

Ken Bryant
Arbitration & Mediation

P.O. Box 20277
San Jose CA 95160-0277
408-268-8175
fax-408-904-4638
kenbryant@mediate.com

February 14, 2007

David James Miclean
miclean@fr.com

William S. Farmer
wfarmer@collette.com

E-MAIL ONLY

RE: MEDIATION teleconference: Apple Computer, Inc., v. Podfitness, Inc., C 06-05805
SBA MED

As you know, I have been appointed by the District Court to serve as mediator in this case under the court's Mediation program. Please be sure to review carefully ADR L.R. 6 which governs the program.

I have served as a mediator for the court since the inception of the program, and I also serve on the court's ENE and Arbitration panels. I have practiced in San Jose since 1972, working as a civil litigator for plaintiffs and defendants until about 1987, at which time I began concentrating on ADR. I am a panelist on the Large Complex Case Panel of the American Arbitration Association, and I serve on ADR panels for most courts in the Bay Area.

Pursuant to ADR L.R. 6-6, I will conduct a phone conference with lead counsel (or their most knowledgeable delegate counsel with authority) before the mediation session to discuss the following:

- The procedures to be followed
- The nature of the case
- Dates for the session
- Persons required to attend
- Written statements
- Your questions and ideas regarding the process

I anticipate the phone conference will last approximately one-half hour. Please confer with each other within the next few days to determine your mutual availability for a call, and E-mail me with at least three one-hour choices, preferably within the next two weeks. Before the call, please ascertain from your clients, witnesses, insurers, a selection of dates for the actual session, which should be conducted prior to April 25, 2007.

My conflicts check reveals no actual or potential conflicts of interest under 28 U.S. C. Section 455(a) and (b), and I am not aware of any other circumstances that would compromise my impartiality or the appearance of impartiality.

Unless the mediation session continues beyond the time contemplated by the court rules (four hours), I do not anticipate charging for my services. Any fee arrangement for additional time is subject to the agreement of all parties and me, and under some circumstances, notice to the court.

I look forward to assisting you on this case.

Sincerely,

Ken Bryant