

1 K.A.D. CAMARA (TX Bar No. 24062646/  
 MA Bar No. 661087 – *Admitted Pro Hac Vice*)  
 2 camara@camarasibley.com  
 KENT RADFORD (TX Bar No. 24027640 –  
 3 *Admitted Pro Hac Vice*)  
 radford@camarasibley.com  
 4 CAMARA & SIBLEY LLP  
 2339 University Boulevard  
 5 Houston, Texas 77005  
 Telephone: (713) 893-7973  
 6 Facsimile: (713) 583-1131

7 EUGENE ACTION (SBN 223023)  
 eugeneaction@hotmail.com  
 8 1780 E. Barstow Ave., #5  
 Fresno, California 93710  
 9 Telephone: (559) 283-9772  
 Facsimile: (559) 642-2843  
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11 IN THE UNITED STATES DISTRICT COURT  
 12 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'S RESPONSE TO  
 APPLE'S MOTION FOR SUMMARY  
 JUDGMENT**

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 21  
 22 Defendant Psystar Corporation submits this Administrative Request pursuant to Civil Local  
 23 Rules 7–11 and 79–5(d) to file parts of Psystar Corporation's Response to Apple's Motion for  
 24 Summary Judgment under seal. **Psystar has no interest in sealing the information contained in its**

25 **motion for summary judgment and requests that this Court deny this motion to seal.** Psystar's  
 26 motion contains information designated by Apple as Confidential or Confidential Attorneys' Eyes  
 27 Only under the Stipulated Protective Order of March 2, 2009. These designations are wildly

28 MISCELLANEOUS ADMINISTRATIVE REQUEST FOR AN ORDER PERMITTING THE FILING  
 UNDER SEAL OF CONFIDENTIAL PORTIONS OF PSYSTAR'S RESPONSE TO APPLE'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.

3 Psystar has complied with these designations by filing papers under seal throughout this  
4 litigation. But this is inappropriate with respect to a dispositive motion like Psystar's Response to  
5 Apple's Motion for Summary Judgment. In its order granting the joint motion for a confidentiality  
6 order, this Court explained that it was granting the joint motion subject to a list of four conditions.  
7 The fourth condition, citing *Kamakana v. Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006), explains that  
8 a "compelling reason" is necessary to seal any part of a dispositive motion and that such a compelling  
9 reason will exist only with respect to trade secrets analogous to the recipe for Coca Cola. See Docket  
10 No. 55 at 2. Certainly material that is publicly available on the Internet does not qualify for Coke-like  
11 protection. Certainly this Court would not close the courtroom for essentially all of the trial in this  
12 case, as would be required if all the material designated by Apple as Confidential or Attorneys' Eyes  
13 Only really merited sealing in a dispositive motion.  
14  
15

16 Under the local rules, Apple has five days to file with the Court and serve a declaration in  
17 response to this motion should it seek to have the motion for summary judgment remain under seal.  
18

19 Dated: October 22, 2009

Respectfully submitted,

20  
21 CAMARA & SIBLEY LLP

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23 By: /s/ K.A.D. Camara \_\_\_\_\_  
24 K.A.D. Camara  
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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'S RESPONSE TO  
8 APPLE'S 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:

<p>13 James G. Gilliland, Jr. 14 TOWNSEND AND TOWNSEND AND CREW LLP 15 Two Embarcadero Center, 8<sup>th</sup> Floor 16 San Francisco, California 94111 17 Telephone: (415) 576-0200 18 Facsimile: (415) 576-0300</p>	<p>19 email: jggilliland@townsend.com</p>
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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 22, 2009 at Houston,  
Texas.

*/s/ Michael Wilson*  
Michael Wilson