

# **Exhibit A**

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10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

13 APPLE, INC.,

14 Plaintiff,

15 v.

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

18 Defendants.

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

**DECLARATION OF STEVEN R.  
HUTCHINSON IN SUPPORT OF  
PODFITNESS' MOTION TO STAY  
PROCEEDINGS FOR THIRTY  
DAYS PENDING ENGAGEMENT  
OF SUBSTITUTE COUNSEL**

Judge: Hon. Sandra B. Armstrong

19 I, Steven R. Hutchinson, Podfitness Vice President of Business and Legal Affairs, declare  
20 as follows:

- 21 1. Current counsel for Podfitness, Workman Nydegger and Collette Erickson Farmer  
22 & O'Neill LLP, recently filed a Notice of Motion for Leave to Withdraw as counsel for Podfitness.
- 23 2. Podfitness' current counsel have represented Podfitness for the past year during  
24 which time four to six attorneys and their support staff and associates have principally conducted  
25 the litigation. Although I have consulted with current counsel, I have not "actively participated," as  
26 claimed in the Notice of Motion for Leave to Withdraw, to the extent that I could sufficiently  
27 proceed with the case without the extensive resources of current counsel or alternative competent  
28 counsel. For example, since most of the discovery produced by Apple has been marked "attorneys

**DECLARATION OF STEVEN R. HUTCHINSON**

1 eyes only,” I have not reviewed any of Apple’s extensive discovery. My principal involvement with  
2 the case has been in settlement discussions, which continue, and not in the details of the litigation  
3 process and procedures.

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

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

12 5. Apple has noticed its intention to depose Podfitness’ CEO, Teri Sundh, and its  
13 President, Jeff Hays. The Parties are coordinating schedules for these depositions. Substitute  
14 counsel will need to be properly educated regarding the case to properly defend the proposed  
15 deponents.

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

22 7. I recently spoke with Apple’s counsel, Lisa Martens, and requested Apple’s  
23 accommodation for the temporary stay to retain and educate substitute counsel. She flatly refused  
24 any accommodation, incredibly asserting that the unfortunate withdrawal of Podfitness’ long-time  
25 counsel precipitating the request was some kind of delay tactic. Also, despite taking the position  
26 that a 30 day stay is unnecessary because I can take over representation of Podfitness, Apple has  
27 not offered to allow me to review the “attorneys eyes only” documents it has produced.  
28

9. I declare, under penalty of perjury, that the foregoing is true and correct to the best of my personal knowledge.

Respectfully submitted,

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