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10 Attorneys for Defendant Fusion Garage PTE Ltd.

11
 12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA
 14

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 (PVT)

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

1 Plaintiffs' effort to keep embarrassing communications with its contractor out of the public
2 record is tardy, unjustified, and should be rejected. First, at the May 13 preliminary injunction and
3 motion to dismiss hearing, Judge Seeborg admonished both parties that they were taking
4 overbroad confidentiality positions and requested that they work to de-designate as many materials
5 as possible. (Pennypacker Decl., Ex. A (Hearing Tr.) at 4:24-5:22). Plaintiffs' efforts to keep these
6 communications confidential flies in the face of Judge Seeborg's instructions to the parties.

7 Next, Plaintiff has already allowed these communications to become part of the public
8 record. Plaintiffs identified this contractor and discussed his activities in their non-confidential
9 Supplemental Responses to Fusion Garage's First Set of Interrogatories. (Pennypacker Decl., Ex.
10 B at 11). Moreover, the very communications that are the subject of this objection were discussed
11 on the record at the May 13 hearing before Judge Seeborg. (Pennypacker Decl., Ex. A (Hearing
12 Tr.) at 34:6-15). Pursuant to the Minute Order governing the Hearing Transcript (Dkt. 139), any
13 redactions to the Hearing Transcript must be requested by May 24, 2010. Plaintiffs never sought
14 to redact the on-the-record colloquy about its communications with its contractor. Thus, Plaintiffs
15 have waived any confidentiality that might have attached to these communications.

16 Further, these communications simply do not qualify for protection under Rule 26(c) or the
17 Protective Order. As discussed in Fusion Garage's Notice of Confidentiality Challenges (Dkt.
18 122), the mere fact that a communication might be embarrassing to a party is insufficient to shield
19 that communication from the public. Apparently conceding this point, Plaintiffs now argue that
20 they "do not seek a confidentiality designation based on embarrassment" but rather "only seek to
21 protect the independent contractor's privacy." (Opp. Br. at 1). Plaintiffs then cite a string of cases
22 holding that *employee personnel files* may be kept confidential and sealed. *Id.* These cases are
23 inapposite, since the personnel files of Plaintiffs' contractor are not at issue. What is at issue is a
24 series of embarrassing emails between the contractor and TechCrunch executive Michael
25 Arrington, in which the contractor proposed certain potentially unethical business actions.
26 Plaintiffs' argument that putting these emails in the public record would violate the contractor's
27 "privacy" is akin to saying that no emails between a company's employees or contractors may

1 ever be made public. This position obviously finds no support in Rule 26(c), the Protective Order,
2 or any other source of authority.

3 Indeed, Plaintiff's own actions in this case do not support its position on this issue.
4 Plaintiffs recently filed a motion to remove the Confidentiality designation from several Fusion
5 Garage documents, which include: (1) Fusion Garage's communications with one of its investors,
6 Bruce Lee; and (2) Fusion Garage's communications with its outside PR firm, McGrath/Power
7 Public Relations. (Dkt. 133). Plaintiffs apparently believe that they can force Fusion Garage's
8 communications with McGrath/Power and other third parties into the public record while
9 shielding its own communications with its own contractor behind a confidentiality designation.
10 This position is unsupportable and should not be facilitated.

11 For the foregoing reasons, Fusion Garage respectfully requests that the "Confidential"
12 designation be removed from pages 261:18-276:6; 373:10-375:5; 388:18-390:12 and Exhibits 9-
13 10 of the Rule 30(b)(6) transcript.

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15 DATED: May 25, 2010

QUINN EMANUEL URQUHART &
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18 By /s/ Evette D. Pennypacker
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