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David J. Miclean
(#115098/miclean@fr.com)
FISH & RICHARDSON P.C.
500 Arguello Street, Suite 500
Redwood City, California 94063
Telephone: (650) 839-5070
Facsimile: (650) 839-5071

Lisa M. Martens
(#195824/martens@fr.com)
Andrew M. Abrams
(#229698/abrams@fr.com)
FISH & RICHARDSON P.C.
12390 El Camino Real
San Diego, California 92130
Telephone: (858) 678-5070
Facsimile: (858) 678-5099

Attorneys for Plaintiff and
Counterclaim Defendant
APPLE INC.

James M. Wagstaffe
Kerr & Wagstaffe LLP
100 Spear Street, Suite 1800
San Francisco, CA 94105-1528
Telephone: (415) 371-8500
Facsimile: (415) 371-0500

James E. Magleby
Jason A. McNeill
Magleby & Greenwood, P.C.
170 South Main Street, Suite 350
Salt Lake City, UT 84101-3606
Telephone: (801) 359-9000
Facsimile: (801) 359-9011

Attorneys for Defendants
and Counterclaim Plaintiff
Podfitness, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(OAKLAND DIVISION)

APPLE INC.,

Plaintiff,

v.

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

Defendants.

Case No. C 06-5805 SBA

**STIPULATED REQUEST FOR ORDER
CHANGING TIME**

Honorable Sandra B. Armstrong

PODFITNESS, INC.,

Counterclaim Plaintiff

v.

APPLE INC.,

Counterclaim Defendant

1 Pursuant to Local Rule 6-2, Plaintiff and Counterclaim Defendant Apple Inc. (“Apple”)
2 and Defendant and Counterclaim Plaintiff Podfitness, Inc. (“Podfitness”) file this stipulation
3 requesting an enlargement of the schedule in this case. In support of this stipulation, the parties
4 submit the declaration of James E. Magleby, counsel for Podfitness, which sets forth the facts that
5 necessitated the requested enlargement. The parties believe good cause for the enlargement exists
6 for the following reasons.

7 **A. FILING OF AMENDED COMPLAINT AND COUNTERCLAIM**

8 Since the Court’s January 25, 2007 Order for Pretrial Preparation setting forth the original
9 trial schedule, the scope of this matter has expanded. On August 1, 2007, Apple filed an amended
10 complaint adding causes of action for cybersquatting and for breach of contract. Magleby Decl.,
11 ¶ 2. Apple’s amendment arose from new information uncovered during the discovery process.
12 *Id.* Podfitness answered the amended complaint on August 31, 2007, and counterclaimed,
13 alleging intentional and negligent interference with contractual relations, negligent interference
14 with prospective economic advantage, and unlawful, unfair and deceptive practices in violation of
15 the California Business and Professions Code. Podfitness’ counterclaims arose from conduct
16 which purportedly occurred during the discovery process, and after the scheduling order had been
17 put into place. Magleby Decl., ¶ 3. Both Apple’s new claims and Podfitness’ new counterclaims
18 invoke the need for additional discovery. Further, pursuant to Podfitness’ efforts to obtain new
19 counsel and the courts order staying this action, discovery has not gone forward for several
20 months.

21 **B. WITHDRAWAL OF PODFITNESS’ COUNSEL AND STAY OF THE**
22 **PROCEEDINGS**

23 On September 19, 2007, Podfitness’ outside counsel, Workman Nydegger, filed its motion
24 to withdraw as counsel. Subsequently, on October 16, 2007, in-house counsel for Podfitness,
25 Steve Hutchinson, filed notice with the Court that he was no longer employed with Podfitness.
26 Magleby Decl., ¶ 4. On October 31, 2007, the Court permitted a withdrawal of outside counsel
27 and ordered a temporary stay of the case for thirty (30) days pending Podfitness’ engagement of
28 substitute counsel. *Id.* Podfitness retained Magleby & Greenwood, P.C. as new outside counsel

1 on November 30, 2007, and retained local California counsel, Kerr & Wagstaffe, LLP on
2 December 6, 2007. Magleby Decl., ¶ 5.

3 During this time, in the months of August, September, October and November 2007, the
4 parties participated in numerous settlement negotiations. Magleby Decl., ¶ 6. Ultimately, the
5 parties did not succeed in reaching a settlement. *Id.* As such, the parties now must reschedule the
6 discovery activities that were postponed during the stay of the action. Further, new counsel for
7 Podfitness requires additional time to review Apple's document production and propound
8 additional discovery.

9 **D. PROPOSED SCHEDULE WITH EXTENDED DEADLINES**

10 To allow the parties adequate time to complete discovery and prepare for trial, the parties
11 have stipulated and agreed to the following schedule:

12		
13	Fact discovery closes	March 14, 2008
14	Last day to designate experts and to 15 submits reports on those issues the party bears the burden of proof	April 8, 2008
16	Last day to serve rebuttal expert reports	May 15, 2008
17	Expert discovery closes	June 14, 2008
18	Deadline for dispositive motions to be filed	June 10, 2008
19	Deadline for dispositive motions to be heard	July 15, 2008
20	Settlement conference	July 30, 2008
21	Filing of pretrial preparation due	August 13, 2008
22	Motions in Limine and Objections to Evidence due	August 19, 2008
23	Responses to Motions in Limine and Objections due	August 27, 2008
24	Pretrial conference	September 24, 2008
25	Jury trial begins	October 13, 2008
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1 PURSUANT TO STIPULATION, IT IS SO ORDERED:

2 Dated: _____
3 United States District Judge

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