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11	IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA SAN FRANCISCO DIVISION		
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14	APPLE INC., a California corporation,	CASE NO. CV-08-03251-WHA	
15	Plaintiff,	MISCELLANEOUS ADMINISTRATIVE REQUEST FOR	
16	v.	AN ORDER PERMITTING THE FILING UNDER SEAL OF	
17	PSYSTAR CORPORATION,	CONFIDENTIAL PORTIONS OF PSYSTAR CORPORATION'S	
	Defendants.	MOTION FOR SUMMARY	
18	AND RELATED COUNTERCLAIMS	JUDGMENT	
19 20			
21			
22	Out of an abundance of caution, Defendant Psystar Corporation submits this Administrative		
23	Request pursuant to Civil Local Rules 7–11 and 79–5(d) to file Psystar Corporation's Motion for Summary Judgment under seal. Psystar has no interest in sealing the information contained in its motion for summary judgment and requests that this Court deny this motion to seal. Psystar's		
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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		
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	MISCELLANEOUS ADMINISTRATIVE REQUEST FOR AN ORDER DENYING THE FILING UNDER SEAL OF CONFIDENTIAL PORTIONS OF PSYSTAR CORPORATION'S MOTION FOR SUMMARY JUDGMENT CV 08-03251 WHA		

overbroad, in many cases encompassing entire deposition transcripts and documents that contain no information not already available on the Internet. Apple's love for the cloak and dagger has no place in a federal court.

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

Psystar raised the issue of this Court's condition four with counsel for Apple yesterday. Psystar invited counsel for Apple to identify any particular materials that Apple believed qualified for Coke-like protection. Apple responded by saying that it would stand by all its confidentiality designations, even in the context of a dispositive motion and in the face of this Court's order, and threatened to pursue contempt proceedings against Psystar if Psystar filed any material designated as confidential other than under seal. Out of an abundance of caution, Psystar is filing its motion for summary judgment under seal to comply with Apple's demands, but respectfully requests that this Court enforce its order of March 2, 2009, and order that Psystar's motion for summary judgment be added to the public file without redaction. Under the local rules, Apple has five days to file with the

1	Court and serve a declaration in response to this motion should it seek to have the motion for summary		
2	judgment remain under seal.		
3			
4	D-4-1. O-4-1-1. 0 2000	D	-4C-111
5	Dated: October 8, 2009	Kespe	ectfully submitted,
6		CAM.	ARA & SIBLEY LLP
7			
8		By:	/s/ K.A.D. Camara
9			K.A.D. Camara
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12		Attorn	neys for Defendant / Counterclaimant ar Corporation
13		Psysta	ar Corporation
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MISCELLANEOUS ADMINISTRATIVE REQUEST FOR AN ORDER PERMITTING THE FILING UNDER SEAL OF CONFIDENTIAL PORTIONS OF PSYSTAR CORPORATION'S MOTION FOR SUMMARY JUDGMENT CV 08-03251 WHA

1 **CERTIFICATE OF SERVICE** 2 I, Michael Wilson, declare I am employed in the City of Houston and County of Harris, Texas in the office of Camara & Sibley. I am over the age of eighteen and not a party to this action. My 3 business address is Camara & Sibley, 2339 University Boulevard, Houston, Texas 77005. 4 I served the following document(s): 5 MISCELLANEOUS ADMINISTRATIVE REQUEST FOR AN ORDER PERMITTING THE FILING UNDER SEAL OF CONFIDENTIAL PORTIONS OF PSYSTAR CORPORATION'S MOTION FOR SUMMARY JUDGMENT 6 Case No. CV 08-03251 WHA 7 on the interested parties in this action by placing a true and correct copy thereof, on the above date, enclosed in a sealed envelope, following the ordinary business practice of Camara & Sibley LLP. I sent the document(s) to the following: 9 10 James G. Gilliland, Jr. email: jggilliland@townsend.com TOWNSEND AND TOWNSEND AND CREW LLP Two Embarcadero Center, 8th Floor 11 San Francisco, California 94111 12 Telephone: (415) 576-0200 Facsimile: (415) 576-0300 13 [By First Class Mail] I am readily familiar with my employer's practice for collecting 14 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 15 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 16 United States Postal Service that same day in the ordinary course of business. 17 [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). 18 [By Hand] I directed each envelope to the party(ies) so designated on the service list to 19 be delivered by courier this date. 20 [By Facsimile Transmission] I caused said document to be sent by facsimile transmission to the fax number indicated for the party(ies) listed above. 21 [By Electronic Transmission] I caused said document to be sent by electronic 22 transmission to the e-mail address indicated for the party(ies) listed above via the court's ECF notification system. 23 I declare under penalty of perjury under the laws of the United States of America that the 24 foregoing is true and correct, and that this declaration was executed on October 8, 2009 at Houston, Texas. 25 /s/ Michael Wilson Michael Wilson 26 27

MISCELLANEOUS ADMINISTRATIVE REQUEST FOR AN ORDER PERMITTING THE FILING UNDER SEAL OF CONFIDENTIAL PORTIONS OF PSYSTAR CORPORATION'S MOTION FOR SUMMARY JUDGMENT

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