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 8 and CRUNCHPAD, INC.

9 **UNITED STATES DISTRICT COURT**
 10 **NORTHERN DISTRICT OF CALIFORNIA**
 11 **SAN FRANCISCO DIVISION**

Winston & Strawn LLP
 101 California Street
 San Francisco, CA 94111-5802

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)

Case No. CV-09-5812 RS (PVT)
PLAINTIFFS' MOTION TO COMPEL
PRODUCTION OF WITHHELD
INFORMATION AND DOCUMENTS
Date: Tuesday, October 12, 2010
Time: 10:00 A.M.
Place: Courtroom 5, 4th Floor, San Jose
Hon. Patricia V. Trumbull

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NOTICE OF MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

Plaintiffs will present this Motion to Compel Production of Withheld Information and Documents on October 12, 2010 at 10:00 A.M., or at any other date and time thereafter convenient to the Court, before the Honorable Patricia V. Trumbull, presiding in Courtroom 5, 4th Floor, of this court located at 280 South First Street, San Jose, California 95113.

Plaintiffs rely on the following Memorandum of Points and Authorities, the declaration of Matthew Scherb, the Proposed Order, other pleadings and papers filed in the case, the proceedings at oral argument, and any other matter that the Court deems appropriate.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND FACTUAL BACKGROUND**

3 For over seven months, Defendant Fusion Garage has refused to produce information and
4 documents responsive to Plaintiffs’ discovery requests and relevant to this case on the ground that
5 they are “highly proprietary” or “trade secret” information. Defendant persists in refusing to
6 comply with its discovery obligations notwithstanding the existence of a protective order in this
7 case, which expressly protects confidential information and trade secrets and which allows
8 Defendant to designate materials and information as “attorneys eyes only” as appropriate.

9 On January 7, 2010, this Court granted Plaintiffs’ request for expedited discovery and
10 ordered Fusion Garage to respond to Plaintiffs’ first set of document requests (numbers 1-49) and
11 first set of interrogatories within 30 days. (Dkt. 19.) On February 5, 2010, Fusion Garage moved
12 for a protective order under California’s trade secret statute, Cal. Code Civ. Proc. § 2019, to shield it
13 from producing documents containing its trade secrets until Plaintiffs disclosed the business ideas
14 underlying its claim for misappropriation of business ideas. (Dkt. 23.) Despite the fact that
15 Plaintiffs never alleged a trade secret claim and that section 2019 did not govern, the Court, on April
16 9, 2010, adopted the provision as a case management tool and ordered Plaintiffs to provide a
17 statement. It made the order with clear reference to the misappropriation claim, which it found was
18 not preempted for purposes of the motion. (Dkt. 62.) Plaintiffs provided a detailed seven-page, 33-
19 paragraph statement on April 23, 2010, but Fusion Garage was unsatisfied. On April 30, 2010,
20 Fusion Garage moved for a renewed protective order, claiming that Plaintiffs’ statement was
21 inadequate. (Dkt. 93.) The Court took that matter under submission following argument on June 30,
22 2010, and the parties await a ruling. With the renewed motion pending before the Court, Fusion
23 Garage, on July 22, 2010 again interposed a number of “trade secret” objections to Plaintiffs’ fifth
24 set of production requests (numbers 53-83).

25 Meanwhile, discovery in the case has proceeded asymmetrically. While Fusion Garage
26 withholds emails, design documents, computer code, and other materials that it unilaterally considers
27 to contain its “highly proprietary information,” Plaintiffs have no similar protection. Fusion Garage,
28 benefiting from the asymmetry, has deposed several persons related to TechCrunch and CrunchPad,

1 Inc. Although Plaintiffs took one deposition in connection with their preliminary injunction motion,
2 Fusion Garage has effectively delayed Plaintiffs from taking further depositions with its successive
3 protective order motions.

4 Plaintiffs expected the delay and asymmetry to end upon Judge Seeborg's entry of an order
5 on August 24, 2010 dismissing Plaintiffs' claim for misappropriation of business ideas. (Dkt. 162.)
6 With the misappropriation of business ideas claim out of the case, Fusion Garage's protective order
7 motion – seeking a more detailed statement of misappropriated business ideas before so called “trade
8 secret” discovery – no longer had a purpose and became moot. On August 25, 2010, Plaintiffs
9 asked Fusion Garage to concede mootness and withdraw the pending protective order motion. It
10 declined:

11 We have consulted with our client, and we do not intend to withdraw this motion. We made
12 clear in our motion practice and during the substantial hearing on this motion that the
13 business ideas claim was not the only claim Magistrate Judge Trumball's order applies to.
14 Discovery taken thus far has only further confirmed that TechCrunch has no basis for seeking
15 source code or other detailed technical documentation in this case. Please let us know if
16 you'd like to discuss further.

17 (Declaration of Matthew Scherb (“Scherb Decl.”) ¶ 2 & Ex. A.)

18 Fusion Garage, in this email, claimed, for the first time, that its motion actually sought to
19 prevent disclosure of source code or highly proprietary information *entirely and forever*, without
20 respect to whether those documents include trade secrets or whether Plaintiffs *ever* produce a proper
21 statement of business ideas, which they have. This is at direct odds with the statement of issues in
22 Fusion Garage's renewed protective order motion: “Should Plaintiffs be required to comply with the
23 Court's April 9, 2010 order and further identify the alleged trade secrets (or business ideas) or other
24 confidential information that they allege Fusion Garage misappropriated before Fusion Garage is
25 required to provide discovery of its confidential, proprietary, and trade secret information?” (Dkt.
26 93 at 1.) The email also fits a pattern of delay. Rather than raising all of its issues related to source
27 code and highly proprietary information at once in a single motion, Fusion Garage now appears to
28 have dealt with its trade secret qualms separately from other objections that it will also invoke later,
burdening this Court (and prejudicing Plaintiffs) with unnecessarily drawn-out court proceedings.

After receiving the email from Fusion Garage's counsel, Plaintiffs sought a telephonic
conference to identify the materials Fusion Garage was continuing to withhold (in order to determine

1 the scope of the current discovery dispute) and to learn whether Fusion Garage would continue
2 refuse to produce source code and highly proprietary information even after a denial of the
3 protective order motion. During the call on September 2, 2010, Fusion Garage was unable to give a
4 final position, but asked counsel for Plaintiffs to put Plaintiffs' position in writing so that Fusion
5 Garage could more effectively provide a response. Plaintiffs' counsel did so and asked for a
6 response. Fusion Garage made no response. (Scherb Decl. ¶ 3.) Plaintiffs now file this motion in
7 order to push forward with critical threshold discovery in a case that has been pending for nine
8 months.

9 **II. STATEMENT OF THE ISSUES**

10 Whether Fusion Garage may continue to withhold relevant documents and discovery
11 responses simply because those documents or responses would contain trade secrets or highly
12 proprietary information now that (1) there is no longer a claim for misappropriation of business
13 ideas, (2) Plaintiffs have in any event provided an adequate section 2019 statement, and (3) a
14 comprehensive confidentiality protective order is in place.

15 **III. DISCOVERY REQUESTS AT ISSUE**

16 For the sake of clarity, Plaintiffs reprint the requests and responses at issue in the Appendix
17 to this Memorandum.

18 **IV. ARGUMENT**

19 Discovery under the Federal Rules is "accorded a broad and liberal treatment." *Hickman v.*
20 *Taylor*, 329 U.S. 495, 507 (1947). Rule 26 provides that "[p]arties may obtain discovery regarding
21 any matter, not privileged, that is relevant to the claim or defense of any party. . . . Relevant
22 information need not be admissible at the trial if the discovery appears reasonably calculated to lead
23 to the discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1).

24 A party may move to compel the production or inspection of documents under Rule 34. Fed.
25 R. Civ. P. 37(a)(3). The party resisting discovery bears the burden of showing why it should be
26 denied. *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975). And courts will grant a
27 motion to compel disclosure so long as the moving party seeks relevant information that does not
28 cause the opposing party "undue burden or expense." Fed. R. Civ. P. 26(c)(1); *Sullivan v. Kelly*

1 *Servs.*, No. C-07-2784, 2008 U.S. Dist. LEXIS 29318, *3-4 (N.D. Cal. Mar. 4, 2008) (granting
2 motion to compel disclosure of relevant information that is not “overly burdensome”). Parties may
3 not refuse discovery simply because the requested information does not fit into their legal theories.
4 *See Humphreys v. Regents of University of Cal.*, No. 04-3808, 2006 WL 870963, at *2 (N.D. Cal.
5 Apr. 3, 2006) (“[D]efendants are not allowed to limit discovery based merely upon their theory of
6 the case.”).

7 **A. Now That the Court Has Dismissed the Misappropriation Claim, there is No**
8 **Reason to Delay Discovery of All of Defendant’s Withheld Information and**
9 **Documents.**

10 The purpose of the Court’s April 9, 2010 protective order was case management (Dkt. 62 at
11 5), not total preclusion of discovery, and certainly not grating lopsided permission for one side to
12 proceed with discovery while thwarting the other side. The Court required Plaintiffs to “identify
13 their business ideas in advance of obtaining any discovery related to defendant FG’s source code.”
14 Fusion Garage’s renewed protective order motion similarly did not profess to seek a total bar against
15 discovery of source code or highly proprietary information. In fact, the issue in Fusion Garage’s
16 own words was whether Plaintiffs must “further identify the alleged trade secrets (or business ideas)
17 or other confidential information that they allege Fusion Garage misappropriated before Fusion
18 Garage is required to provide discovery of its confidential, proprietary, and trade secret
19 information.” (Dkt. 93 at 1.)

20 Now that the Court has dismissed Plaintiffs’ claim for misappropriation of business ideas
21 with prejudice (Dkt. 162), a protective order intended to protect Fusion Garage from surprise
22 pleading of “new” allegedly misappropriated business ideas, based on a defendant’s previous
23 disclosure, serves no purpose.

24 If Plaintiffs had never brought a misappropriation claim in the first place, Fusion Garage
25 would not have obtained the April 9, 2010 protective order. This is no longer a misappropriation
26 case of any kind, and Fusion Garage has no basis for continuing to demand a statement of
27 misappropriated business ideas more to its liking.¹ Fusion Garage’s pending motion for renewed

28 ¹ In any case, Plaintiffs’ current 33-paragraph, seven-page statement is adequate, for the reasons set
forth in Plaintiffs’ papers in opposition to Fusion Garage’s renewed protective order motion.

1 protective order is therefore moot.

2 Illustrating how Fusion Garage’s motion is moot and demonstrating that the time for
3 discovery delays should end is *Bryant v. Mattel, Inc.*, No. 04-09049, 2007 WL 5430888, at *4 n.3
4 (C.D. Cal. May 18, 2007). Even when a misappropriation claim *coexists* with other claims and
5 shares a nucleus of facts with them, some courts hold that section 2019.210 does not allow a
6 reluctant defendant to withhold its trade secrets, because they would be relevant to the non-
7 misappropriation claims. *Id.* In *Bryant*, when drawings and designs for unreleased products were
8 relevant to both a trade secret and other claims, including copyright infringement, the Court rejected
9 a request for delayed discovery under Section 2019.210. *Id.* This case is much simpler than *Bryant*,
10 because there is no longer a coexisting misappropriation claim of any kind.

11 **B. The Documents and Information Plaintiffs Request are Relevant and Properly**
12 **Discoverable.**

13 Plaintiffs’ document requests seek relevant, discoverable information. For several requests,
14 Fusion Garage has already conceded they seek discoverable information, agreeing to produce
15 responsive documents, but explicitly excepting any that consist of source code or highly proprietary
16 information. (*See, e.g.*, RFPs 53-57.) For other (*e.g.*, RFPs 40, 49), Fusion Garage acknowledges it
17 is under an obligation to produce documents based on previous Court orders but takes exception to
18 producing responsive documents that contain highly confidential proprietary information.

19 Request for production 53 seeks documents that contain the term JooJoo – the name of
20 Fusion Garage’s web tablet – from any date before Fusion Garage aborted the collaboration. Any
21 such document would be evidence of breach of fiduciary duty and fraud.

22 Request for production 40 seeks all documents that mention the JooJoo and also mention the
23 CrunchPad, TechCrunch, or TechCrunch’s Mr. Arrington. Such documents are highly relevant.

24 Production requests 4-5 and 60-61 seek information about what, if any, work on a tablet
25 Fusion Garage performed outside of its collaboration with Plaintiffs, which would bear directly on
26 Plaintiffs’ claims for breach of fiduciary duty and fraud.

27 Production requests 12-15, 17-20, 23-24, 45-56, 49, 67, 78-81 all seek information about
28 Fusion Garage’s efforts to design, develop, write software for, test, create documentation for,

1 market, advertise, and obtain government approvals for the CrunchPad or JooJoo web tablet. These
2 documents will show when and how Fusion Garage began to develop and market its JooJoo apart
3 from Plaintiffs in breach of its fiduciary duty.

4 Similarly, production requests 32-33, 43-44, 54-57, and 59 seek communications with
5 vendors, contractors, suppliers, and payment processors for the JooJoo and CrunchPad, and
6 communications regarding any claims to intellectual property in the JooJoo or CrunchPad. Again,
7 these documents will show when and how Fusion Garage began to develop its rival tablet apart from
8 Plaintiffs.

9 Production request 76 seeks documents sufficient to identify any products of Fusion Garage
10 other than a web tablet. This information is important to valuing the Fusion Garage business for
11 purposes of computing damages.

12 Interrogatory 1 asks Fusion Garage to identify all components in the JooJoo while
13 Interrogatory 2 asks Fusion Garage to identify the designers and suppliers of JooJoo components.
14 Knowing the components and the business associates of Fusion Garage will enable Plaintiffs to
15 pursue appropriate avenues of discovery related to how and when Fusion Garage formed
16 relationships with business associates secretly without Plaintiffs' knowledge.

17 **Source Code.** Although source code may be called for by other requests for production,
18 requests 37 and 38 explicitly request all versions of source code, object code, and executable files for
19 the CrunchPad and JooJoo. This computer code will reveal Fusion Garage's progress on the JooJoo
20 relative to its joint venture with Plaintiffs. Source code itself can show dates where the code was
21 modified. *i4i Ltd. Partnership v. Microsoft Corp.*, 670 F. Supp. 2d 568, 586 (E.D. Tex. 2009).
22 Source code is also likely to have embedded comments that bear not only on the technical nature of
23 the code, but also on the circumstances of its creation, including any venture or dealings with
24 Plaintiffs. The Ninth Circuit recently explained source code comments:

25 Programmer's notes or comments are annotations within the source code that comment on the
26 source code and try to make it easier to understand. While such comments are typically
27 ignored by the compiler or interpreter when compiling source code because they do not affect
28 the operation of the object code, several of JustMed's witnesses testified that they considered
the comments part of the software.

1 *JustMed, Inc. v. Byce*, 600 F.3d 1118, 1123 (9th Cir. 2010). In *Phillip M. Adams & Associates,*
2 *L.L.C. v. Winbond Electornics Corp.*, No. 05-64, 2010 WL 2977228, at *2 (D. Utah July 21, 2010),
3 the plaintiff accused defendant of destroying source code with comments showing illegal behavior.
4 The Court would allow plaintiff to make its arguments about the lack of code comments at trial.

5 Here, mention in source code comments of the original brand name, CrunchPad; Fusion
6 Garage’s chosen brand name, JooJoo; or of TechCrunch or CrunchPad, Inc., or of their personnel
7 would be extremely relevant.

8 In addition, Plaintiffs anticipate that Fusion Garage, during the damages phase of this case,
9 will argue that at some point a new version of the JooJoo will turn a corner and be substantially
10 based upon source code or hardware that was not in use or selected during the parties’ collaboration.
11 Fusion Garage’s law firm litigated the Ninth Circuit case that produced the recent decision *Mattel,*
12 *Inc. v. MGA Entertainment, Inc.*, 2010 WL 2853761 (9th Cir. July 22, 2010). In that case, the Ninth
13 Circuit held that the district court abused its discretion in awarding Mattel the fruits of the
14 defendant’s labor directly related to a derivative but “subsequent generation” of a product it
15 unlawfully developed and sold. *Id.* at *4 -5. Plaintiffs anticipate Fusion Garage arguing, based on
16 *Mattel*, that Plaintiffs should not obtain profits from sales of newer versions of the JooJoo as part of
17 a damages award. If Fusion Garage makes this argument, challenging its factual basis might well
18 require a source code comparison. It would be inequitable for Fusion Garage to assert it had created
19 a second-generation product subject to a different damages calculation without revealing how its
20 product had changed.

21 Finally, the Court has already weighed in on the relevance and discoverability of source
22 code. (Dkt. 62 at 6) (“Defendant Fusion Garage does not dispute that metadata from the source code
23 may be relevant to timing.”) The Court’s order merely dealt with case management issues by
24 sequencing some discovery, but those case management issues are no longer present.

25 The materials and information that Plaintiffs have requested are relevant. Fusion Garage’s
26 attempt to block discovery of this information over the course of the last seven months has never
27
28

1 been about relevance or burden or any other objection save its trade secret objection. Now that the
2 objection is moot, the Court should order immediate production.²

3 **C. Plaintiffs’ Trade Secret Objection Fails Because the Stipulated Protective Order**
4 **in This Case Offers Adequate Protection for Trade Secret and Source Code**
5 **Materials.**

6 That Fusion Garage source code or other materials might contain “highly proprietary
7 information” does not place those materials beyond the reach of discovery.

8 Source code and other trade secrets are routinely produced under typical confidentiality
9 protective orders.

10 This Court ordered production of source code in *Echostar Satellite LLC v. Freetech, Inc.*, No.
11 07-6124, slip. op. at 3-4 (N.D. Cal. May 18, 2009) (Seeborg, M.J.) (Scherb Decl. Ex. B) and stated
12 that despite “understandabl[e]” concerns over “this sensitive material,” “the stipulated protective
13 order should address concerns regarding improper use of such information.” The Court continued:
14 “Protective orders in general are adequate to address proprietary issues particularly in the absence of
15 any showing, as in this case, that the documents here go beyond the type of sensitive materials
16 implicated in other litigation in this district.” *Id.* at 4.

17 Other courts agree that protective orders are adequate. *E.g., MSC Software Corp. v. Altair*
18 *Engineering, Inc.*, No. 07-12807, 2008 WL 4940361, at *6 (E.D. Mich. Sep. 9, 2008) (standard AEO
19 protective order appropriate); *Fair Isaac Corp. v. Equifax, Inc.*, No. 06-4112, 2007 WL 2791168, at
20 *6 (D. Minn. Sept. 25, 2007) (rejecting convoluted escrow arrangement that would hamper experts’
21 analysis of computer code).

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28 ² Counsel understands that Fusion Garage has already collected responsive “highly proprietary”
materials and could be in a position to produce them quickly.

APPENDIX

REQUEST FOR PRODUCTION NO. 4:

All documents concerning work by you or on your behalf to develop a tablet computer before September 10, 2008.

SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

Fusion Garage incorporates each of its General Objections as expressly set forth therein.

Fusion Garage objects that this request seeks highly proprietary information and/or source code, but Plaintiffs have not submitted an adequate Statement of Misappropriated Business Ideas in accordance with the Court's Order of April 9, 2010. (See Dkt. 62).

Fusion Garage further objects to this request on the ground that it is unduly burdensome, harassing, and overbroad with respect to scope.

Fusion Garage further objects to this request on the ground that it seeks information protected by the attorney-client privilege, the work-product doctrine, and other applicable privileges.

Fusion Garage further objects to this request on the ground that it is vague and ambiguous.

REQUEST FOR PRODUCTION NO. 5:

All documents concerning work by you or on your behalf to develop a tablet computer separately from TechCrunch or Michael Arrington.

SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

Fusion Garage incorporates each of its General Objections as expressly set forth therein.

Fusion Garage objects that this request seeks highly proprietary information and/or source code, but Plaintiffs have not submitted an adequate Statement of Misappropriated Business Ideas in accordance with the Court's Order of April 9, 2010. (See Dkt. 62).

Fusion Garage further objects to this request on the ground that it is unduly burdensome, harassing, and overbroad with respect to scope.

Fusion Garage further objects to this request on the ground that it seeks information protected by the attorney-client privilege, the work-product doctrine, and other applicable privileges.

Fusion Garage further objects to this request on the ground that it is vague and ambiguous.

REQUEST FOR PRODUCTION NO. 12:

All documents concerning the design, development or writing of software for the CrunchPad.

SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 12:

Fusion Garage incorporates each of its General Objections as expressly set forth therein.

Fusion Garage objects to the defined term "CrunchPad" as vague and ambiguous as it purports to encompass Fusion Garage's products, including the JooJoo.

Fusion Garage further objects to this request to the extent it seeks information regarding the "CrunchPad," as Fusion Garage understands that no such device exists. Any documents that Fusion Garage agrees to produce in response to this request shall not be deemed an admission as to the existence of the CrunchPad or that the JooJoo is related to, or a successor to, the alleged

CrunchPad. Fusion Garage further objects that Plaintiffs are trying to use this request to elicit a response or objection that a Fusion Garage product is, or is related to, the CrunchPad.

Fusion Garage further objects to this request on the ground that it assumes facts not in evidence; namely, the existence of the "CrunchPad" device. It is Fusion Garage's understanding that there is no such device.

Fusion Garage objects that this request seeks highly proprietary information and/or source code, but Plaintiffs have not submitted an adequate Statement of Misappropriated Business Ideas in accordance with the Court's Order of April 9, 2010. (See Dkt. 62).

Fusion Garage further objects to this request on the ground that it is vague and ambiguous.

Fusion Garage further objects to this request on the ground that it seeks information which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, as there is no evidence that Plaintiffs contributed any software.

1 **REQUEST FOR PRODUCTION NO. 13:**

All documents concerning the design, development or writing of software for the JooJoo.

2 **RESPONSE TO REQUEST FOR PRODUCTION NO. 13:**

Fusion Garage incorporates each of its General Objections as expressly set forth therein.

3 Fusion Garage objects that this request seeks highly proprietary information and/or source
4 code, but Plaintiffs have not submitted an adequate Statement of Misappropriated Business Ideas in
accordance with the Court's Order of April 9, 2010. (See Dkt. 62).

Fusion Garage further objects to this request on the ground that it is vague and ambiguous.

5 Fusion Garage further objects to this request on the ground that it seeks information which is
6 neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, as there is
no evidence that Plaintiffs contributed any software.

7 **REQUEST FOR PRODUCTION NO. 14:**

All documents concerning the design of the CrunchPad, including but not limited to
8 industrial design, hardware, software, feature set, and user interface.

9 **SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 14:**

Fusion Garage incorporates each of its General Objections as expressly set forth therein.

10 Fusion Garage objects to the defined term "CrunchPad" as vague and ambiguous as it
purports to encompass Fusion Garage's products, including the JooJoo.

11 Fusion Garage further objects to this request to the extent it seeks information regarding the
"CrunchPad," as Fusion Garage understands that no such device exists. Any documents that Fusion
12 Garage agrees to produce in response to this request shall not be deemed an admission as to the
existence of the CrunchPad or that the JooJoo is related to, or a successor to, the alleged CrunchPad.
13 Fusion Garage further objects that Plaintiffs are trying to use this request to elicit a response or
objection that a Fusion Garage product is, or is related to, the CrunchPad.

14 Fusion Garage further objects to this request on the ground that it assumes facts not in
evidence; namely, the existence of the "CrunchPad" device. It is Fusion Garage's understanding that
there is no such device.

15 Fusion Garage further objects that this request seeks highly proprietary information and/or
source code, but Plaintiffs have not submitted an adequate Statement of Misappropriated Business
16 Ideas in accordance with the Court's Order of April 9, 2010. (See Dkt. 62).

17 Fusion Garage further objects to this request to the extent that it seeks information that is in
the custody or control of Plaintiffs and/or equally available from Plaintiffs, as Plaintiffs assert that
the CrunchPad is their device.

18 **REQUEST FOR PRODUCTION NO. 15:**

All documents concerning the design of the JooJoo, including but not limited to industrial
19 design, hardware, software, feature set, and user interface.

20 **SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO 15:**

Fusion Garage incorporates each of its General Objections as expressly set forth therein.

21 Fusion Garage objects that this request seeks highly proprietary information and/or source
22 code, but Plaintiffs have not submitted an adequate Statement of Misappropriated Business Ideas in
accordance with the Court's Order of April 9, 2010. (See Dkt. 62).

23 Fusion Garage further objects to this request on the ground that it is unduly burdensome,
harassing, and overbroad with respect to scope.

Fusion Garage further objects that this request is vague and ambiguous.

24 **REQUEST FOR PRODUCTION NO. 17:**

All documents concerning user experience testing of the CrunchPad.

25 **SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 17:**

26 Fusion Garage incorporates each of its General Objections as expressly set forth therein.

27 Fusion Garage objects to the defined term "CrunchPad" as vague and ambiguous as it
purports to encompass Fusion Garage's products, including the JooJoo.

28 Fusion Garage further objects to this request to the extent it seeks information regarding the
"CrunchPad," as Fusion Garage understands that no such device exists. Any documents that Fusion
Garage agrees to produce in response to this request shall not be deemed an admission as to the

1 existence of the CrunchPad or that the JooJoo is related to, or a successor to, the alleged CrunchPad.
2 Fusion Garage further objects that Plaintiffs are trying to use this request to elicit a response or
objection that a Fusion Garage product is, or is related to, the CrunchPad.

3 Fusion Garage further objects to this request on the ground that it assumes facts not in
evidence; namely, the existence of the "CrunchPad" device. It is Fusion Garage's understanding that
4 there is no such device.

5 Fusion Garage objects that this request seeks highly proprietary information and/or source
code, but Plaintiffs have not submitted an adequate Statement of Misappropriated Business Ideas in
accordance with the Court's Order of April 9, 2010. (See Dkt. 62).

6 Fusion Garage further objects to this request to the extent that it seeks information that is in
the custody or control of Plaintiffs and/or equally available from Plaintiffs, as Plaintiffs assert that
the CrunchPad is their device.

7 Fusion Garage further objects to this request on the ground that it is vague and ambiguous.

8 **REQUEST FOR PRODUCTION NO. 18:**

All documents concerning user experience testing of the JooJoo.

9 **SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 18:**

Fusion Garage incorporates each of its General Objections as expressly set forth therein.

10 Fusion Garage objects that this request seeks highly proprietary information and/or source
code, but Plaintiffs have not submitted an adequate Statement of Misappropriated Business Ideas in
accordance with the Court's Order of April 9, 2010. (See Dkt. 62).

11 Fusion Garage objects to this request on the ground that it is vague and ambiguous. Fusion
12 Garage further objects to this request on the ground that it is unduly burdensome, harassing, and
overbroad with respect to scope.

13 **REQUEST FOR PRODUCTION NO. 19:**

All documents concerning user documentation for the CrunchPad.

14 **SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 19:**

Fusion Garage incorporates each of its General Objections as expressly set forth therein.

15 Fusion Garage objects to the defined term "CrunchPad" as vague and ambiguous as it purports to
encompass Fusion Garage's products, including the JooJoo.

16 Fusion Garage further objects to this request to the extent it seeks information regarding the
17 "CrunchPad," as Fusion Garage understands that no such device exists. Any documents that Fusion
Garage agrees to produce in response to this request shall not be deemed an admission as to the
18 existence of the CrunchPad or that the JooJoo is related to, or a successor to, the alleged CrunchPad.
Fusion Garage further objects that Plaintiffs are trying to use this request to elicit a response or
19 objection that a Fusion Garage product is, or is related to, the CrunchPad.

20 Fusion Garage further objects to this request on the ground that it assumes facts not in
evidence; namely, the existence of the "CrunchPad" device. It is Fusion Garage's understanding that
there is no such device.

21 Fusion Garage further objects to this request on the ground that it is vague and ambiguous as
to the term "user documentation."

22 Fusion Garage objects that this request seeks highly proprietary information and/or source
code, but Plaintiffs have not submitted an adequate Statement of Misappropriated Business Ideas in
23 accordance with the Court's Order of April 9, 2010. (See Dkt. 62).

24 Fusion Garage further objects to this request to the extent that it seeks information that is in
the custody or control of Plaintiffs and/or equally available from Plaintiffs, as Plaintiffs assert that
the CrunchPad is their device.

25 **REQUEST FOR PRODUCTION NO. 20:**

All documents concerning user documentation for the JooJoo.

26 **SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO 20:**

Fusion Garage incorporates each of its General Objections as expressly set forth therein.

27 Fusion Garage objects to this request on the ground that it is vague and ambiguous as to the
28 term "user documentation."

1 Fusion Garage further objects that this request seeks highly proprietary information and/or
2 source code, but Plaintiffs have not submitted an adequate Statement of Misappropriated Business
3 Ideas in accordance with the Court's Order of April 9, 2010. (See Dkt. 62).

4 Fusion Garage further objects to this request on the ground that it is unduly burdensome,
5 harassing, and overbroad with respect to scope.

6 **REQUEST FOR PRODUCTION NO. 23:**

7 All documents concerning plans for the development, design, manufacturing, marketing,
8 advertising and promotion, and distribution of the CrunchPad.

9 **SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 23:**

10 Fusion Garage incorporates each of its General Objections as expressly set forth therein.

11 Fusion Garage objects to the defined term "CrunchPad" as vague and ambiguous as it
12 purports to encompass Fusion Garage's products, including the JooJoo.

13 Fusion Garage further objects to this request to the extent it seeks information regarding the
14 "CrunchPad," as Fusion Garage understands that no such device exists. Any documents that Fusion
15 Garage agrees to produce in response to this request shall not be deemed an admission as
16 to the existence of the CrunchPad or that the JooJoo is related to, or a successor to, the
17 alleged CrunchPad. Fusion Garage further objects that Plaintiffs are trying to use this request to elicit
18 a response or objection that a Fusion Garage product is, or is related to, the CrunchPad.

19 Fusion Garage further objects to this request on the ground that it assumes facts not in
20 evidence; namely, the existence of the "CrunchPad" device. It is Fusion Garage's understanding that
21 there is no such device.

22 Fusion Garage further objects that this request seeks highly proprietary information and/or
23 source code, but Plaintiffs have not submitted an adequate Statement of Misappropriated Business
24 Ideas in accordance with the Court's Order of April 9, 2010. (See Dkt. 62).

25 Fusion Garage further objects to this request to the extent that it seeks information that is in
26 the custody or control of Plaintiffs and/or equally available from Plaintiffs, as Plaintiffs assert that
27 the CrunchPad is their device.

28 Fusion Garage further objects to this request on the ground that it is unduly burdensome,
harassing, and overbroad (in light of the definition of "CrunchPad") with respect to scope.

REQUEST FOR PRODUCTION NO. 24:

All documents concerning plans for the development, design, manufacturing, marketing,
advertising and promotion, and distribution of the JooJoo.

SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 24:

Fusion Garage incorporates each of its General Objections as expressly set forth therein.

Fusion Garage objects that this request seeks highly proprietary information and/or source
code, but Plaintiffs have not submitted an adequate Statement of Misappropriated Business

Ideas
in accordance with the Court's Order of April 9, 2010. (See Dkt. 62).

Fusion Garage further objects to this request on the ground that it is unduly burdensome,
harassing, and overbroad with respect to scope.

Fusion Garage further objects to this request on the ground that it is vague and ambiguous as
to the term "development, design, [and] manufacturing."

REQUEST FOR PRODUCTION NO. 32:

All documents evidencing or concerning communications concerning intellectual property in
the CrunchPad.

SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 32:

Fusion Garage incorporates each of its General Objections as expressly set forth therein.

Fusion Garage objects to the defined term "CrunchPad" as vague and ambiguous as it
purports to encompass Fusion Garage's products, including the JooJoo.

Fusion Garage further objects to this request to the extent it seeks information regarding the
"CrunchPad," as Fusion Garage understands that no such device exists. Any documents that Fusion
Garage agrees to produce in response to this request shall not be deemed an admission as to the
existence of the CrunchPad or that the JooJoo is related to, or a successor to, the alleged

1 CrunchPad. Fusion Garage further objects that Plaintiffs are trying to use this request to elicit
2 a response or objection that a Fusion Garage product is, or is related to, the CrunchPad.

3 Fusion Garage further objects to this request on the ground that it assumes facts not in
4 evidence; namely, the existence of the "CrunchPad" device. It is Fusion Garage's understanding that
5 there is no such device.

6 Fusion Garage objects that this request seeks highly proprietary information and/or source
7 code, but Plaintiffs have not submitted an adequate Statement of Misappropriated Business Ideas in
8 accordance with the Court's Order of April 9, 2010. (See Dkt. 62).

9 Fusion Garage further objects to this request on the ground that it seeks information protected
10 by the attorney-client privilege, the work-product doctrine, and other applicable privileges.

11 Fusion Garage further objects to this request to the extent that it seeks information that is in
12 the custody or control of Plaintiffs and/or equally available from Plaintiffs, as Plaintiffs assert that
13 the CrunchPad is their device.

14 **REQUEST FOR PRODUCTION NO. 33:**

15 All documents evidencing or concerning communications concerning intellectual property in
16 the JooJoo.

17 **SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 33:**

18 Fusion Garage incorporates each of its General Objections as expressly set forth therein.

19 Fusion Garage objects that this request seeks highly proprietary information and/or source
20 code, but Plaintiffs have not submitted an adequate Statement of Misappropriated Business Ideas in
21 accordance with the Court's Order of April 9, 2010. (See Dkt. 62).

22 Fusion Garage further objects to this request on the ground that it seeks information protected
23 by the attorney-client privilege, the work-product doctrine, and other applicable privileges.

24 Fusion Garage objects that this request is overbroad, unduly burdensome, and harassing.

25 Fusion Garage objects that this request is vague and ambiguous.

26 **REQUEST FOR PRODUCTION NO. 37:**

27 A complete copy of all versions of the source codes, object codes, and executables for the
28 CrunchPad.

SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 37:

Fusion Garage incorporates each of its General Objections as expressly set forth therein.

Fusion Garage objects to the defined term "CrunchPad" as vague and ambiguous as it
purports to encompass Fusion Garage's products, including the JooJoo.

Fusion Garage further objects to this request to the extent it seeks information regarding the
"CrunchPad," as Fusion Garage understands that no such device exists. Any documents that Fusion
Garage agrees to produce in response to this request shall not be deemed an admission as to the
existence of the CrunchPad or that the JooJoo is related to, or a successor to, the alleged CrunchPad.

Fusion Garage further objects that Plaintiffs are trying to use this request to elicit a response or
objection that a Fusion Garage product is, or is related to, the CrunchPad.

Fusion Garage further objects to this request on the ground that it assumes facts not in
evidence; namely, the existence of the "CrunchPad" device. It is Fusion Garage's understanding that
there is no such device.

Fusion Garage further objects that this request seeks highly proprietary information and/or
source code, but Plaintiffs have not submitted an adequate Statement of Misappropriated Business
Ideas in accordance with the Court's Order of April 9, 2010. (See Dkt. 62).

Fusion Garage further objects to this request on the ground that it is vague and ambiguous.

Fusion Garage further objects to this request on the ground that it seeks information which is
neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, as there is
no evidence that Plaintiffs contributed any source code, object codes, or executables.

REQUEST FOR PRODUCTION NO. 38:

A complete copy of all versions of the source codes, object codes, and executables for the
JooJoo.

1 **SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO 38:**

Fusion Garage incorporates each of its General Objections as expressly set forth therein.

2 Fusion Garage objects that this request seeks highly proprietary information and/or source
3 code, but Plaintiffs have not submitted an adequate Statement of Misappropriated Business Ideas in
4 accordance with the Court's Order of April 9, 2010. (See Dkt. 62).

Fusion Garage further objects to this request on the ground that it is vague and ambiguous.

4 Fusion Garage further objects to this request on the ground that it seeks information which is
5 neither relevant nor reasonably calculated to lead to the discovery of admissible evidence, as there is
6 no evidence that Plaintiffs contributed any source code, object codes, or executables.

Fusion Garage further objects that the request is overbroad, unduly burdensome, and
6 harassing.

7 **REQUEST FOR PRODUCTION NO. 40:**

All documents that mention both (a) the JooJoo and (b) the CrunchPad, TechCrunch, or
8 Michael Arrington.

9 **SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO 40:**

Fusion Garage incorporates each of its General Objections as expressly set forth therein.

10 Fusion Garage objects to this request on the ground that it seeks information protected by
11 the attorney-client privilege, the work-product doctrine, and other applicable privileges.

Fusion Garage further objects to this request on the ground that it is unduly burdensome
and overbroad with respect to scope.

12 Fusion Garage further objects that this request is vague, ambiguous, and incomprehensible,
13 particularly in light of the definitions of the terms this request uses.

14 Subject to the foregoing general and specific objections, Fusion Garage has complied with
the Court's Order of April 9, 2010 (Dkt. 61) to produce documents responsive to this request, to the
15 extent that such documents do not disclose Fusion Garage's highly proprietary information.

15 **REQUEST FOR PRODUCTION NO. 43:**

All documents concerning communications with any vendors, contractors, or suppliers,
16 including but not limited to Pegatron, relating to the JooJoo.

17 **SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 43:**

Fusion Garage incorporates each of its General Objections as expressly set forth therein.

18 Fusion Garage Objects that this request seeks highly proprietary information and/or source
code, but Plaintiffs have not submitted an adequate Statement of Misappropriated Business Ideas in
19 accordance with the Court's Order of April 9, 2010. (See Dkt. 62).

20 Fusion Garage further objects to this request on the ground that it seeks confidential,
proprietary, and/or business-sensitive material of Fusion Garage and no protective order is in place
in this action.

Fusion Garage further objects that this request seeks documents that are neither relevant nor
21 reasonably calculated to lead to the discovery of admissible information.

22 Subject to the foregoing general and specific objections, Fusion Garage has complied with
the Court's Order of April 9, 2010 (Dkt. 61) to produce documents responsive to this request, to the
23 extent that such documents do not disclose Fusion Garage's highly proprietary information.

24 **REQUEST FOR PRODUCTION NO. 44:**

All documents concerning communications with any vendors, contractors, or suppliers,
25 including but not limited to Pegatron, concerning the CrunchPad or the project to develop the
CrunchPad.

26 **SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 44:**

Fusion Garage incorporates each of its General Objections as expressly set forth therein.

27 Fusion Garage objects that this request seeks highly proprietary information and/or source
code, but Plaintiffs have not submitted an adequate Statement of Misappropriated Business Ideas in
28 accordance with the Court's Order of April 9, 2010. (See Dkt. 62).

Fusion Garage further objects to the defined term "CrunchPad" as vague and ambiguous as it
purports to encompass Fusion Garage's products, including the JooJoo.

1 Fusion Garage further objects to this request to the extent it seeks information regarding the
2 "CrunchPad," as Fusion Garage understands that no such device exists. Any documents that Fusion
3 Garage agrees to produce in response to this request shall not be deemed an admission as to the
4 existence of the CrunchPad or that the JooJoo is related to, or a successor to, the alleged CrunchPad.
5 Fusion Garage further objects that Plaintiffs are trying to use this request to elicit a response or
6 objection that a Fusion Garage product is, or is related to, the CrunchPad.

7 Fusion Garage further objects to this request to the extent that it seeks information that is in
8 the custody or control of Plaintiffs and/or equally available from Plaintiffs, as Plaintiffs assert that
9 the CrunchPad is their device.

10 Subject to the foregoing general and specific objections, Fusion Garage has complied with
11 the Court's Order of April 9, 2010 (Dkt. 61) to produce documents responsive to this request, to the
12 extent that such documents do not disclose Fusion Garage's highly proprietary information.

13 **REQUEST FOR PRODUCTION NO. 45:**

14 All design documents, bill of materials, and other technical materials concerning the
15 CrunchPad.

16 **SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 45:**

17 Fusion Garage incorporates each of its General Objections as expressly set forth therein.

18 Fusion Garage objects to the defined term "CrunchPad" as vague and ambiguous as it
19 purports to encompass Fusion Garage's products, including the JooJoo.

20 Fusion Garage further objects to this request to the extent it seeks information regarding the
21 "CrunchPad," as Fusion Garage understands that no such device exists. Any documents that Fusion
22 Garage agrees to produce in response to this request shall not be deemed an admission as to the
23 existence of the CrunchPad or that the JooJoo is related to, or a successor to, the alleged CrunchPad.
24 Fusion Garage further objects that Plaintiffs are trying to use this request to elicit a response or
25 objection that a Fusion Garage product is, or is related to, the CrunchPad.

26 Fusion Garage further objects to this request on the ground that it assumes facts not in
27 evidence; namely, the existence of the "CrunchPad" device. It is Fusion Garage's understanding that
28 there is no such device.

Fusion Garage further objects that this request seeks highly proprietary information and/or
source code, but Plaintiffs have not submitted an adequate Statement of Misappropriated Business
Ideas in accordance with the Court's Order of April 9, 2010. (See Dkt. 62).

Fusion Garage further objects to this request to the extent that it seeks information that is in
the custody or control of Plaintiffs and/or equally available from Plaintiffs, as Plaintiffs assert that
the CrunchPad is their device.

Fusion Garage further objects to this request on the ground that it is vague and ambiguous.

REQUEST FOR PRODUCTION NO. 46:

All design documents, bill of materials, and other technical materials concerning the JooJoo.

SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 46:

Fusion Garage incorporates each of its General Objections as expressly set forth therein.

Fusion Garage objects that this request seeks highly proprietary information and/or source
code, but Plaintiffs have not submitted an adequate Statement of Misappropriated Business Ideas in
accordance with the Court's Order of April 9, 2010. (See Dkt. 62).

Fusion Garage further objects to this request on the ground that it seeks confidential,
proprietary, and/or business-sensitive material of Fusion Garage and no protective order is in place
in this action.

Fusion Garage further objects to this request on the ground that it is unduly burdensome,
harassing, and overbroad with respect to scope.

Fusion Garage further objects to this request on the ground that it is vague and ambiguous.

REQUEST FOR PRODUCTION NO. 49:

All documents concerning government approvals or certifications concerning the JooJoo or
the CrunchPad, including but not limited to Federal Communications Commission approval.

1 **SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 49:**

Fusion Garage incorporates each of its General Objections as expressly set forth therein.

2 Fusion Garage objects that this request seeks highly proprietary information and/or source
code, but Plaintiffs have not submitted an adequate Statement of Misappropriated Business Ideas in
3 accordance with the Court's Order of April 9, 2010. (See Dkt. 62).

4 Fusion Garage further objects to the defined term "CrunchPad" as vague and ambiguous as it
purports to encompass Fusion Garage's products, including the JooJoo.

5 Fusion Garage further objects to this request to the extent it seeks information regarding the
"CrunchPad," as Fusion Garage understands that no such device exists. Any documents that Fusion
6 Garage agrees to produce in response to this request shall not be deemed an admission as to the
existence of the CrunchPad or that the JooJoo is related to, or a successor to, the alleged CrunchPad.
7 Fusion Garage further objects that Plaintiffs are trying to use this request to elicit a response or
objection that a Fusion Garage product is, or is related to, the CrunchPad.

8 Fusion Garage further objects to this request on the ground that it assumes facts not in
evidence; namely, the existence of the "CrunchPad" device. It is Fusion Garage's understanding that
there is no such device.

9 Fusion Garage further objects to this request on the ground that it seeks information protected
by the attorney-client privilege, the work-product doctrine, and other applicable privileges.

10 Fusion Garage further objects to this request to the extent that it seeks information that is in
the custody or control of Plaintiffs and/or equally available from Plaintiffs.

11 Subject to the foregoing general and specific objections, Fusion Garage has complied with
the Court's Order of April 9, 2010 (Dkt. 61) to produce documents responsive to this request, to the
12 extent that such documents do not disclose Fusion Garage's highly proprietary information.

13 **REQUEST FOR PRODUCTION NO. 53:**

Every document created or received before November 17, 2009 that contains the term
14 "JooJoo."

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. 53:**

Fusion Garage incorporates each of its General Objections as expressly set forth therein.

16 Fusion Garage further objects to this request on the grounds that it is overly broad and unduly
burdensome. Fusion Garage further objects to this request to the extent that it calls for the disclosure
of information subject to the attorney-client privilege, the work-product doctrine, or any other
17 applicable privileges. Fusion Garage further objects to this request on the grounds that it seeks
information which is neither relevant nor reasonably calculated to lead to the discovery of admissible
18 evidence. Fusion Garage further objects to this request to the extent that it seeks Fusion Garage's
highly proprietary information and/or source code, which is not discoverable before TechCrunch
19 submits a Statement that adequately identifies and delineates its allegedly misappropriated business
ideas. (See Dkt. 62).

20 Subject to the foregoing general and specific objections, after reasonable investigation,
Fusion Garage has produced all non-privileged documents within its possession, custody, or control
21 that contain the term "JooJoo" and were created or received before November 17, 2009, to the extent
that such documents do not disclose Fusion Garage's highly proprietary information and/or source
22 code.

23 **REQUEST FOR PRODUCTION NO. 54:**

Every communication with Gigabyte before November 17, 2009.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 54:**

Fusion Garage incorporates each of its General Objections as expressly set forth therein.

25 Fusion Garage further objects to this request on the ground that it is overly broad and unduly
burdensome. Fusion Garage further objects to this request on the ground that it seeks evidence
26 which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.
Fusion Garage further objects to this request to the extent that it seeks Fusion Garage's highly
27 proprietary information and/or source code, which is not discoverable before TechCrunch submits a
Statement that adequately identifies and delineates its allegedly misappropriated business ideas.
28 (See Dkt. 62). Subject to the foregoing general and specific objections, after reasonable
investigation, Fusion Garage has produced all communications with Gigabyte the occurred before

1 November 17, 2009 and do not disclose Fusion Garage's highly proprietary information and/or
2 source code, to the extent any such documents exist.

3 **REQUEST FOR PRODUCTION NO. 55:**

4 Every communication with Gigabyte regarding Plaintiffs or the CrunchPad, JooJoo, or
5 other web tablet on which either party worked.

6 **RESPONSE TO REQUEST FOR PRODUCTION NO. 55:**

7 Fusion Garage incorporates each of its General Objections as expressly set forth therein.
8 Fusion Garage further objects to this request on the ground that it is overly broad and unduly
9 burdensome. Fusion Garage further objects to this request on the ground that it seeks evidence
10 which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.
11 Fusion Garage further objects to this request to the extent that it seeks Fusion Garage's highly
12 proprietary information and/or source code, which is not discoverable before TechCrunch submits a
13 Statement that adequately identifies and delineates its allegedly misappropriated business ideas. (See
14 Dkt. 62). Fusion Garage further objects to this request on the grounds that it seeks information
15 regarding the "CrunchPad," as Fusion Garage understands that no such device exists. Fusion Garage
16 further objects that TechCrunch is trying to use these requests to elicit a response or objection that a
17 Fusion Garage product is, or is related to, the CrunchPad.

18 Subject to the foregoing general and specific objections, Fusion Garage will produce all
19 communications with Gigabyte regarding Plaintiffs, the CrunchPad, or the JooJoo, to the extent
20 such documents have not already been produced in this litigation and to the extent such documents
21 do not disclose Fusion Garage's highly proprietary information and/or source code.

22 **REQUEST FOR PRODUCTION NO. 56:**

23 Every communication with CSL before November 17, 2009.

24 **RESPONSE TO REQUEST FOR PRODUCTION NO. 56:**

25 Fusion Garage incorporates each of its General Objections as expressly set forth therein.
26 Fusion Garage further objects to this request on the ground that it is overly broad and unduly
27 burdensome. Fusion Garage further objects to this request on the ground that it seeks evidence which
28 is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Fusion
Garage further objects to this request to the extent that it seeks Fusion Garage's highly proprietary
information and/or source code, which is not discoverable before TechCrunch submits a Statement
that adequately identifies and delineates its allegedly misappropriated business ideas. (See Dkt. 62).
Fusion Garage further objects to this request on the grounds that it is vague and ambiguous because
"CSL" has not been defined.

Subject to the foregoing general and specific objections, Fusion Garage has produced all
documents reflecting communications with CSL that occurred before November 17, 2009, to the
extent such documents exist and to the extent that such documents do not disclose Fusion Garage's
highly proprietary information and/or source code.

REQUEST FOR PRODUCTION NO. 57:

Every communication with CSL regarding Plaintiffs or the CrunchPad, JooJoo, or other
web tablet on which either party worked.

RESPONSE TO REQUEST FOR PRODUCTION NO. 57:

Fusion Garage incorporates each of its General Objections as expressly set forth therein.
Fusion Garage further objects to this request on the ground that it is overly broad and unduly
burdensome. Fusion Garage further objects to this request on the ground that it seeks evidence
which is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.
Fusion Garage further objects to this request to the extent that it seeks Fusion Garage's highly
proprietary information and/or source code, which is not discoverable before TechCrunch submits a
Statement that adequately identifies and delineates its allegedly misappropriated business ideas.
(See Dkt. 62). Fusion Garage objects to this request on the grounds that it seeks information
regarding the "CrunchPad," as Fusion Garage understands that no such device exists. Fusion Garage
further objects that TechCrunch is trying to use these requests to elicit a response or objection that a
Fusion Garage product is, or is related to, the CrunchPad.

1 Subject to the foregoing general and specific objections, Fusion Garage will produce all
2 communications with CSL regarding Plaintiffs, the CrunchPad, or the JooJoo, to the extent such
3 documents have not already been produced in this litigation and to the extent such documents do
4 not disclose Fusion Garage's highly proprietary information and/or source code.

REQUEST FOR PRODUCTION NO. 59:

4 All communications with "M Payments," as referenced by Mr. Rathakrishnan on page 159
5 of his deposition transcript, or those that offer the "M Payments" service, regarding Plaintiffs or
6 the CrunchPad, JooJoo, or other web tablet on which either party worked.

RESPONSE TO REQUEST FOR PRODUCTION NO. 59:

6 Fusion Garage incorporates each of its General Objections as expressly set forth therein.
7 Fusion Garage further objects to this request on the ground that it seeks evidence which is neither
8 relevant nor reasonably calculated to lead to the discovery of admissible evidence. Fusion Garage
9 objects to this request on the grounds that it seeks information regarding the "CrunchPad," as Fusion
10 Garage understands that no such device exists. Fusion Garage further objects that TechCrunch is
11 trying to use these requests to elicit a response or objection that a Fusion Garage product is, or is
12 related to, the CrunchPad.

10 Subject to the foregoing general and specific objections, Fusion Garage will produce any
11 relevant, non-privileged documents within its possession, custody, or control that constitute
12 communications with M Payments (or those that offer the M Payments service) regarding Plaintiffs,
13 the CrunchPad, or the JooJoo, to the extent such documents have not already been produced in this
14 litigation and to the extent that such documents do not disclose Fusion Garage's highly proprietary
15 information and/or source code.

REQUEST FOR PRODUCTION NO. 60:

14 All documents evidencing your use of the term "Project Fuse" in connection with a tablet
15 computer.

RESPONSE TO REQUEST FOR PRODUCTION NO. 60:

15 Fusion Garage incorporates each of its General Objections as expressly set forth therein.
16 Fusion Garage further objects to this request on the ground that it seeks evidence which is neither
17 relevant nor reasonably calculated to lead to the discovery of admissible evidence. Fusion Garage
18 further objects to this request on the grounds that it is overly broad and unduly burdensome. Fusion
19 Garage further objects to this request to the extent that it calls for the disclosure of information
20 subject to the attorney-client privilege, the work-product doctrine, or any other applicable privileges.
21 Fusion Garage further objects to this request to the extent that it seeks Fusion Garage's highly
22 proprietary information and/or source code, which is not discoverable before TechCrunch submits a
23 Statement that adequately identifies and delineates its allegedly misappropriated business ideas. (See
24 Dkt. 62).

20 Subject to the foregoing general and specific objections, Fusion Garage will produce any
21 non-privileged documents within its possession, custody, or control evidencing the term "Project
22 Fuse" in connection with a tablet computer, to the extent such documents have not already been
23 produced in this litigation and to the extent that such documents do not disclose Fusion Garage's
24 highly proprietary information and/or source code.

REQUEST FOR PRODUCTION NO. 61:

24 All documents concerning the planning or implementation of what Mr. Rathalcrishnan
25 termed Fusion Garage's "Plan B" on page 80 of his deposition transcript.

RESPONSE TO REQUEST FOR PRODUCTION NO. 61:

25 Fusion Garage incorporates each of its General Objections as expressly set forth therein.
26 Fusion Garage further objects to this request to the extent that it calls for the disclosure of
27 information subject to the attorney-client privilege, the work-product doctrine, or any other
28 applicable privileges. Fusion Garage further objects to this request to the extent that it seeks Fusion
29 Garage's highly proprietary information and/or source code, which is not discoverable before
30 TechCrunch submits a Statement that adequately identifies and delineates its allegedly
31 misappropriated business ideas. (See Dkt. 62).

1 Subject to the foregoing general objections, Fusion Garage will produce any non- privileged
2 documents within its possession, custody, or control that discuss the planning or implementation of
3 Fusion Garage's Plan B, to the extent such documents have not already been produced in this
4 litigation and to the extent that such documents do not disclose Fusion Garage's highly proprietary
5 information and/or source code.

6 **REQUEST FOR PRODUCTION NO. 67:**

7 Documents sufficient to show the work performed on the CrunchPad project, JooJoo, or
8 other web tablet on which either party worked by FUSION GARAGE TABLET PERSONNEL.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 67:**

10 Fusion Garage incorporates each of its General Objections as expressly set forth therein.
11 Fusion Garage further objects to the definition of "FUSION GARAGE TABLET PERSONNEL" on
12 the ground that it is incomprehensible. Fusion Garage further objects to this request to the extent that
13 it seeks Fusion Garage's highly proprietary information and/or source code, which is not
14 discoverable before TechCrunch submits a Statement that adequately identifies and delineates its
15 allegedly misappropriated business ideas. (See Dkt. 62). Fusion Garage objects to this request on the
16 grounds that it seeks information regarding the "CrunchPad," as Fusion Garage understands that no
17 such device exists. Fusion Garage further objects that TechCrunch is trying to use these requests to
18 elicit a response or objection that a Fusion Garage product is, or is related to, the CrunchPad. Fusion
19 Garage further objects to this request on the grounds that it is overly broad and unduly burdensome.
20 Fusion Garage further objects to this request to the extent that it calls for the disclosure of
21 information subject to the attorney-client privilege, the work-product doctrine, or any other
22 applicable privileges.

23 Subject to the foregoing general and specific objections, Fusion Garage will produce non-
24 privileged documents within its possession, custody, or control that are sufficient to show the work
25 that Fusion Garage contractors or employees performed on the CrunchPad or JooJoo projects, to the
26 extent such documents have not already been produced in this litigation and to the extent that such
27 documents do not disclose Fusion Garage's highly proprietary information and/or source code.

28 **REQUEST FOR PRODUCTION NO. 76:**

Documents sufficient to identify any products you have developed other than a web tablet.

RESPONSE TO REQUEST FOR PRODUCTION NO. 76:

Fusion Garage incorporates each of its General Objections as expressly set forth therein.
Fusion Garage further objects to this request on the ground that it is overly broad and unduly
burdensome. Fusion Garage further objects to this request on the ground that it seeks evidence which
is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Fusion
Garage further objects to this request to the extent that it seeks Fusion Garage's highly proprietary
information and/or source code, which is not discoverable before TechCrunch submits a Statement
that adequately identifies and delineates its allegedly misappropriated business ideas. (See Dkt. 62).

REQUEST FOR PRODUCTION NO. 78:

All documents that refer or relate to the design, development and/or manufacture of the tablet
computer referred to as "Prototype B" in Michael Arrington's January 19, 2009 blog post, entitled
"TechCrunch Tablet Update: Prototype B."

RESPONSE TO REQUEST FOR PRODUCTION NO. 78:

Fusion Garage incorporates each of its General Objections as expressly set forth therein.
Fusion Garage further objects to the extent this request seeks items that are within the custody or
control of TechCrunch or equally available to TechCrunch. Fusion Garage further objects to this
request to the extent that it calls for the disclosure of information subject to the attorney-client
privilege, the work-product doctrine, or any other applicable privileges. Fusion Garage further
objects to this request to the extent that it seeks Fusion Garage's highly proprietary information
and/or source code, which is not discoverable before TechCrunch submits a Statement that
adequately identifies and delineates its allegedly misappropriated business ideas. (See Dkt. 62).

Subject to the foregoing general and specific objections, Fusion Garage has conducted a
diligent search and at this stage has not located any documents relating to the design, development

1 and/or manufacture of the tablet computer referred to as "Prototype B" other than documents that
2 disclose Fusion Garage's highly proprietary information and/or source code.

3 **REQUEST FOR PRODUCTION NO. 79:**

4 All documents that refer or relate to the design, development and/or manufacture of the tablet
5 computer referred to as "Prototype B.5?" in Michael Arrington's April 10, 2009 blog post entitled
6 "About Those New CrunchPad Pictures."

7 **RESPONSE TO REQUEST FOR PRODUCTION NO. 79:**

8 Fusion Garage incorporates each of its General Objections as expressly set forth therein.
9 Fusion Garage further objects to the extent this request seeks items that are within the
10 custody or control of TechCrunch or equally available to TechCrunch. Fusion Garage further objects
11 to this request to the extent that it calls for the disclosure of information subject to the attorney-client
12 privilege, the work-product doctrine, or any other applicable privileges. Fusion Garage objects to
13 this request on the grounds that it seeks information regarding the "CrunchPad," as Fusion
14 Garage understands that no such device exists. Fusion Garage further objects that TechCrunch is
15 trying to use these requests to elicit a response or objection that a Fusion Garage product is, or is
16 related to the CrunchPad. Fusion Garage further objects that this request seeks items that are within
17 the custody or control of TechCrunch or equally available to TechCrunch. Fusion Garage further
18 objects to this request on the ground that it seeks Fusion Garage's highly proprietary information
19 and/or source code, which is not discoverable before TechCrunch submits a Statement that
20 adequately identifies and delineates its allegedly misappropriated business ideas. (See Dkt. 62).

21 Subject to the foregoing general and specific objections, Fusion Garage responds that it has
22 produced all non-privileged documents within its possession, custody, or control that refer or relate
23 to the design, development and/or manufacture of the tablet computer referred to as "Prototype
24 B.5?", to the extent such documents do not disclose Fusion Garage's highly proprietary information
25 and/or source code.

26 **REQUEST FOR PRODUCTION NO. 80:**

27 All documents that refer or relate to the design, development and/or manufacture of the tablet
28 computer referred to as the "launch prototype" in Michael Arrington's June 3, 2009 blog post entitled
"CrunchPad: The Launch Prototype."

RESPONSE TO REQUEST FOR PRODUCTION NO. 80:

Fusion Garage incorporates each of its General Objections as expressly set forth therein.
Fusion Garage further objects to the extent this request seeks items that are within the
custody or control of TechCrunch or equally available to TechCrunch. Fusion Garage further objects
to this request to the extent that it calls for the disclosure of information subject to the attorney-client
privilege, the work-product doctrine, or any other applicable privileges. Fusion Garage objects to
this request on the grounds that it seeks information regarding the "CrunchPad," as Fusion Garage
understands that no such device exists. Fusion Garage further objects that TechCrunch is trying to
use these requests to elicit a response or objection that a Fusion Garage product is, or is related to,
the CrunchPad. Fusion Garage further objects that this request seeks items that are within the
custody or control of TechCrunch or equally available to TechCrunch. Fusion Garage further objects
to this request on the ground that it seeks Fusion Garage's highly proprietary information and/or
source code, which is not discoverable before TechCrunch submits a Statement that adequately
identifies and delineates its allegedly misappropriated business ideas. (See Dkt. 62).

Subject to the foregoing general and specific objections, Fusion Garage responds that it has
produced all non-privileged documents within its possession, custody, or control that refer or relate
to the design, development and/or manufacture of the tablet computer referred to as "launch
prototype," to the extent such documents do not disclose Fusion Garage's highly proprietary
information and/or source code.

REQUEST FOR PRODUCTION NO. 81:

All documents that refer or relate to the design, development and/or manufacture of each
prototype or version of the tablet computer known as the "CrunchPad," other than "Prototype A,"
"Prototype B," "Prototype B.5?," and the "launch prototype."

1 **RESPONSE TO REQUEST FOR PRODUCTION NO. 81:**

2 Fusion Garage incorporates each of its General Objections as expressly set forth therein.
3 Fusion Garage further objects to this request on the ground that it seeks Fusion Garage's
4 highly proprietary information and/or source code, which is not discoverable before TechCrunch
5 submits a Statement that adequately identifies and delineates its allegedly misappropriated business
6 ideas. (See Dkt. 62). Fusion Garage further objects to this request to the extent that it calls for the
7 disclosure of information subject to the attorney-client privilege, the work-product doctrine, or any
8 other applicable privileges. Fusion Garage further objects to this request on the grounds that it seeks
9 information regarding the "CrunchPad," as Fusion Garage understands that no such device exists.
10 Fusion Garage further objects that TechCrunch is trying to use these requests to elicit a response or
11 objection that a Fusion Garage product is, or is related to, the CrunchPad. Fusion Garage further
12 objects that this request seeks items that are within the custody or control of TechCrunch or equally
13 available to TechCrunch.

14 Subject to the foregoing general and specific objections, Fusion Garage represents that it
15 has produced all non-privileged documents within its possession, custody, or control that refer or
16 relate to the design, development and/or manufacture of each prototype or version of the tablet
17 computer known as the "CrunchPad," other than "Prototype A," "Prototype B," "Prototype B.5?,"
18 and the "launch prototype," to the extent such documents do not disclose Fusion Garage's highly
19 proprietary information and/or source code.

20 **INTERROGATORY NO. 1:**

21 Identify all components (hardware and software) in the JooJoo devices that you have exhibited or
22 delivered, or plan to exhibit or deliver, to any person.

23 **RESPONSE TO INTERROGATORY NO. 1:**

24 Fusion Garage incorporates by reference the General Objections set forth above, as if fully
25 stated herein. Fusion Garage further objects to this Interrogatory on the following grounds:

- 26 1. This Interrogatory seeks trade secret and/or proprietary information but Plaintiffs
27 have failed to comply with California Code of Civil Procedure § 2019.210. That code section
28 provides that "before commencing discovery relating to the trade secret, the party alleging the
misappropriation shall identify the trade secret with reasonable particularity." Cal. Civ. Proc. §
2019.210; see also Computer Economics, Inc. v. Gartner Group, Inc., 50 F. Supp. 2d 980, 992 (S.D.
Cal. 1999) (explaining the rationale behind § 2019.210). Plaintiffs have not identified their alleged
trade secret(s) with the required particularity, or at all.
2. Fusion Garage objects that Plaintiffs served this Interrogatory before it made any
identification or disclosure of the alleged trade secret(s) at issue, much less an adequate
identification. Accordingly, Plaintiffs commenced discovery relating to the trade secret(s)
prematurely. Cal. Civ. Proc. § 2019.210.
3. Fusion Garage objects that this Interrogatory is vague and ambiguous and assumes
facts not in evidence.
4. Fusion Garage objects to this Interrogatory because it seeks information that is neither
relevant nor reasonably calculated to lead to the discovery of admissible information.
5. Fusion Garage objects to this Interrogatory to the extent that it calls for the disclosure
of information protected by the attorney-client privilege, the attorney work product doctrine, or any
other applicable privilege.
6. Fusion Garage further objects that this interrogatory is overbroad, vague and
ambiguous.
7. Fusion Garage objects to the definitions that this Interrogatory contains, including the
definition of the word "you" which renders this Interrogatory vague, ambiguous, and unintelligible.

29 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 1**

30 Subject to the foregoing general and specific objections, and without waiving the same,
31 Fusion Garage further objects to this Interrogatory on the ground that it seeks the discovery of
32 Fusion Garage's highly proprietary information and/or source code even though Plaintiffs have not
33 submitted an adequate Statement of Misappropriated Business Ideas in accordance with the Court's
34 Order of April 9, 2010. (See Dkt. 62).

1 **INTERROGATORY NO. 2:**

2 Identify all persons who participate, or have participated in, the design of, or the supply of
3 components for, the JooJoo devices that you have exhibited or delivered or plan to deliver to any
4 persons.

5 **RESPONSE TO INTERROGATORY NO. 2:**

6 Fusion Garage incorporates by reference the General Objections set forth above, as if fully
7 stated herein. Fusion Garage further objects to this Interrogatory on the following grounds:

8 1. This Interrogatory seeks trade secret and/or proprietary information but Plaintiffs
9 have failed to comply with California Code of Civil Procedure § 2019.210. That code section
10 provides that "before commencing discovery relating to the trade secret, the party alleging the
11 misappropriation shall identify the trade secret with reasonable particularity." Cal. Civ. Proc. §
12 2019.210; see also Computer Economics, Inc. v. Gartner Group, Inc., 50 F. Supp. 2d 980, 992
13 (S.D. Cal. 1999) (explaining the rationale behind § 2019.210). Plaintiffs have not identified
14 their alleged trade secret(s) with the required particularity, or at all.

15 2. Fusion Garage objects that Plaintiffs served this Interrogatory before it made any
16 identification or disclosure of the alleged trade secret(s) at issue, much less an adequate
17 identification. Accordingly, Plaintiffs commenced discovery relating to the trade secret(s)
18 prematurely. Cal. Civ. Proc. § 2019.210.

19 3. Fusion Garage objects that this Interrogatory is vague and ambiguous and assumes
20 facts not in evidence.

21 4. Fusion Garage objects to this Interrogatory because it seeks information that is neither
22 relevant nor reasonably calculated to lead to the discovery of admissible information.

23 5. Fusion Garage objects to this Interrogatory to the extent that it calls for the disclosure
24 of information protected by the attorney-client privilege, the attorney work product doctrine, or any
25 other applicable privilege.

26 6. Fusion Garage further objects that this interrogatory is overbroad, vague and
27 ambiguous.

28 7. Fusion Garage objects to the definitions that this Interrogatory contains, including the
definitions of the word "you" and "Identify."