

1 David J. Miclean (#115098/miclean@fr.com)  
 FISH & RICHARDSON P.C.  
 2 500 Arguello Street, Suite 500  
 Redwood City, California 94063  
 3 Telephone: (650) 839-5070  
 Facsimile: (650) 839-5071

4 Lisa M. Martens (#195824/martens@fr.com)  
 Andrew M. Abrams (#229698/abrams@fr.com)  
 FISH & RICHARDSON P.C.  
 6 12390 El Camino Real  
 San Diego, California 92130  
 7 Telephone: (858) 678-5070  
 Facsimile: (858) 678-5099

8 Attorneys for Plaintiff  
 9 APPLE COMPUTER, INC.

10 UNITED STATES DISTRICT COURT  
 11 NORTHERN DISTRICT OF CALIFORNIA  
 12 (OAKLAND DIVISION)

14 APPLE INC.,  
 15 Plaintiff,  
 16 v.  
 17 PODFITNESS, INC., and DOES 1-100,  
 18 inclusive,  
 19 Defendants.

Case No. C 06-5805 SBA  
**MOTION TO FILE A DOCUMENT  
 UNDER SEAL**  
 Honorable Joseph C. Spero

20 PODFITNESS, INC.,  
 21 Counterclaim Plaintiff  
 22 v.  
 23 APPLE INC.,  
 24 Counterclaim Defendant

1 A discovery dispute has arisen that concerns whether a certain document produced by  
2 defendant Podfitness, Inc. (“Podfitness”), bearing control number PF001014 contains information  
3 protected from disclosure by the attorney-client privilege and thus should continue to be redacted  
4 pursuant to the Order re Joint Letter issued by this Court on February 4, 2008. To address this  
5 issue, plaintiff Apple Inc. (“Apple”) is submitting an Application For Disclosure Of The Redacted  
6 Information In Document Number PF001014 (“Application”). Counsel for Apple believes that in  
7 order to adequately address the issue of privilege in the Application, the substance of the document  
8 bearing control number PF001014 must be addressed. Consequently, in order to avoid public  
9 disclosure of a document designated as “Attorneys’ Eyes Only” pursuant to the Stipulated  
10 Protective Order entered into by the parties, Apple requests and moves the Court to file the  
11 unredacted version of the Application under seal.

12  
13 Dated: April 4, 2008

FISH & RICHARDSON P.C.

14  
15 By: /s/ David J. Miclean  
16 David J. Miclean

17 Attorneys for Plaintiff and  
18 Counterclaim Defendant  
19 APPLE INC.  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **PROOF OF SERVICE**

2 I am employed in the County of San Diego, my business address is Fish & Richardson P.C.,  
3 12390 El Camino Real, San Diego, California 92103. I am over the age of 18 and not a party to the  
4 foregoing action.

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

9 On April 4, 2008, I caused a copy of the following document(s):

10 **MOTION TO FILE A DOCUMENT UNDER SEAL**

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

13 James E. Magleby  
14 Jason A. McNeill  
15 Magleby & Greenwood, P.C.  
16 170 South Main Street, Suite 350  
17 Salt Lake City, UT 84101  
18 (801) 359-9011 (facsimile)

Attorneys for Defendant  
PODFITNESS, INC.

19 James M. Wagstaffe  
20 Kerr & Wagstaffe LLP  
21 100 Spear Street, Suite 1800  
22 San Francisco, CA 94105-1528  
23 (415) 371-0500 (facsimile)

Attorneys for Defendant  
PODFITNESS, INC.

24  **MAIL:** Such correspondence was deposited, postage fully paid, with the  
25 United States Postal Service on the same day in the ordinary course  
26 of business.

27  **FEDERAL EXPRESS:** Such correspondence was deposited on the same day in the ordinary  
28 course of business with a facility regularly maintained by Federal  
Express.

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 April 4,  
2008, at San Diego, California.

/s/Nicole C. Pino

Nicole C. Pino

10823804.doc