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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
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14 INTERSERVE, INC. dba TECHCRUNCH, a
15 Delaware corporation, and CRUNCHPAD,
INC., a Delaware corporation,

16 Plaintiffs,

17 vs.

18 FUSION GARAGE PTE LTD., a Singapore
19 company,

20 Defendant.
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CASE NO. C 09-cv-5812 RS (PVT)

**FUSION GARAGE'S NOTICE OF
FURTHER CHALLENGES TO
CONFIDENTIALITY DESIGNATIONS
FROM TRANSCRIPT OF TECHCRUNCH
30(B)(6) DEPOSITION**

(Lodged Under Seal)

1 NOTICE OF CONFIDENTIALITY CHALLENGES

2 In its April 30, 2010 Order Dissolving the April 28, 2010 Order to Show Cause (Dkt. 88),
3 the Court held that "Defendant Fusion Garage shall advise whether it has further challenges to any
4 confidentiality designations for the [TechCrunch] Rule 30(b)(6) transcript no later than May 14,
5 2010." *Id.* at 1. TechCrunch has designated pages 261:18-276:6; 373:10-375:5; 388:18-390:12
6 and Exhibits 9-10 of the Rule 30(b)(6) transcript as "Confidential" under the Stipulated Protective
7 Order. (Doolittle Decl., Ex. A). Pursuant to the Court's April 28 Order, Fusion Garage hereby
8 provides notice that it challenging TechCrunch's designations.

9 Exhibits 9 and 10 to the TechCrunch 30(b)(6) deposition are email exchanges between
10 TechCrunch employees Michael Arrington and Nik Cubrilovic in which [REDACTED]
11 [REDACTED] (Doolittle Decl.,
12 Exs. B & C). Transcript pages 261:18-276:6; 373:10-375:5; and 388:18-390:12 involve questions
13 about these e-mail exchanges. (Doolittle Decl., Ex. D). None of these exhibits or deposition
14 excerpts deserve Confidential status.

15 TechCrunch has waived any confidentiality that might have otherwise attached to this
16 information. TechCrunch's publicly-filed Complaint is based on allegations that the parties were
17 in a partnership and owed fiduciary duties to each other. But [REDACTED]
18 [REDACTED] are completely inconsistent with the existence
19 of a partnership or fiduciary duty, since (needless to say) [REDACTED]
20 [REDACTED] Having publicly put the supposed partnership and fiduciary
21 duties at issue in this litigation, TechCrunch cannot seek to shield its own internal communications
22 that so starkly refute the existence of a partnership or fiduciary duty. *See Fraihat v. Cohen*, No.
23 06-1452, 2007 WL 3333117, *4 (S.D. Cal. Nov. 6, 2007) ("to the extent Plaintiff has any
24 expectation of confidentiality in his disciplinary or immigration records . . . he has waived it by
25 placing his disciplinary history and immigration status at issue via the claims in this case.")

26 Even if TechCrunch had not waived confidentiality, these exhibits and transcript excerpts
27 would not qualify for "Confidential" status. The Stipulated Protective Order states that
28 "Confidential" status shall be given only to information that is protectable under Fed. R. Civ. P

1 26(c). (Dkt. 35 at 2) That rule provides: “The court may, for good cause, issue an order to protect
2 a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” The
3 materials TechCrunch seeks to shield from public disclosure here do not qualify for protection
4 under Rule 26(c). There is nothing in these emails or in the transcript discussing these emails that
5 reveals TechCrunch’s confidential research, development, or commercial information. The
6 emails and transcript do not address TechCrunch’s revenues, ongoing commercial relationships, or
7 ongoing business strategies. At most, they are embarrassing, since they disclose [REDACTED]

8 [REDACTED]
9 [REDACTED] This is not the type of
10 embarrassment that serves as a ground to shield this information behind a “Confidential”
11 designation under Rule 26(c) or the Protective Order in this case. *See, e.g., Ideal Steel Supply*
12 *Corp. v. Anza*, No. 02-4788, 2005 WL 1213848, *3 (S.D.N.Y. May 23, 2005) (“The only other
13 ground posited by defendants (through Ideal’s letter) is that this information will incriminate or
14 embarrass defendants. That, however, is not a basis for documents to be held to be ‘confidential’
15 under Rule 26”); *Culinary Foods, Inc. v. Raychem Corp.*, 151 F.R.D. 297, 301 (N.D. Ill. 1993)
16 (“Although the information . . . may be embarrassing and incriminating, this alone is insufficient
17 to bar public disclosure.”)

18 Rather, to shield “embarrassing” documents from public disclosure under Rule 26(c), “a
19 business will have to show with some specificity that the embarrassment resulting from
20 dissemination of the information would cause a significant harm to its competitive and financial
21 position.” *See Cippollone v. Liggett Group, Inc.*, 785 F.2d 1108, 1121 (3d Cir. 1986).

22 TechCrunch cannot credibly argue that its ongoing business activities will be unfairly jeopardized
23 if this year-old information is disclosed to the public, and the designation should therefore be
24 lifted.

25 For all these reasons, Fusion Garage respectfully requests that the “Confidential”
26 designation be removed from pages 261:18-276:6; 373:10-375:5; 388:18-390:12 and Exhibits 9-
27 10 of the Rule 30(b)(6) transcript.

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1 DATED: May 12, 2010

QUINN EMANUEL URQUHART &
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