

1 QUINN EMANUEL URQUHART & SULLIVAN, LLP  
 Claude M. Stern (Bar No. 96737)  
 2 claudestern@quinnemanuel.com  
 Evette Pennypacker (Bar No. 203515)  
 3 evettepennypacker@quinnemanuel.com  
 555 Twin Dolphin Dr., 5<sup>th</sup> floor  
 4 Redwood Shores, CA 94065  
 Telephone: (650) 801-5000  
 5 Facsimile: (650) 801-5100

6 Patrick Doolittle (Bar No. 203659)  
 patrickdoolittle@quinnemanuel.com  
 7 50 California Street, 22nd Floor  
 San Francisco, California 94111  
 8 Telephone: (415) 875-6600  
 Facsimile: (415) 875-6700

9 Attorneys for Defendant Fusion Garage PTE Ltd.

11 UNITED STATES DISTRICT COURT  
 12 NORTHERN DISTRICT OF CALIFORNIA  
 13 SAN FRANCISCO DIVISION

15 INTERSERVE, INC. dba TECHCRUNCH, a  
 16 Delaware corporation, and CRUNCHPAD,  
 INC., a Delaware corporation,  
 17 Plaintiffs,  
 18 vs.  
 19 FUSION GARAGE PTE LTD., a Singapore  
 20 company,  
 21 Defendant.

CASE NO. C 09-cv-5812 RS  
**FUSION GARAGE'S OPPOSITION TO  
 PLAINTIFFS' ADMINISTRATIVE  
 MOTION FOR LEAVE TO FILE  
 SUPPLEMENTAL DECLARATIONS**

1 Just two days before the hearing on Plaintiffs' Motion for Preliminary Injunction, and  
2 more than a week after briefing on the Preliminary Injunction Motion was concluded, Plaintiffs  
3 seek to introduce two "supplemental" declarations that supposedly support their position in the  
4 Preliminary Injunction proceedings. The first declaration, by third-party Keith Teare, describes  
5 Mr. Teare's work on a PowerPoint slide deck and also attaches the slide deck that Mr. Teare  
6 purportedly worked on. The second declaration, by Plaintiffs' counsel Andrew Bridges, attaches  
7 one email produced by Fusion Garage, two emails produced by Fusion Garage's PR firm  
8 McGrath/Power, and one email produced by Plaintiffs. As discussed below, the Court should  
9 deny Plaintiffs' Motion to file these two, extremely tardy declarations.

10 Under the scheduling order in this case, Plaintiffs were required to file their Preliminary  
11 Injunction Reply Brief and supporting papers by May 3, 2010. (Dkt. 64). Plaintiffs must establish  
12 "good cause" for the Court to waive this deadline and accept additional material after this date.  
13 *See Watson v. Albin*, 2008 WL 2079967, \*4 n.4 (N.D. Cal. May 12, 2008) ("Good cause was not  
14 shown for that late declaration and it will not be considered here.") Plaintiffs cannot establish  
15 good cause for the tardy Teare and Bridges declarations.

16 The substance of the Teare declaration shows that Mr. Teare is a percipient witness to  
17 some of the events relating to this suit, and that Plaintiffs knew about Mr. Teare's involvement  
18 long before yesterday when they sought relief from this Court to submit his declaration. Plaintiffs'  
19 prior knowledge of Mr. Teare's involvement is clear, since Mr. Teare was copied on some of the  
20 e-mails that Plaintiffs attached to their own Complaint. *See* Complaint., Ex. B ("Copying Keith  
21 [Teare] so that he can gracefully wind down discussions he is leading.") Moreover, the lone  
22 document attached to the Teare Declaration is a TechCrunch-produced document, so Plaintiffs  
23 clearly could have (and should have) introduced this document earlier. If Plaintiffs felt that Mr.  
24 Teare had information relevant to the Preliminary Injunction Motion, they should have attached  
25 his declaration to their *Opening Brief*. There is no justification for Plaintiffs' failing to submit Mr.  
26 Teare's declaration until a week after their Reply Brief was submitted.

27 Plaintiffs' argument that the four documents attached to the Bridges declaration are "new,  
28 highly relevant documents from Fusion Garage and McGrath Power that were unavailable to

1 Plaintiffs for use in their reply brief” rings hollow. (Mot., 1). Plaintiffs have long known that  
2 third-party McGrath Power would produce its documents by May 5, since Magistrate Judge  
3 Trumbull ordered that McGrath Power produce its documents by that date. (Dkt. 90 at 4).  
4 Plaintiffs never contacted Fusion Garage or the court to seek modification of the Preliminary  
5 Injunction briefing schedule so that they could incorporate the McGrath documents into their  
6 Reply Brief. Plaintiffs *knew* of the production schedule, *knew* that some of these documents  
7 would be produced after the scheduled deadline for Plaintiffs’ Reply Brief, and yet did not even  
8 attempt to modify the briefing schedule to accommodate these McGrath documents. Plaintiffs  
9 have not demonstrated good cause for introducing this additional evidence at the eleventh hour  
10 before the Preliminary Injunction hearing.

11 Not only have Plaintiffs failed to demonstrate good cause, but introduction of this evidence  
12 at this late date will prejudice Fusion Garage. In particular, because he did not submit a  
13 declaration in support of Plaintiffs' Opening Preliminary Injunction papers, Fusion Garage did not  
14 take Mr. Teare's deposition. Thus, Fusion Garage has had no opportunity to test and challenge the  
15 statements in his declaration. At minimum, if the Court *were* inclined to allow Plaintiffs to file the  
16 Teare declaration at this late date, Fusion Garage respectfully requests that the Preliminary  
17 Injunction hearing be continued to allow Fusion Garage the opportunity to take Mr. Teare's  
18 deposition.

19 For the foregoing reasons, Fusion Garage respectfully requests that the Court deny  
20 Plaintiffs’ motion to file the supplemental Teare and Bridges declarations. In the alternative, if the  
21 court grants Plaintiffs leave to file the Teare declaration, Fusion Garage respectfully requests that  
22 the Preliminary Injunction hearing be postponed so that Fusion Garage may have an opportunity  
23 to depose Mr. Teare.

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1 DATED: May 12, 2010

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

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By /s/ Patrick Doolittle  
Patrick C. Doolittle  
Attorneys for Defendant Fusion Garage PTE Ltd.