

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)  
 5 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.,

Plaintiff,

16 v.

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

19 Defendants.

20 PODFITNESS, INC.,

Counterclaim Plaintiff

22 v.

23 APPLE INC.,

24 Counterclaim Defendant

Case No. C 06-5805 SBA

**DECLARATION OF ANDREW M. ABRAMS IN SUPPORT OF MOTION TO FILE A DOCUMENT UNDER SEAL**

Honorable Joseph C. Spero

1 I, Andrew M. Abrams, declare as follows:

2 1. I am an associate of Fish & Richardson P.C., counsel of record in this action for  
3 Apple Inc. (“Apple”). I am a member of the Bar of the State of California and am admitted to this  
4 Court. I have personal knowledge of the matters stated in this declaration and would testify  
5 truthfully to them if called upon to do so.

6 2. A discovery dispute has arisen that concerns whether a certain document produced  
7 by defendant Podfitness, Inc. (“Podfitness”), bearing control number PF001014 contains  
8 information protected from disclosure by the attorney-client privilege and should continue to be  
9 redacted pursuant to the Order re Joint Letter issued by this Court on February 4, 2008.

10 3. The document bearing control number PF001014 is designated “Attorneys’ Eyes  
11 Only” pursuant to the Stipulated Protective Order entered into by the parties.

12 4. Apple is submitting an Application For Disclosure Of The Redacted Information In  
13 Document Number PF001014 (“Application”).

14 5. In order to adequately address the issues in the Application, I believe that the  
15 substance of the document bearing control number PF001014 must be discussed, and in order to  
16 avoid public disclosure of the content of the document bearing control number PF001014, I believe  
17 it is necessary to file the unredacted version of the Application under seal.

18 I declare under the penalty of perjury under the laws of the State of California that the  
19 foregoing is true and correct.

20 Executed at San Diego, California on the 2nd day of April, 2008.

21

22

\_\_\_\_\_  
/s/ Andrew M. Abrams  
Andrew M. Abrams

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 92130. 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 **DECLARATION OF ANDREW M. ABRAMS IN SUPPORT OF MOTION TO FILE A**  
11 **DOCUMENT UNDER SEAL**

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

14 James E. Magleby  
15 Jason A. McNeill  
16 Magleby & Greenwood, P.C.  
17 170 South Main Street, Suite 350  
18 Salt Lake City, UT 84101  
19 (801) 359-9011 (facsimile)

Attorneys for Defendant  
PODFITNESS, INC.

20 James M. Wagstaffe  
21 Kerr & Wagstaffe LLP  
22 100 Spear Street, Suite 1800  
23 San Francisco, CA 94105-1528  
24 (415) 371-0500 (facsimile)

Attorneys for Defendant  
PODFITNESS, INC.

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

28  **FEDERAL EXPRESS:** Such correspondence was deposited on the same day in the ordinary  
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

10823809.doc