

1 7. The facts underlying the Third and Fourth counterclaims share a common nucleus of
2 operative facts and law with the First and Second counterclaims for relief in this First Amended
3 Counterclaim. This Court, therefore, has supplemental subject matter jurisdiction pursuant to 28
4 U.S.C. § 1367(a).

5 8. This First Amended Counterclaim is a compulsory counterclaim brought in accordance with
6 Federal Rule of Civil Procedure 13(a)(1). The aforementioned causes of action arise out of the
7 transactions or occurrences that are the subject matter of APPLE's Complaint and First Amended
8 Complaint and do not require adding another party over which the Court cannot acquire
9 jurisdiction.

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11 **The Parties**
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13 9. APPLE is a California Corporation with its principal place of business at 1 Infinite Loop,
14 Cupertino, California 95014. APPLE markets the Macintosh Computer and the OS X Operating
15 System.

16 10. Counterclaimant PSYSTAR is a Florida Corporation with its principal place of business at
17 10475 NW 28th Street, Doral, Florida, 33172.

18 11. PSYSTAR manufactures and distributes computers tailored to customer choosing. As a part
19 of its devotion to supporting customer choice, PSYSTAR supports a wide range of operating
20 systems including Microsoft Windows XP and XP 64-bit, Windows Vista and Vista 64-bit, Linux
21 (32 and 64-bit kernels), and the Mac OS. PSYSTAR generally refers to this custom tailored line of
22 computers as Open Computers.

23 12. Open Computers are personal computers that, in the case of the Mac OS, work like a
24 Macintosh including the latest Macintosh operation system—OS X.5 (a.k.a. Leopard). PSYSTAR
25 Open Computers, again in the case of the Mac OS, run the OS X like that of a Macintosh from
26 APPLE albeit on a computer hardware system offered at a considerably lower price and with
27 considerably higher performance. For example, one of the least expensive Macintosh machines on
28 the market is for the Mac Mini, which costs more than that of an Open Computer from PSYSTAR.