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INTERSERVE, INC. dba TECHCRUNCH,  
8 and CRUNCHPAD, INC.

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN JOSE DIVISION

12 INTERSERVE, INC. dba TECHCRUNCH, a )  
13 Delaware corporation, and CRUNCHPAD, )  
INC., a Delaware corporation, )

14 Plaintiffs, )

15 vs. )

16 FUSION GARAGE PTE. LTD., a Singapore )  
17 company, )  
18 Defendant. )

Case No. C 09 5812 (JW) (PVT)

DECLARATION OF DAVID S. BLOCH  
IN SUPPORT OF PLAINTIFFS'  
MOTION TO ALLOW DISCOVERY  
PRIOR TO RULE 26 CONFERENCE  
ON AN EXPEDITED BASIS

[L.R. 6-3(a)]

19 I, David S. Bloch, declare:

20 1. I am an attorney at law duly licensed to practice before all of the courts of the State of  
21 California and the District of Columbia, and a member in good standing of the Bar of the United  
22 States District Court for the Northern District of California. I am an attorney of record for  
23 Interserve, Inc. dba TechCrunch and CrunchPad Inc. (collectively, "TechCrunch"), the plaintiffs in  
24 this action.

25 2. Through this motion, TechCrunch asks the Court to open discovery prior to the Rule  
26 conference. If leave is granted, TechCrunch asks that Fusion Garage ("FG") respond to the  
27 interrogatories attached as **Exhibit A** and the requests for production attached as **Exhibit B** within  
28 30 days of the date of service of this motion and accompanying declaration, i.e., January 27, 2010.

1           3.       TechCrunch also will serve subpoenas on PayPal (FG's payment processor for JooJoo  
2 pre-orders) and McGrath Power (FG's PR firm). We do not seek an order requiring these entities to  
3 respond on an expedited basis.

4           4.       Prior to filing this motion, my partner Andrew Bridges and I communicated with  
5 counsel for FG to agree to the relief TechCrunch now seeks by motion. As required by Local Rules  
6 1-5 (n) and 6-3 (a)(2), Mr. Bridges and I spoke by telephone to Patrick Doolittle, counsel for FG, on  
7 December 28, 2009, following a call between Mr. Bridges and Mr. Doolittle the previous week. Mr.  
8 Doolittle informed us that FG would not agree to the requested relief.

9           5.       **Exhibit C** is a true and correct copy of a December 30, 2008, email exchange. In this  
10 exchange, TechCrunch's Louis Monier engaged in direct communications with FG to help define the  
11 user interface, technical specifications, and software details for a working prototype assembled by  
12 Mr. Monier's team. FG commented: "This is great news. Good to see the first signs of the baby :)"  
13 (emoticon original).

14           6.       **Exhibit D** is a true and correct copy of a January 19, 2009, TechCrunch blog posting,  
15 which states in part: "The software has been created by Fusion Garage, who continue to work with  
16 Louis on the feature set and user experience."

17           7.       **Exhibit E** is a true and correct copy of a document that purports to be the Google-  
18 archived version of FG's blog. We believe this to be a true and accurate copy of the text that FG  
19 originally posted on its fusiongarage.com blog. FG has since disabled public access to its blog and  
20 may have deleted it entirely. The January 19, 2009, entry states in part: "It's our software running  
21 on the tablet ... We continue to work with Louis Monier on the feature set and the user experience.  
22 We ... would like to take the opportunity to thank Michael [Arrington] and Louis for giving us the  
23 opportunity to work with them on the TechCrunch Tablet." A follow-up February 4, 2009, entry  
24 states: "the collaboration with the Crunchpad project happened as a result of meetings we had with  
25 Mike Arrington and co, subsequent to [TechCrunch50]. We worked closely with Louis Monier in  
26 getting the software in shape for the hardware prototype B. We continue to work with them in  
27 getting the software in shape to make crunchpad an easy to use device."

28           8.       **Exhibit F** is a true and correct copy of an April 10, 2009, TechCrunch blog post

1 stating: “we’ve continued to tinker with the project ... We did meet with Fusion Garage today to test  
2 out the most recent prototype (B.5)? ... The software stack is now entirely customized. ... This time  
3 the ID and hardware work was driven by Fusion Garage out of Singapore. ... All credit should go to  
4 Fusion Garage ... you need partners to actually make things happen, and the credit for what we saw  
5 today goes entirely to the Fusion Garage team. Those guys are rock stars.” This is one of several  
6 documents evidencing that the parties worked in close collaboration, including joint work at  
7 TechCrunch’s California headquarters, where FG’s CEO, Chandrasekar Rathakrishnan, and software  
8 team relocated for several months.

9           9.       On information and belief, **Exhibit G** is a true and correct copy of Mr.  
10 Rathakrishnan’s Twitter feed, printed from twitter.com. Mr. Rathakrishnan broadcast the following  
11 statement by Twitter on May 25, 2009: “just leaving techcrunch office, last to leave today and its  
12 memorial day.” On June 3, he wrote: “CrunchPad Update, the launch prototype, we are excited  
13 working on this.”

14           10.       **Exhibit H** is a true and correct copy of a June 3, 2009, TechCrunch blog post, which  
15 praises FG and describe their ongoing collaboration, stating in part: “Our partner Fusion Garage  
16 continues to drive the software forward ... Our vision of the user interface and the last version of the  
17 software stack ... The device boots directly into the browser.”

18           11.       **Exhibit I** is a true and correct copy of a June 2, 2009, email string between FG and  
19 TechCrunch, which evidences that FG and TechCrunch each were active participants in marketing  
20 and other business decisions. In part of this string, Mr. Rathakrishnan wrote: “my suggestion is that  
21 we do a post, update new device pictures and at the same time announce that we will be having a  
22 press conference in july to unveil the device, do a demo etc.”

23           12.       **Exhibit J** is a true and correct copy of a June 27, 2009, email string from Mr.  
24 Rathakrishnan confirming FG’s agreement for FG to merge into CrunchPad Inc. in exchange for  
25 35% of the merged company’s stock.

26           13.       **Exhibit K** is a true and correct copy of an August 31, 2009, email string from Mr.  
27 Rathakrishnan, following multi-week visits to Asia by TechCrunch senior technologists Brian  
28 Kindle (hardware) and Nik Cubrilovic (software), who worked with Defendant on software, design,

1 and user interface issues and the parties' jointly-selected original design manufacturer, Pegatron, on  
2 hardware and pricing. The email reveals significant friction during this period, and TechCrunch  
3 seriously considered ending the joint venture. In response, Mr. Rathakrishnan begged TechCrunch  
4 to continue working together and promised to fly his entire team to the Bay Area to drive the  
5 CrunchPad to completion: "Pls do not kill the project as yet. Pls hold off a week. ... I know how to  
6 deal with Pegatron and some of the challenges that we are currently facing. We can overcome these  
7 challenges. ... If we decide to move forward and get the product launched at TC50 or separate press  
8 event, then I will have my team to back me and get the product where it needs to be. ... So [a] team  
9 of guys will fly with me."

10 14. Relying on these representations, TechCrunch sponsored business visas for four of  
11 the Indian nationals on the team, and starting in September FG and TechCrunch personnel worked  
12 together in TechCrunch's offices to get the CrunchPad ready for launch. As late as November 13,  
13 2009, all seemed well, with Mr. Rathakrishnan confirming that "we shd target the [November 20]  
14 event in sf" for the CrunchPad's public debut. **Exhibit L** is a true and correct copy of this email  
15 string from Mr. Rathakrishnan.

16 15. But then, on November 17—in an email that it concedes "came out of the blue"—FG  
17 abruptly aborted the project, asserting that it owned all associated IP rights and would manufacture  
18 and market the CrunchPad product on its own. **Exhibit M** is a true and correct copy of the  
19 November 18, 2009, email string from Mr. Rathakrishnan, which incorporates his November 17  
20 message.

21 16. **Exhibit N** is a true and correct copy of a letter received from Pegatron purporting to  
22 terminate Pegatron's relationship with FG as of October 2009. TechCrunch did not receive a copy  
23 of this letter or learn of its contents until December 2009.

24 17. **Exhibit O** is a true and correct copy of an email string from Mr. Rathakrishnan  
25 purporting to attach FG's "capitalization table" in spreadsheet form. According to that capitalization  
26 table, one FG investor ("Raffles") lent FG \$100,000 Singapore dollars at an interest rate of 1.65%  
27 per month (19.8% annualized), and another ("Wilfred") lent FG \$100,000 Singapore dollars at an  
28 interest rate of 7% per month.

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I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 28, 2009

/s/ David S. Bloch  
David S. Bloch

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