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Attorneys for Plaintiffs
INTERSERVE, INC., dba TECHCRUNCH
and CRUNCHPAD, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

INTERSERVE, INC., dba TECHCRUNCH,)
a Delaware corporation, and CRUNCHPAD,)
INC., a Delaware corporation,)

Case No. CV-09-5812 RS (PVT)

Plaintiffs,

DECLARATION OF MATTHEW SCHERB
IN OPPOSITION TO FUSION GARAGE'S
MOTION TO DISMISS THE COMPLAINT

vs.

FUSION GARAGE PTE. LTD., a Singapore)
company,)

Date: May 13, 2010
Time: 1:30 P.M.
Place: Courtroom 3, 17th Floor

Defendant.

I, Matthew A. Scherb, declare:

1. I am an attorney at law duly licensed to practice before all the Courts of the State of California, and a member in good standing of the Bar of the United States District Court for the Northern District of California. I am an associate with the law firm of Winston & Strawn LLP, counsel of record in this action for Plaintiffs.

2. Exhibit A to this declaration is a true and correct copy of the document that Defendant produced in this litigation starting with Bates number FG0029727.

3. Exhibit B to this declaration is a true and correct copy of the document that Defendant produced in this litigation starting with Bates number FG0013268.

4. Exhibit C to this declaration is a true and correct copy of the document that Defendant produced in this litigation starting with Bates number FG0013395.

5. Exhibit D to this declaration is a true and correct copy of the document that Defendant produced in this litigation starting with Bates number FG0029940.

6. Exhibit E to this declaration is a true and correct copy of the document that Defendant produced in this litigation starting with Bates number FG0029960.

7. Exhibit F to this declaration is a true and correct copy of the document that Defendant produced in this litigation starting with Bates number FG0030068.

8. Exhibit G to this declaration is a true and correct copy of the document that Defendant produced in this litigation starting with Bates number FG0029927.

9. Exhibit H to this declaration is a true and correct copy of page 379 of the April 20, 2010 deposition transcript of Plaintiffs' Michael Arrington in this litigation.

10. Exhibit I to this declaration is a true and correct copy of the document that Defendant produced in this litigation starting with Bates Number FG0000250.

11. Exhibit J to this declaration is a true and correct copy of the document that Defendant produced in this litigation starting with Bates Number FG0030010.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 26th day of April, 2010, in San Francisco, California.

/s/
Matthew A. Scherb

SF:280453.2

EXHIBIT A

DECLARATION OF MATTHEW SCHERB
IN OPPOSITION TO FUSION GARAGE'S
MOTION TO DISMISS THE COMPLAINT

From: 'Chandrasekar Rathakrishnan' <chandra@fusiongarage.com>
To: Jonathan Bloom <JonathanBloom@mcgrathpower.com>; Kathryn Walker
<KathrynWalker@mcgrathpower.com>
Sent: 11/11/2009 3:30:14 AM
Attachments: Video Outline for Launch of JooJoo 11 09 09 edits.docx
Subject: Script with comments

Jon/Kate,

Here is the script with my comments. Will be awake by 11 am , should you want to discuss this.

As mentioned previously, this not re-edit but just comments.

Thanks,
Chandra

Video Outline/Script for Launch of JooJoo

1. Intro: Black background with white type

What if the Web was only 9 seconds away?

Then the second line is added

What if the Web was only 9 seconds away?

How different would your world be?

2. Note: Chandra appears on screen. His name and title appears on the bottom of the screen to identify him for a few moments. Chandra uses the teleprompter to help deliver the message.

Hello. I'm ChandrasekarRathakrishnan and I'm the CEO of Fusion Garage.

Fusion Garage started more than a year ago in Singapore with two questions that needed answers. What if a browser could boot without an OS? How different would the world be?

We introduced ourselves to Michael Arrington when he wondered aloud in his TechCrunch blog whether a dead simple and dirt cheap touch screen Web tablet to surf the Web could be built. His vision was simple. Build a device that connects to the Web quickly and easily. Data input would be through an iPhone-like touch screen keyboard. Its browser would be its operating system. It would run on Linux and Firefox and be built entirely on open source hardware. His dream was to turn it on, bypass any desktop interface and reach the Internet in seconds.

So that was his initial vision. Linux firefox and bypass desktop etc. I see where you are going with this. But we are now not running linux, firefox n bypassing the desktop. He was thinking of an hack while we had a system

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that was built from ground up for the purpose. A browser os. So we need to clearly not confuse his initial approach with what we ended up doing. Coz they are different. This para is confusing as it seem to insinuate that we have done linux and firefox.

Why? With Google docs, Gmail and Skype, and you have a device that can connect to everything that you use every day from social networks to photo sites, from email to document creation. The key would be to package this in a light-weight, portable device that's as thin as possible.

That's our vision. Do we need to have this up here and how we getting it thin was important ?

When we first met with Arrington we showed him how our technology could make his vision for the device he called the "CrunchPad" possible. You probably saw some of our initial prototypes in photos circulating around the blogosphere or on YouTube.

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Despite the pictures and videos, you've probably heard the speculation in the industry about whether this device can be built. Perhaps you've read how Popular Mechanics placed CrunchPad at the top of its list of the 10 Most Brilliant Products of 2009 and may have asked how an unreleased product could have received such accolades.

Y does the popular mechanics award and how we got that without launching be a topic of discussion here ?

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You've probably wondered when you would see this product and when you will be able to get your hands on one.

The wait is over. Fusion Garage has developed a device that not only fulfills the initial vision for the "CrunchPad" but takes it steps further in both hardware and software design. I'm here today to tell you that we are announcing the JooJoo

So this paragraph here seem to suggest that we took crunchpad concept and went further with it and did joojoo and are now announcing it. We have to keep in mind that, Mike is going to say crunchpad is dead or not going to make it or something to that effect. We need to clearly make the case that we could not agree on biz terms, and that crunchpad is now going to be called JooJoo. Not that this is an offshoot of crunchpad or to that effect. We need to clearly make the link that this is crunchpad with a different name.

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So just to summarize, we need to clearly link ourselves as the team behind crunchpad and all. Make the breakup clear and make sure that its made known that crunchpad will now launch under another name.

Note: Chandra picks up the JooJoo and the camera focuses in on the JooJoo.

Here it is — the JooJoo. It's real and it's the first touch screen device that allows you to connect to the Web in seconds.

You will be able to pre-order this device for \$XXX starting on December X. Orders for the first 2,000 devices will be taken from the Fusion Garage Website and the product will ship in the first quarter of 2010.

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This entire paragraph needs to be dropped. We just should say unveiling 2nd Dec.

Formatted: Superscript

3. Capabilities section: Black background with white type

What if a browser could boot in 9 seconds?

Note: The camera is directed at the JooJoo with Chandra's voice providing the commentary. Since the camera is not on Chandra, Chandra is reading from the script for provide the voiceover. Astop watch in the lower, right-hand corner to show how fast the browser boots up.

With just a browser at its core, the JooJoo connects you to your world of content, news, social media and web services quickly and easily through the Internet.

Note: Chandra starts his demo of the device by pressing the "on" button at which time a stop watch appears in the corner ticking off the seconds. The clock stops at 9 seconds. In the nine seconds that the device is booting up Chandra is starting to give the demo.

As you can see, our browser connects you directly to the Web in nine seconds. Your PC can take two minutes and even your iPhone can take about 30 seconds.

We should just stop here and go no further. And again make reference to just the dec 2nd unveiling.

Formatted: Superscript

Let me show you how the JooJoo can easily connect you to the Web.

Note: At this point the camera is still focused on the screen of the JooJoo and Chandra shows how to pull content from the Web.

By connecting to the thousands of applications on the Web, you can access content quickly, use apps like Google Docs to create documents, or use your Gmail account to send email.

4. Closing with the user experience: Black background with white type

How different would your world be?

Note: Chandra returns for the close.

The JooJoo is designed for anyone who lives on the Web and enjoys having access to the Internet wherever they are. JooJoo users can watch high-resolution videos and listen to music through headphone jacks or can access any content available on the Web, such as content on Hulu, YouTube or Pandora or other content that's saved to the cloud.

I look forward to telling you more about the JooJoo on December X when we start to take orders for the JooJoo.

Until then, thank you.

5. Closing Graphic: Black background with white type

www.fusiongarage.com

For more information on the JooJoo, check us out on our website
www.fusiongarage.com.

EXHIBIT B

DECLARATION OF MATTHEW SCHERB
IN OPPOSITION TO FUSION GARAGE'S
MOTION TO DISMISS THE COMPLAINT

October 6, 2009

Fusion Garage
120 Lower Delta Road
Cendex Building
#07-16
Singapore 169208
Attn: Chandrasekar Rathakrishnan

Dear Chandra;

We are excited to be working with you and look forward to getting our formal contract signed and focusing all of our efforts on the launch of the Fusion Garage tablet computer.

We understand from our discussion that the official start date for the Fusion Garage Launch Project is still being determined but will likely be the week of October 12. Per your direction, we have scheduled a planning meeting on October 9th between yourself, [REDACTED] and me at the McGrath/Power offices in San Jose, CA to brainstorm the Launch, discuss branding and develop a framework for the Launch that can be deployed beginning the week of October 12, 2009, pending your approval.

Our agency policy requires that we have written confirmation to begin work while the formal contract is being finalized. The purpose of this Pre-Engagement Letter is to acknowledge our agreement to work together while we await the formal start date of the Fusion Garage Launch Project and contract approval and to outline the key components of the working relationship and contract.

This Letter summarizes the financial parameters for both the October 9th meeting and the Fusion Garage launch project as we understand it today. We require your agreement to the parameters in this Letter prior to our meeting on October 9th.

October 9th Planning Meeting:

1. As agreed, our fee for the meeting on October 9th is [REDACTED]
2. If no decision is made to proceed on the overall launch project by Tuesday, October 13th, 2009, we will invoice you for the meeting fee of [REDACTED]
3. If you agree to commence the Fusion Garage Launch Project by Tuesday, October 13 and a contract signed by Friday, October 16th, the [REDACTED] meeting fee will be [REDACTED]

applied to the Fusion Garage Launch Project budget and [REDACTED]

4. All Invoices associated with the Planning Meeting are due upon receipt and payable in US dollars.

Fusion Garage Launch Project

The key components of our working relationship and Project contract as we know them today are as follows:

1. McGrath/Power is the agency of record for Fusion Garage. Agency CEO will lead the Fusion Garage program
2. [REDACTED] is a sub-contracted agency to M/P. Agency President [REDACTED] will lead the Launch Event portion of Fusion Garage program
3. The minimum fee for the Fusion Garage Launch Project fee will be [REDACTED]
4. The timeframe for the Fusion Garage Launch Project will not exceed 5 months from start date
5. Before beginning work, an advance payment in US dollars for the full Fusion Garage Launch Project fee and anticipated expenses must be deposited into a trust or escrow type account at a local US bank from which payments for services and anticipated expenses will be drawn. McGrath/Power will control the account and provide a monthly reconciliation of funds with corresponding invoices to Fusion Garage.

Thank you for your confidence in us. We look forward to working with you and the team.

Accepted and Agreed

Fusion Garage

By [Signature]
Chandrasekar Rathakrishnan

Date 6/10/09

Sincerely;

Jonathan Bloom

EXHIBIT C

DECLARATION OF MATTHEW SCHERB
IN OPPOSITION TO FUSION GARAGE'S
MOTION TO DISMISS THE COMPLAINT

From: 'Jonathan Bloom' <JonathanBloom@mcgrathpower.com>
Cc: Chandra <chandra@fusionsgarage.com>
Sent: 10/19/2009 2:13:17 PM
Attachments: image003.jpg; image004.jpg; image001.gif; image002.jpg; Oprah Update 10.17.09.docx
Subject: Summary Of Ideas To Date

Chandra,

As I mentioned, [REDACTED] and I met a few times last week to discuss the preliminary framework for the following:

1. Arrington Positioning/Initial News Cycle
2. Overall Launch Approach
3. [REDACTED]
4. Branding/Product Naming
5. Apple Threat
6. CES

(NOTE: We are using JuJu as the working company and product name for the purposes of this discussion.)

While we did not develop a full PR plan, per se, we did agree on several paths moving forward and would like to talk with you jointly when [REDACTED] returns from a second trip (he went on to a client meeting in St. Kitts and should be back by the weekend).

The following should give you a top line of where we are at and provide you and I with a jumping off point for our discussion today at 3:30. If you are in agreement with us, we will move forward with a plan.

Time is running short – we need to begin work ASAP and I need us to work through the contract as well.

Arrington Positioning – Company Launch:

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The Arrington issue must be dealt with first – in fact, we view it as the beginning of the company launch cycle.

Approach: We would like to use every appropriate online/offline reporter (eliminating any that may be overly friendly with Arrington) that has written about the product in detail to date as vehicles to establish that you are now the owner of the product, to debut your company and begin to demo the product in person. We would also like to meet with analysts in tandem with the first wave of reporters. On the tone of these meetings, [REDACTED] and I recommend overcompensating on the Arrington issue – going as far as possible to compliment his vision while also taking polite credit for the actual design work. The goal here is to stay as far away as possible from any in-print arguments with him and, instead, simply say that we “acted in good faith but a firm business arrangement could not be met. Michael’s vision lives on through JuJu.”

Desired End Result: News stories highlighting our perspective on the Arrington issue, the announcement of JuJu as a company and third party validation for the stories via analysts.

Timeline: Within 2 weeks; once positioning is approved and product is fully demonstrable with units for review

Overall Product Launch Approach:

We fundamentally agree that the product must get visible immediately with multiple activities ongoing in tandem to kick off the pre-order period and beat Apple to the punch.

Approach:

Part One:

We believe that we must undertake offline and online activities simultaneously with a blend of traditional activities (reviews, mainstream news announcement of the product’s availability via pre-order) and online (community building, blogger outreach, and “special” activities to drive traffic to your site for pre-orders). Bill and I firmly agree that a major consumer event should be considered only after the product receives the first one or two waves of visibility. We need product for reviews and other demonstrations ASAP.

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Part Two:

One of the "special activities" we discussed was enlisting "Social Media Celebrities" and put the JuJu SM (SM=social media; see branding section below) in their hands to get their endorsement. To make this work, we would tie in with a well known charity that benefits children (perhaps a literacy organization) and use the charity hook to get the celebrities involved. We would seed the product to these "celebrities" and then hold a charity fundraising event (probably in LA or New York) to launch the product to the broader social media audiences. However, the key to the success of this would be a comprehensive on-line and social media campaign that gets people talking about the JuJu SM and the great user experience as a build up to the event. We would treat it more like a Hollywood movie premier than a typical product launch. Obviously, this is a large-scale undertaking and would require planning time.

Timeline: Within 4-8 weeks for Part One activities; 2-4 months for Part Two special idea

See attached memo from [REDACTED]. We both like your idea but we both also believe that the chances are very, very slim that this will happen this year. Let's give it a shot but not count on it definitively.

Timeline: ASAP

Branding:

We went over our notes from our in-person discussion and came up with the following:

Key product attributes:

Ease of use
Speed (boots fast)
Attainable/broad appeal

Positioning idea:

The Internet is all about content, and JuJu is the perfect device for interacting with on-line content and participating in social media activities. We would position it as the first device that is *built specifically for the needs of the "socially connected" and how they interact with on-line content.*

Possible product naming architecture:

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u SM (Social Media/wi-fi)
u SM G3 (broadband

This provides the opportunity to create additional products in the future that follow the same naming convention, but gives a fair amount of flexibility in those options.

Summary:

As you and I have not had a chance to connect and update each other on Arrington discussions, product availability, etc., we can't really go much farther on planning. Once we talk today, we can determine where we are at and appropriate next steps.

Best,

Jon

+++++

Jonathan Bloom

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333 W. San Carlos Street #900

San Jose, CA 95110

☎ (408) 727-0351 ext 760

☎ (408) 200-3760 direct

☎ (408) 885-9317 fax

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ner Agency, The Worldcom Group

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EXHIBIT D

DECLARATION OF MATTHEW SCHERB
IN OPPOSITION TO FUSION GARAGE'S
MOTION TO DISMISS THE COMPLAINT

From: 'Jonathan Bloom' <JonathanBloom@mcgrathpower.com>
To: Chandrasekar Rathakrishnan <chandra@fusiongarage.com>
Sent: 11/17/2009 6:10:12 AM
Subject: RE: Email note to arrington- pls reply asap as I am hoping to send this out no later than 7 am PST on Tues. (today depending on when u see this note)

Reading this now

From: Chandrasekar Rathakrishnan [mailto:chandra@fusiongarage.com]
Sent: Monday, November 16, 2009 9:50 PM
To: Jonathan Bloom
Cc: Kathryn Walker
Subject: Email note to arrington- pls reply asap as I am hoping to send this out no later than 7 am PST on Tues. (today depending on when u see this note)

Jon,

the note below the line is intended to be from the investor to me. while the note immediately below is the one that I send along with the forwarded note from investors.

pls let me know what you think asap as I got to send this out by 6 or 7 pm on Tues morning. As u can see from arrington's last mail, its impossible to hold out any longer.

thanks and sorry for getting this to u later than expected.

Mike,

no good news to update. updated hardware is still on its way , so that's a timing issue. got delayed at taiwan's end.

but the bigger issue is the required investment.

I had a conf call with Bruce last evening EST (An existing shareholder who is looking to co-invest and is a friend of the other 2 new investors who were to be part of the new round).

and it was not a good call. Pls see his email note to me (below) for the details.

I am in predicament and its unenviable.

We need the investment but they are not willing to proceed on the current structure as proposed by CrunchPad.

I have spent the night deliberating on this and I cannot substantiate my arguments against the issues raised.

I know the counter proposal from Bruce is going to upset you greatly but I have no choice but to put it forth.

They are pretty resolute and its extremely hard for me to ignore my fiduciary responsibility.

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Unless there is an alternative funding available at the right terms , its hard for me to turn this down.

Given its importance, I am heading to NY to meet with them to discuss the situation further but doubt their position will change significantly.

I will be in the air for 6 hours or so shortly and out for circulation during that time. Given the urgency of the matter, pls let me have your thoughts.

Thanks,
Chandra

So. A note to recap our conversation earlier.

The shareholders are not at all happy with the latest "perceived" offer from Techcrunch.

There is no official offer letter to speak of despite you suggesting it was forthcoming on several occasions.

The offer derived from the cap table provided for from their end has not changed from the last "offer" in May.

Your shareholders, team and you have taken all the risk to date including all related operational and developmental costs of the Crunchpad.

They have done nothing of note with the exception of "marketing". Granted, Arrington's writing has created awareness but what's that worth

without the execution and product to back it ? We were prepared to take an offer of 12 % last dec. At that stage, you argued about the value

Arrington and team would bring to table and that we were still early in our development.

You were clear that the merger would be for the best of both outfits. However things has not gone according to plan, has it ?

We heard nothing from them for 4 months and the project was dead till u showed up in their offices in April with the then prototype build of the

hardware and software. You brought the project from dead by assuming all responsibility, leadership and risk and working the whole assortment of

hardware, software, design and packaging.

The shareholders argued at that stage , that the offer of 12 % was out of hand given that we had done all the work and deserved at least 50 % if not more.

You came back with an offer of 25 % and argued in their favor and suggested, they will bring connections, funding , marketing and help bring this to market faster.

Again, none of that had happened. In Dec 08, they were to assume all responsibility except for software , which we

brought to the table.

But with the exception of blog posts on Techcrunch, they have done nothing. They might have tried but if trying was good enough, then there would be way more winners

in the world of start-ups than there are.

In fact, I would argue that they have delayed your own go to market because of the time lost in trying to make all of this work.

And from the general updates, that we have been getting from you over the last 6 months, we have not gained any confidence whatsoever that they have the necessary business

know-how to get this to market and win.

Their reluctance to assume responsibility of the project affirmatively from the beginning has been appalling.

Even to this date, there is no contract whatsoever and its easy for them to walk if "shit" hits the fan.

So in essence, you do all the work , assume all risk and merge the company for a song when the time is right as dictated by them.

And , you are expected to bring in the funding as well. There is something very wrong with this "picture".

They wanting control despite doing nothing is just embarrassing.

What gives you the confidence that if they could not execute thus far, that they are going to in the future ?

Past performance though not a be-all and end-all , its still a solid indicator.

I am not disputing that Arrington and Techcrunch do have their value. I am disputing the pricing of this value.

I am prepared to invest along with my 2 friends at the 10 million pre-money.

This is because we recognize the potential .

At that valuation and by giving up control to Arrington and team, you are suggesting that they are bringing a value of 5 million to the table.

And, this is excluding the massive dilution everyone here takes.

That is just ridiculous. Marketing valued at 5 million ? Even 10 % (Valued at 1 million) is rich.

You could get so much more value for the buck if you were to spend that kind money for marketing in other ways.

I appreciate that you respect Arrington and his friendship. But that is no reason to do a bad deal.

He clearly is looking after his own interests, so why shouldn't you do the right thing for the company ?

I have made it clear to you that this is not just a bad deal. Its a non-starter.

So as suggested, the existing shareholders are rejecting the deal outright.

If you decide to proceed with this bad deal, I will not co-invest resulting in the 2 new investors pulling out as well.

We are prepared to back you and your team. We see the value of Arrington and Techcrunch from a marketing perspective as well.

So I suggest that we structure the deal with Crunchpad differently. We grant share options in FusionGarage to Arrington and team.

This should not exceed a total of 10 % of the enlarged capital of FusionGarage.

In exchange, we have Arrington assume the role of visionary/evangelist/marketing head and acquire the rights to use the Crunchpad brand and name.

This option grant should be done before the new round is assumed. This ensures new investors do not get diluted.

So in essence, I am proposing that we turn the deal on its head and do a 180 degree reversal of the original structure.

This is the reverse of Crunchpad buying FusionGarage. This makes the most sense given the almost exclusive role FusionGarage has played in

furthering this and recognizes the continued risk and responsibility that it has to assume on a on-going basis.

I understand you are of the opinion that the above proposal may not hold with Arrington and its conceivable that he shuts down the Crunchpad initiative.

I have made it clear that we are willing to back and invest in FusionGarage with or without Arrington and Crunchpad.

I want to be clear that the above proposal has the unequivocal support of the existing shareholders and the new investors.

Time is running out and you need to understand that we need to launch with or without Crunchpad asap.

The investment is ready and the documents can be signed off quickly allowing you to focus on execution.

Hence, I have to emphasize that you need this resolved either way by end of this weekend or risk the possibility of the potential investment dissipating.

You are the founder and CEO of FusionGarage. I trust that you will carry out your fiduciary duty as expected.

I have to urge you to do the right thing by the Company.

I am available to meet in New York tomorrow afternoon. Eric is here as well. Call me when you get into New York.

Let's discuss in greater detail then.

Best.

EXHIBIT E

DECLARATION OF MATTHEW SCHERB
IN OPPOSITION TO FUSION GARAGE'S
MOTION TO DISMISS THE COMPLAINT

From: 'Kathryn Walker' <KathrynWalker@mcgrathpower.com>
To: Jonathan Bloom <JonathanBloom@mcgrathpower.com>; Chandrasekar Rathakrishnan <chandra@fusiongarage.com>
Sent: 11/17/2009 6:46:52 AM
Subject: RE: Pls peruse this version instead -----Fwd: Rejection of Arrington's "offer"

Chandra and Jon,

I am in agreement with the points that Jon made below on the overall tone of the note from Bruce – in particular with the idea that if the note could be toned down a bit it may be of assistance.

I also thought that the note from Bruce (in addition to being in a different font/font color) needs to be structured a bit differently. Everyone has their own personal style in their structure of emails and my concern is that the note from Bruce is written more in Chandra's style than in something that would be attributed to a third party – this is in things like the line spacing/break of graphs, etc.

If we're cutting and pasting the note without a sending history, I think you're at least going to have to include some parts of the header, ie Bruce's full name with email address removed, a date sent and a subject line.

To echo Jon's previous email, I am happy to assist as needed. I know that you're in a time crunch, so please let us know if you'd like us to directly edit text, etc.

Best,

Kate

From: Jonathan Bloom
Sent: Tuesday, November 17, 2009 6:30 AM
To: Chandrasekar Rathakrishnan
Cc: Kathryn Walker
Subject: RE: Pls peruse this version instead -----Fwd: Rejection of Arrington's "offer"

1. You need to change the front between the two emails – it is unlikely that you and your investor use identical fonts
2. I assume you are not cutting and pasting "Bruce's" email to/from line into his note to you because you don't want to drag his name into this mess, correct? I think without it, though, it opens you up to speculation that you are making this up – does he know Bruce, ever heard you mention him in the past? Does he know ETA? Do they have a web presence? If so, they will likely get pulled in any way and it would be better if the note looks like it was actually

sent to you

3. I would take any references to MA out of quotes (such as "marketing") – it sounds via the quotes like Bruce is mocking him and that isn't good
4. The overall tone of Bruce's note is really, really negative. Is that the way the guy is in real life? Does it have to be that harsh?

Overall, the points are made in Bruce's note but it seems to go on a bit too long and it rambles somewhat. As I don't know the guy's personality and as I don't know if MA knows/has spoken to Bruce, it is difficult for me to determine if the note is within character or not. I would recommend, though, shortening it, making it sound less attack-like on MA and more "it's just business and this isn't good business". if you can give me a bit more time, I could do the editing myself but I know you want this out by 7 this morning.

My phone is turned off as the kids are still sleeping but I am on email as you can see. Let me know what you want to do.

KATE: any other comments?

From: Chandrasekar Rathakrishnan [mailto:chandra@fusiongarage.com]
Sent: Tuesday, November 17, 2009 1:40 AM
To: Jonathan Bloom
Cc: Kathryn Walker
Subject: Pls peruse this version instead -----Fwd: Rejection of Arrington's "offer"

Jon,

Pls peruse this version instead. Cleaned up after another read. below is my note to mike n below that is the "note from my investor to me" that is to be passed on.

thanks

Mike,

no good news to update. updated hardware is still on its way , so that's a timing issue. got delayed at taiwan's end.

but the bigger issue is the required investment.

I had a conf call with Bruce last evening EST (An existing shareholder who is looking to co-invest and is a friend of the

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other 2 new investors who were to be part of the new round).

and it was not a good call. Pls see his email note to me (below) for the details.

I am in predicament and its unenviable.

We need the investment but they are not willing to proceed on the current structure as proposed by CrunchPad.

I have spent the night deliberating on this and I cannot substantiate my arguments against the issues raised.

I know the counter proposal from Bruce is going to upset you greatly but I have no choice but to put it forth.

They are pretty resolute and its extremely hard for me to ignore my fiduciary responsibility.

Unless there is an alternative funding available at the right terms , its hard for me to turn this down.

Given its importance, I am heading to NY to meet with them to discuss the situation further but doubt their position will change significantly.

I will be in the air for the next couple of hours or so shortly and out for circulation during that time. Given the urgency of the matter, pls let me have your thoughts.

Thanks,
Chandra

Hello Chandra,

Thanks for taking the time to discuss things. I just wanted to drop a note to recap our conversation.

The shareholders are not happy with the supposed "offer" from Techcrunch. There is no official offer letter to speak of despite you suggesting it was forthcoming on several occasions.

The offer derived from the cap table provided by them has not changed from the last "offer" in May.

We as your shareholders, your team and you have taken all the risk to date including ALL related operational and developmental costs of the device.

They have done nothing of note with the exception of "marketing". Granted, Arrington's writing has created awareness but what's the value of that without the execution and product to back it ? We were prepared to consider an offer of 12 % last December. At that stage, you argued about the value Arrington and his team would bring to the table and that we were still early in our development.

You were convinced that a merger would be the best way to move forward. We had our reservations then and our reservations are proving correct. Things have not gone according to plan have they?

We heard nothing from them for 4 months and the project was dead to them until you showed up in their offices in April with the then prototype build of the hardware and software. You brought the project from dead by assuming all responsibility, leadership and risk and working the whole assortment of

hardware, software, design and packaging. And who paid for it all? We the investors/ shareholders.

The shareholders argued at that stage, that the offer of 12 % was out of hand given that we had done all the work and deserved at least 50 % if not significantly more.

You came back with an offer of 25 %, argued until you were blue in the face on their behalf suggesting they will bring connections, funding, marketing and help bring this to market faster. Again, none of that has happened. In the mean time, in order to keep the project alive the shareholders have had to continue to invest more and more funds to keep things going. In Dec 08, they were to assume all responsibility except for software.

But with the exception of blog posts on Techcrunch they have done nothing. They might have tried but if trying was good enough, then there would be more success stories in the world of start-ups wouldn't there?

In fact, I would argue that they have been a detriment to this project by delaying your chance to go to market because of the time lost trying to make all of this work. And from the general updates, that we have been getting from you over the last 6 months, we have not gained any confidence whatsoever that they have the necessary business acumen, skill sets, and contacts to get this to the market and win.

Their reluctance to assume responsibility of the project affirmatively from the beginning has been appalling. To date, there is no contract whatsoever and it's easy for them to walk should things implode or should we fail miserably.

So in essence what you are saying is that you should do all the work, the shareholders assume all risk, you merge the company and Mike and his buddies hold substantially more shares than the original investors? Who are they to dictate terms? And, you are expected to bring in the funding as well? Isn't there something very wrong with this picture? Why would they ask for a controlling stake in the company when have invested nothing and contributed nothing? What on earth are they thinking?

What gives you the confidence that if they could not execute thus far, that they are going to in the future? While past performance is not a predictor of future performance, everything they have done to date gives me little confidence.

I am not disputing that Arrington and Techcrunch do have some value. I am disputing the pricing of this value. I am prepared to invest along with my 2 friends at the 10 million pre-money. This is because we recognize the potential.

At that valuation and by giving up control to Arrington and team, you are suggesting that they are bringing a value of 5 million to the table.

And, this is excluding the massive dilution everyone here takes.

That is just ridiculous. Marketing valued at 5 million? Even 10 % (Valued at 1 million) is rich. You could get so much more value for the buck if you were to spend that kind of money for marketing in other ways.

I appreciate that you respect Arrington and his friendship. But that is no reason to do a bad deal. He clearly is looking after his own interests. Shouldn't you look after your interests and more importantly the interest of the company and its shareholders? Shouldn't you do the right thing for the company?

I have made it clear to you that this is not just a bad deal. It's a non-starter. So as mentioned, the existing shareholders are rejecting the deal outright. If you decide to proceed with this bad deal, I will not co-invest resulting in the 2 new investors pulling out as well.

We are prepared to back you and your team. And despite everything, we still acknowledge that Arrington and Techcrunch brings some value.

So I suggest that we structure the deal with Crunchpad differently. We grant share options in FusionGarage to Arrington and team.

This should not exceed a total of 10 % of the enlarged capital of FusionGarage. This is non negotiable. Don't come back to me asking for more because it will be this percentage or less. Not more. We've wasted enough time on this.

If he agrees to our terms, we have Arrington assume the role of visionary/evangelist/marketing head and acquire the rights to use the Crunchpad brand and name. Personally I don't think the name is all that important but you seem to be somewhat attached to the name.

This option grant should be done before the new round is assumed. This ensures new investors do not get diluted.

So we are proposing that we turn the deal on its head and do a reversal of the original structure. This makes the most sense given the virtually exclusive role FusionGarage has played in furthering this and recognizes the continued risk and responsibility that it has assumed to this point.

I understand you are of the opinion that the above proposal may not hold with Arrington and I think it's conceivable that he walks away or kills the project.

I have now made it clear that we are willing to back and invest in FusionGarage with or without Arrington and Crunchpad. The above proposal has the unequivocal support of the existing shareholders and the new investors.

Time is running out and you need to understand that we need to launch with or without Crunchpad asap. The investment is ready and the documents can be signed off quickly allowing you to focus on execution.

Hence, I have to emphasize that you need this resolved by the end of this weekend or risk the possibility of the potential investment dissipating.

You are the founder and CEO of FusionGarage. I trust that you will carry out your fiduciary duty as expected.

I have to urge you to do the right thing for the Company.

I am available to meet in Miami tomorrow afternoon. Eric is here as well. Call me when you get into Miami.

Let's discuss in greater detail then.

Cheers.

Bruce.

Hello Bruce ,

the note below the line is intended to be from you to me. while the note immediately below is the one that I send along with the forwarded note from investors.

pls let me know what you think asap as I got to send this out by 6 or 7 am PST on Tues morning.

thanks and sorry for getting this to u later than expected.

So. A note to recap our conversation earlier.

The shareholders are not at all happy with the latest "perceived" offer from Techcrunch.

There is no official offer letter to speak of despite you suggesting it was forthcoming on several occasions.

The offer derived from the cap table provided for from their end has not changed from the last "offer" in May.

Your shareholders, team and you have taken all the risk to date including all related operational and developmental costs of the Crunchpad.

They have done nothing of note with the exception of "marketing". Granted, Arrington's writing has created awareness but what's that worth

without the execution and product to back it ? We were prepared to take an offer of 12 % last dec. At that stage, you argued about the value

Arrington and team would bring to table and that we were still early in our development.

You were clear that the merger would be for the best of both outfits. However things has not gone according to plan, has it ?

We heard nothing from them for 4 months and the project was dead till u showed up in their offices in April with the then prototype build of the

hardware and software. You brought the project from dead by assuming all responsibility, leadership and risk and working the whole assortment of

hardware, software, design and packaging.

The shareholders argued at that stage , that the offer of 12 % was out of hand given that we had done all the work and deserved at least 50 % if not more.

You came back with an offer of 25 % and argued in their favor and suggested, they will bring connections, funding , marketing and help bring this to market faster.

Again, none of that had happened. In Dec 08, they were to assume all responsibility except for software , which we

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brought to the table.

But with the exception of blog posts on Techcrunch, they have done nothing. They might have tried but if trying was good enough, then there would be way more winners

in the world of start-ups than there are.

In fact, I would argue that they have delayed your own go to market because of the time lost in trying to make all of this work.

And from the general updates, that we have been getting from you over the last 6 months, we have not gained any confidence whatsoever that they have the necessary business

know-how to get this to market and win.

Their reluctance to assume responsibility of the project affirmatively from the beginning has been appalling.

Even to this date, there is no contract whatsoever and its easy for them to walk if "shit" hits the fan.

So in essence, you do all the work , assume all risk and merge the company for a song when the time is right as dictated by them.

And , you are expected to bring in the funding as well. There is something very wrong with this "picture".

They wanting control despite doing nothing is just embarrassing.

What gives you the confidence that if they could not execute thus far, that they are going to in the future ?

Past performance though not a be-all and end-all , its still a solid indicator.

I am not disputing that Arrington and Techcrunch do have their value. I am disputing the pricing of this value.

I am prepared to invest along with my 2 friends at the 10 million pre-money.

This is because we recognize the potential .

At that valuation and by giving up control to Arrington and team, you are suggesting that they are bringing a value of 5 million to the table.

And, this is excluding the massive dilution everyone here takes.

That is just ridiculous. Marketing valued at 5 million ? Even 10 % (Valued at 1 million) is rich.

You could get so much more value for the buck if you were to spend that kind money for marketing in other ways.

I appreciate that you respect Arrington and his friendship. But that is no reason to do a bad deal.

He clearly is looking after his own interests, so why shouldn't you do the right thing for the company ?

I have made it clear to you that this is not just a bad deal. Its a non-starter.

So as suggested, the existing shareholders are rejecting the deal outright.

If you decide to proceed with this bad deal, I will not co-invest resulting in the 2 new investors pulling out as well.

We are prepared to back you and your team. We see the value of Arrington and Techcrunch from a marketing perspective as well.

So I suggest that we structure the deal with Crunchpad differently. We grant share options in FusionGarage to Arrington and team.

This should not exceed a total of 10 % of the enlarged capital of FusionGarage.

In exchange, we have Arrington assume the role of visionary/evangelist/marketing head and acquire the rights to use the Crunchpad brand and name.

This option grant should be done before the new round is assumed. This ensures new investors do not get diluted.

So in essence, I am proposing that we turn the deal on its head and do a 180 degree reversal of the original structure.

This is the reverse of Crunchpad buying FusionGarage. This makes the most sense given the almost exclusive role FusionGarage has played in

furthering this and recognizes the continued risk and responsibility that it has to assume on a on-going basis.

I understand you are of the opinion that the above proposal may not hold with Arrington and its conceivable that he shuts down the Crunchpad initiative.

I have made it clear that we are willing to back and invest in FusionGarage with or without Arrington and Crunchpad.

I want to be clear that the above proposal has the unequivocal support of the existing shareholders and the new investors.

Time is running out and you need to understand that we need to launch with or without Crunchpad asap.

The investment is ready and the documents can be signed off quickly allowing you to focus on execution.

Hence, I have to emphasize that you need this resolved either way by end of this weekend or risk the possibility of the potential investment dissipating.

You are the founder and CEO of FusionGarage. I trust that you will carry out your fiduciary duty as expected.

I have to urge you to do the right thing by the Company.

I am available to meet in New York tomorrow afternoon. Eric is here as well. Call me when you get into New York.

Let's discuss in greater detail then.

Best.

EXHIBIT F

DECLARATION OF MATTHEW SCHERB
IN OPPOSITION TO FUSION GARAGE'S
MOTION TO DISMISS THE COMPLAINT

From: 'Jonathan Bloom' <JonathanBloom@mcgrathpower.com>
To: Chandrasekar Rathakrishnan <chandra@fusiongarage.com>
Sent: 11/17/2009 4:43:15 PM
Subject: RE: no good news

What time are you planning on speaking to him?

From: Chandrasekar Rathakrishnan [mailto:chandra@fusiongarage.com]
Sent: Tuesday, November 17, 2009 4:46 PM
To: Jonathan Bloom
Subject: Re: no good news

yeah am sure he does . sure being in miami wld have been fun!

On Wed, Nov 18, 2009 at 8:30 AM, Jonathan Bloom <JonathanBloom@mcgrathpower.com> wrote:

Well, Bruce expects it right? If so, it's all expected. Relax, you're on you're way to Miami!

From: Chandrasekar Rathakrishnan [mailto:chandra@fusiongarage.com]
Sent: Tuesday, November 17, 2009 4:33 PM

To: Jonathan Bloom
Subject: Re: no good news

yeah :)

mike sent that mail to bruce as well. that last mail from mike.

cheers,
chandra

On Wed, Nov 18, 2009 at 8:27 AM, Jonathan Bloom <JonathanBloom@mcgrathpower.com> wrote:

Deep breaths....you knew it would be like this, ride with it...it's predictable.

What do you mean Mike CCing Bruce?

From: Chandrasekar Rathakrishnan [mailto:chandra@fusiongarage.com]

Sent: Tuesday, November 17, 2009 4:29 PM

To: Jonathan Bloom

Subject: Re: no good news

am actually pissed now.

heather's tone, mike ccing bruce n sayin i wont let own a piece of the business etc.

On Wed, Nov 18, 2009 at 8:28 AM, Chandrasekar Rathakrishnan <chandra@fusiongarage.com> wrote:

no. think its a threat. even if he did try , no basis.

but i can see him exploding once he knows no course of action.

On Wed, Nov 18, 2009 at 8:22 AM, Jonathan Bloom <JonathanBloom@mcgrathpower.com> wrote:

You concerned about legal action?

From: Chandrasekar Rathakrishnan [mailto:chandra@fusiongarage.com]

Sent: Tuesday, November 17, 2009 4:25 PM

To: Jonathan Bloom

Subject: Re: no good news

none watsoever.

everything been verbal...emails has been me updating on development but no ideas or anything at all with any of their ideas being shared via email etc.

On Wed, Nov 18, 2009 at 8:19 AM, Jonathan Bloom <JonathanBloom@mcgrathpower.com> wrote:

No trademarks, contracts, written agreements or inferences in emails, right?

From: Chandrasekar Rathakrishnan [mailto:chandra@fusiongarage.com]

Sent: Tuesday, November 17, 2009 4:22 PM

To: Jonathan Bloom

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Subject: Re: no good news

tats wat i am wondering!aside from a name, nothing else!

On Wed, Nov 18, 2009 at 8:16 AM, Jonathan Bloom <JonathanBloom@mcgrathpower.com> wrote:

What "rights?"

From: Chandrasekar Rathakrishnan [mailto:chandra@fusiongarage.com]

Sent: Tuesday, November 17, 2009 4:06 PM

To: Jonathan Bloom; Kathryn Walker

Subject: Fwd: no good news

fyi...now using threats...getting fun....

----- Forwarded message -----

From: Michael Arrington <editor@techcrunch.com>

Date: Wed, Nov 18, 2009 at 7:59 AM

Subject: Re: no good news

To: heather harde <heather@techcrunch.com>, drlee@pacific.net.sg

Cc: Chandrasekar Rathakrishnan <chandra@fusiongarage.com>

Chandra,

We can discuss when you return.

It's clear that your investors do not understand that we created this product jointly, and there is no way for either of us to bring it to market without the other party. We'd obviously take legal action against you and any manufacturer of the device if you were to move forward without us in violation of our rights. And regardless, there is no path to success in my opinion even if we were to allow you to do so.

What's most disconcerting to me is the tone of the email. I'd never do business with this person, and I'd never allow him to own any part of any project I work on.

Mike

On Nov 17, 2009, at 3:50 PM, Heather Harde wrote:

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Chandra,

As you know, I normally defer primary communications on CrunchPad to Michael, since he is founder and CEO of the business. However, Bruce Lee's letter below is so uninformed, inaccurate and insulting that I'm at a total loss for your business purpose in sharing it. Your cover note equally damaging. Strategically, operationally, financially completely wrong. Irreparable for me.

Heather

From: Chandrasekar Rathakrishnan [mailto:chandra@fusiongarage.com]

Sent: Tuesday, November 17, 2009 2:50 PM

To: Michael Arrington

Cc: Heather Harde

Subject: no good news

Mike,

no good news to update. updated hardware is still on its way , so that's a timing issue. friday will be a challenge now. got delayed at taiwan's end. but the bigger issue is the required investment.

I had a conf call with Bruce last night. (An existing shareholder who is looking to co-invest and is a friend of the 2 new investors who were to be part of the new round).

and it was not a good call. Pls see his email note to me (below) for the details. I am in predicament and it's unenviable.

We need the investment but they are not willing to proceed on the current structure as proposed by CrunchPad.

I have spent the night deliberating on this and I cannot substantiate my arguments against the issues raised.

I know the counter proposal from Bruce is going to upset you greatly but I have no choice but to put it forth.

They are pretty resolute and it's extremely hard for me to ignore my fiduciary responsibility.

Unless there is an alternative funding available at the right terms , it's hard for me to turn this down.

Given its importance, I am heading to Miami to meet with them to discuss the situation further but doubt their position will change significantly.

I am going to get on my connection flight to Miami in the next few minutes and
I will be in the air for the next couple of hours or so and out of circulation during that time.
Given the urgency of the matter, pls let me have your thoughts.

Thanks,
Chandra

----- Forwarded message -----

From: <drlee@pacific.net.sg>

Date: Tue, Nov 17, 2009 at 11:51 PM

Subject: Rejection of Arrington's "offer"

To: chandra@fusiongarage.com

Hello Chandra,

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Thanks for taking the time to discuss things. I just wanted to drop a note to recap our conversation.

As I mentioned to you, the shareholders have expressed concern that there is no formal offer letter from TechCrunch. They are also not happy with the verbal offers that you have relayed. We had been prepared to consider an offer of 12% last December based on your comments about the value that Michael Arrington and his team would add – coupled with the fact that we were still early in the development of the device and your recommendations that a merger would be the best way to move forward.

However, since that time, we as your shareholders (and you/your development team) have assumed all related operational and developmental costs of the device. We have told you at several points that based on our significant investments, we would be willing to entertain an offer of 50%, if not significantly more. You have argued an offer of 25% on their behalf until you were blue in the face – suggesting that Michael Arrington/TechCrunch would bring connections, funding and marketing valuable in bringing the device to market faster.

We appreciate that Arrington and his team have generated marketing/awareness via their blog posts and relationships in the technology community over the last year. However, we feel strongly that this awareness is of minor value without a product to back it up – a product funded completely by your investors and shareholders and developed by your team at Fusion Garage with no formal contract in place with Arrington/TechCrunch.

The dialogue that we have been having feels like you are saying that Fusion Garage should do all the work, the shareholders should assume all risk, then you merge the company and Arrington/TechCrunch hold substantially more shares than the original investors? Given their lack of formal commitment to the development of this device, we feel that it is not for them to dictate terms. Why would we grant them a controlling stake in the company when they have invested nothing and have contributed nothing tangible?

I am not disputing that Arrington and TechCrunch do have some value. However, I am disputing the pricing of this value. I am prepared, along with my two friends, to invest at the 10 million pre-money. This is because we recognize the potential of what Fusion Garage is developing. However, at that valuation and by giving up control to Arrington and team, you are suggesting that they are bringing a value of 5 million to the table. Marketing valued at 5 million? You could get so much more value for the buck if you were to spend that kind money for marketing in other ways.

I appreciate that you respect Arrington and value his friendship, but from my perspective the agreement that you have presented to me demonstrates that he is looking after his own interests. I, along with your other shareholders, look to you to protect our interests. Because of this, we are rejecting the deal that you have presented to us outright. If you decide to proceed with this deal as it was presented to us, I will not co-invest resulting in the two new investors pulling out as well.

We still acknowledge that Arrington and TechCrunch bring some value to your business endeavor. If you would like to continue the relationship with Arrington/TechCrunch, I am proposing that we structure the deal differently. We would grant share options in Fusion Garage to Arrington and team, not to exceed a total of 10 % of the enlarged capital of the company. The percentage would be non-negotiable.

If he agrees to our terms, we would have Arrington assume the role of visionary/evangelist/marketing head and Fusion Garage would acquire the rights to use the Crunchpad brand and name. Personally, I don't think the name is all that important but you seem to be somewhat attached to the name.

This option grant would be done before the new round is assumed. This ensures new investors do not get diluted. I understand you are of the opinion that the above proposal may not hold with Arrington, but we are willing to back and invest in Fusion Garage with or without Arrington and Crunchpad. The above proposal has the unequivocal support of the existing shareholders and the new investors.

Collectively, we all agree that time is running out. We strongly believe that we need to launch with or without Arrington/TechCrunch ASAP. The investment is ready and the documents can be signed off quickly allowing you to

focus on execution. Hence, I have to emphasize that you need this resolved by the end of this weekend or risk potential investment dissipating.

You are the founder and CEO of Fusion Garage. I trust that you will carry out your fiduciary duty as expected. I am available to meet in Miami tomorrow afternoon. Eric is here as well. Call me when you get into Miami.

Let's discuss in greater detail then.

Bruce

EXHIBIT G

DECLARATION OF MATTHEW SCHERB
IN OPPOSITION TO FUSION GARAGE'S
MOTION TO DISMISS THE COMPLAINT

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

2009/11/16 Jonathan Bloom <JonathanBloom@mcgrathpower.com>

Thoughts?

From: Ursula Herrick
Sent: Sunday, November 15, 2009 8:40 AM
To: Jonathan Bloom; Kathryn Walker
Subject: FW: Michael Arrington Discusses Status of the CrunchPad

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Jon, Kate,

We need to consider Arrington's comments for our pitch to the media and our launch approach.

I am probably the only one seeing it this way but I continue to think in the back of my mind that Arrington is "keeping Chandra warm" and may have another company doing similar work to Fusion Garage. Reason is that in this latest Gillmor Gang conversation he acts as though he has been involved in the past month in enhancing the software and we hear from Chandra that Arrington has been MIA on it. Either Arrington is stringing Chandra along as a fallback position in case his other device does not come through or that Arrington is truly out of touch on Chandra's progress and is merely talking about it in public with limited information.

It seems to me that Arrington is a smart guy and he has seen the questions posed by *Wired* and others. Wouldn't he be connected with Chandra more closely if an announcement that he talks about coming shortly is truly happening? What would this announcement be if Chandra doesn't know about it? If there is truly an Arrington announcement happening shortly and when Chandra does his announcement, do we need to do anything differently?

I don't want to sound alarmist or anything, but I don't want us to have blinders on either. We just think that we need to consider everything.

Ursula

From: John Kreuzer
Sent: Saturday, November 14, 2009 10:30 PM
To: Ursula Herrick; Kathryn Walker; Jonathan Bloom
Cc: Megan Alpers; 'derekj@mcgrathpower.com'; Timothy J. Polakowski; Amelia Vierra; Rory Mohon; 'johnk@mcgrathpower.com'
Subject: Michael Arrington Discusses Status of the CrunchPad

Hi Team,

I wanted to flag a few articles to the team which posted today and provide readers with an "update on the CrunchPad" from Michael Arrington.

Michael Arrington appeared on the Gillmor Gang on Friday afternoon with Robert Scoble, Saul Hansell of the *New York*

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Times and a couple of other participants from the technology industry. During the podcast, Arrington made his first comments updating viewers on the status of the CrunchPad.

Of note in the posts, Arrington states that “The CrunchPad is steam-rolling along. Costs keep coming down. We’ve been working entirely on the software for the past month, trying to make it perfect to get it to market.” He also mentioned during the broadcast that “we should have good news shortly.”

Here is the [direct link](#) to hear Arrington’s specific comments on the status of the CrunchPad.

The full text of the most relevant posts can be found below.

Thanks,

John

11/14/09

Arrington: CrunchPad Great, Costs Keep Coming Down, \$300 – 400 Price, Good News Shortly

CrunchPad Fans

<http://crunchpadfans.com/2009/11/15/arrington-crunchpad-great-costs-keep-coming-down-300-400/>

It seems the only way you can get Arrington to talk about the CrunchPad is if some of his dear old friends ask him.

In a recent episode of the [Gilmore Gang](#), which is a weekly podcast about technology with Arrington and other tech geeks, **he stated that we will hear something shortly** and that costs are actually coming down.

He says:

The CrunchPad is great actually. It's actually steam rolling along, everything is good. That stuff about costing was too high, I don't know where it came from. Actually costs keep coming down. We've been working entirely on the software for the last month trying to make it perfect to get it to market. Should be good news on that shortly.

He also says it's going to sell from "somewhere between 300 to 400 dollars" and the cost remains "in the high 200s, sort of all in".

In addition, something we didn't know before, Arrington says there will be some software revenue on the device such as sponsorships "without impacting the user experience" and of these avenues will include revenue from the search bar similar to how Firefox makes money.

It's now November, the promised month for its release. We hope the price will be at the lower end of the range, but I have a feeling it's at \$350-375.

~~~~~  
**11/14/09**

#### **Update on the CrunchPad**

*GottaBeMobile*

<http://www.gottabemobile.com/2009/11/14/update-on-the-crunchpad>

Mike Arrington appeared on the Gilmore Gang and gave a quick update on the CrunchPad. Arrington says his costs are in the high \$200 range and will sell for \$300 to \$400.

**"The CrunchPad is steam-rolling along," Arrington said. "Costs keep coming down. We've been working entirely on the software for the past month, trying to make it perfect to get it to market."**

Arrington sidestepped Robert Scoble's question about how he thinks the CrunchPad will compete with Apple's future tablet. While Arrington is positioning the CrunchPad as a pretty simple device, he says he hopes Apple will produce a high-end slate. The truth of the matter is that mainstream consumers would choose an Apple tablet over a CrunchPad in a heartbeat, even if there's a price premium.

Arrington said he thinks they'll sell 10's of millions of CrunchPads in the next few years.

If you don't have time to watch the full video below, head over to [YouTube to skip to the CrunchPad portion of the conversation](#). Skip to about 38:50.

~~~~~  
11/14/09

Sponsorship-supported Crunchpad is alive. 'Steamrolling' says Arrington.

UMPC Portal

<http://www.umpcportal.com/2009/11/sponsorship-supported-crunchpad-is-alive-steamrolling-says-arrington/>

I should have been in bed but I got hooked into an excellent Gilmore Gang videocast this evening. Robert Scoble, Mike Arrington, P Rangaswami, Kevin Marks, and Saul Hansell talk a lot about the iPhone and Droid war, discuss the differences and then, all of a sudden, at about 39 minutes in, the conversation switches to the Crunchpad.

As I watched, I sent three important tweets out:

- "Crunchpad is steamrolling", "costs keep coming down". "big news on that shortly" says @arrington
- Crunchpad is going to sell "for something between three and four hundred dollars", web-only says @arrington
- "soft revenue", "sponsorships" on Crunchpad. Sounds like ad-supported "without impacting the user experience"

\$300-\$400 dollars PLUS advertising (sponsorship) is what everyone will be talking about. For mass-market couch-surfing, that's too expensive. The Archos Android tablet and iPod Touch have already set the pricing bar (and possibly the sizing) for home-based sofa-surfing devices.

To be fair, I don't think Mike Arrington expects the Crunchpad to be selling millions and he understands that the home 'pad' market is just taking off so this, like many other 1st attempt projects, could be more of a learning and branding exercise than anything else. If you think about how Nokia are playing with their Maemo devices it's much the same. They are nurturing awareness and developer support for a time when the market is ripe. That could be 2010, 2011 or beyond but you have to be ready to strike when the conditions are ready.

Clearly the Crunchpad is alive, it's going to cost between 300 and 400 dollars, it's Atom-based, it's going to be sponsorship-supported, web-only and we should expect 'big news' shortly.

~~~~~  
11/14/09

**It's alive, it's Alive, IT'S ALIVE! The CrunchPad gets some new details**

*BestTabletReview.com*

<http://besttabletreview.com/its-alive-the-crunchpad-gets-some-new-details/>

It's become a throw-away joke on Twitter. "Hey @Arrington, where's the CrunchPad?" Recent speculation holds that the device was officially kaput. Then again, it was also voted one of the "ten most brilliant products of 2009?" by Popular Mechanics. Rumors buzz around the CrunchPad like so many bees, but thanks to the keen listening of Chippy from UMPCPortal.com we finally have some new information about this elusive beast.

According to today's Gilmore Gang vidcast (starting around the 39 minute mark) Arrington spills some details on the CrunchPad.

**First, it will have a 12 inch screen, be an "internet only" machine, run an Intel Atom processor and cost between \$300 and \$400. As we suspected, most of the delays have been caused by fine tuning the independent OS and web browser that utilizes internet connected web based operation.**

Basically all of your programs are accessed through the CrunchPad's connection to an online server. The upside is that the CrunchPad uses its limited resources to speed up your surfing process. The bad side is if you have no internet connection you have a slab paperweight.

Another bit of suggestive wording might mean you'll be seeing ads on the CrunchPad when surfing around. In order to keep the price low — and out of the price range and competition of the upcoming Apple Tablet — they may sell sponsorships on CrunchPad programs. We're told that more information will be coming shortly, but we won't hold our breath. We've heard that particular yarn before.

John Kreuzer

Account Executive



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Partner Agency, The Worldcom Group

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# EXHIBIT H

DECLARATION OF MATTHEW SCHERB  
IN OPPOSITION TO FUSION GARAGE'S  
MOTION TO DISMISS THE COMPLAINT

**Michael Arrington**  
**Highly Confidential - Attorneys' Eyes Only**

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

INTERSERVE, INC., dba )

TECHCRUNCH, a Delaware )

corporation, and CRUNCHPAD, )

INC., a Delaware )

corporation, )

Plaintiffs, )

vs. ) No. 09-CV-5812 RS

FUSION GARAGE PTE. LTD, a )

Singapore company, )

Defendant. )

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VIDEOTAPED DEPOSITION OF

INTERSERVE, INC. dba TECHCRUNCH

MICHAEL ARRINGTON

Redwood Shores, California

Tuesday, April 20, 2010

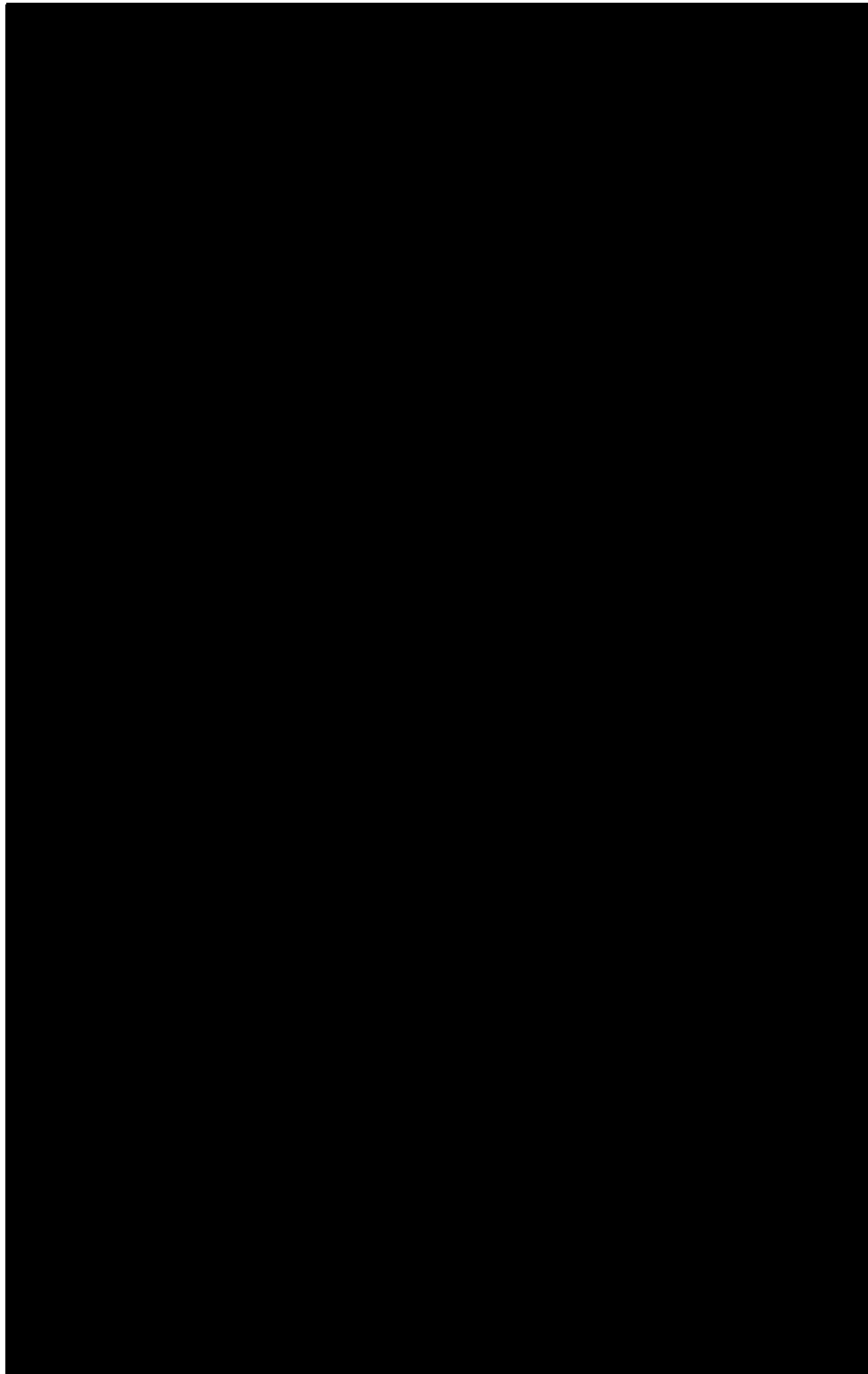
HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY

REPORTED BY:

JAY W. HARBIDGE, CSR NO. 4090

**Michael Arrington**  
**Highly Confidential - Attorneys' Eyes Only**

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MR. BRIDGES: No further questions.

# EXHIBIT I

DECLARATION OF MATTHEW SCHERB  
IN OPPOSITION TO FUSION GARAGE'S  
MOTION TO DISMISS THE COMPLAINT

**From:** Stuart Tan <stuart@fusiongarage.com>  
**Sent:** Wednesday, September 23, 2009 2:25 PM  
**To:** Alicia Tan <aliciatan78@yahoo.com.sg>  
**Subject:** Re: Read Read!

---

Very nice indeed.

Sorry dear yesterday was totally trashed, take a short nap in the early morning all the way until this noon. Very tired and there are so many things to do and Pegatron is giving me problem again. Threaten to stop project again for reasons that they the payment to be early.

Really suck these people. anyway still got to deal with them and really miss hm and having time with u. love u let's chat later. my schedule we will have another meeting with Michael at around 3-4 pm today and we will be at their office. then i will come back to ks apartment again to work on the project. Cheers

----- Original Message -----

**From:** Alicia Tan

**To:** Stuart Tan

**Sent:** Wednesday, September 23, 2009 8:07 PM

**Subject:** FW: Read Read!

| dear, read this...very meaningful. share with chandra and the rest of ur colleagues. cheers!

---

| Try cool new skins, plus more space for friends. [Check it out on Singapore Yahoo! Messenger now.](#)

# EXHIBIT J

DECLARATION OF MATTHEW SCHERB  
IN OPPOSITION TO FUSION GARAGE'S  
MOTION TO DISMISS THE COMPLAINT

---

**From:** 'Jonathan Bloom' <JonathanBloom@mcgrathpower.com>  
**To:** Chandrasekar Rathakrishnan <chandra@fusiongarage.com>  
**CC:** Kathryn Walker <KathrynWalker@mcgrathpower.com>; Ursula Herrick  
<UrsulaHerrick@mcgrathpower.com>  
**Sent:** 11/17/2009 12:03:47 PM  
**Attachments:** image001.gif; image002.jpg; Arrington Note.11.17.09.docx; image003.jpg  
**Subject:** FW: Edits to Arrington Note

Chandra,

I think Kate did a really nice job on this and I have no further edits.

It is our understanding that you will send this to Bruce and he will send it back via email so that it appears like a legitimate email communication.

Let us know what you think.

Jon

**From:** Kathryn Walker  
**Sent:** Tuesday, November 17, 2009 11:50 AM  
**To:** Jonathan Bloom  
**Subject:** Edits to Arrington Note

Scrubbed email attached. Note that I cut large chunks of the last email to craft this one. Happy to discuss live.

Kathryn Walker

Partner & Senior Vice President



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Partner Agency, The Worldcom Group

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