from a customer
16 to Psystar dated October 10, 2008 produced by Psystar with Bates Number PS007822.

17 60. Attached hereto as Exhibit 59 is a true and correct copy of an email from a customer
18 to Psystar dated May 7, 2008 produced by Psystar with Bates Number PS005904.

19 61. Attached hereto as Exhibit 60 is a true and correct copy of an email string between
20 Psystar and customer dated August 7, 2008 produced by Psystar with Bates Numbers PS000825-
21 826.

22 62. Attached hereto as Exhibit 61 is a true and correct copy of an email from a customer
23 to Psystar dated May 29, 2008 produced by Psystar with Bates Numbers PS004201.

24 63. Attached hereto as Exhibit 62 is a true and correct copy of an email string between
25 Psystar and customer dated March 5, 2009 produced by Psystar with Bates Numbers PS014616-17.

26 64. Attached hereto as Exhibit 63 is a true and correct copy of an email from Rodolfo
27 Pedraza to David Elliott dated June 9, 2008 produced by David Elliott with Bates Number
28 Elliot000033, marked as “Highly Confidential – AEO.”

CERTIFICATE OF SERVICE

I, Diane G. Sunnen, 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 MEGAN M. CHUNG 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
Camara & Sibley LLP
2339 University Boulevard
Houston, TX 77005
Tel: 713-893-7973
Fax: 713-583-1131
Email: camara@camarasibley.com

Eugene Action
Attorney at Law
1780 E. Barstow Avenue, #5
Fresno, CA 93710
Email: eugeneaction@hotmail.com

[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/Diane G. Sunnen
Diane G. Sunnen