

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE RICHARD SEEBORG, JUDGE

INTERSERVE, INC. DBA TECHCRUNCH,
A DELAWARE CORPORATION, AND CRUNCHPAD,
INC., A DELAWARE CORPORATION,

PLAINTIFFS,

VS.

NO. C 09-5812 RS

FUSION GARAGE PTE LTD., A SINGAPORE
COMPANY,

DEFENDANT.

SAN FRANCISCO, CALIFORNIA
THURSDAY
MAY 13, 2010
2:00 O'CLOCK P.M.

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFFS:

WINSTON & STRAWN
101 CALIFORNIA STREET
39TH FLOOR
SAN FRANCISCO, CALIFORNIA 94111-5802

**BY: ANDREW P. BRIDGES, ESQUIRE
MATTHEW A. SCHERB, ESQUIRE**

FOR DEFENDANT:

QUINN EMANUEL URQUHART OLIVER & HEDGES
LLP
555 TWIN DOLPHIN DRIVE, 5TH FLOOR
REDWOOD SHORES, CALIFORNIA 94065

**BY: CLAUDE M. STERN, ESQUIRE
EVETTE D. PENNYPACKER, ATTORNEY AT LAW**

REPORTED BY: KATHERINE WYATT, CSR 9866, RMR, RPR

OFFICIAL REPORTER - US DISTRICT COURT
COMPUTERIZED TRANSCRIPTION BY ECLIPSE

1 CLAIM AND THE FRAUD CLAIM, I THINK THAT FIRST PRONG, AT LEAST IN
2 MY INITIAL READING, SEEMS TO BE SATISFIED.

3 I AM NOT CONVINCED, HOWEVER, THAT PLAINTIFFS HAVE
4 MADE A SHOWING OF IRREPARABLE INJURY. I DON'T THINK THEY HAVE
5 SHOWN THAT THEY WOULD BE UNABLE TO OBTAIN AN ENFORCEABLE
6 JUDGMENT FOR DAMAGES IN THE EVENT THAT THEY WERE TO PREVAIL. THE
7 SIMPLE FACT THAT FUSION IS A FOREIGN ENTITY, IT HAS FUNDS
8 OFFSHORE, THAT'S NOT ENOUGH.

9 PLAINTIFF CLAIMS AN ENTITLEMENT TO A SHARE OF THE
10 PROFITS, BUT THERE ISN'T ANY RES, IF YOU WILL, TO BE FROZEN HERE
11 AT THIS POINT. THERE'S SOME INDICATION THAT THERE'S SOME
12 PRODUCT REVENUE, NOT ALL OF WHICH WOULD BE EVEN UNDER
13 PLAINTIFFS' THEORY, SOMETHING THAT PLAINTIFF WOULD NECESSARILY
14 BE ENTITLED TO.

15 AND I'M ALSO AWARE THAT TO FREEZE THE REVENUE HERE
16 WOULD CARRY THE POTENTIAL OF SHUTTING DOWN THE FUSION'S ABILITY
17 TO DO BUSINESS. AND I DON'T THINK THAT A SIMILAR HARDSHIP
18 WOULD BE IMPOSED UPON THE PLAINTIFFS.

19 SO, ACCORDINGLY, MY INITIAL INCLINATION AT THIS
20 POINT IS TO DENY THE MOTION FOR PRELIMINARY INJUNCTION ON THIS
21 RECORD ON THE FAILURE TO MAKE AN ADEQUATE IRREPARABLE HARM
22 SHOWING.

23 BEFORE I GO INTO MY PRELIMINARY COMMENTS ON THE
24 MOTION TO DISMISS, LET ME DIGRESS FOR A MOMENT ABOUT THE
25 FILINGS I HAVE RECEIVED AND, IN PARTICULAR, THE FILINGS I HAVE

1 RECEIVED UNDER SEAL. I KNOW THERE WERE A FLURRY JUST IN THE
2 LAST TWO DAYS OF BACK AND FORTH LAST MINUTE EVIDENTIARY
3 MATERIAL THAT HAS BEEN PRESENTED. AND I'M NOT ACTUALLY --
4 THESE COMMENTS ARE NOT SPECIFICALLY DIRECTED TO THAT WAVE, BUT
5 IN TERMS OF THE FIRST WAVE OF MATERIALS THAT I SAW, I THINK
6 THERE'S NOTHING THAT QUALIFIED FOR UNDER SEAL FILING.

7 INFORMATION SUCH AS WHETHER OR NOT ONE PARTY IS
8 SAYING:

9 "LET'S PLAY THE OTHER PARTY ALONG," OR, YOU
10 KNOW, WHETHER OR NOT E-MAILS WERE FABRICATED IN TERMS OF THEIR
11 ORIGIN, THINGS LIKE THAT, THAT'S NOT MATERIAL THAT GETS FILED
12 UNDER SEAL. IT'S NOT CONFIDENTIAL. IT'S NOT PROPRIETARY. IT
13 MAY BE EMBARRASSING, BUT MY CONCERN IS THAT THERE'S GROSS
14 OVERDESIGNATION THAT I ALREADY SEE IN THIS CASE.

15 SO AT THE VERY LEAST IN TERMS OF WHAT HAS BEEN
16 SUBMITTED TO ME PARTIES ARE GOING TO GO BACK AND SCALE DOWN THE
17 REQUEST TO SEAL. THERE MAY BE -- AND I KNOW IN THE MOST RECENT
18 WAVE OF MATERIALS THERE WAS SOME REVENUE DISCUSSION AND
19 CERTAINLY IF THERE WERE, YOU KNOW, BUSINESS PLANS GOING FORWARD,
20 THAT'S THE KIND OF MATERIAL THAT ARGUABLY CAN BE SEALED. BUT
21 THE AMOUNT OF STUFF THAT WAS SEALED -- PROPOSED TO BE SEALED WAS
22 JUST WAY BEYOND THE PALE, IN MY VIEW.

23 SO LET ME TALK A LITTLE ABOUT THE MOTION TO DISMISS.
24 TO MAKE A LONG STORY SHORT, ON THE FIVE CLAIMS THAT ARE
25 PRESENTED IN THE COMPLAINT -- AND THIS IS THE DEFENDANT'S MOTION

1 EVERYBODY UNDERSTANDS THAT THE DEAL IS DEPENDENT ON THESE
2 THIRD-PARTY FINANCING CONTINGENCIES, EVERYBODY UNDERSTANDS IT.

3 AND BY THE WAY, AN IMPORTANT FOOTNOTE HERE: WE'RE
4 OUT LOOKING FOR FINANCING FOR OURSELVES. ARRINGTON IS LOOKING
5 OUT FOR FINANCING FOR HIMSELF.

6 I MEAN, I DON'T WANT YOU TO GET THE IMPRESSION
7 BECAUSE THE CASE -- THE EVIDENCE CLEARLY SHOWS THIS. HE'S
8 SENDING HIS OWN PEOPLE TO SINGAPORE TO LOOK FOR INDEPENDENT
9 FINANCING SO IF IT DOESN'T WORK OUT WITH US -- THIS IS THE
10 E-MAILS FROM HIS PERSON NICK CUBRILOVIC TO US SAYING:

11 "YOU KNOW WHAT? LET'S KILL FUSION GARAGE.

12 LET'S POACH THEIR EMPLOYEES."

13 **THE COURT:** I SAW THOSE.

14 **MR. STERN:** BY THE WAY, YOUR HONOR, INTERESTING
15 LANGUAGE FOR A FIDUCIARY TO USE TOWARD ANOTHER.

16 BUT THE POINT IS -- BY THE WAY, I DON'T SLIGHT THEM
17 FOR THAT. THE FACT OF THE MATTER IS THAT TECHCRUNCH AND FUSION
18 GARAGE WERE OUT EACH DOING THEIR OWN THING. THEY WERE TRYING TO
19 RAISE FINANCING ANY WAY THEY COULD. IF THEY COULD DO IT
20 TOGETHER, AS MY GRANDMOTHER WOULD SAY:

21 "GESUNDHEIT. CONGRATULATIONS. THAT'S GREAT."

22 **THE COURT:** YOU MAY HAVE TO SPELL THAT FOR THE COURT
23 REPORTER.

24 **MR. STERN:** IT'S "GESUNDHEIT."

25 BUT IF THEY CAN'T, IF THEY CAN'T, YOUR HONOR, THEN

1 **MR. BRIDGES:** THANK YOU, YOUR HONOR.

2 **THE CLERK:** COURT'S ADJOURNED.

3 (THEREUPON, THIS HEARING WAS CONCLUDED.)

4 CERTIFICATE OF REPORTER

5 I, KATHERINE WYATT, THE UNDERSIGNED, HEREBY CERTIFY
6 THAT THE FOREGOING PROCEEDINGS WERE REPORTED BY ME, A CERTIFIED
7 SHORTHAND REPORTER, AND WERE THEREAFTER TRANSCRIBED BY ME INTO
8 TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE
9 RECORD OF SAID PROCEEDINGS.

10 I FURTHER CERTIFY THAT I AM NOT OF COUNSEL OR
11 ATTORNEY FOR EITHER OR ANY OF THE PARTIES IN THE FOREGOING
12 PROCEEDINGS AND CAPTION NAMED, OR IN ANY WAY INTERESTED IN THE
13 OUTCOME OF THE CAUSE NAMED IN SAID CAPTION.

14 THE FEE CHARGED AND THE PAGE FORMAT FOR THE
15 TRANSCRIPT CONFORM TO THE REGULATIONS OF THE JUDICIAL
16 CONFERENCE.

17 IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND THIS
18 17TH DAY OF MAY, 2010.

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23 _____
/s/ KATHERINE WYATT

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