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 and Counterclaim Plaintiff  
 Podfitness, Inc.

10 Attorneys for Plaintiff and  
 11 Counterclaim Defendant  
 APPLE INC.

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

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

Case No. C 06-5805 SBA

**DECLARATION OF JAMES E.  
 MAGLEBY IN SUPPORT OF  
 STIPULATED REQUEST FOR ORDER  
 CHANGING TIME**

Honorable Sandra B. Armstrong

22 PODFITNESS, INC.,  
 23 Counterclaim Plaintiff  
 24 v.  
 25 APPLE INC.,  
 26 Counterclaim Defendant  
 27

1 I, James E. Magleby, declare as follows:

2 1. I am a partner of Magleby & Greenwood, P.C., counsel of record in this action for  
3 Podfitness, Inc. ("Podfitness"). I am a member of the Bar of the State of Utah and will be  
4 admitted to this Court pending approval of my *pro hac vice* application. I have personal  
5 knowledge of the matters stated in this declaration and would testify truthfully to them if called  
6 upon to do so.

7 2. My review of the file indicates that on August 1, 2007, Apple filed an amended  
8 complaint adding causes of action for cybersquatting and for breach of contract.

9 3. My review of the file indicates that Podfitness answered the amended complaint  
10 on August 31, 2007, and counterclaimed, alleging intentional and negligent interference with  
11 contractual relations, negligent interference with prospective economic advantage, and unlawful,  
12 unfair and deceptive practices in violation of the California Business and Professions Code.  
13 Podfitness' counterclaims arose from conduct which Podfitness alleges occurred during the  
14 discovery process, and after the scheduling order had been put into place.

15 4. My review of the file also indicates that on September 19, 2007, Podfitness'  
16 outside counsel, Workman Nydegger, filed its motion to withdraw as counsel. Subsequently, on  
17 October 16, 2007, in-house counsel for Podfitness, Steve Hutchinson, filed notice with the Court  
18 that he was no longer employed with Podfitness. On October 31, 2007, the Court permitted a  
19 withdrawal of outside counsel and ordered a temporary stay of the case for thirty (30) days  
20 pending Podfitness' engagement of substitute counsel.

21 5. Podfitness retained my firm, Magleby & Greenwood, P.C. as new outside counsel  
22 on or about November 30, 2007, and retained local California counsel, Kerr & Wagstaffe, LLP  
23 on December 6, 2007.

24 6. I have been informed that during the months of August, September, October and  
25 November 2007, the parties participated in numerous settlement negotiations. Ultimately, the  
26 parties did not succeed in reaching a settlement.

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