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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.

Case No. 08-3251 WHA

**DECLARATION OF DR. MATTHEW R.
 LYNDE, PH.D. IN SUPPORT OF APPLE
 INC.'S MOTION FOR A PERMANENT
 INJUNCTION, STATUTORY DAMAGES
 AND ATTORNEYS' FEES**

25 I, Matthew R. Lynde, Ph.D., declare as follows:

26 1. I make this declaration on personal knowledge unless otherwise indicated and if
 27 called as a witness I am able to testify with respect to the matters stated herein. I am an economist
 28

DECLARATION OF DR. MATTHEW R. LYNDE, PH.D. IN SUPPORT OF APPLE INC.'S MOTION FOR A PERMANENT
 INJUNCTION, STATUTORY DAMAGES AND ATTORNEYS' FEES, CASE NO. 08-3251 WHA

1 and a Vice President of Cornerstone Research, an economic and financial consulting firm in San
2 Francisco, California. I have been retained by the law firm of Townsend and Townsend and Crew
3 LLP on behalf of Apple Inc. (“Apple”) to provide testimony and expert opinion in the above-
4 captioned matter. I have submitted an expert report and a supplemental expert report in this matter
5 that I understand have been served on opposing counsel. Psystar Corporation did not take my
6 deposition.

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

19 3. In preparing my testimony, among other things, I researched and analyzed both
20 Apple and Psystar’s business models, calculated Psystar’s infringing units and revenues, conducted
21 independent research, and reviewed documents disclosed through discovery as well as deposition
22 testimony. Moreover, I determined, using a conservative methodology, the number of computers
23 running Mac OS X that Psystar sold from April, 2008 until August, 2009, and calculated statutory
24 damages. My conclusions regarding irreparable harm and damages are summarized in the next
25 section and explained more fully throughout the remainder of this declaration.

26 SUMMARY OF CONCLUSIONS

27 4. **Irreparable harm.** Psystar’s ongoing copyright infringement and violations of the
28 Digital Millennium Copyright Act (“DMCA”), including a pattern of infringing the copyrights in

1 Apple's revisions and upgrades to Mac OS X, have caused and will continue to cause irreparable
2 harm to Apple. Specifically, Psystar's practices harm and will continue to harm Apple's brand, its
3 business reputation, and business goodwill and result in an injury that cannot be quantified or
4 measured with a reasonable degree of certainty. Unless legally prevented from continuing this
5 pattern of harmful conduct, Psystar's actions will undermine Apple's ability to rely on its well-
6 known close integration of software and hardware. This in turn will negatively affect Apple's
7 ability to innovate, to offer superior customer services, to provide customers with reliable products
8 and a better user experience, and will limit Apple's ability to use its brand in marketing its products.
9 Psystar's pattern of wrongful conduct also enables and induces others to violate Apple's intellectual
10 property, which has caused and will cause further irreparable injury to Apple.

11 5. **Statutory damages.** According to my review of Psystar's incomplete financial
12 records for April, 2008 through August 10, 2009, Psystar sold at least 768 computers preinstalled
13 with Mac OS X and shipped at least 262 restore disks. Based on these numbers and this Court's
14 November 13, 2009 findings that Psystar has infringed at least two of Apple's copyrighted works
15 and violated the DMCA in a number of ways, I have calculated the range of statutory damages
16 under copyright and DMCA standards. Based on my calculations, the statutory damages to Apple
17 as a result of Psystar's copyright infringement are between \$1500 and \$300,000 and the statutory
18 damages to Apple as a result of Psystar's violations of the DMCA are between \$449,500 and
19 \$4,495,000.

20 **APPLE'S BUSINESS MODEL**

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

27 7. Apple's business model is built upon close integration of its hardware and software.
28 This integrated business model was created and maintained with a very substantial investment in

1 research and design that over the years has amounted to billions of dollars. As demonstrated in
2 Apple's Form 10-Ks from 1998-2008, Apple's Research and Development ("R&D") budget has
3 risen steadily from \$303 million in 1998 to over \$1.1 billion in 2008.

4 8. The integration of hardware and software in a focused product line are central to
5 Apple's business model and are vital to Apple's success. Apple's integrated business model allows
6 it to deliver a high quality-product that provides optimal performance, further enhancing the user
7 experience. As set forth in Apple's Form 10-K, "[t]he Company's business strategy leverages its
8 unique ability to design and develop its own operating system, hardware, application software, and
9 services to provide its customers new products and solutions with superior ease-of-use, seamless
10 integration, and innovative industrial design." Third parties have also recognized the importance of
11 Apple's integrated business model to its success. For example, in the Q2 2009 Quarterly
12 Commentary accompanying the American Customer Satisfaction Index ("ACSI") published by the
13 National Quality Research Center at the University of Michigan, Professor Claes Fornell writes that
14 "Apple's success has been a result of innovation, integration of products, customer service and good
15 marketing."

16 9. Apple focuses on multiple dimensions of quality, including high technical standards,
17 reliability, security, design, ease of use, and outstanding service and support. Apple maintains strict
18 quality controls on all Apple products and after-sale services, and promotes quality as part of the
19 Apple experience. It also distinguishes itself from its competitors through its brick-and-mortar
20 retail and customer service presence. Apple's 2008 Form 10-K states that "[t]he Company...
21 believes providing a high-quality sales and after-sales support experience is critical to attracting
22 new and retaining existing customers."

23 10. The user experience provided by Apple's innovative products and strong customer
24 support as well as its extensive marketing focusing on Apple's unique attributes, reinforces the
25 overall Apple brand, reputation, and goodwill for all Apple products.

26 **PSYSTAR'S BUSINESS MODEL AND INFRINGING CONDUCT**

27 11. Psystar primarily sells non-Apple computers with Mac OS X installed. According to
28 the deposition testimony of its President and Co-Founder, Rodolfo Pedraza, at least 80% of

1 Psystar's computers are preinstalled with Mac OS X. Although Psystar's records are incomplete,
2 they show that Psystar's gross profits from sales of those computers to amount to at least \$243,055
3 through August 10, 2009. Since the issuance of my report, Psystar has also started marketing and
4 distributing software that enables Mac OS X to run on non-Apple hardware, circumventing Apple's
5 measures to protect its intellectual property. Psystar also licenses such software to third party
6 computer manufacturers (OEMs).

7 12. Psystar described its own business model in a presentation to potential investors,
8 (PS009258-84, attached to this declaration as Exhibit A). According to Psystar, its business model
9 is *premised* on infringing Apple's intellectual property. Psystar characterizes this litigation as a
10 "unique opportunity" and projects that it will capture 7% of all personal computer sales by 2011. In
11 the same presentation, Psystar describes its plan to sell Mac OS X in an effort to take market share
12 from Apple: "Psystar is the first and only business to compete with Apple in the OS X market"
13 (PS009274). "Psystar will target students and educators" because "Apple has great penetration in
14 this market" (PS009275). It is Psystar's plan to encourage and promote infringement by others as
15 well. It plans to "[open] Mac OS to other OEMs" (PS009263) – which it has now done. According
16 to Psystar's conservative forecast, by Q4 2011, it will sell two million units on an annual basis
17 (PS009276). Psystar's more aggressive growth model forecasts fourteen million unit sales on an
18 annual basis by the end of 2011 (PS009278).

19 13. Not only is Psystar's business premised on selling computers running Mac OS X, but
20 Psystar's product development is also centered on offering Mac OS X. Psystar has spent less than
21 \$2,000 on R&D since 2008. Psystar has saved substantial amounts of money by using Mac OS X
22 without authorization rather than developing its own operating system as a number of other
23 companies have done.

24 14. Similarly, Psystar's marketing and advertising strategies also focus on offering Mac
25 OS X. For example, Psystar attempted to use certain Apple product names and marks when
26 advertising via Google AdWords. Google AdWords auctions off the chance to have the bidder's
27 ads appear next to Google search results when a particular keyword is used in a search. Ads may
28 also appear in various web pages that partner with Google and which contain the same keywords.

1 Psystar ran the following advertisements on Google: “Works Like a Mac; Faster Hardware and
 2 More Options; Get Your Open Computer Today”, and “Try Mac Now; Fast Computers with OS X
 3 Installed, Visit Us & Get OS X On Your PC Now” (PS008475-PS008480 at PS008476). Psystar’s
 4 use of Apple’s brand and product names in its advertising was effective in attracting users to
 5 Psystar’s website: the highest click-through rate (CTR) for an ad with Apple product names such as
 6 “Mac” or “OS X” was more than three times higher than the highest click-through rate for a term
 7 *other* than “Mac” or “OS X”.

8 15. Overall, Psystar spent just over \$40,000 on advertising and promotion of its products
 9 since 2008. In contrast, as demonstrated in Apple’s 10-Ks from 1998–2009, Apple’s advertising
 10 expenses have risen steadily from \$152 million in 1998 to over \$486 million in 2008 and \$501
 11 million in 2009. Because Psystar’s advertising and marketing centers on offering Mac OS X, it
 12 essentially free rides on Apple’s advertising and marketing efforts – just like it free rides on Apple’s
 13 R&D efforts. As a result, Psystar has saved substantial amounts of money in advertising and
 14 marketing expenses.

15 **PSYSTAR CUSTOMERS AND THEIR EXPERIENCE WITH PSYSTAR PRODUCTS**

16 16. In contrast to Apple’s customers, Psystar customers have not experienced
 17 consistently high-quality products and after-sale customer support. I have reviewed records¹ from

18 ¹ These complaints can be found in the following documents: PS002985–7; PS008105;
 19 PS015132; PS015135–6; PS006017; PS007912; PS014681; PS003683; PS004100; PS005079–
 20 140; PS010718–22; PS005679; PS006646; PS007711–2; PS008002–5; PS013290; PS014455–6;
 21 PS014496–500; PS005183; PS006016–8; PS007368–80; PS013447; PS014984–9; PS005033–4;
 22 PS005057–8; PS005452; PS013527; PS013446; PS001228–9; PS004315; PS005333–4;
 23 PS005904; PS006881; PS007270; PS000211; PS000766–7; PS001241; PS001353; PS002164;
 24 PS002875–6; PS003423; PS003632–3; PS003856–7; PS004100; PS008326–31; PS009105;
 25 PS012945; PS013134; PS013978; PS014114; PS014275; PS014356; PS014666–8; PS004255–6;
 26 PS004303–4308; PS000825–6; PS007813; PS007947; PS003551; PS003718–21; PS003863–7;
 27 PS004155–6; PS004255–6; PS005289; PS008105–25; PS013277–8; PS015014–5; PS002242;
 28 PS002245; PS004199; PS004257; PS007912; PS007969; PS013026–7; PS013352; PS014451–9;
 PS014476; PS014559–62; PS002242; PS014739–47; PS001793–800; PS014150–2; PS003297–8;
 PS005079–140; PS005213–30; PS006464–5; PS007711–12; PS014191; PS014494–500;
 PS014984–9; PS002268; PS002985-7; PS003685–704; PS013280–1; PS002488–95; PS013509;
 PS007237; PS007822; PS015127–45; PS008301–4; PS003062–4; PS003650; PS003852–3;
 PS004175; PS004201; PS005047–8; PS005307–19; PS007583; PS007813; PS008352–3;
 PS003157–9; PS004201; PS007827–8; PS002251–2; PS003530; PS003531; PS005448–9;
 PS006526; PS013445; PS000325; PS003569; PS003592; PS008026–7; PS008473; PS002488–95;
 PS003157–9; PS007583; PS013913–5; PS007845; PS013256–63; PS013750–1; PS014307–20;
 PS014680–2; PS003592; PS007366; PS007675; PS013308; PS014616; PS014366–74; and
 PS014488–9; PS016829; PS016724–6.

1 Psystar's document production in which customers complained about problems with Psystar
 2 computers including problems relating to video memory, clocks, automatic backups, running Apple
 3 software applications which are designed to work seamlessly on Apple computers such as iMovie,
 4 iWork, Photo Booth, and Final Cut Pro Studio, networking, excessive fan noise, software updates,
 5 audio, USB ports, wireless network connectivity, display, electrical malfunctions, quality control,
 6 unexpected blank screens, frequent system crashes, unexpected shutdowns, and malfunctioning hard
 7 discs and disc drives. For example, one customer described that when he received his Psystar
 8 computer, "the hard disk was not mounted and just dangling in the computer. Drive makes
 9 screeching noises and does not work properly." Another customer noted that the Psystar computer
 10 stopped working only two days after he received it. When he attempted to return the computer he
 11 was charged a 25% restocking fee of which he had no notice. Other customers were frustrated that
 12 while they were promised at the time of purchase that they would receive all Mac OS X updates,
 13 they were later informed by Psystar that it was not responsible for providing the updates.

14 **PSYSTAR'S ACTS CAUSE IRREPARABLE HARM TO APPLE**

15 17. In my opinion, Psystar's ongoing copyright infringement and its violations of the
 16 DMCA have caused and will continue to cause irreparable harm to Apple's brand equity,
 17 reputation, goodwill and business model, thereby harming Apple's ability to operate as it currently
 18 does, including its ability to innovate, offer superior customer services, and provide customers with
 19 reliable products.

20 **HARM TO APPLE'S BRAND EQUITY**

21 18. In professional economics literature related to marketing, a brand is generally
 22 defined as "a name, term, sign, symbol, or design, or a combination of these intended to identify the
 23 goods or services of one seller or group of sellers and to differentiate them from those of
 24 competitors." See *Marketing: An Introduction*, by Kotler and Armstrong. A brand, however,
 25 serves as a number of functions beyond being a marker for the product offering of a firm, including
 26 influencing consumer choice by signaling product quality. If the quality level signaled by the brand
 27 is confirmed by consumer experience, it leads to consumer satisfaction, repeat purchases and
 28 loyalty. In this way, brands can help consumers simplify their choices and reduce risk.

1 19. A brand can also augment the impact of the company's advertising and promotion
2 efforts (*e.g.*, a strong brand can make advertising and promotion more effective), help secure
3 distribution (*e.g.*, consumers expect stores to carry a strong brand), and facilitate growth and
4 expansion into other product categories (*e.g.*, it can be easier for a strong brand to successfully
5 launch brand extensions). Brands can have a strong sway on consumer preference and attract a
6 loyal and profitable set of customers. As a result, a brand is an "asset" (though an intangible one) in
7 the financial sense. In order to enhance and protect their brands, companies invest time, money and
8 effort (*e.g.*, research and development) to preserve and improve the quality of their products and
9 services, and the consumers' experience with their brands. They also engage in marketing and
10 advertising efforts to increase brand awareness and recognition and to consistently provide a
11 message about what their brands represent.

12 20. The value of the Apple brand has been assessed by several consulting companies that
13 specialize in brands and branding. Two such companies, Millward Brown and Interbrand, have
14 estimated the value of the Apple brand in the billions of dollars. In its 2008 report, Interbrand also
15 commented that "[Apple's] ability to identify new customer needs and deliver products of beautiful
16 simplicity and desirability continue to put it in a league of its own."

17 21. Apple follows a corporate branding strategy by using one corporate brand for all of
18 its products. *Kellogg on Marketing*, published by the Northwestern University's Kellogg School of
19 Management, notes that "[a]ll products under the corporate brand must be compatible with the
20 associations that the brand evokes." Higher awareness and recognition of the Apple brand are
21 expected to generate future sales, not only of the products Apple is currently offering, but also of
22 Apple's future products. A product or a consumer's experience with a product that is not
23 compatible with the brand's associations can harm the brand's equity.

24 22. Customer dissatisfaction with unauthorized products running Mac OS X, such as
25 Psystar's computers, threatens the Apple brand. As discussed above, customers complained about
26 the quality of Psystar's computers. Some of these problems may have stemmed from the low
27 quality of Psystar computer hardware, others from Psystar's tampering with Mac OS X to make the
28 operating system work on non-Apple hardware. Regardless of the source of the problems, Psystar

1 consumers are likely to attribute them at least in part to Mac OS X. This is consistent with the fact
2 that Apple has received calls from Psystar customers for technical support on the computers they
3 purchased from Psystar (APP_PSY0042441-9; APP_PSY0050592-607; APP_PSY0054794-5).

4 23. Apple has been ranked first in customer satisfaction since 2004 in the personal
5 computer industry section of the American Customer Satisfaction Index (“ACSI”) published by the
6 National Quality Research Center at the University of Michigan. Laptop Magazine’s Tech Support
7 Showdown 2009 recently chose Apple as the overall winner in terms of technical support. In 2007,
8 2008 and 2009, Apple received top Consumer Report reader scores for both laptop and desktop
9 technical support. A September 17, 2008 article in *iTWire.com* reported that “Apple continues to
10 command the strongest repurchase intent of any PC brand.”

11 24. The consumer experience following the purchase of an Apple product (from the use
12 of products to customer service, to advertising and marketing campaigns) is an important building
13 block of its brand equity. Thus, Psystar’s sales today will not merely impact Apple’s current
14 computer sales but also potential sales of other Apple products, including products that will be
15 introduced in the future.

16 25. Quantifying lost sales due to the reduction in brand equity is inherently difficult to
17 do and impossible for any situations in the distant future and for new, currently unknown, products.
18 Therefore, it would not be possible to fully compensate Apple for the harm suffered due to Psystar’s
19 acts.

20 **HARM TO APPLE’S BUSINESS REPUTATION**

21 26. Business reputation is crucial for the long-term success of a company. A company
22 with a strong business reputation can attract customers and employees and can differentiate itself
23 from its competitors. According to a market research firm, Harris Interactive, “[p]ositive
24 relationships exist between reputation perceptions and supportive behaviors toward the company
25 such as: trusting them, definitely purchasing a product/service in the future, definitely
26 recommending a product/service to others, and definitely investing or recommending the company
27 as an investment to others.”

28 27. Apple has consistently been highly ranked in surveys that try to measure business

1 reputation. In Fortune Magazine's "America's Most Admired Companies," Apple was ranked
2 eleventh most admired company in 2006, seventh most admired company in 2007, and most
3 admired company in 2008 as well as in 2009. Apple was the number one most admired company in
4 both innovativeness and quality of products and services in 2006, 2007, 2008 and 2009. Harris
5 Interactive ranked Apple nineteenth and fourteenth in its 2007 and 2008 Annual RQ surveys of
6 business reputation respectively. Apple was ranked even higher in some subcategories, such as the
7 consistency and distinctiveness of its corporate communications.

8 28. Apple's carefully established and maintained brand identity is put at risk when
9 consumers are confused about which products and services are actually Apple's responsibility. If
10 consumers feel that Apple does not deliver on its promise, Apple's business reputation declines. At
11 least some of Psystar's consumers confuse Psystar products with Apple products as evidenced by
12 the calls Apple received from Psystar's customers (APP_PSY0042441-9; APP_PSY0050592-607;
13 APP_PSY0054794-5). If Psystar is allowed to continue its current business practices and to enable
14 others to violate Apple's intellectual property rights, the harm to Apple's business reputation can
15 significantly increase.

16 **HARM TO APPLE'S BUSINESS GOODWILL**

17 29. Business goodwill is a company's intangible asset, defined as positive relationships
18 with the entities with whom a company deals, including customers, suppliers, and employees. As is
19 the case with other intangible assets, to the extent that Apple possesses goodwill, it has the potential
20 to generate future sales, including of other products.

21 30. Psystar's actions have damaged Apple's business goodwill. When a particular
22 hardware-software configuration fails, it is possible for the customer to blame the software for the
23 failure. Consumers of Psystar's computers could attribute the quality problems they experienced
24 with Psystar's products to Apple's operating system. A reduction in business goodwill is likely to
25 affect future sales of Apple's products and even the introduction of new products.

26 **HARM TO APPLE'S BUSINESS MODEL**

27 31. Close integration of hardware and software is crucial to Apple's success. Psystar's
28 conduct threatens Apple's integrated business model and harms Apple's ability to operate as it

1 currently does.

2 32. In economic terms, Psystar is free riding on the billions of dollars and years of effort
3 that Apple has invested in creating and advertising its high quality integrated products. As a result,
4 Psystar has saved substantial amounts of money in R&D, advertising and marketing expenses. But
5 such free riding reduces Apple's incentives for continued investment and development of new
6 integrated products.

7 **PSYSTAR'S OPERATION SETS AN EXAMPLE FOR OTHER INFRINGERS**

8 33. Psystar's operation inspires other companies to undertake similar infringing
9 activities. For example, a company called Quo Computer, announced a retail store in Los Angeles,
10 opening on June 1, 2009, selling Quo-built computer systems with Mac OS X preinstalled.
11 *TechSpot* magazine describes Quo computers as "seek[ing] to fill gap left by Psystar." Another
12 company called AppleOpen Systems describes itself as offering "Open Architecture Design for Mac
13 OS X 10.5 Leopard." An *OSNews* report confirmed the existence of Quo and indicated that these
14 are not the only companies that are trying to sell systems with Apple's Mac OS X preinstalled on
15 non-Apple hardware, with other "clone makers" reportedly operating in Russia, the UK, Germany,
16 the Netherlands, France, Belgium, and Luxemburg.

17 34. Recently Psystar has also announced a new software product that it markets and
18 distributes that enables the use of Mac OS X on non-Apple hardware. It has also offered to license
19 this software to other third-party computer manufacturers (OEMs).

20 35. Thus, the harm of Psystar's infringement to Apple exceeds its own direct impact on
21 Apple's sales or the impact on Apple's brand, business reputation and goodwill. Psystar's
22 operations are encouraging others to violate Apple's intellectual property rights. The actual and
23 potential entry of additional infringers encouraged by Psystar's actions further contributes to the
24 irreparable harm to Apple's integrated product business model.

25 **PSYSTAR IS UNLIKELY TO BE ABLE TO PAY MONETARY DAMAGES**

26 36. Psystar's financial records are not complete. Thus, evaluating Psystar's revenues
27 and costs is not easy in this case. However, the records that exist appear to indicate that their costs
28 exceed their revenues (PS018785-7).

1 41. I understand that Apple may recover statutory damages for each violation of the
2 DMCA ranging from \$250 to \$2500. I have been informed about the following four violations of
3 the DMCA associated with Psystar's sale of computers running Mac OS X:

- 4 ▪ The first violation is the shipment of a Psystar computer with Psystar's
- 5 circumvention technology;
- 6 ▪ The second violation is the acknowledgement form that is shipped with each Psystar
- 7 computer which offers the customer a restore disc with Psystar's circumvention
- 8 technology;
- 9 ▪ The third violation is the shipment of the restore disk; and
- 10 ▪ The fourth violation is when a customer runs the restore disk and connects with
- 11 Psystar's servers to download Psystar's circumvention technology.

12 42. Psystar produced incomplete financial records. After conducting an extensive
13 review of the business records that Psystar did produce, I was able to use invoices, purchase orders
14 and a limited amount of other documents to reconstruct Psystar's financial statements. From these
15 statements I formed a conservative conclusion about, among other things, Psystar's volume of sales
16 of computers and acknowledgment forms shipped with those computers and the number of restore
17 disks shipped by Psystar to its customers. According to my calculations, Psystar sold at least 768
18 computers preinstalled with Mac OS X from April, 2008 through August 10, 2009 and shipped 262
19 restore disks to customers. Psystar has not challenged my analysis of its financial records. There is
20 less evidence indicating how often a Psystar customer connected to Psystar's servers downloads
21 Psystar's circumvention technology. To be conservative, I have not included any violations related
22 to such downloads in my analysis.

23 43. Given my understanding of the DMCA violations described above, it is my opinion
24 that Psystar has violated the DMCA 1,798 times by selling at least 768 computers preinstalled with
25 Mac OS X, including offers to provide customers with restore disks containing circumvention
26 technology with each of its 768 sales of infringing computers and shipping 262 restore disks to
27 customers. Given my understanding that damages for violation of the DMCA range from \$250 to
28 \$2,500 per violation, based on the instances of violation identified above and based on the evidence

1 available to me, statutory damages to Apple for violations of the DMCA are in a range between
2 \$449,500 and \$4,495,000.

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

5 Executed on November 23, 2009, at San Francisco, California.

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Matthew R. Lynde, Ph.D.