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Attorneys for Defendants
and Counterclaim Plaintiff
Podfitness, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(OAKLAND DIVISION)

APPLE INC.,

Plaintiff,

v.

PODFITNESS, INC., and DOES 1-100,
inclusive,

Defendants.

Case No. C 06-5805 SBA

**STIPULATED REQUEST FOR ORDER
CHANGING TIME**

Honorable Sandra B. Armstrong

PODFITNESS, INC.,

Counterclaim Plaintiff

v.

APPLE INC.,

Counterclaim Defendant

1 Pursuant to Local Rule 6-2, Plaintiff and Counterclaim Defendant Apple Inc. (“Apple”)
2 and Defendant and Counterclaim Plaintiff Podfitness, Inc. (“Podfitness”) file this stipulation
3 requesting an enlargement of the schedule in this case. In support of this stipulation, the parties
4 submit the declaration of James E. Magleby, counsel for Podfitness, which sets forth the facts that
5 necessitated the requested enlargement. The parties believe good cause for the enlargement exists
6 for the following reasons.

7 **A. FILING OF AMENDED COMPLAINT AND COUNTERCLAIM**

8 Since the Court’s January 25, 2007 Order for Pretrial Preparation setting forth the original
9 trial schedule, the scope of this matter has expanded. On August 1, 2007, Apple filed an amended
10 complaint adding causes of action for cybersquatting and for breach of contract. Magleby Decl.,
11 ¶ 2. Apple’s amendment arose from new information uncovered during the discovery process.
12 *Id.* Podfitness answered the amended complaint on August 31, 2007, and counterclaimed,
13 alleging intentional and negligent interference with contractual relations, negligent interference
14 with prospective economic advantage, and unlawful, unfair and deceptive practices in violation of
15 the California Business and Professions Code. Podfitness’ counterclaims arose from conduct
16 which purportedly occurred during the discovery process, and after the scheduling order had been
17 put into place. Magleby Decl., ¶ 3. Both Apple’s new claims and Podfitness’ new counterclaims
18 invoke the need for additional discovery. Further, pursuant to Podfitness’ efforts to obtain new
19 counsel and the courts order staying this action, discovery has not gone forward for several
20 months.

21 **B. WITHDRAWAL OF PODFITNESS’ COUNSEL AND STAY OF THE**
22 **PROCEEDINGS**

23 On September 19, 2007, Podfitness’ outside counsel, Workman Nydegger, filed its motion
24 to withdraw as counsel. Subsequently, on October 16, 2007, in-house counsel for Podfitness,
25 Steve Hutchinson, filed notice with the Court that he was no longer employed with Podfitness.
26 Magleby Decl., ¶ 4. On October 31, 2007, the Court permitted a withdrawal of outside counsel
27 and ordered a temporary stay of the case for thirty (30) days pending Podfitness’ engagement of
28 substitute counsel. *Id.* Podfitness retained Magleby & Greenwood, P.C. as new outside counsel

1 on November 30, 2007, and retained local California counsel, Kerr & Wagstaffe, LLP on
2 December 6, 2007. Magleby Decl., ¶ 5.

3 During this time, in the months of August, September, October and November 2007, the
4 parties participated in numerous settlement negotiations. Magleby Decl., ¶ 6. Ultimately, the
5 parties did not succeed in reaching a settlement. *Id.* As such, the parties now must reschedule the
6 discovery activities that were postponed during the stay of the action. Further, new counsel for
7 Podfitness requires additional time to review Apple's document production and propound
8 additional discovery.

9 **D. PROPOSED SCHEDULE WITH EXTENDED DEADLINES**

10 To allow the parties adequate time to complete discovery and prepare for trial, the parties
11 have stipulated and agreed to the following schedule:

12		
13	Fact discovery closes	May 23, 2008
14	Last day to designate experts and to 15 submits reports on those issues the party bears the burden of proof	June 17, 2008
16	Last day to serve rebuttal expert reports	July 25, 2008
17	Expert discovery closes	August 22, 2008
18	Deadline for dispositive motions to be filed	August 19, 2008
19	Deadline for dispositive motions to be heard	September 23, 2008
20	Mandatory Settlement conference before a Magistrate Judge	September 24 to October 24, 2008
21	Filing of pretrial preparation due	October 28, 2008
22	Motions in Limine and Objections to Evidence due	November 4, 2008
23	Responses to Motions in Limine and Objections due	November 11, 2008
24	Pretrial conference	November 18, 2008 at 1:00 p.m.
25	Jury trial begins	December 1, 2008 at 8:30 a.m. for 5 26 days
27		
28		

1 There have been no prior modifications to the schedule set forth in the Court's January 25,
2 2007 Order. Magleby Decl., ¶ 7. The requested time modification would re-set the entire
3 schedule for this case, and the parties would be prepared to try the case on December 1, 2008. *Id.*

4 Based on the foregoing, the parties respectfully request that the Court grant the parties
5 stipulated request.

6 Dated: January 10, 2008

FISH & RICHARDSON P.C.

7
8 By: /s/ David J. Miclean
David J. Miclean

9
10 Attorneys for Plaintiff and
Counterclaim Defendant
11 APPLE INC.

12 Dated: January 10, 2008

MAGLEBY & GREENWOOD, P.C.

13
14 By: /s/ James E. Magleby
James E. Magleby

15
16 Attorneys for Defendants and
Counterclaim Plaintiff
17 PODFITNESS, INC.

18 **DECLARATION OF CONSENT**

19 Pursuant to General Order No. 45, Section X(B) regarding signatures, I attest under
20 penalty of perjury that concurrence in the filing of this document has been obtained from James
21 E. Magleby.

22 Dated: January 10, 2008

FISH & RICHARDSON P.C.

23
24 By: /s/ David J. Miclean
David J. Miclean

25
26 Attorneys for Plaintiff and
Counterclaim Defendant
27 APPLE INC.

PURSUANT TO STIPULATION, IT IS SO ORDERED:

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Dated: 1/10/08


United States District Judge

PROOF OF SERVICE

I am employed in the County of San Diego. My business address is Fish & Richardson P.C., 12390 El Camino Real, San Diego, California 92130. I am over the age of 18 and not a party to the foregoing action.

I am readily familiar with the business practice at my place of business for collection and processing of correspondence for personal delivery, for mailing with United States Postal Service, for facsimile, and for overnight delivery by Federal Express, Express Mail, or other overnight service.

On January 10, 2008, I caused a copy of the following document(s):

STIPULATED REQUEST FOR ORDER CHANGING TIME

to be served on the interested parties in this action by placing a true and correct copy thereof, enclosed in a sealed envelope, and addressed as follows:

James M. Wagstaffe Kerr & Wagstaffe LLP 100 Spear Street, Suite 1800 San Francisco, CA 94105-1528 Telephone: (415) 371-8500 Facsimile: (415) 371-0500	Attorneys For Defendant PODFITNESS, INC.
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James E. Magleby Jason A. McNeill Magleby & Greenwood, P.C. 170 South Main Street, Suite 350 Salt Lake City, UT 84101-3606 Telephone: (801) 359-9000 Facsimile: (801) 359-9011	Attorneys For Defendant PODFITNESS, INC.
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MAIL: Such correspondence was deposited, postage fully paid, with the United States Postal Service on the same day in the ordinary course of business.

ELECTRONIC MAIL: Such document was transmitted by electronic mail to the addressees' email addresses as stated above.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

I declare under penalty of perjury that the above is true and correct. Executed on January 10, 2008, at San Diego, California.

/s/Nicole C. Pino
Nicole C. Pino