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 10 Counterclaim Defendant
 APPLE INC.

11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13 (OAKLAND DIVISION)

14 APPLE INC.,
 15 Plaintiff,
 16 v.
 17 PODFITNESS, INC., and DOES 1-100,
 18 inclusive,
 19 Defendants.

Case No. C 06-5805 SBA

**DECLARATION OF DAVID J. MICLEAN
 IN SUPPORT OF APPLE INC.'S
 OPPOSITION TO DEFENDANT'S
 MOTION FOR ADMINISTRATIVE
 RELIEF EXTENDING PRETRIAL
 DEADLINES**

Honorable Sandra B. Armstrong

21 PODFITNESS, INC.,
 22 Counterclaim Plaintiff
 23 v.
 24 APPLE INC.,
 25 Counterclaim Defendant

26
 27 I, David J. Miclean, declare as follows:

28 1. I am a principal of Fish & Richardson P.C., counsel of record in this action for

1 Apple Computer, Inc. (“Apple”). I am a member of the Bar of the State of California and am
2 admitted to this Court. I have personal knowledge of the matters stated in this declaration and
3 would testify truthfully to them if called upon to do so.

4 2. Apple initially requested a trial date in June 2008 (which the court granted), while
5 Podfitness proposed a trial date in November of 2008. Since the trial date was set, Podfitness
6 filed two separate motions to stay the litigation, the former of which was rejected by this Court
7 on May 10, 2007.

8 3. On September 26, 2007, Podfitness’ then-in-house attorney Steve Hutchinson
9 filed a declaration purporting to support a motion to stay the case. This stand-alone declaration
10 represented an invalid attempt to request a stay from the Court under Local Rules 7-1 and 7-2
11 (requiring a party seeking to stay a case to file a notice of the motion, set a date and time of
12 hearing, and submit a memorandum of points and authorities)

13 4. Apple was forced to file a Motion to Compel the Depositions of Jeff Hays and
14 Teri Sundh on October 30, 2007, and the Court granted Apple’s motion on December 10, 2007.

15 5. After Defendant’s outside counsel failed to return multiple voice and email
16 messages attempting to meet and confer regarding scheduling the depositions of Defendant’s
17 employees, on July 27, 2007 Apple noticed the depositions of Defendant’s CEO, Teri Sundh, and
18 its President, Jeff Hays. The depositions were noticed for the dates of September 5-6, 2007. In
19 the approximately four months after Apple issued the notices, Defendant stated only that the
20 dates are not acceptable, ignored repeated requests to propose alternate dates, and attempted to
21 stay the case (twice) in an effort to further postpone the depositions.

22 6. On August 22, 2007 Defendant’s outside counsel emailed my firm, stating that
23 they were “still working on coordinating dates for the depositions of Teri Sundh and Jeff Hays
24 that you have noticed for September 5th and 6th.” We followed up on September 5, 2007 with
25 another email requesting proposed dates for the depositions. Defendant’s outside counsel
26 responded on that day with a promise to be in touch with Podfitness that week to get deposition
27 dates. Defendant did not attempt to get in touch with Apple after this communication.
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