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 TECHCRUNCH, INC. and CRUNCHPAD, INC.

8
 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 TECHCRUNCH, INC., a Delaware corporation,)
 and CRUNCHPAD, INC., a Delaware)
 13 corporation,)
 14 Plaintiffs,)
 15 vs.)
 16 FUSION GARAGE PTE. LTD., a Singapore)
 company,)
 17 Defendant.)
 18)
 19)

Case No. C 09-cv-5812 RS (PVT)

**AMENDED COMPLAINT FOR BREACH
 OF FIDUCIARY DUTY, FRAUD AND
 DECEIT, AND UNFAIR COMPETITION**

DEMAND FOR JURY TRIAL

1 Plaintiffs file this Amended Complaint pursuant to the Court’s order of August 24, 2010.

2 **INTRODUCTORY STATEMENT**

3 1. Starting in the fall of 2008, Defendant Fusion Garage Pte. Ltd. and Plaintiffs
4 TechCrunch, Inc. and CrunchPad, Inc. worked together to develop and market a low-cost, touch-
5 screen tablet computer called the CrunchPad.

6 2. Fusion Garage led Plaintiffs to believe that they were collaborators working earnestly
7 on a common joint venture. This turned out to be false.

8 3. At some point, and certainly by September 2009, Fusion Garage secretly decided to
9 “divorce” itself from Plaintiffs. On November 17, 2009, seemingly “out of the blue,” as it claimed,
10 Fusion Garage unilaterally cancelled the joint venture between itself and Plaintiffs, announcing that
11 it would exploit for its sole benefit the CrunchPad business and all that the parties had done together,
12 thus cutting Plaintiffs out of the project and its rewards.

13 4. In a communication to the public relations firm orchestrating the divorce, Fusion
14 Garage acknowledged having “strung along” Plaintiffs, confided that it was getting harder to “play
15 along,” and predicted “a massive blowup” upon Plaintiffs’ receipt of its November 17, 2009
16 cancellation email. Later, Fusion Garage dismissed concerns of its public relations firm about legal
17 action by explaining “everything [had] been verbal” and nothing “shared via email etc.”

18 5. Fusion Garage and Plaintiffs were joint venturers. Fusion Garage breached its
19 fiduciary duty to Plaintiffs with malice, “stringing along” Plaintiffs with fraudulent promises and
20 deceitful conduct so it could usurp the CrunchPad business for itself. Plaintiffs bring this suit to seek
21 redress for Fusion Garage’s malicious misconduct.

22 **THE PARTIES**

23 6. TechCrunch, Inc. is a Delaware corporation with its principal place of business within
24 this District. The Plaintiff formerly known as Interserve, Inc. has changed its name to TechCrunch,
25 Inc. TechCrunch has developed a widespread reputation as a publisher of a network of technology-
26 oriented blogs and other web properties and as a sponsor of forums and conferences to highlight new
27 technologies and the companies that are spawning them.

1 14. Before founding TechCrunch and CrunchPad, Inc., Mr. Arrington founded or worked
2 for technology companies RealNames, Achex, RazorGator, Edgeio and others.

3 **A. Chronology of the CrunchPad’s Development and the Parties’ Joint Efforts**

4 15. In 2008, Mr. Arrington conceived of a market opportunity for a new kind of
5 computer. On July 21, 2008, Mr. Arrington posted a challenge to himself and to the world: “We
6 want a dead simple web tablet for \$200, help us build it.” In the announcement, he elaborated:

7 Here’s The Plan

8 We’ll organize a small team of people to spec this out. First is the marketing document that
9 just outlines what the machine will do – we have a first draft of that already and will post it
10 soon. Then we’ll spec out the hardware and get people to help write the customized Linux
11 and Firefox code. Once we’ve completed the design we’ll start to work with the supply chain
12 company to get an idea on the cost of the machine (the goal is \$200), and hopefully build a
13 few prototypes. Anyone who contributes significantly to the project would get one of those
14 first prototypes. If everything works well, we’d then open source the design and software and
15 let anyone build one that wants to.

16 The goal is to keep the machine very simple and very cheap. I think this will be a lot of fun,
17 and it may just turn into an actual product that we can use to surf the web and talk to our
18 friends.

19 We’ll be coordinating the project over at TechCrunchIT. Leave a comment there if you want
20 to participate and we’ll be in touch soon.

21 Exhibit 1 is a copy of Mr. Arrington’s July 21, 2008 blog post.

22 16. By August 30, 2008, TechCrunch had constructed its first prototype web tablet.
23 Fusion Garage played no role in the development of that prototype. TechCrunch posted pictures and
24 a description on the TechCrunch blog, referring to it as Prototype A. As Mr. Arrington noted in a
25 blog post on that date: TechCrunch was “still far from having beta units but there is now a team
26 working on the project, and an incredible group of people and companies have reached out to us to
27 help. We’ve learned a lot about building a hardware device over the last few weeks, and it’s clear
28 that it is quite possible to build a high performance web tablet in the price range we anticipated.”

Exhibit 2 is a copy of Mr. Arrington’s August 30, 2008 blog post.

17. In September 2008 TechCrunch recruited Louis Monier to lead the CrunchPad
project. Mr. Monier was the founder and former CTO of AltaVista and had held positions at eBay,
Google, and other high-performance Web- or technology-focused companies.

1 18. TechCrunch organized a widely publicized event called “TechCrunch 50” in San
2 Francisco on September 8-10, 2008, which showcased new companies and technologies. During
3 that event, Chandrasekhar Rathakrishnan of Fusion Garage met an acquaintance of Michael
4 Arrington, who later introduced Mr. Rathakrishnan to Mr. Arrington.

5 19. On September 18, 2008, Fusion Garage wrote to TechCrunch that it wanted to
6 “discuss possible collaboration” and noted that for it to achieve success it would “need to be working
7 with [TechCrunch] at a early stage of device conception.” Exhibit 3 is a copy of an email containing
8 Fusion Garage’s September 18, 2008 communication.

9 20. On September 23, 2008, Mr. Arrington and TechCrunch’s CEO Heather Harde met
10 with Mr. Rathakrishnan and discussed the CrunchPad project. Later that day, Mr. Rathakrishnan
11 wrote an email to Mr. Arrington saying that “[i]t was good meeting you and Heather today. I am
12 excited about the possibility of working together and am looking forward to making this happen.” A
13 copy of this email is Exhibit 4.

14 21. Mr. Rathakrishnan confirmed his interest in October, writing “I can be [back] in San
15 Franc for discussions on collaboration and to move things forward etc. when needed. Looking
16 forward to working with you and the team on this tablet project.” A copy of this email is Exhibit 5.*

17 22. On October 8, 2008, CrunchPad, Inc. was incorporated as a subsidiary of TechCrunch
18 to be a vehicle for TechCrunch’s commercialization of the CrunchPad. TechCrunch personnel
19 doubled as CrunchPad, Inc. personnel in their work on the CrunchPad. CrunchPad, Inc. facilitated
20 TechCrunch’s participation in the joint project and would have been the entity to merge with Fusion
21 Garage had the parties’ merger talks, which occurred in parallel with the parties’ collaboration,
22 succeeded.

23 23. By January 19, 2009, the parties, with the help of hired contractors, had constructed a
24 second CrunchPad prototype called Prototype B.

25 24. In a post on its company blog dated January 19, 2009, Fusion Garage stated:

26 There is an air of excitement permeating through Fusion Garage at the moment. Michael
27 Arrington of Techcrunch just wrote an update on the Techcrunch Tablet Prototype B.

28 * Some exhibits, such as Exhibit 5, have a confidentiality marking, but the parties have agreed that
they need not treat these exhibits as confidential any longer.

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It's our software that is running on the tablet as demonstrated in the videos embedded in the article. We continue to work with Louis Monier [of Plaintiffs] on the feature set and the user experience. We are thrilled with this progress and would like to take the opportunity to thank Michael and Louis for giving us the opportunity to work with them on the Techcrunch Tablet.

Its early days yet but we are big believers of the Browser As An Operating System and the Techcrunch Tablet Initiative.

A nice way to begin 2009 here at FusionGarage!

Exhibit 6 is a Google cache copy of the Fusion Garage blog with this entry.

25. Just before Plaintiffs filed this lawsuit, Fusion Garage removed its blog from public display on its web site. Plaintiffs believe, and therefore allege, that Fusion Garage did so in order to conceal from the public the true facts about its collaboration with Plaintiffs. Although Fusion Garage tried to erase the public record of the truth, the Google cache has preserved a record of the blog.

26. About the same time as Fusion Garage's January 19, 2009 blog posting, Mr. Arrington wrote on TechCrunch's own blog that "[w]e have completed our original goal of building a 'dead simple'" web tablet. The next step was to make Prototype B into a production-ready product. Exhibit 7 is a copy of that post.

27. On February 4, 2009 Fusion Garage reflected in its blog (*see* Exhibit 6) on the beginning of its relationship with Plaintiffs with this post:

The collaboration with the Crunchpad project happened as a result of meetings we had with Mike Arrington and co, subsequent to TC50. We worked closely with Louis Monier in getting the software in shape for the hardware prototype B. We continue to work with them in getting the software in shape to make crunchpad a easy to use device. This is where we stand as of prototype-B: (Details over at TechCrunch's update)

28. From April to July, 2009, Mr. Rathakrishnan worked with Plaintiffs' personnel in TechCrunch's offices in California on an almost daily basis as part of the joint development of the CrunchPad.

29. On April 9, 2009, photographs of a third prototype, called Prototype C, appeared online, quickly spreading to many different technology-interest websites. The website www.engadget.com, for example, showed some of the photos on a webpage dated April 9, 2009 and stated "Leaked pics of the CrunchPad make it look dangerously close to availability."

1 30. On April 10, 2009, Michael Arrington posted on the TechCrunch blog that the
2 collaboration was going well and that Fusion Garage had contributed significantly to the most recent
3 prototype, acknowledging that “this time the ID [industrial design] and hardware work was driven
4 by Fusion Garage out of Singapore” and that “[i]n fact, all the credit should go to Fusion Garage.”
5 A copy of this blog post is Exhibit 8.

6 31. Mr. Arrington’s statement graciously attributed the credit to Fusion Garage, but
7 Fusion Garage had not done all the work leading up to Prototype C. In fact, Prototype C was simply
8 another iteration of earlier prototypes and built upon the work and experience that came before it as
9 well as the collaboration that went into its development.

10 32. Mr. Rathakrishnan remarked in May 2009 that Prototype C was part of “the evolution
11 of the collaboration with techcrunch ... prototype b then prototype c.” A copy of the email
12 containing this statement is Exhibit 9.

13 33. Further, Mr. Rathakrishnan, back in April 2009, explained to a friend that Fusion
14 Garage was only “kind of” responsible for product design on the prototype. A copy of the email
15 containing this statement is Exhibit 10.

16 34. In late April 2009, the parties created a joint presentation to potential investors that
17 identified the “Crunch Pad Team” as Mr. Arrington (of Plaintiffs), Chandrasekar Rathakrishnan (of
18 Fusion Garage), Mr. Monier (of Plaintiffs), and Ms. Harde (of Plaintiffs). Keith Teare of Plaintiffs
19 was the primary creative force behind the presentation, choosing the text, initial artwork, and
20 concept. Fusion Garage contributed some artwork and polishing work. Mr. Teare and Mr.
21 Rathakrishnan jointly used the presentation with potential investors.

22 35. On June 3, 2009, the Launch Prototype for the CrunchPad was ready. Mr. Arrington
23 and wrote on the TechCrunch blog: “A lot has happened behind the scenes, too. Our partner Fusion
24 Garage continues to drive the software forward, and we are in deep discussions with key partners to
25 bring the device to market.” A copy of Mr. Arrington’s June 3, 2009 blog post is Exhibit 11.

26 36. On June 16, 2009, because of Fusion Garage’s financial difficulties, Mr.
27 Rathakrishnan asked Plaintiffs to make payments on its behalf, stating “I need help with advancing
28 some payments for vendors to ensure that we stay the course on timeline.” Seeing its collaborator in

1 need, TechCrunch did in fact advance payment on behalf of Fusion Garage. Exhibit 12 is a copy of
2 an email exchange containing Fusion Garage’s request and TechCrunch’s response.

3 37. Later that month, Fusion Garage – and, according to Mr. Rathakrishnan, its investors
4 and creditors – agreed to the material terms of a merger in which CrunchPad, Inc. would acquire
5 Fusion Garage in exchange for 35% of the merged company’s stock.

6 38. A lengthy exchange on June 27, 2009 documented the agreement to the material
7 terms. The sequence begins with Mr. Arrington explaining that he was drafting a letter to inform
8 prospective U.S. investors that an Asian investment promised by Fusion Garage would not
9 materialize. He asked, “One thing that just isn’t clear is where you stand [with respect to] our offer
10 to acquire the company. I don’t want to make representations about your position that aren’t
11 accurate.” Mr. Rathakrishnan’s initial response to Mr. Arrington’s question was equivocal: “My
12 position has not changed. I want to make this work with you guys and have been keen on the
13 acquisition. Am prepared to do everything it takes to close the acquisition etc.”

14 39. Mr. Rathakrishnan’s response, however, did not alleviate Mr. Arrington’s concerns.
15 He therefore wrote back that “You don’t seem to be able to speak authoritatively for you [investors]
16 and creditors. For reputation reasons I’m forced to notify our investors the deal is off. ... At this
17 point it looks like our position is to turn the project off completely.”

18 40. Mr. Rathakrishnan then replied with unequivocal confirmation that the merger
19 transaction would go forward on Plaintiffs’ terms. He stated that he “had some long chats with some
20 of my investors & creditors” and, “after having thought about this again for the whole of last night
21 and this morning,” he was prepared to commit to the 35 percent deal Plaintiffs had offered: “**I will**
22 **do this deal even if it means the only possibility is option 3**” (emphasis in original). He then tried
23 to wheedle a better deal, “humbly request[ing]” 40 percent instead of 35 percent. But “[t]o be clear,
24 I am not saying that I will only do this if the offer is increased by 5 %. I am saying that while I
25 would be thankful for that, I **will do the** deal even if it stays 35%. I hope the above answers your
26 question with no ambiguity” (emphasis in original). Exhibit 13 is a copy of this email thread.

27 41. The parties had begun merger discussions early in their relationship, but these talks
28 occurred on a separate track from their ongoing collaboration to develop and sell the CrunchPad for

1 profit. The contemplated merger was one way for the parties to work together, but development of
2 the CrunchPad was not contingent on a merger. In fact, the parties worked on the CrunchPad
3 without a merged entity throughout the life of their venture. Mr. Rathakrishnan acknowledged back
4 in November 2008 that the parties would “work together in the meantime” while attempting to
5 finalize the financing and merger. Exhibit 14 is a copy of the November 2008 email containing that
6 statement.

7 42. In July 2009, Plaintiffs and Fusion Garage brought in Brian Kindle to oversee
8 hardware development for the CrunchPad. Mr. Arrington and Mr. Rathakrishnan interviewed Mr.
9 Kindle together at TechCrunch’s offices and both agreed that Mr. Kindle would oversee hardware
10 development and would supervise the work of Fusion Garage personnel.

11 43. During the summer of 2009, Fusion Garage missed key milestones in the
12 development process, leading to concerns about Fusion Garage’s performance and intentions.
13 During August 2009, Plaintiffs’ personnel traveled to Singapore and Taiwan to work with the Fusion
14 Garage personnel on the team, met with potential investors and sponsors, and met with
15 representatives from Pegatron, a Taiwanese company that Fusion Garage and Plaintiffs had
16 identified to manufacture the CrunchPad. Mr. Rathakrishnan was absent from the Fusion Garage
17 offices during part of that time. In his absence, Fusion Garage personnel turned to Plaintiffs’
18 personnel for leadership and guidance to solve both software and hardware challenges.

19 44. On August 31, 2009, frustrated with delays and communication problems with Fusion
20 Garage and problems with Pegatron, the company that was lined up to manufacture the CrunchPad’s
21 hardware, Plaintiffs threatened to shut down the collaboration. In response, Fusion Garage’s Mr.
22 Rathakrishnan pleaded: “Pls do not kill the project as yet. Pls hold off a week. ... I know how to deal
23 with Pegatron and some of the challenges that we are currently facing. We can overcome these
24 challenges.” A copy of Mr. Rathakrishnan’s email and his and Mr. Arrington’s subsequent
25 communications is Exhibit 15.

26 45. Mr. Rathakrishnan, in the same email thread, announced that he would bring a team
27 of software and hardware engineers with him to the United States starting the following week to
28 finalize the CrunchPad in anticipation of TechCrunch’s TechCrunch 50 conference scheduled for

1 September of 2009.

2 46. Fusion Garage personnel needed visas to work in the United States, and Mr.
3 Rathakrishnan signed letters to support applications for those visas. A number of these letters stated:
4 “TechCrunch and Fusion Garage have been working as partners for the last 12 months on a web
5 tablet product.” Fusion Garage submitted these letters to the American embassy in Singapore.
6 Copies of these letters are Exhibit 16.

7 47. Around September 8, 2009, Fusion Garage flew most of its personnel to California to
8 integrate the teams and to work with Plaintiffs’ personnel on the CrunchPad at the TechCrunch
9 facility in Palo Alto, California for an extended period. Plaintiffs’ and Fusion Garage personnel
10 worked together on almost every component of the project. Particular objects of attention included
11 screen visibility issues, touch screen performance issues, user interface issues, issues relating to
12 “gestures” used for commands, and keyboard page design issues, to name only a few.

13 48. These photos, taken during Fusion Garage’s September 2009 stint at TechCrunch’s
14 offices in Palo Alto show Fusion Garage personnel working on the CrunchPad project:



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22 49. The parties did not have a product ready for the September TechCrunch 50 event.
23 TechCrunch’s next major conference, called “CrunchUp,” was scheduled for San Francisco on
24 November 20, 2009. CrunchUp attracts many influential startups, investors, engineers, and
25 marketers in technology industries. That conference would provide another opportunity for a public
26 launch of the CrunchPad.

27 50. Throughout September and October 2009, the parties communicated about the status
28 of the CrunchPad and the lead-up to the planned November 20, 2009 launch at CrunchUp. Fusion

1 Garage never disclosed a plan to usurp the CrunchPad business for itself.

2 51. On October 12, 2009, referring to the CrunchPad development and the planned
3 November 20 launch, Mr. Rathakrishnan wrote to Plaintiffs in an email: “we are still on track.”
4 Exhibit 17 is a copy of that email.

5 52. On October 27, 2009, Fusion Garage conducted a demonstration of the CrunchPad at
6 TechCrunch’s Silicon Valley office without disclosing its intent to abandon the venture. Exhibit 18
7 is a copy of an email reflecting the demonstration.

8 53. On November 10, 2009, again referring to the planned November 20 launch, Mr.
9 Rathakrishnan emailed Plaintiffs stating “we are almost there” and “ready to go live on stage.”
10 Exhibit 19 is a copy of that email.

11 54. On November 13, 2009, Mr. Rathakrishnan emailed Plaintiffs stating “as per my last
12 email, we are [on] course for getting a lockdown device . . . by late Monday [November 16] [and
13 we] will arrange to come over once i have it locked down on monday.” Mr. Rathakrishnan also
14 agreed that “yes, we shld [sic] target the event in sf,” meaning the November 20, 2009 TechCrunch
15 “CrunchUp” event. Exhibit 20 is a copy of the November 13, 2009 email.

16 55. On November 17, 2009, Fusion Garage terminated the joint venture “out of the blue.”

17 **B. Plaintiffs’ Contributions to the Joint Project**

18 56. By way of summary only, between July 2008 and November 17, 2009, Plaintiffs
19 made numerous contributions to the joint venture with Fusion Garage. Indeed, the overall
20 conception, blueprint, guidance, and senior level support for the project emanated substantially from
21 Plaintiffs. But even apart from that high-level direction on virtually a daily basis, Plaintiffs’
22 contributions included:

- 23 a. design and oversight of the specifications, performance characteristics (including
24 boot speed that Fusion Garage prominently features in the advertising and
25 promotion of its JooJoo product), software architecture, hardware platform
26 design and component sourcing, hardware form factor and other designs, driver
27 integration, application programming interface, user interface, and
28 documentation;

- b. creation of the first two prototypes of the CrunchPad;
- c. payment of vendors and of debts incurred by Fusion Garage;
- d. advice and direction on solving technical problems and hardware and software bugs;
- e. the hosting of Fusion Garage personnel at TechCrunch's headquarters in California to promote the collaboration, the sponsorship of United States visas for Fusion Garage personnel, and the securing of temporary residences for the personnel in connection with that collaboration;
- f. the expertise of its personnel and hired contractors;
- g. the identification and solicitation of interest from of potential investors and the introduction of potential investors to Fusion Garage;
- h. the lining up of promotion, marketing, and distribution channels for the CrunchPad; and
- i. the creation of widespread awareness and anticipation of the expected arrival of the parties' product in the marketplace.

57. Despite Plaintiffs' contributions to the CrunchPad's development and despite the existence of a joint venture between Fusion Garage and Plaintiffs for the purpose of developing and selling the CrunchPad, Fusion Garage decided to claim unilateral ownership of the CrunchPad venture and exclude Plaintiffs.

C. Fusion Garage's Abrogation of the Joint Venture

58. Fusion Garage's termination was a surprise to Plaintiffs but was part of a secret plan by Fusion Garage to usurp the fruits of the parties' joint venture.

59. On November 16, 2009, the day before Fusion Garage abandoned the parties' joint venture, Mr. Rathankrishnan revealed his true thinking to the public relations firm, McGrath/Power, that was surreptitiously helping Fusion Garage launch, by itself, the "JooJoo" web tablet computer as the fruit of the CrunchPad collaboration. Mr. Rathakrishnan wrote this email to disagree with a suspicion voiced by an employee of the public relations firm that *Plaintiffs* might be planning to cut Fusion Garage out of the joint venture (the highlighting is added emphasis):

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From: 'Chandrasekar Rathakrishnan' <chandra@fusiongarage.com>
To: Jonathan Bloom <JonathanBloom@mcgrathpower.com>
Sent: 11/16/2009 4:11:53 AM
Attachments: image002.jpg; image003.jpg; image004.jpg; image001.gif
Subject: Re: FW: Michael Arrington Discusses Status of the CrunchPad

Jon,

Am not in agreement with Ursula. I can understand y Ursula would have such thoughts. however, i believe its unfounded.

Ursula is giving arrington more credit than he deserves :) Got a call from Arrington last night. Answered as did not recognize the number.

Essentially he wanted to know where we were with software and that he wants to meet on Tues and to discuss and launch product at the their realtime event on Friday.

Told me how this deadline cannot be missed and that he was excited about it.

Played along and told him will let him know about meeting on Tuesday tomorrow and that have not been able to connect with investors but have a call on Monday with them.

left that door open to use as a reason to cite inability to accept terms at the last minute.

As you can see its becoming really hard to play along and i do think this it is going to lead to a massive blowup on his part (not perhaps translated in his writing)

when realization hits that I have strung him along.

This is going to be one helluva of a week.

So to wrap up, I do think Ursula is off track with this and that we should not expand energy working that angle. I am dead confident on this one.

Best,
Chandra

60. Exhibit 21 is a copy of Mr. Rathakrishnan's November 16, 2009 email to McGrath Power.

61. This email exposes Fusion Garage's deceptions.

62. The email, however, was only a culminating statement of purpose that Mr. Rathakrishnan authored upon reflection after months of secret planning to usurp the parties' joint venture.

63. In addition, Mr. Rathakrishnan being "dead confident" in Plaintiffs' loyalty to Fusion Garage indicates that Mr. Arrington had satisfactorily resolved an issue that arose in August 2009 involving one of Plaintiffs' personnel. A TechCrunch contractor, after visiting Fusion Garage in Asia, suggested to Plaintiffs that they poach Fusion Garage's personnel and cut Fusion Garage out of

1 the project. But Mr. Arrington rebuked the contractor in front of Mr. Rathakrishnan when the three
2 met face to face for making the rogue suggestion and confirmed to Mr. Rathakrishnan that the only
3 way forward was with Fusion Garage and Plaintiffs working as joint venturers.

4 64. While the parties worked together in each other's offices in August and September of
5 2009 – while the venture continued to appear healthy, and while TechCrunch had sponsored visas
6 for personnel of Fusion Garage ostensibly for work on their joint project – Fusion Garage was
7 already well underway with its secret plan of “divorcing” from Plaintiffs and pursuing its exclusive
8 ambition to sell the CrunchPad on its own as the JooJoo.

9 65. Just before Fusion Garage hosted Plaintiffs' personnel in Asia in August 2009, Fusion
10 Garage investor Bruce Lee and Mr. Rathakrishnan exchanged an email on August 6, 2009 in which
11 Mr. Lee wondered whether Mr. Arrington ever considered “he might not be a part of the project”
12 and cautioned Fusion Garage to be “careful with the CrunchPad name.” A copy of this email is
13 Exhibit 22.

14 66. In September 2009, Fusion Garage's Mr. Rathakrishnan turned to the public relations
15 firm McGrath Power to manage “final stages of ‘divorcing’ himself from Michael Arrington of
16 TechCrunch fame.” A copy of two emails using the divorce terminology is Exhibit 23.

17 67. On September 23, 2009, while working in California on the joint project, Fusion
18 Garage employee Stuart Tan wrote home about Plaintiffs' personnel in an email: “Really sucker
19 these people. anyway still got to deal with them.” A copy of this email is Exhibit 24.

20 68. Fusion Garage formally contracted with the McGrath Power public relations firm on
21 October 6 to assist with launching “the Fusion Garage tablet computer.” A copy of a redacted
22 version of this agreement is Exhibit 25.

23 69. On October 12, 2009, Fusion Garage exchanged emails with McGrath in which it
24 secretly discussed plans for the “JooJoo,” using the new brand name for the product it secretly
25 planned to launch solo. A copy of this email is Exhibit 26.

26 70. On October 19, 2009, McGrath told Fusion Garage that “the Arrington issue must be
27 dealt with first – in fact, we view it as the beginning of the company launch cycle.” A copy of this
28 email is Exhibit 27. McGrath Power currently states on its website: “Singapore-based Fusion

1 Garage utilizes M/P for corporate, product and issues management-oriented communications
2 focusing on the controversial and industry-first joojoo Internet tablet. The program helps usher in a
3 new product category while also establishing Fusion Garage as a first mover.”

4 71. By October 19, 2009, Fusion Garage was secretly corresponding for its sole benefit
5 with Gigabyte, its new manufacturer for the JooJoo. A copy of this correspondence is Exhibit 28.
6 On November 7, 2009 Fusion Garage sought to “push giga very hard and ensure we get board and
7 bios etc. by 25th-27th Nov” for its JooJoo. A copy of this email is Exhibit 29. Fusion Garage never
8 informed Plaintiffs that it and the original manufacturer, Pegatron, had ended work with each other.

9 72. On November 10, Fusion Garage registered “thejoojoo.com” for its own benefit
10 without informing Plaintiffs. Plaintiffs did not discover that Fusion Garage had registered this
11 domain name until December 7, 2009, when Fusion Garage publicly launched the JooJoo.

12 73. On November 11, 2009, just days before the supposed CrunchPad launch at the
13 CrunchUp, Mr. Rathakrishnan gave comments to his public relations firm on the script he would use
14 to announce the theft of the CrunchPad business opportunity and the launch of the JooJoo. He
15 speculated about Plaintiffs’ reaction to, and how to spin, the usurpation of the venture. He stated:
16 “the crunchpad is now going to be called JooJoo. Not that this is an offshoot of crunchpad or to that
17 effect. We need to clearly make the link that this is crunchpad with a different name.” Copies of the
18 script and Mr. Rathakrishnan’s comments are Exhibit 30.

19 74. The next day, November 12, 2009, the public relations firm characterized Chandra’s
20 edits and the current version of the script, stating “the script reads as if **we built it the way he**
21 **[Michael Arrington] wanted it and are now taking the product away from him and simply**
22 **changing the name.**” A copy of the email with this comment is Exhibit 31. That characterization
23 accurately reflects the fact that the JooJoo was built the way Mr. Arrington wanted a web tablet
24 computer built and that Fusion Garage was taking the product away from Plaintiffs and simply
25 changing the name.

26 75. Over the next few days, as Plaintiffs still believed the CrunchPad would go forward
27 with Fusion Garage, Mr. Rathakrishnan finalized the email he would send to Mr. Arrington to set in
28

1 motion the parties' "divorce." On November 17, 2009, three days before the scheduled product
2 launch, Mr. Rathakrishnan sent the email. A copy of the email is Exhibit 32.

3 76. In the November 17, 2009 email, Mr. Rathakrishnan told Mr. Arrington that the
4 "updated hardware is still on its way" and that "[F]riday will be a challenge now . . . but the bigger
5 issue is the required investment." Mr. Rathakrishnan mentioned that he "had a conf call with Bruce
6 [Lee] last night. (An existing shareholder who is looking to co-invest and is a friend of the 2 new
7 investors who were to be part of the new round)" and forwarded an email that appears to be from
8 Mr. Lee to Mr. Rathakrishnan which portrayed Fusion Garage as the sole developer of the
9 CrunchPad and Plaintiffs as a team of marketers with no "formal commitment to the development of
10 this device." Mr. Rathakrishnan further stated he was "heading to Miami" to meet with investors.

11 77. The email ostensibly from Bruce Lee is a forgery authored by Mr. Rathakrishnan with
12 the assistance of Jonathan Bloom of McGrath Power.

13 78. Mr. Rathakrishnan had earlier prepared a draft of the email from Bruce Lee and sent
14 it to his public relations firm, McGrath Power, for review. He told McGrath Power in an email: "the
15 note below the line is intended to be from the investor to me." A copy of this email exchange is
16 included in the series of emails that are Exhibit 33.

17 79. McGrath Power helped Mr. Rathakrisnan better disguise his forgery. McGrath's
18 Jonathan Bloom told Mr. Rathakrishnan that "you need to change the font between the two emails –
19 it is unlikely that you and your investor use identical fonts." McGrath further counseled Mr.
20 Rathakrishnan to structure the Bruce Lee email "differently" because "everyone has their own
21 personal style in their structure of emails and my concern is that the note from Bruce is written more
22 in Chandra's style than in something that would be attributed to a third party." (See Exhibit 33.)
23 Finally, McGrath confirmed with Mr. Rathakrishnan that "it is our understanding that you will send
24 this to Bruce and he will send it back via email so that it appears like a legitimate email
25 communication." A copy of this email is Exhibit 34.

26 80. Not only did Mr. Rathakrishnan concoct the Bruce Lee email, but he also lied about
27 the meeting with investors in Miami. That meeting never took place. Mr. Rathakrishnan told his
28 contact at McGrath on that "being in miami wld have been fun!" A copy of this email is Exhibit 35.

1 81. In the November 17, 2009 email, Mr. Rathakrishnan fulfilled the goal he had revealed
2 the day before to his public relations firm – the goal of using investors to “as a reason to cite
3 inability to accept terms at the last minute.” (*See* Exhibit 21.)

4 82. On November 18, 2009, Mr. Arrington emailed Mr. Rathakrishnan stating that “[i]t’s
5 clear your investors do not understand that we created this product jointly, and there is no way for
6 either of us to bring it to market without the other party.”

7 83. That same day, Mr. Rathakrishnan replied to Mr. Arrington and said that “I
8 understand this came out of the blue but I needed to say where things were as soon as it was made
9 known to me.” Mr. Rathakrishnan also wrote that he was meeting with those same investors shortly
10 and would call Mr. Arrington “later today to discuss this.” A copy of this email exchange is in
11 Exhibit 36. These statements were lies. There was no investor meeting in Miami. And Mr.
12 Rathakrishnan had long “known” of the manufactured investor discontent that he himself fabricated.

13 84. The November 17, 2009 email was Fusion Garage’s unequivocal termination of the
14 parties’ joint venture.

15 85. When McGrath Power asked Mr. Rathakrishnan on November 18, 2009 if his intent
16 had been to still leave open the possibility of making the joint venture work, Mr. Rathakrishnan
17 wrote “not the intent. just trying to soften the ‘blow’ from his perspective so he does not go all
18 nuclear.” A copy of this email is Exhibit 37.

19 86. Also, McGrath Power asked Mr. Rathakrishnan if he feared legal action from
20 Plaintiffs. Mr. Rathakrishnan responded “everything been verbal” and that there had been nothing
21 “shared via email etc.” (*See* Exhibit 35.)

22 87. On December 7, 2009, Mr. Rathakrishnan held a press conference in San Francisco
23 where Fusion Garage announced the release of the CrunchPad as the JooJoo.

24 88. Fusion Garage converted to its exclusive use the CrunchPad joint venture, including
25 Plaintiffs’ interest in the joint venture.

26 89. Plaintiffs believes and therefore allege that , as of November 17, 2009, Fusion Garage
27 was devoting all of its resources to the development and launch of a web tablet as a result of the
28 collaboration with Plaintiffs.

1 90. Plaintiffs believes and therefore allege that, as of November 17, 2009, Fusion Garage
2 was devoting all of its resources to the development and launch of a web tablet called the JooJoo.

3 91. Even to this day, Fusion Garage personnel continue to view Fusion Garage’s web
4 tablet product as the CrunchPad and continue to use the CrunchPad name to their benefit. This
5 screenshot below from Facebook taken on August 24, 2010 shows Mr. Tan as Fusion Garage’s
6 Director, “Developing CrunchPad/” It does not reference the JooJoo.



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19 **D. Fusion Garage’s Lies and Misleading Statements Before and During the Project**

20 92. Beginning at a point unknown to Plaintiffs, but before late September of 2009, Fusion
21 Garage began misrepresenting its intention to continue working on the joint venture in collaboration
22 with Plaintiffs.

23 93. From that point forward, Fusion Garage made misrepresentations and omissions of
24 material fact while secretly making its own plans to divert the joint venture to its own exclusive
25 purposes and to exclude Plaintiffs from it.

26 94. There are indications that Fusion Garage had long harbored secret ambitions to seize
27 the CrunchPad for itself. Mr. Rathakrishnan has stated in deposition testimony that Fusion Garage’s
28 “Plan B” – to “go out on our own” – was “always in place.”

1 95. Further, On August 6, 2009, Fusion Garage investor Bruce Lee and Mr.
 2 Rathakrishnan exchanged an email in which Mr. Lee wondered whether Mr. Arrington ever
 3 considered “he might not be a part of the project” and cautioned Fusion Garage to be “careful with
 4 the CrunchPad name” if he split ways. (See Exhibit 22.)

5 96. From the moment that Fusion Garage chose to go out on its own while failing to
 6 inform Plaintiffs of its choice, Fusion Garage was “playing along” Plaintiffs and committing fraud
 7 and deceit by omission of this material fact while continuing to operate as if they were still
 8 committed to a joint venture.

9 97. As Fusion Garage implemented its plan to go out on its own, it took specific actions
 10 against the interests of the joint venture while making specific misrepresentations to Plaintiffs or
 11 engaging in strategic, material omissions to induce Plaintiffs to continue in the joint venture to the
 12 benefit of Fusion Garage and the detriment of Plaintiffs.

13 98. These are the specific actions that Fusion Garage took paired with its fraudulent
 14 misrepresentations and omissions:

<i>Executing the “Divorce” from Plaintiffs</i>	<i>Fraudulent Reassurances to Plaintiffs</i>
<p>17 In <u>September 2009</u>, Mr. Rathakrishnan was working with McGrath to help with “the final stages of divorcing himself from Michael Arrington of TechCrunch fame.” (See Exhibit 23.)</p>	<p>The same month, Fusion Garage asked Plaintiffs to sponsor visas for Fusion Garage personnel to come to the U.S. and finish the CrunchPad’s development with Plaintiffs’ personnel. Fusion Garage personnel came. (See photographs, supra, at p. 10.) To obtain the visas, Fusion Garage certified in letters to the U.S. government that “TechCrunch and Fusion Garage have been working as partners for the last 12 months on a web tablet product.” (See Exhibit 16.)</p>
<p>22 On <u>October 12, 2009</u>, Fusion Garage exchanged emails with its PR firm in which it secretly discussed plans for the “JooJoo.” (See Exhibit 26.) Fusion Garage formally contracted the PR firm on October 6 to assist with launching “the Fusion Garage tablet computer.” (See Exhibit 25.)</p>	<p>On the same day, Fusion Garage and Plaintiffs exchanged emails discussing the CrunchPad’s status as “still on track.” Copies of these emails are Exhibit 38. Fusion Garage did not reveal its divorce plans at that time.</p>
<p>26 In mid to late October, Fusion Garage secretly corresponded with the new JooJoo manufacturer, Gigabyte. (See Exhibit 28.) Pegatron, the original manufacturer known to Plaintiffs, was no longer involved.</p>	<p>On October 27, 2009, Fusion Garage operated and worked on the CrunchPad at TechCrunch’s Silicon Valley office, said nothing about abandoning the venture, and concealed the loss of Pegatron. (See Exhibit 18.)</p>

1 2 3	On <u>November 7</u> , Fusion Garage sought to “push giga very hard and ensure we get board and bios etc. by 25th-27th Nov” for its JooJoo. (<i>See</i> Exhibit 29.)	Just days before, Fusion Garage told Plaintiffs, in response to a call for status of the CrunchPad launch, “so yes, we should do this.” A copy of this email is Exhibit 39.
4	On <u>November 10</u> , FG registered “thejoojoo.com” without informing TC.	The same day, Fusion Garage assured Plaintiffs “we are almost there” and “ready to go live on stage.” (<i>See</i> Exhibit 20.)
5 6 7 8	On <u>November 11</u> , Mr. Rathakrishnan gave comments to his PR firm on the script he would use to announce the theft of the CrunchPad and the JooJoo launch. (<i>See</i> Exhibit 30.) He speculated about Plaintiffs’ reaction to, and how to spin, the usurpation.	On November 13, 2009, Fusion Garage assured Plaintiffs that it was ready for the joint launch on November 20. (<i>See</i> Exhibit 21 (“we are [sic] course . . . shd target the event in sf.”).)

9 99. As noted, Fusion Garage destroyed the joint venture only three days before the
10 scheduled November 20 launch. It conceded on November 18 that its November 17 revelation was,
11 from Plaintiffs’ perspective, “out of the blue.”

12 100. Fusion Garage’s representations and omissions were material and critical to
13 Plaintiffs’ decision to commence and continue the joint venture with Fusion Garage on the
14 CrunchPad. At the time Fusion Garage made these representations or omissions, they were false and
15 Fusion Garage knew they were false--or, at a minimum, made these statements recklessly and
16 without regard for the truth, or had no reasonable grounds for believing them to be true. Plaintiffs
17 relied on the representations and omissions, were deceived by them, and were damaged by them.

18 101. Plaintiffs attracted offers of assistance from multiple other software and hardware
19 developers in developing the CrunchPad. Plaintiffs declined these offers because of the joint venture
20 arrangement it had with Fusion Garage.

21 **FIRST CAUSE OF ACTION: BREACH OF FIDUCIARY DUTY**

22 102. Plaintiffs incorporate by reference and reallege all previous paragraphs.

23 103. Defendant and Plaintiffs had a common interest in fulfilling Michael Arrington’s
24 dream of making a “dead simple and dirt cheap touch screen web tablet to surf the web” that would
25 appeal to consumers.

26 104. Defendant and Plaintiffs also had a common interest in developing the web tablet
27 device and in bringing the device to market.

1 105. To achieve these common interests, Defendant and Plaintiffs collaborated to develop
2 the CrunchPad’s hardware, software, and industrial components; to seek capital; and to publicize and
3 develop the market for the product.

4 106. Defendant and Plaintiffs jointly managed and controlled their undertaking to develop
5 and market the CrunchPad, with representatives from both companies participating in important
6 decisions about the technological direction, schedule, pace, and strategy of their development effort
7 and the intended product launch.

8 107. Defendant and Plaintiffs mutually agreed and acknowledged that they would each
9 make capital investments of money, time, and services to achieve their common interests.

10 108. Defendant and Plaintiffs also agreed and expected that they would both benefit from
11 the profits in selling the CrunchPad to consumers.

12 109. Defendant and Plaintiffs associated with each other in a joint venture to carry on as
13 co-owners of a business to commercialize and sell the CrunchPad product.

14 110. Under California law, the association of two or more persons to carry on as co-
15 owners of a business for profit for a limited purpose forms a joint venture, whether or not the
16 persons intend to form a joint venture. Also under California law, property acquired by a joint
17 venture is property of the joint venture and not of the joint venturers individually.

18 111. Plaintiffs and Defendant discussed, in parallel to their joint venture, a merger between
19 Defendant and CrunchPad and had extensive discussion of the terms. They agreed that Defendant
20 would own 35 percent of the merged company which would profit from the commercialization and
21 sales of the CrunchPad pursuant to their collaboration. Mr. Rathakrishnan confirmed his absolute
22 agreement on that point while expressing his wish that Defendant could have obtained a better deal.
23 At no point afterwards did the parties consider a share for Defendant of greater than 35 percent.

24 112. As a joint venturer, Defendant had a fiduciary duty to deal with Plaintiffs at all times
25 with the highest loyalty and the utmost good faith, to deal with Plaintiffs as a reasonably prudent
26 business partner, to refrain from taking unfair advantage or making any secret profit from the joint
27 venture, and to refrain from usurping any opportunity of the joint effort or otherwise compete with
28 the venture even after dissolution.

1 113. Defendant breached its fiduciary duties to Plaintiffs by various acts including, but not
2 limited to: (1) concealing important facts about its relationships with other business partners,
3 including Pegatron, who were important to the success of the joint effort; (2) misrepresenting its
4 intention to jointly launch the CrunchPad while it was secretly planning on launching a tablet that
5 was the fruit of their collaboration without Plaintiffs under another name; (3) pulling out of the joint
6 effort just days before the scheduled product launch; and (4) bringing the product to market under a
7 different name (the “JooJoo”) and offering to sell and selling the product to consumers without
8 Plaintiffs.

9 114. Plaintiffs did not provide informed consent for Defendant to act in this manner.

10 115. Substantially because of Defendant’s conduct, Plaintiffs have suffered injury in the
11 form of economic loss and loss to their business reputation including but not limited to: (1) loss of
12 Plaintiffs’ substantial investment of money and services for the CrunchPad’s development and
13 marketing; (2) loss of future profits in expected sales of the CrunchPad; (3) loss of Plaintiffs’ rightful
14 share in the value of the joint venture; and (4) significant injury to Plaintiffs’ business reputation
15 among consumers and potential investors.

16 116. Defendant breached its fiduciary duty with fraud, malice, and oppression directed at
17 Plaintiffs.

18 117. Plaintiffs are therefore entitled to relief as set forth below.

19 **SECOND CAUSE OF ACTION: FRAUD AND DECEIT**

20 118. Plaintiffs incorporate by reference and reallege all previous paragraphs.

21 119. Defendant made numerous intentional representations, negligent misrepresentations,
22 promises, and omissions of material facts to Plaintiffs throughout their collaboration, including those
23 identified above.

24 120. At the time Defendant made these misrepresentations, they were false, and Defendant
25 knew or believed they were false or had no reasonable grounds for believing them to be true.

26 121. At the time Defendant made these promises, Defendant did not intend to perform
27 them.

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1 122. These representations, promises, and omissions were material to the joint venture
2 between Defendant and Plaintiffs.

3 123. Furthermore, Defendant and Plaintiffs were collaborating in a joint venture to develop
4 and sell the CrunchPad and owed each other a duty of candor.

5 124. Defendant intended that Plaintiffs rely on Defendant's misrepresentations, promises,
6 and omissions and intended to deceive Plaintiffs, so that Defendant would benefit from Plaintiffs'
7 continued investment in, and efforts and collaboration on, the CrunchPad.

8 125. Plaintiffs reasonably relied on Defendant's representations and omissions in
9 continuing the collaboration; forgoing other business opportunities; and contributing money, time,
10 effort, and services.

11 126. As a result of Defendant's conduct, Plaintiffs have suffered damage in their business
12 or property.

13 127. Defendant acted with fraud, malice, and oppression directed at Plaintiffs.

14 128. Plaintiffs are therefore entitled to relief as set forth below.

15 **THIRD CAUSE OF ACTION: UNLAWFUL BUSINESS PRACTICES UNDER**
16 **CALIFORNIA LAW**

17 129. Plaintiffs incorporate by reference and reallege all previous paragraphs.

18 130. Defendant, through the conduct and violations described above, has engaged in
19 unfair, unlawful, and fraudulent business practices against Plaintiffs in violation of California
20 Business and Professions Code sections 17200 and under the common law.

21 131. Unless enjoined, Defendant will continue to engage in the unfair, unlawful, and
22 fraudulent business practices.

23 132. In connection with Defendant's unfair, unlawful, and fraudulent business practices,
24 Defendant has deprived Plaintiffs of money and property. Defendant has also gained money and
25 property that rightly belongs to Plaintiffs to which Plaintiffs is entitled.

26 133. Plaintiffs are therefore entitled to relief as set forth below.
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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court enter judgment as follows:

- A. Preliminarily and permanently imposing a constructive trust upon the assets of Defendant that reflect the interests of Plaintiffs in the joint venture;
 - B. Preliminarily and permanently imposing a constructive trust upon revenues obtained by Defendant in connection with its breaches, violations, and unlawful behavior, specifically including all revenues generated by sales of the JooJoo product;
 - C. Preliminarily and permanently enjoining Defendant from unfairly competing with Plaintiffs and unlawfully injuring their reputation and goodwill;
 - D. Awarding to Plaintiffs their actual damages from Defendant's misconduct;
 - E. Awarding to Plaintiffs the Defendant's profits arising from its unlawful conduct;
 - F. Awarding to Plaintiffs their share of the value of the parties' joint venture;
 - G. Awarding to Plaintiffs restitution of Defendant's unjust enrichment and unlawful gains;
 - H. Awarding to Plaintiffs their attorney's fees and costs of suit;
 - I. Awarding to Plaintiffs exemplary damages in the enlightened conscience of the jury;
- and
- J. Granting such other relief as the Court may determine just and equitable.

Dated: September 13, 2010

WINSTON & STRAWN LLP
By: /s/
Andrew P. Bridges
David S. Bloch
Matthew A. Scherb
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial by jury.

Dated: September 13, 2010

WINSTON & STRAWN LLP
By: /s/
Andrew P. Bridges
David S. Bloch
Matthew A. Scherb
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