

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

APPLE INC., a California corporation,

Plaintiff,

v.

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

Defendants.

AND RELATED COUNTERCLAIMS

Case No. CV 08-03251 WHA

~~JOINT PROPOSED~~ ORDER
COMPELLING PSYSTAR'S
PRODUCTION OF FINANCIAL
DOCUMENTS AND 30(B)(6)
DEPOSITION

Plaintiff and counterdefendant Apple Inc. ("Apple") filed a motion to compel, asserting that defendant and counterclaimant Psystar Corporation ("Psystar") had failed to provide, either through documents or testimony, relevant financial information. Psystar countered that it had produced responsive documents to Apple and provided a date for supplemental deposition. On May 1, 2009, the Court ordered the parties to meet and confer on May 5, 2009, starting at 8 a.m. with any unresolved disputes to be heard at 11 a.m. On May 5, 2009, the parties met and conferred. The Court then heard the parties' agreements and the few remaining areas of dispute, including Apple's request for attorney's fees and reasonable expenses. Based on the parties'

~~JOINT PROPOSED~~ ORDER COMPELLING PSYSTAR'S PRODUCTION OF FINANCIAL
DOCUMENTS AND 30(B)(6) DEPOSITION
CASE NO. CV 08-03251 WHA

1 agreement and the Court's resolution of the disputes, the Court now orders that Psystar produce by
2 **NOON ON MAY 18, 2009**, the following categories of documents:

- 3 • All the underlying documents used to prepare the June 2008 profit and loss
4 statement and balance sheet bates stamped PS010327-328, to the extent the
5 documents have not been produced.
- 6 • All the underlying documents used or being used to prepare the aggregated
7 financial statement referenced in Psystar's opposition letter brief (Dkt. No. 61).
- 8 • All of the tabulations created by Jennifer Perez regarding the components needed to
9 build Psystar's products.
- 10 • Documents bates stamped PS01383-2000.
- 11 • Bank statements for all of Psystar's accounts from Commerce Bank and TD Bank
12 from April 2008 through September 2008. To the extent that said statements are
13 not immediately in the possession of Psystar either in physical or electronic form,
14 Psystar shall ask Commerce Bank and TD Bank for these statements on an every
15 other day basis until Commerce Bank and TD Bank provide said statements.
- 16 • A copy of all attachments to all previously produced emails and a copy of the
17 corresponding email in hard copy or in electronic form.

18 In addition, Psystar will provide a designated representative to supplement Apple's
19 previously noticed 30(b)(6) deposition on Topic 2 (financial information) on **JUNE 3, 2009**,
20 starting at 9 a.m. at the San Francisco office of Townsend and Townsend and Crew LLP. This
21 date may be changed to another day during the week of June 3 so long as the Parties agree in
22 writing in advance of the deposition date.

23 If Psystar does not completely produce the aforementioned financial documents by May
24 18, 2009, Apple will be allowed to take a deposition after the fact discovery deadline regarding
25 any documents produced after the Court's deadline of May 18, 2009.

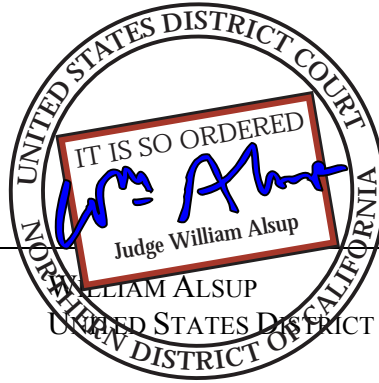
26 Should Psystar fully comply in producing all the financial documents listed above by May
27 18, Psystar does not have to pay Apple's attorney's fees and expenses. Otherwise, the Court holds
28 that Apple is entitled to its reasonable attorney's fees and expenses in bringing the aforementioned

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

motion.

IT IS SO ORDERED.

DATED: May 8, 2009



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

61937064 v1

CERTIFICATE OF SERVICE

I, Scott Wortman, 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 document exactly entitled:

[JOINT PROPOSED] ORDER COMPELLING PSYSTAR’S PRODUCTION OF FINANCIAL DOCUMENTS AND 30(B)(6) DEPOSITION

on the interested parties in this action following the ordinary business practice of Townsend and Townsend and Crew LLP, as follows:

Robert J. Yorio, Esq. Colby B. Springer, Esq. Christopher P. Grewe, Esq. Carr & Ferrell, LLP 2200 Geng Road Palo Alto, California 94303 Phone: 650-812-3400 Fax: 650-812-3444	email: yorio@carrferrell.com email: cspringer@carrferrell.com email: cgrewe@carrferrell.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 May 8, 2009, at San Francisco, California.

/s/ Scott Wortman