EXHIBIT 5
TO
DECLARATION OF MEHRNAZ BOROUMAND SMITH IN SUPPORT OF APPLE INC.'S ADMINISTRATIVE MOTION SEEKING LEAVE OF COURT TO FILE A REPLY TO PSYSTAR CORPORATION'S SUPPLEMENTAL BRIEFING ON THE RELEVANCE OF TOPIC 3 TESTIMONY, DEFENDANT'S MOTION TO COMPEL AND PLAINTIFF'S CROSS-MOTION FOR A PROTECTIVE ORDER

Boroumand Smith, Mehrnaz

From: Boroumand Smith, Mehrnaz
Sent: Tuesday, September 01, 2009 10:12 PM
To: 'Timothy Nyberg'
Cc: K.A.D. Camara; radford@camarasibley.com; Noah D. Radbil; David Welker; Gilliland, James G.; Chung, Megan M.; Oblak, Jeb B.; Gee, Tyler J.
Subject: RE: FW: STIPULATION TO ALLOW APPLE TO FILE ITS REPLY TO PSYSTAR CORPORATION'S SUPPLEMENTAL BRIEFING ON THE RELEVANCE OF TOPIC 3 TESTIMONY.DOC

Tim,

Thank you for the response.

We disagree with Psystar's position. There were several issues brought up in your supplemental brief that were never raised in any meet and confer or at the hearing before the court. Consequently, we will seek leave of the court to file our reply.

Thanks,

Mehrnaz

-----Original Message-----
From: Timothy Nyberg [mailto:nyberg@camarasibley.com]
Sent: Tuesday, September 01, 2009 9:17 PM
To: Boroumand Smith, Mehrnaz
Cc: K.A.D. Camara; radford@camarasibley.com; Noah D. Radbil; David Welker; Gilliland, James G.; Chung, Megan M.; Oblak, Jeb B.; Gee, Tyler J.
Subject: Re: FW: STIPULATION TO ALLOW APPLE TO FILE ITS REPLY TO PSYSTAR CORPORATION'S SUPPLEMENTAL BRIEFING ON THE RELEVANCE OF TOPIC 3 TESTIMONY.DOC

Mehrnaz,

I'll let Kiwi answer officially when he is back online; but we did discuss this at dinner and we are not okay with the stipulation as written. First, we won't stipulate to the statement that we "raised for the first time several new legal arguments as to the relevance of the information that Psystar is seeking to compel Apple Inc. (“Apple”) to produce." Second, my understanding is that the stipulation agreed to also included the option of a second brief from Psystar.

,Tim

WHEREAS, Psystar has no objection to Apple submitting a reply brief, no later than noon on September 2, 2009;

On Tue, Sep 1, 2009 at 11:07 PM, Boroumand Smith, Mehrnaz<mboroumand@townsend.com> wrote:
> Kiwi and team:
>

> I am following up with Jeb's email below and my voicemail message to Kiwi.
> Please let us know whether you are okay with our filing the stipulation
> attached below. Per my voicemail, we would like to file the administrative
> motion together with our reply tonight.
>
> Thanks,
>
> Mehrnaz
>
> _____
> From: Oblak, Jeb B.
> Sent: Tuesday, September 01, 2009 5:02 PM
> To: 'camara@camarasibley.com'; 'radford@camarasibley.com'
> Cc: 'david.welker@werolaw.com'; Gee, Tyler J.; Boroumand Smith, Mehrnaz;
> Chung, Megan M.
> Subject: STIPULATION TO ALLOW APPLE TO FILE ITS REPLY TO PSYSTAR
> CORPORATION'S SUPPLEMENTAL BRIEFING ON THE RELEVANCE OF TOPIC 3
> TESTIMONY.DOC
>
> Kiwi:
>
> Attached is the stipulation that you discussed with Tyler this afternoon.
> Per your agreement, we have included language indicating that Psystar does
> not oppose Apple's filing of a Reply. Please let us know if you are OK with
> us filing this stipulation.
>
> Thanks,
>
> Jeb
>
> <<STIPULATION TO ALLOW APPLE TO FILE ITS REPLY TO PSYSTAR CORPORATION'S
> SUPPLEMENTAL BRIEFING ON THE RELEVANCE OF TOPIC 3 TESTIMONY.DOC¤>>
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>

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