

Exhibit “1”

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15 Counterclaim Plaintiff Podfitness, Inc.

16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 OKLAND DIVISION

19 APPLE COMPUTER, INC.,

20 Plaintiff,

21 v.

22 PODFITNESS, INC., and DOES 1-100,
23 Inclusive,

24 Defendants.

25 PODFITNESS, INC.,

26 Counterclaim Plaintiff,

27 v.

28 APPLE COMPUTER, INC.,

Counterclaim Defendants.

Case No. C 06-05805 SBA

DECLARATION OF JEFF HAYS

Hon. Sandra Brown Armstrong

1 I, JEFF HAYS, hereby declare and say as follows:

2 1. I am over the age of eighteen (18) years of age and have person acknowledge of
3 the facts set forth in this Affidavit. If asked to testify, I could and would testify as to the matters
4 set forth below.

5 2. At all times, I have been the President of Podfitness, Inc. As such, I was
6 personally involved in the discussions and relationship with Power Music in 2005 and 2006.

7 3. In or about September or October 2005, Podfitness joined with Power Music to
8 pursue the Podfitness business.

9 4. At that time, Power Music and Podfitness desired to advance their joint interest in
10 developing and promoting the business of Podfitness. Thus, we struck an agreement, which,
11 although not immediately reduced to writing as is common in startup businesses, provided for
12 Power Music to join Podfitness in pursuing its business, and would allow Power Music to have
13 ownership in Podfitness.

14 5. The Power Music participation with Podfitness included using Power Music's
15 existing infrastructure to support Podfitness, including its employees, office space, computers,
16 money resources, support, etc., all of which added monetary value to the business and our
17 common goal in growing the Podfitness business.

18 6. From the onset of this relationship, Podfitness began operating out of Power
19 Music's office. Power Music and Podfitness also shared key employees, and additional
20 employees were undertaken at Power Music's expense to service this venture. Power Music also
21 designed, placed, and paid for Podfitness advertisements.

22 7. At the time it partnered with Podfitness, Dave Malone was employed by Power
23 Music, overseeing art and design with Power Music and was part of the executive team who
24 reported directly to Power Music's owner, Richard Petty. After commencing its relationship
25 with Podfitness, Dave Malone became part of the executive team for Podfitness, reporting
26 directly to me as Podfitness' art director, and taking on the responsibility for the design and use
27 of Podfitness' brand and logos on the company's web site, packaging and marketing materials.
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