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9 **UNITED STATES DISTRICT COURT**  
 10 **NORTHERN DISTRICT OF CALIFORNIA**

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12 **INTERSERVE, INC., dba TECHCRUNCH, )**  
**a Delaware corporation, and CRUNCHPAD, )**  
 13 **INC., a Delaware corporation, )**  
 14 Plaintiffs, )  
 15 vs. )  
 16 **FUSION GARAGE PTE. LTD., a Singapore )**  
**company, )**  
 17 Defendant. )  
 18 )  
 19 )

**Case No. CV-09-5812 RS (PVT)**  
**PLAINTIFFS' MEMORANDUM IN**  
**OPPOSITION TO FUSION GARAGE'S**  
**RENEWED MOTION FOR PROTECTIVE**  
**ORDER**  
 Date: June 8, 2010  
 Time: 10:00 a.m.  
 Judge: Hon. Patricia V. Trumbull

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1 **I. PRELIMINARY STATEMENT**

2 Fusion Garage’s renewed protective order motion fails to address the real issue for this  
3 Court: the adequacy and necessity of Plaintiffs’ statement of business ideas.

4 The statement, which contains 33 paragraphs over seven pages plus an incorporated  
5 attachment, is more than adequate. It gives Fusion Garage notice of the business ideas at issue. It  
6 complies with the Court’s April 9, 2010, Protective Order (Dkt. 62) requiring Plaintiffs to submit a  
7 statement of business ideas as a case management tool. And it more than satisfies California Code  
8 of Civil Procedure § 2019.210, the provision that guided the Court’s Order. (*See* Doolittle Decl. Ex.  
9 A (the statement).)

10 Moreover, the statement is not even necessary to obtain the information Fusion Garage is  
11 trying to shield, because all the discovery that Plaintiffs seek is relevant not only to their  
12 misappropriation claim, but also to their claims for breach of fiduciary duty and fraud. (At the  
13 recent hearing on Plaintiffs’ motion for preliminary injunction, Judge Seeborg tentatively indicated  
14 that Plaintiffs have a likelihood of success on the merits on their breach of fiduciary duty and fraud  
15 claims. (*See* Dkt. 139 (hearing transcript).))

16 Meanwhile, Fusion Garage spends most of its breath arguing the *merits* of Plaintiffs’  
17 misappropriation claim. It complains (incorrectly) that Plaintiffs’ statement contains business ideas  
18 that cannot be the subject of a claim for relief. But the Court already held that “plaintiffs’ claim for  
19 misappropriation of business ideas ... is a valid claim,” distinct from a trade secret claim, at least for  
20 purposes of this motion. (Dkt. 62 at 5.) Paradoxically, Defendant wants to hide key matters from  
21 discovery even if there is *no* misappropriation claim and *no* trade secret claim in the case. Defendant  
22 cannot properly invoke section 2019.210 to hide from discovery on the breach of fiduciary duty,  
23 fraud, and other claims. In any event, the issue is not whether misappropriation of particular ideas is  
24 actionable, but whether Fusion Garage is now on notice about the substance of the misappropriation  
25 that Plaintiffs allege. Ironically, Fusion Garage’s attacks on the merits of specific business ideas  
26 confirm that it indeed has sufficient notice..

27 Moreover, Fusion Garage has misused the Court’s Protective Order to shield a wide variety  
28 of information that the Order did not intend to address. Citing the Court’s Protective Order, Fusion

1 Garage has withheld the names of its investors, the number of products it has sold, and business  
2 plans for its JooJoo product--the offspring of the parties' joint venture and the device at the heart of  
3 this case. This is far beyond the "source code and other highly proprietary information only" that the  
4 Court allowed Fusion Garage to protect *on a limited basis* until Plaintiffs submitted their quasi-  
5 2019.210 disclosure on April 23, 2010. (Dkt. 62 at 5, 7.)

6 Based on the adequacy of Plaintiffs' C.C.P. § 2019.210 statement and Fusion Garage's  
7 history of making overbroad use of the Court's Protective Order, the Court should deny Fusion  
8 Garage's renewed request and order Fusion Garage to comply with long-pending discovery.

## 9 **II. STATEMENT OF ISSUES**

10 1. Should the Court grant Fusion Garage a second "trade secret" protective order  
11 allowing it to withhold purported trade secrets, given that Plaintiffs do not allege trade secret  
12 misappropriation, Plaintiffs have now provided an adequate statement of business ideas, and Fusion  
13 Garage has used the initial protective order to withhold more than just its source code and other  
14 highly proprietary information?

15 2. Should the Court allow Fusion Garage to delay discovery on all claims against it by  
16 linking certain discovery requests to Plaintiffs' misappropriation claim, when in fact those requests  
17 seek information relevant to Plaintiffs' breach of fiduciary duty, fraud, and false advertising claims,  
18 which do not depend on the existence of protectable business ideas and proof of a misappropriation?

## 19 **III. ARGUMENT**

### 20 **A. Plaintiffs' Statement of Misappropriated Business Ideas is Adequate.**

21 Fusion Garage attempts to evade discovery by claiming that "[the] statement does not  
22 comply with the Court's order." (Mot. at 1.) Plaintiffs have indeed complied with the order.  
23 Plaintiffs' seven-page, 33-paragraph statement of business ideas contains abundant detail and  
24 satisfies the "reasonable particularity" standard of California Code of Civil Procedure § 2019.210.  
25 Fusion Garage instead wants Plaintiffs to "specify with *exacting detail* precisely what they contend  
26 [was] misappropriated." (Mot. at 11 (emphasis in original).) But a section 2019.210 statement is not  
27 required to identify a trade secret or business idea "with the greatest degree of particularity possible,  
28 or to reach such an exacting level of specificity that even its opponents are forced to agree the

1 designation is adequate.” *Brescia v. Angelin*, 172 Cal. App. 4th 133, 146 (2009). The statute’s aim  
2 is the “more modest” one of “reasonable particularity.” *Id.* at 149. As the California Court of  
3 Appeals explained,

4  
5 Reasonable particularity . . . does not mean that the party alleging misappropriation has to  
6 define every minute detail of its claimed trade secret at the outset of the litigation. Nor does it  
7 require a discovery referee or trial court to conduct a miniature trial on the merits of a  
8 misappropriation claim before discovery may commence. Rather, it means that the plaintiff  
9 must make some showing that is reasonable, i.e., fair, proper, just and rational . . . under all  
of the circumstances to identify its alleged trade secret in a manner that will allow the trial  
court to control the scope of subsequent discovery, protect all parties' proprietary  
information, and allow them a fair opportunity to prepare and present their best case or  
defense at a trial on the merits

10 *Id.* at 145.

11 *Brescia* overturned a lower court ruling that plaintiff’s statement of misappropriated trade  
12 secrets was inadequate. The fact that defendant had “presented evidence . . . to argue that Brescia's  
13 alleged trade secrets are matters of common knowledge in the commercial food science industry”  
14 evidenced that defendant understood the trade secrets at issue and that plaintiff had satisfied section  
15 2019.210. *Id.* at 151.

16 In *Excelligence Learning Corp. v. Oriental Trading Co.*, No. 03-4947, 2004 WL 2452834, at  
17 \* 3 (N.D. Cal. Jun. 14, 2004) (Seeborg, J.), this Court discussed the kinds of statements and level of  
18 specificity that would satisfy section 2019.210 in a trade secret case. The plaintiff in that case filed a  
19 statement that pointed the Court to allegations in its Amended Complaint that discussed its trade  
20 secrets related to vendors and finances. *Id.* Plaintiff identified, as one example, its cultivation and  
21 selection of vendors as a potential trade secret. Am. Compl. ¶¶ 24-30, *Excelligence Learning Corp.*  
22 *v. Oriental Trading Co.*, No. 03-4947 (N.D. Cal. Nov. 12, 2003), available at 2003 WL 24241034.  
23 This “adequately disclosed [plaintiff’s] trade secrets with sufficient specificity to fulfill the threshold  
24 requirements of Section 2019[] for the purposes of commencing discovery.” *Excelligence*, 2004 WL  
25 2452834, at \*4. Courts have upheld trade secret disclosures that are far less detailed than Plaintiffs’  
26 statement of business ideas here. In *Whyte v. Schlage Lock Co.*, 101 Cal. App. 4th 1443 (2002), for  
27 example, the California Court of Appeal approved all but one of these potential trade secrets:

- a. Information about Schlage's new products;
- b. Pricing of Schlage's products sold to its customers;
- c. Profit margins on Schlage's products sold to its customers;
- d. Schlage's costs in producing the products it sells to its customers;
- e. The Home Depot Line Review Documents;
- f. Pricing concessions made by Schlage to its customers;
- g. Promotional discounts made by Schlage to its customers;
- h. Advertising allowances made by Schlage to its customers;
- i. Volume rebates made by Schlage on its products to its customers;
- j. Marketing concessions made by Schlage to its customers;
- k. Schlage's market research data;
- l. Advertising strategy plans for calendar year 2000;
- m. Trade Discounts made by Schlage to its customers;
- n. Payment terms offered by Schlage to its customers and offered by Schlage's vendors/suppliers to Schlage;
- o. Rebate Incentives made by Schlage to its customers;
- p. Schlage's advertising, sales and promotion budgets;
- q. Finishing processes for new and existing Schlage products;
- r. Composite material process technologies (i.e., the unique composite materials used by Schlage in its products and the processes applied to those composite materials);
- s. Schlage's 1, 3 and 5 year strategic plan documents;

*Id.* at 1452-3 (“Categories 1b through 1s ... are drafted with sufficient detail to permit Whyte to identify and understand the protected information”).

Fusion Garage attacks Plaintiffs’ statement for including “access to, and expertise of” specific individuals as a misappropriated business idea. (Mot. at 1.) This is just the kind of statement, however, that this Court found satisfactory in *Excelligence*. Fusion Garage also faults Plaintiffs for listing “the CrunchPad prototype A, and its hardware configuration” as being too broad. (Mot. at 1, 12.) This is not too broad. It puts Fusion Garage on notice of Plaintiffs’ assertions with at least as much specificity as the statements approved in *Whyte*. Moreover, in this case, Fusion Garage is well acquainted with prototype A and other prototypes of the CrunchPad; Mr. Rathakrishnan discussed each at length in his declaration opposing Plaintiffs’ preliminary injunction motion.

Plaintiffs have met their obligations to provide Fusion Garage with notice of their claimed business ideas. This satisfies the Court’s goals of case management (Dkt. 62 at 5), the core purpose of section 2019.210, *Brescia*, 172 Cal. App. 4th at 149. Further, California’s discovery statutes, including section 2019.210, should be read “to ascertain the truth, not suppress it” and “[a]ny doubt about discovery is to be resolved in favor of disclosure.” *Id.* at 146. Thus, section 2019.210 is

1 reconcilable with the Federal Rules’ emphasis on broad disclosure. *Id.*; *Computer Econ., Inc. v.*  
2 *Gartner Group, Inc.*, 50 F. Supp. 2d 980, 989 (S.D. Cal. 1999) (finding no conflict between  
3 California’s trade secret disclosure statute and “the broad right of discovery conferred by Rule  
4 26(b)(1)”).

5 Plaintiffs’ statement of misappropriated business ideas speaks for itself and compares  
6 favorably with various published trade secret lists that have been approved in state and Federal court.  
7 Given all this, the Court should deny a second protective order and order Fusion Garage to comply  
8 immediately, and without further stalling, with Plaintiffs’ long-pending discovery. Although Fusion  
9 Garage protests that it “is not using this motion as a stall tactic,” Mot. at 2, it is hard to see what  
10 other benefit Fusion Garage genuinely sought to gain by its motion.

11 **B. Fusion Garage’s Arguments on the Merits Are Improper and Irrelevant.**

12 **1. When Determining the Sufficiency of a § 2019.210 Statements, Courts Do**  
13 **Not Consider the Merits of a Plaintiffs’ Misappropriation Claim.**

14 Though Fusion Garage purports to argue against the sufficiency of Plaintiffs’ C.C.P. §  
15 2019.210 statement, it spends nearly all its brief attacking the merits of Plaintiffs’ misappropriation  
16 claim. This is improper.

17 The purpose of Section 2019.210 is not to provide defendants with an excuse for a mini-trial  
18 on the merits of a plaintiff’s claims. *Brescia*, 172 Cal. App. 4th at 149; *Excelligence Learning*, 2004  
19 WL 2452834, at \* 3. Section 2019.210 does not “require a discovery referee or trial court to conduct  
20 a miniature trial on the merits of a misappropriation claim before discovery may commence.”  
21 *Brescia*, 172 Cal. App. 4th at 145; *id.* at 149 (2019.210 is not a “procedural device to litigate the  
22 ultimate merits” or “determine as a matter of law ... whether the trade secret actually exists”).  
23 Rather, Section 2019.210 is a case management tool. “The two most important goals of the statute  
24 ... are to help the court shape discovery, and to give the defendant the opportunity to develop  
25 defenses.” *Id.* at 149.

26 Thus, in *Excelligence*, this court found that a plaintiff had complied with the requirements of  
27 Section 2019.210, even though plaintiff listed alleged trade secrets that defendant argued were either  
28 publicly available or known to those in the trade. 2004 WL 2452834, at \* 3. The *Excelligence* court



1 held that defendant’s “argument that such information is not protected because it is either publicly  
2 available or known to those in the trade *addresses the merits* of Excelligence's trade secrets claim  
3 *rather than its responsibilities under the applicable discovery rules.*” *Id.* at \*4 (emphases added).

4 The court found that the alleged inadequacy of the disclosures did “not warrant a stay of discovery,  
5 nor provide justification for [defendant] to refuse to provide further discovery to Excelligence.” *Id.*

6 Fusion Garage’s arguments on the merits, including its assertion that certain business ideas  
7 were public, “common knowledge,” or too obvious for protection (*e.g.*, Mot. at 1-2), are irrelevant to  
8 this motion. This is the wrong motion for the arguments, and any attack on the merits belongs  
9 before Judge Seeborg. In any case, as discussed below, these arguments fail.

## 10 2. Fusion Garage’s Improper Arguments on the Merits Fail.

11 As noted above, the procedural nature of Section 2019.210 offers no basis for Fusion Garage  
12 to argue the merits of the case. Nevertheless, Fusion Garage proceeds to do just that, rehashing its  
13 arguments from previous pleadings. None of its old positions finds fresh life in this new forum.

14 ***Plaintiffs’ Business Ideas Were Not Publicly Disclosed.*** Fusion Garage first argues that  
15 Plaintiffs’ business ideas cannot have been misappropriated because Plaintiffs supposedly disclosed  
16 them publicly. This argument fails for two reasons. First, most of the supposed public disclosures  
17 took place *after* Plaintiffs shared their business ideas with Fusion Garage. That the parties  
18 periodically announced developments on their shared CrunchPad project does not erase the hard  
19 work that went into those developments *before they were announced*. Second, to the extent limited  
20 aspects of protectable business ideas became public, those supposed “disclosures” lacked the  
21 specificity that allowed Fusion Garage and Plaintiffs, jointly, to turn them from idea to reality.

22 Unlike the ideas in the case Fusion Garage recycles from its earlier pleadings, *Jonathan Browning,*  
23 *Inc. v. Venetian Casino Resort, LLC*, No. 07-3983, 2007 WL 4532214 (N.D. Cal. Dec. 19, 2007)  
24 (White, J.), Plaintiffs’ business ideas were available, if at all, only in vague, general terms, not in  
25 whole, detailed fashion as in *Jonathan Browning*. Fusion Garage’s own lengthy table (Mot. at 5–9)  
26 amply demonstrates the distinction between the specific business ideas Plaintiffs enumerates in their  
27 statement, and the vagueness of the supposed “public disclosure” of those ideas. For example,  
28 “TechCrunch insisted that the product be capacitive (rather than resistive) touch-screen based, with

1 no integrated ‘hard’ keyboard. TechCrunch concluded that a capacitive touch-screen would be more  
2 attractive to consumers.” (Mot. at 7.) In rebuttal, Fusion Garage quotes internet posts that refer only  
3 in general terms to a “touch-screen keyboard.” *Id.* Fusion Garage cannot show that Plaintiffs  
4 publicly disclosed those ideas it contributed to the parties’ joint venture in a way that would  
5 undermine the misappropriation claim.

6 **“Common Concepts” Are Often Only Obvious in Hindsight.** Furthermore, supposedly  
7 “common concepts” were not obvious to Fusion Garage at the time Plaintiffs shared them. In fact,  
8 Plaintiffs had to insist that Fusion Garage adopt many of the features that Fusion Garage now, with  
9 the benefit of hindsight, characterizes as “common.” *See, e.g.,* Doolittle Decl. Ex. A (the statement)  
10 at 4, ¶ 18 (Fusion Garage was initially indifferent to the critical issue of boot time); *id* at 2, ¶ 8  
11 (Plaintiffs’ insistence that the product have a camera).

12 **All Credit Does Not Go to Fusion Garage.** To bolster its claim that Plaintiffs have no  
13 protectable business ideas, Fusion Garage makes hay out of a blog post from the middle of the  
14 parties’ collaboration in April 2009.<sup>1</sup> The post exuberantly credited Fusion Garage with the  
15 “[industrial design] and hardware work” and “all credit” for Prototype C, the then-current iteration  
16 of the CrunchPad. (Mot. at 12.) This is mere flattery, not the concession Fusion Garage claims.  
17 The truth is that Prototype C was a continuation of the collaboration. Mr. Rathakrishnan, Fusion  
18 Garage’s CEO, believed in May of 2009 that Prototype C was part of “the evolution of the  
19 collaboration with techcrunch ... prototype b then prototype c.” (Scherb Decl. Ex. A.) In a private  
20 communication, Mr. Rathakrishnan told a friend that Fusion Garage was only “kind of” responsible  
21 for product design on the prototype. (Scherb Decl. Ex. B.)

22 **Mr. Arrington’s Deposition Statements Do Not Undermine Plaintiffs’ Claims.** Again  
23 resorting to improper attacks on the merits, Fusion Garage cites portions of Mr. Arrington’s  
24 deposition testimony related to the intellectual property rights that Plaintiffs own in the CrunchPad.  
25 Mr. Arrington testified, in response to repeated, badgering questions, that he was not comfortable  
26 drawing legal conclusions about intellectual property rights ownership. This was perfectly  
27

28 <sup>1</sup> Not, as Fusion Garage writes, April 2010. (Mot. at 12.)

1 appropriate based on the questions asked.<sup>2</sup> Fusion Garage wrongly contends that Mr. Arrington’s  
2 unwillingness to render legal opinions means that Plaintiffs could not have contributed business  
3 ideas to the parties’ venture. (Mot. at 13.) Indeed, Fusion Garage asserts that “TechCrunch and  
4 Arrington made no contributions to” the CrunchPad. (Mot. at 3.) This ignores Mr. Arrington’s  
5 lengthy deposition testimony on what Plaintiffs contributed to the CrunchPad project. (Scherb Decl.  
6 Ex. C (Arrington Dep. Tr. at 138:10 to 144:2).) And it has no place in this motion, which is  
7 supposed to test the adequacy of Plaintiffs’ statement of misappropriated business ideas, not whether  
8 Plaintiffs actually contributed to the CrunchPad project..

9 **C. The Discovery Plaintiffs Seek, and From Which Fusion Garage Runs, is**  
10 **Relevant to Causes of Action Other Than the Misappropriation Claim, and**  
11 **Therefore Fusion Garage Should Produce it Without Further Delay.**

12 Although Section 2019.210 may forestall discovery of information *solely related* to a trade  
13 secret claim, it does not interfere with the rest of discovery. When information is relevant to both a  
14 trade secret claim and another claim, Section 2019.210 does not allow a reluctant defendant to  
15 withhold that information. *Bryant v. Mattel, Inc.*, No. 04-09049, 2007 WL 5430888, at \*4 n.3 (C.D.  
16 Cal. May 18, 2007) (Infante, M.J. (ret.)). In *Bryant*, when drawings and designs for unreleased  
17 products were relevant to both a trade secret and other claims, including copyright infringement, the  
18 Court rejected a request for delayed discovery under Section 2019.210. *Id.* Here, as in *Bryant*, the  
19 information that Plaintiffs seek is relevant to other claims, and the Court should not permit Fusion  
20 Garage to thwart discovery simply because a misappropriation claim is also at issue. This is  
21 especially the case since Plaintiffs have already provided a detailed statement, and because the other

22 <sup>2</sup> Deposition topics and questions that call for legal conclusions are improper. *See, e.g., Specialty*  
23 *Surplus Ins. Co. v. Second Chance, Inc.*, No. C03-0927C, 2006 WL 2459092, at \*7 (W.D. Wash.  
24 Aug. 22, 2006) (refusing to admit “deposition testimony given in response to hypothetical questions,  
25 characteriz[ed] ... as ‘admissions’ on key issues” and holding that “[t]o the extent that deponents  
26 were asked to speculate as to legal conclusions and regarding hypothetical situations, or on the basis  
27 of facts disputed by the parties, the Court does not accept this testimony as admissible evidence”);  
28 *3M Co. v. Kanbar*, No. C06-01225, 2007 WL 1794936, at \*2 (N.D. Cal. Jun. 19, 2007) (Lloyd, M.J.)  
(rejecting proposed deposition topics that “are, in effect, seeking legal conclusions that should not  
form the basis for 30(b)(6) deposition topics”); *Lenz v. Universal Music Corp.*, Slip Copy, No. C 07-  
03783, 2010 WL 1610074, at \*3 (N.D. Cal. Apr. 20, 2010) (Trumbull, M.J.) (denying motion to  
compel designation of Rule 30(b)(6) witnesses, where “Plaintiff [asked] for testimony that forms the  
basis of defendant’s “belief” regarding infringement and fair use. The facts that form those “beliefs”  
are legal conclusions and an improper topic for a Rule 30(b)(6) deposition”). Before Mr.  
Arrington’s deposition, Plaintiffs objected to Defendant’s deposition topics that called for legal  
conclusions, but still agreed to produce a witness to testify about facts related to those topics.

1 claims -- the breach of fiduciary duty, fraud, and false advertising – stand solidly on their own apart  
2 from the misappropriation claim.

3 Fusion Garage’s renewed motion does not identify with any particularity the discovery it  
4 seeks to avoid, and Fusion Garage has made no attempt to show how any requests call for any of its  
5 alleged trade secrets. Still, the Court listed the kind of information and requests that it thought  
6 should qualify for protection from discovery when it issued its Protective Order on April 9, 2010.  
7 “The protective order shall apply to defendant FG’s source code and other highly proprietary  
8 information only. *See, e.g.*, Request for Production Nos. 13, 15, 20, 24, 33, 38 and 46.” Dkt 62 at 7.  
9 Fusion Garage’s source code and the information that requests 13, 15, 20, 24, 33, 38, and 46 seek are  
10 relevant to more than the misappropriation claim.

11 RFP 13 and 15 seek documents concerning the design and development of the JooJoo and its  
12 software. RFP 20 seeks all documents concerning user documentation for the JooJoo. RFP 24 seeks  
13 documents concerning various design and business plans for the JooJoo. RFP 33 seeks all  
14 documents concerning intellectual property in the JooJoo. RFP 38 seeks JooJoo software. RFP 46  
15 seeks further design documents and technical materials for the JooJoo, including a bill of materials.

16 These categories of documents are relevant to Plaintiffs’ non-misappropriation claims,  
17 including their claims for breach of fiduciary duty, fraud, and false advertising. Design documents  
18 will document when and how Fusion Garage began to develop its JooJoo apart from Plaintiffs in  
19 breach of its fiduciary duty. To the extent they reveal discussions with and any contributions from  
20 Plaintiffs, they will support the false advertising claims based on Fusion Garage’s false statement  
21 that it alone contributed all of the intellectual and physical initiative for the JooJoo. Software and  
22 source code will likewise reveal Fusion Garage’s progress on the JooJoo relative to its joint venture  
23 with Plaintiffs. Source code is also likely to have embedded comments that bear not only on the  
24 technical nature of the code, but also on the circumstances of its creation, including any venture or  
25 dealings with Plaintiffs.

26 Though Plaintiffs bring varied claims for relief in this case, each with different elements, the  
27 claims still emerge from one event: Fusion Garage’s usurpation of the parties’ joint venture and  
28 product while making false statement about both to the public. That one of Plaintiffs’ claims

1 happens to involve misappropriation of business ideas should not stall discovery on the entire case.  
2 *See Bryant*, 2007 WL 5430888, at \*4 n.3.

3 Had Plaintiffs not brought a misappropriation of business ideas claim, Plaintiffs would still  
4 be entitled to all the discovery they seek without delay. In this circumstance, further postponing  
5 such discovery because Plaintiffs also brought a misappropriation claim (one that does not even  
6 necessarily implicate section 2019.210 because it is not a trade secret claim) is unfair to Plaintiffs.

7 **D. Discovery Must Go Forward and the Court Must Make it Clear That Fusion**  
8 **Garage May No Longer Withhold Documents or Information.**

9 An additional reason to deny a second protective order is Fusion Garage’s improper behavior  
10 in stretching the first protective order beyond its limits. The Court’s protective order explicitly  
11 applied to “FG’s source code and other *highly proprietary information only*.” (Dkt. 62 at 7  
12 (emphasis supplied).) To further clarify the scope of the protective order, the Court specified certain  
13 of Plaintiffs’ Requests for Production to which the Order could apply. Each of the exemplars  
14 requests documents relating to the design, construction, or source code of the JooJoo. *Id.*  
15 (referencing Requests for Production Nos. 13, 15, 20, 24, 33, 38, and 46). Fusion Garage interpreted  
16 the Court’s existing protective order beyond all reason using it as an excuse to withhold information  
17 that the Court did not shield. For example, in the deposition of Mr. Rathakrishan, Fusion Garage’s  
18 CEO, the deponent repeatedly and improperly used the protective order, with the encouragement of  
19 counsel, as an excuse to refuse to answer questions about the number of orders Fusion Garage had  
20 received for the JooJoo, (Scherb Decl. Ex. D (Rathakrishnan Depo. Tr. at 52:8 to 53:15)); the  
21 number of orders Fusion Garage was receiving daily for the JooJoo, *id.* at 161:20 to 166:6;  
22 information about the business plan for the JooJoo’s release, *id.* at 198:7-17; and the identity of  
23 Fusion Garage’s investors, *id.* at 25:25 to 26:12, 27:6-17, 177:13 to 180:3. Surely this is not the  
24 “source code and other highly proprietary information” the Court intended to protect.

25 The Court should not give Fusion Garage further license to stall discovery and withhold  
26 relevant information.

