

Exhibit 1

1 Steven R. Hutchinson
2 VP Business & Legal Affairs
3 PODFITNESS, INC.
235 West Segoe Lily Drive
Sandy, Utah 84070

4
5 UNITED STATES DISTRICT COURT
6 NORTHERN DISTRICT OF CALIFORNIA
7 SAN FRANCISCO DIVISION

8 APPLE, INC.,

9 Plaintiff,

10 v.

11 PODFITNESS, INC., and DOES 1-100,
12 inclusive

13 Defendants.

Civil Action No. 4:06-cv-05805 SBA

DECLARATION OF STEVEN R.
HUTCHINSON, VP OF BUSINESS AND
LEGAL AFFAIRS FOR DEFENDANT
PODFITNESS, INC., REQUESTING A
TEMPORARY STAY IN LIGHT OF
COUNSELS' MOTION TO WITHDRAW

Hon. Sandra B. Armstrong

14
15
16
17
18 By this request, Podfitness seeks a temporary stay of 30 days while it retains and educates
19 substitute counsel in light of its current counsels' Motion to Withdraw. It is essential that
20 Defendant, Podfitness, Inc., receive a temporary stay of proceedings while it retains substitute
21 counsel or, in the alternative, a denial of Podfitness' counsels' present Motion to Withdraw. Such
22 withdrawal, without the 30-day stay, will critically prejudice Podfitness' case unless and until
23 Podfitness is able to retain and educate new competent counsel.

24 1. Current counsel for Podfitness, Workman Nydegger and Collette Erickson
25 Farmer & O'Neill LLP, recently filed a Notice of Motion for Leave to Withdraw as counsel for
26 Podfitness.
27

1 2. Podfitness' current counsel have represented Podfitness for the past year during
2 which time four to six attorneys and their support staff and associates have principally conducted
3 the litigation. Although I have consulted with current counsel, I have not "actively participated,"
4 as claimed in the Notice of Motion for Leave to Withdraw, to the extent that I could sufficiently
5 proceed with the case without the extensive resources of current counsel or alternative competent
6 counsel. For example, since most of the discovery produced by Apple has been marked
7 "attorneys eyes only," I have not reviewed any of Apple's extensive discovery.

8 3. As current counsel stated in its Motion to Withdraw, Apple has recently produced
9 about 290,000 pages of written discovery. This voluminous cache must be carefully reviewed by
10 any new counsel prior to further discovery, including depositions by Podfitness or Apple, the
11 scheduling of which is imminent.

12 4. Podfitness' current counsel recently responded on August 31, 2007, to Apple's
13 First Amended Complaint, filed on August 1, 2007, through its Answer to First Amended
14 Complaint, and Podfitness included therein certain (new) counterclaims. These additional claims
15 are likely to spawn further discovery requests by both Parties.

16 5. Apple has noticed its intention to depose Podfitness' CEO, Teri Sundh, and its
17 President, Jeff Hays. The Parties are coordinating schedules for these depositions. Substitute
18 counsel will need to be properly educated regarding the case to properly defend the proposed
19 deponents.


20 6. The Parties are presently in sincere settlement discussions, having exchanged
21 preliminary settlement agreement drafts. A stay would allow the parties to continue with the
22 settlement discussions while avoiding additional costs and burdens to themselves and the Court
23 if a settlement is reached. While I'm optimistic that the Parties will reach an accord,
24 alternatively, Podfitness will need to retain and educate new counsel to proceed with the case
25 until such settlement is attained.

26 Based on the foregoing, in order to avoid severe prejudice to Podfitness' case, it is
27 essential that the case be stayed pending Podfitness retaining and educating new counsel or, in

1 the alternative, that Podfitness' current counsels' Notice of Motion for Leave to Withdraw be
2 denied by the Court. In addition, a stay would allow the parties to pursue their settlement
3 discussions.

4 DATED: September 26, 2007.

Respectfully submitted,

5
6
7 
8 Steven R. Hutchinson
9 VP Business & Legal Affairs
10 PODFITNESS, INC.
11 235 West Segoe Lily Drive, Suite 200
12 Sandy, Utah 84070
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27