

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

APPLE COMPUTER, INC.,
Plaintiff(s),
v.
PODFITNESS, INC.,
Defendant(s).

Case No. C-06-05805 SBA (JCS)

ORDER RE JOINT LETTER
[Docket Nos. 44 (sealed) and 54 (public)]

The Court has received a Joint Letter from the parties dated June 8, 2007 [Docket Nos. 44, 54], regarding Document Number PF 001014. In the Joint Letter, Defendant asserts that the document is protected by the attorney-client privilege, that the privilege has not been waived, that the document was inadvertently produced, and that it must be returned. Plaintiff disputes all of these contentions.

The Court finds that a portion of the document reflects a privileged communication from counsel for Defendant to Defendant. The document was inadvertently produced. The inadvertent production was promptly brought to the attention of Plaintiff by Defendant. Under the Protective Order in this case, Paragraph 12, the privileged information must be returned to Defendant unless there is some waiver of the privilege other than on the basis of production of the document in this lawsuit. Plaintiff's assertion that Defendant waived the privilege by disclosure to a non-employee of Defendant is not supported by the facts recited in the Joint Letter.

Accordingly, IT IS HEREBY ORDERED that the document at issue be returned to Defendant and a redacted version substituted in its place. The only redaction shall be in the second paragraph, second sentence, starting after the word "information" and continuing to the end of that

1 sentence. Plaintiff may take the deposition of Dave Malone on whether he was employed by
2 Defendant at the time of the meeting reflected in the document. It may make an application for
3 disclosure of the redacted information if that deposition and other information establishes that Mr.
4 Malone was not employed by Defendant at the time of the meeting in question.

5 IT IS SO ORDERED.

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7 Dated: February 4, 2008

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JOSEPH C. SPERO
United States Magistrate Judge

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