

1 TOWNSEND AND TOWNSEND AND CREW LLP
 2 JAMES G. GILLILAND, JR. (State Bar No. 107988)
 3 MEHRNAZ BOROUMAND SMITH (State Bar No. 197271)
 4 MEGAN M. CHUNG (State Bar No. 232044)
 5 J. JEB B. OBLAK (State Bar No. 241384)
 6 Two Embarcadero Center Eighth Floor
 7 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

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

12 Attorneys for Plaintiff and Counterdefendant
 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.

Case No. 08-3251 WHA

**DECLARATION OF J. JEB B. OBLAK IN
 SUPPORT OF PSYSTAR
 CORPORATION'S MISCELLANEOUS
 ADMINISTRATIVE REQUEST FOR AN
 ORDER PERMITTING THE FILING
 UNDER SEAL OF PORTIONS OF
 PSYSTAR CORP.'S REPLY BRIEF AND
 EXHIBITS A-C (DKT. NO. 203)**

24 AND RELATED COUNTERCLAIMS.

26 I, J. Jeb B. Oblak, declare as follows:

27 1. I am an attorney licensed to practice law in the State of California and am admitted
 28 to practice before this Court. I am an associate in the law firm of Townsend and Townsend and

1 Crew LLP, and am one of the attorneys representing plaintiff and counterdefendant Apple Inc.
2 (“Apple”) in the above-captioned matter. I make this declaration based on personal knowledge
3 and, if called as a witness, I could and would competently testify with respect to the matters stated
4 herein.

5 2. I make this declaration pursuant to Civil Local Rule 79-5(d) in support of Psystar’s
6 administrative request to seal portions of its reply brief and exhibits (Dkt. No. 203). Though in
7 that administrative request Psystar has asked that its request be denied, some of what Psystar has
8 filed under seal contains Apple’s highly confidential information that was disclosed to Psystar
9 during discovery.

10 3. During discovery, Apple produced to Psystar confidential technical information
11 regarding Apple’s various means for implementing technological protection measures and the
12 means Psystar uses to circumvent Apple’s technological protection measures. That information
13 was designated “CONFIDENTIAL-ATTORNEYS’ EYES ONLY” pursuant to the Stipulated
14 Protective Order approved and entered by this Court on March 2, 2009. Deposition testimony
15 regarding this information was also designated by Apple and Psystar as “CONFIDENTIAL-
16 ATTORNEYS’ EYES ONLY.”

17 4. Such highly confidential information about Apple’s current technological
18 protection measures has never been disclosed by Apple to the public and is maintained in such
19 manner to ensure that it is never disclosed to the public by Apple. Apple has explained in detail
20 the legal basis for why such information has been kept confidential by courts and why it should
21 remain confidential in Apple’s reply in support of its motion to seal portions of Apple’s motion for
22 summary judgment (Dkt. No. 188). Additionally, Psystar has submitted with its Reply Brief In
23 Support Of Its Motion For Summary Judgment, deposition testimony from one Apple witness
24 regarding other means of implementing technological protection measures that Psystar does not in
25 any way rely on in its briefs. Apple has never disclosed this information to the public, has
26 consistently designated this information “CONFIDENTIAL” or “CONFIDENTIAL-
27 ATTORNEYS’ EYES ONLY,” and the disclosure of this information could cause Apple
28 competitive harm. Because Psystar in no way relies on this information, its disclosure does not

1 contribute to the openness of the judicial process and this information should be subject to the
2 good cause standard. The Ninth Circuit's rationale for making the judicial process accessible to
3 the public does not require the disclosure of highly confidential information not relied upon in
4 dispositive motions. Whether under the good cause standard or the compelling reason standard,
5 this information should remain sealed.

6 5. For the Court's convenience, Apple has lodged the portions of Psystar's filing that
7 should be redacted and filed under seal. With respect to Psystar's Reply brief, those portions that
8 Psystar redacted remain highlighted in yellow and those portions that Apple contends should be
9 redacted are now boxed in red. Similarly, the portions of Psystar's Exhibits to the Radford
10 Declaration in Support of Psystar's Reply that Apple contends should be redacted are also boxed
11 in red and are also lodged with the Court.

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

14 Executed on November 5, 2009, at San Francisco, California.

15
16 /s/J. Jeb B. Oblak
17 J. JEB B. OBLAK

**ATTACHMENTS TO OBLAK DECLARATION WILL BE
LODGED WITH CLERK OF THE COURT PURSUANT TO
CIVIL LOCAL RULE 79-5(d)**

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 J. JEB B. OBLAK IN SUPPORT OF PSYSTAR CORPORATION'S MISCELLANEOUS ADMINISTRATIVE REQUEST FOR AN ORDER PERMITTING THE FILING UNDER SEAL OF PORTIONS OF PSYSTAR CORP.'S REPLY BRIEF AND EXHIBITS A-C (DKT. NO. 203)** 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: 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 November 5, 2009, at San Francisco, California.

/s/Diane G. Sunnen
Diane G. Sunnen

62292317 v1