

Larry R. Laycock (Admitted *Pro Hac Vice*)
Charles J. Veverka (Admitted *Pro Hac Vice*)
Robert E. Aycock (Admitted *Pro Hac Vice*)
Mark W. Ford (Admitted *Pro Hac Vice*)
WORKMAN | NYDEGGER
1000 Eagle Gate Tower
60 East South Temple
Salt Lake City, UT 84111
Telephone: (801) 533-9800
Facsimile: (801) 328-1707
Email: llaycock@wnlaw.com

William B. Farmer (State Bar No. 46694)
Jacob Alpren (State Bar No. 235713)
COLLETTE ERICKSON FARMER & O'NEILL LLP
235 Pine Street, Suite 1300
San Francisco, CA 94104
Telephone: (415) 788-4646
Facsimile: (415) 788-6929
Email: wfarmer@collette.com

Attorneys for Defendant
PODFITNESS, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

APPLE, INC.,

Plaintiff,

v.

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

Defendants.

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

**PODFITNESS' MOTION TO STAY
PROCEEDINGS FOR THIRTY
DAYS PENDING ENGAGEMENT
OF SUBSTITUTE COUNSEL**

Date: November 6, 2007
Time: 1:00 pm
Courtroom 3, 3rd Floor
Judge: Hon. Sandra B. Armstrong

1 At the request of Defendant Podfitness, Inc. (“Podfitness”), Workman Nydegger submits the
2 follow Motion to Stay Proceedings for Thirty Days Pending Engagement of Substitute Counsel. The
3 statements herein are based upon the supporting declaration of Steven R. Hutchinson (filed
4 contemporaneously herewith) and are not necessarily the position of Workman Nydegger:

5 On September 18, 2007, present counsel for Podfitness, Workman Nydegger and Collette
6 Erickson Farmer & O’Neill, moved this Court for leave to withdraw as counsel. Podfitness must now
7 find and educate substitute counsel to represent Podfitness. Once found and retained, educating
8 substitute counsel is a task that will likely take a significant amount of time. In light of this, on
9 September 27, 2007, Podfitness’ VP of Business & Legal Affairs (Steve Hutchinson) contacted counsel
10 for Apple Inc. (Lisa Martens) seeking Apple’s agreement to a thirty-day stay or stand-down, while
11 Podfitness engages and educates substitute counsel. Apple refused to accommodate Podfitness’
12 reasonable request under the circumstances. (*See* Declaration of Steve Hutchinson, attached hereto as
13 Exhibit A).

14 Podfitness has identified the following facts, which make staying this action for thirty days
15 essential in order to avoid prejudice to Podfitness’ case:

16 First, Apple has recently produced nearly 300,000 pages of documents, many of which have
17 been marked “attorney’s eyes only.” Because in-house counsel for Podfitness, Steve Hutchinson, is not
18 permitted under the protective order to review these documents, much of this remains in need of review.
19 Apple has expressly opposed Mr. Hutchinson’s requests for a thirty-day stay while Podfitness retains
20 substitute counsel, stating that Mr. Hutchinson himself can represent Podfitness going forward. Despite
21 knowing that Mr. Hutchinson cannot review much of Apple’s document production because it is marked
22 “attorney’s eyes only,” Apple has not offered to allow disclosure of “attorney’s eyes only” documents to
23 Mr. Hutchinson. (*Id.* at ¶¶ 2, 3 and 7).

24 Second, Apple filed its First Amended Complaint on August 1, 2007. The new claims asserted
25 in Apple’s Amended Complaint, and the additional counterclaims included in Podfitness’ Answer to the
26 First Amended complaint will likely spawn the need for additional discovery. (*Id.* at ¶ 4).

1 Third, Apple has also noticed its intention to depose Podfitness' president and CEO. Substitute
2 counsel will need to be properly educated on the facts and issues present in this case prior to defending
3 those depositions. (*Id.* at ¶ 5).

4 Finally, the parties are presently in sincere settlement discussions and have exchanged
5 preliminary settlement agreement drafts. Staying these proceedings for thirty-days would allow the
6 parties to continue with the settlement discussions while avoiding additional costs and burdens to
7 themselves and the Court if a settlement is reached. (*Id.* at ¶ 6).

8 Based on the foregoing, Podfitness seeks a thirty-day stay of this action. Without a thirty-day
9 stay, Podfitness' case would be critically prejudiced.

10
11 DATED: October 1, 2007.

Respectfully submitted on behalf of Podfitness,

12 WORKMAN | NYDEGGER

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14
15 /s/ Charles J. Veverka
16 1000 Eagle Gate Tower
17 60 East South Temple
18 Salt Lake City, UT 84111
Telephone: (801) 533-9800

19 COLLETTE ERICKSON FARMER & O'NEILL LLP
20 235 Pine Street, Suite 1300
21 San Francisco, CA 94104
Telephone: (415) 788-4646

22 Attorneys for Defendant and Counterclaimant Podfitness,
23 Inc.

PROOF OF SERVICE

I hereby certify that on October 1, 2007, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which sent notification of such filing to the following: Abrams@fr.com; jacobalpren@quinnemanuel.com; raycock@wnlaw.com; wfarmer@collette.com; rlawrence@collette.com; llaycock@wnlaw.com; jlewis@wnlaw.com; martens@fr.com; miclean@fr.com; cveverka@wnlaw.com and served Podfitness' in-house counsel separately at shutchinson@podfitness.com.

WORKMAN | NYDEGGER

/s/ Charles J. Veverka

Larry R. Laycock
Charles J. Veverka
Robert A. Aycock
Mark W. Ford
1000 Eagle Gate Tower
60 East South Temple
Salt Lake City, UT 84111
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William S. Farmer
Jacob Alpren
COLLETTE ERICKSON FARMER & O'NEILL LLP
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San Francisco, CA 94104
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