

EXHIBIT A

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.)

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

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1 THE WITNESS: The first meeting I had
2 with Chandra was, I believe, in -- I believe in
3 October, although there's some email evidence to
4 nail the date down. At that meeting, we, Chandra
5 and I, agreed that the only way to work together was
6 a merger of the entities.

7 In particular, I was concerned -- excuse
8 me -- I was concerned that -- Fusion Garage had a
9 different product that they were in the middle of
10 creating and that our partner needed to be
11 completely focused on the CrunchPad project. And he
12 agreed that that was a concern.

13 And so at that meeting we agreed that we
14 needed to combine these entities to make sure that
15 we were all working towards one goal and the same
16 goal. That arrangement, that agreement, never
17 changed until November of 2009.

18 BY MR. STERN:

19 Q. Okay. Move to strike. That was not my
20 question.

21 My question was, the specific agreement
22 referred to in the last sentence of paragraph 31 on
23 page 6 where, again, you say that the parties
24 agreed, quote, "that each would bear its own losses
25 of time, energy and money if the project was not

1 successful, and to share the profits if it was,"
2 close quote, when was that agreement reached? And
3 I'm looking for a date.

4 MR. BRIDGES: Objection, vague and
5 ambiguous, asked and answered.

6 THE WITNESS: The problem was that
7 Fusion Garage had a messy cap table, and that was
8 the primary reason why we didn't combine the
9 companies, the assets, right from the start.

10 In the meantime, while Chandra was
11 working to clean up his cap table, we had a general
12 working relationship where he would continue to pay
13 in particular payroll for the Fusion Garage
14 employees and many of the expenses that went to
15 third parties. We would cover some of them in
16 particular when they needed the money.

17 That was an ongoing relationship that we
18 operated under the entire time while working towards
19 merging the entities.

20 BY MR. STERN:

21 Q. Okay. But my question was -- again,
22 moving to strike what you just said, my question
23 was -- I'm looking for a date -- can you tell me the
24 date that you and anybody on behalf of Fusion Garage
25 reached an agreement where each of the parties,

1 namely Fusion Garage, CrunchPad and TechCrunch,
2 would bear its own losses of time, energy and money
3 if the project was not successful and to share the
4 profits if it was?

5 MR. BRIDGES: Objection, asked and
6 answered, vague and ambiguous.

7 THE WITNESS: I don't feel comfortable
8 opining on legally when an agreement was in place.

9 BY MR. STERN:

10 Q. Well, when, if any time? Can you tell
11 me the date on which you had any conversation with
12 anybody at Fusion Garage where you or the person at
13 Fusion Garage made the statement that each would
14 bear its own losses of time, energy and money if the
15 project was not successful, and to share the profits
16 if it was?

17 MR. BRIDGES: Objection, argumentative.
18 You may answer.

19 THE WITNESS: No.

20 BY MR. STERN:

21 Q. Can you tell me who -- well, first of
22 all, did you make the statement to
23 Mr. Rahthakrishnan that the parties would bear their
24 own losses of time, energy and money if the project
25 was not successful but would share the profits if it

1 BY MR. STERN:

2 Q. Does the JooJoo solve the core CPU issue
3 that you identified?

4 MR. BRIDGES: Objection, lacks
5 foundation and competence and vague and ambiguous.

6 THE WITNESS: I haven't held a JooJoo.
7 I don't know.

8 BY MR. STERN:

9 Q. Does the JooJoo solve the capacitance
10 touch issue which you mentioned?

11 MR. BRIDGES: Same objections.

12 THE WITNESS: I'm not aware because I
13 haven't had the product. If you have one and want
14 to give me some time with it, I would be happy to
15 answer those questions.

16 BY MR. STERN:

17 Q. Does the JooJoo satisfy or solve the
18 Flash issue that you mentioned?

19 MR. BRIDGES: Same objections.

20 THE WITNESS: I have not held the
21 product. I don't know.

22 BY MR. STERN:

23 Q. Can you tell me who is the supplier, who
24 is the manufacturer of the JooJoo?

25 MR. BRIDGES: Objection, lacks

1 began working together shortly thereafter. I don't
2 recall the exact date.

3 BY MR. STERN:

4 Q. Is it your testimony that the date that
5 you met Chandra is the date that you entered into
6 the partnership agreement with him?

7 MR. BRIDGES: Objection, argumentative,
8 calls for a legal conclusion, vague and ambiguous,
9 misstates testimony.

10 THE WITNESS: Not necessarily.

11 BY MR. STERN:

12 Q. I'm not asking about necessarily. Is
13 that possibly the date? Are you saying that it's
14 possible that the partnership agreement was entered
15 into the date you met Chandra?

16 A. Not --

17 MR. BRIDGES: Same objections.

18 THE WITNESS: I'm just not comfortable
19 forming legal conclusions.

20 BY MR. STERN:

21 Q. I'm not asking about legal conclusions;
22 I'm asking about what your understanding was.

23 Was it your understanding that you
24 entered into a partnership with Mr. Rahthakrishnan
25 on the first day you met him?

1 MR. BRIDGES: Objection, argumentative,
2 calls for a legal conclusion, vague and ambiguous
3 and misstates testimony.

4 THE WITNESS: I feel like I've answered
5 this question multiple times.

6 BY MR. STERN:

7 Q. You can answer it.

8 MR. BRIDGES: Same objections.

9 BY MR. STERN:

10 Q. It's not your job to object,
11 Mr. Arrington; it's your lawyer's job.

12 So the question is, did you enter into a
13 partnership with Mr. Rahthakrishnan the first day
14 you met him?

15 MR. BRIDGES: Excuse me. I would like
16 to have the court reporter reread Mr. Arrington's
17 last answer.

18 (Record read.)

19 MR. BRIDGES: That's a fair answer.

20 BY MR. STERN:

21 Q. Same question.

22 MR. BRIDGES: Same objections.

23 THE WITNESS: I'm not comfortable
24 forming legal conclusions.

25 BY MR. STERN:

1 Q. I'm not asking about your comfort level;
2 I'm asking you a factual question. Did you and
3 Mr. Rahthakrishnan agree on the first day that you
4 met each other that you would have a partnership?

5 MR. BRIDGES: Objection, calls for a
6 legal conclusion, vague and ambiguous.

7 THE WITNESS: I believe I've answered
8 the question.

9 BY MR. STERN:

10 Q. What's the answer to the question?

11 A. I'm not comfortable making legal
12 conclusions.

13 Q. All-right. Can you tell me any date on
14 which you and Mr. Rahthakrishnan entered into a
15 partnership agreement?

16 MR. BRIDGES: Objection, argumentative,
17 calls for a legal conclusion, vague and ambiguous
18 and assumes facts not in evidence.

19 THE WITNESS: We began working together
20 as a team within a few weeks after I first met him.
21 Again, I think there's emails to suggest the exact
22 date.

23 BY MR. STERN:

24 Q. I understand when you first began
25 working together. Is it your testimony that when

1 you first began working together, a partnership was
2 formed?

3 MR. BRIDGES: Objection, calls for a
4 legal conclusion.

5 THE WITNESS: I'm not comfortable
6 forming legal conclusions.

7 BY MR. STERN:

8 Q. I want to make it clear, I'm not asking
9 about your comfort level; I'm asking you to answer
10 the question.

11 Do you know the answer to the question
12 about whether or not when you first met him or when
13 you first started working with Mr. Rahthakrishnan a
14 partnership was formed in your mind?

15 MR. BRIDGES: Calls for a legal
16 conclusion, vague and ambiguous.

17 THE WITNESS: We began working together
18 as a team almost immediately and worked very closely
19 together throughout the next year.

20 BY MR. STERN:

21 Q. Did you intentionally misrepresent to
22 the Court that you, on behalf of TechCrunch and
23 CrunchPad, entered into an agreement with Fusion
24 Garage pursuant to which a partnership was formed?

25 MR. BRIDGES: Objection. Where did he

1 calls for a legal conclusion, vague and ambiguous.
2 And for you to suggest that Mr. Arrington has
3 committed perjury, Mr. Arrington, is reprehensible.

4 THE WITNESS: He suggested I committed
5 perjury?

6 MR. BRIDGES: Yes.

7 THE WITNESS: I did not commit perjury.

8 BY MR. STERN:

9 Q. Is it your belief that a partnership
10 agreement exists between Fusion Garage, TechCrunch
11 and CrunchPad?

12 MR. BRIDGES: Asked and answered, legal
13 conclusion, vague and ambiguous.

14 [THE WITNESS: I'm not comfortable
15 forming legal conclusions.

16 BY MR. STERN:

17 Q. Did you and Fusion Garage ever form an
18 agreement to share profits?

19 MR. BRIDGES: Objection, vague and
20 ambiguous, argumentative.

21 [THE WITNESS: I'm not comfortable
22 forming legal conclusions.

23 BY MR. STERN:

24 Q. Did you and Mr. Rahthakrishnan ever talk
25 about sharing profits?

1 [THE WITNESS: Yes, I'm not comfortable
2 answering that.

3 BY MR. STERN:

4 Q. Well, I don't care if you're comfortable
5 with it. My question is, does TechCrunch or
6 CrunchPad believe that the intellectual property of
7 this company belongs in whole or in part to
8 TechCrunch or CrunchPad?

9 MR. BRIDGES: Objection, calls for a
10 legal conclusion, and to the extent it calls for any
11 attorney-client, the content of any attorney-client
12 privileged communications, I'll instruct him not to
13 answer.

14 MR. STERN: You can answer.

15 THE WITNESS: Did you switch back to
16 CrunchPad from the advertising company? I just
17 didn't understand the question.

18 BY MR. STERN:

19 Q. No. You didn't have the name of this
20 advertising company. You want to call it "Bingo"?

21 A. Sure.

22 Q. Okay. So with respect to Bingo --

23 MR. BRIDGES: Well, excuse me. I want
24 to object. Mr. Arrington just asked a question
25 about your question, and you've changed a different

1 part of it. I suggest, Mr. Stern, you reread your
2 last question and his answer and then reformulate
3 the question.

4 MR. STERN: I'm not reformulating the
5 question; I'll reask it. If he doesn't want to
6 answer my question -- the record's plain here about
7 what the questions are.

8 BY MR. STERN:

9 Q. The question is, does TechCrunch or
10 CrunchPad believe that this-third-party advertising
11 company that you mentioned has intellectual property
12 that's owned in whole or in part by either
13 TechCrunch or CrunchPad?

14 MR. BRIDGES: Objection, calls for a
15 legal conclusion, may call for legal advice. And to
16 the extent that it asks for knowledge based upon
17 legal advice, I would instruct you not to answer, to
18 that extent only.

19 [THE WITNESS: I'm not comfortable making
20 legal conclusions.

21 BY MR. STERN:

22 Q. I'm not asking about legal conclusions.

23 A. Well, you asked about ownership of
24 intellectual property.

25 Q. And the question is, does TechCrunch

1 ambiguous, unintelligible, calls for a legal
2 conclusion, foundation, competence.

3 BY MR. STERN:

4 Q. Let's start with patents. Can you tell
5 me what patents are associated with the JooJoo that
6 TechCrunch or CrunchPad claims it owns?

7 MR. BRIDGES: Objection, lacks
8 foundation, competence, legal conclusion.

9 BY MR. STERN:

10 Q. You can answer.

11 A. I'm not comfortable making legal
12 conclusions.

13 Q. Can you tell me what patentable
14 inventions are associated with the JooJoo that
15 TechCrunch or CrunchPad claims it owns in whole or
16 in part?

17 MR. BRIDGES: Objection, lacks
18 foundation, competence, calls for a legal
19 conclusion.

20 THE WITNESS: I'm not comfortable
21 drawing legal conclusions.

22 BY MR. STERN:

23 Q. Can you tell me what features or aspects
24 of the JooJoo are either intellectual property or
25 proprietary rights of TechCrunch or CrunchPad?

1 MR. BRIDGES: Objection, lacks
2 foundation, competence, calls for a legal
3 conclusion, compound.

4 BY MR. STERN:

5 Q. You can answer.

6 [A. I'm not comfortable making legal
7 conclusions.

8 Q. Can you describe to me any aspect of the
9 JooJoo software or hardware that is owned in whole
10 or in part by either TechCrunch or CrunchPad?

11 MR. BRIDGES: Objection, foundation,
12 competence, legal conclusion.

13 [THE WITNESS: I'm not comfortable making
14 legal conclusions.

15 BY MR. STERN:

16 Q. Can you tell me any aspect of the JooJoo
17 operating system that is owned in whole or part by
18 either TechCrunch or CrunchPad?

19 MR. BRIDGES: Objection, vague and
20 ambiguous, potentially calls for a legal conclusion
21 and foundation and competence.

22 [THE WITNESS: I'm not comfortable making
23 legal conclusions.

24 BY MR. STERN:

25 Q. Can you tell me any property at all that

1 Fusion Garage or anybody associated with Fusion
2 Garage appropriated or took from TechCrunch or
3 CrunchPad?

4 MR. BRIDGES: Objection, vague and
5 ambiguous, calls for a legal conclusion, foundation
6 competence.

7 THE WITNESS: I'm not comfortable making
8 legal conclusions.

9 BY MR. STERN:

10 Q. Can you tell me any feature of the
11 JooJoo that was contributed to in whole or in part
12 by either TechCrunch or CrunchPad?

13 MR. BRIDGES: Objection, foundation,
14 competence in part, and vague and ambiguous.

15 But you may answer.

16 THE WITNESS: We -- obviously the
17 project, CrunchPad project began before Fusion
18 Garage entered the picture. It began with our
19 initial post in July with progress from there
20 through the various prototypes.

21 Once Fusion Garage did enter the picture
22 and started working with us, we worked
23 collaboratively as a team. There was no difference
24 between what we were doing and what they were doing.
25 They were in our office working with us directly,

1 mixing and mingling with my employees.

2 It was a purely -- an awesome
3 collaborative project where we were working together
4 constantly. Decisions were made at high levels,
5 passed through me; low-level suggestions were made,
6 passed right back up, and it was kind of how the
7 product was developed.

8 BY MR. STERN:

9 Q. Can you tell me the high-level
10 suggestions that were made by anybody at TechCrunch
11 or CrunchPad to anybody at Fusion Garage? No, let
12 me change that question.

13 Can you please list for me all the
14 high-level suggestions that were made by anybody at
15 TechCrunch or CrunchPad to anybody at Fusion Garage
16 where those high-level suggestions were proprietary
17 rights of TechCrunch or CrunchPad?

18 MR. BRIDGES: Objection, calls for a
19 legal conclusion.

20 [THE WITNESS: Yes, I'm uncomfortable
21 forming legal conclusions.

22 BY MR. STERN:

23 Q. Can you tell me the high-level
24 suggestions that were made by anybody at TechCrunch
25 or CrunchPad to anybody at Fusion Garage?

1 that.

2 BY MR. STERN:

3 Q. So what were the terms and conditions of
4 your agreement with Mr. Chandra about what you could
5 write about and what you couldn't write about?

6 MR. BRIDGES: Objection, argumentative,
7 vague and ambiguous, assumes facts not in evidence.

8 THE WITNESS: We didn't get to that
9 level of detail.

10 Q. Ah.

11 MR. BRIDGES: I move to strike the
12 colloquy.

13 BY MR. STERN:

14 Q. Just so I'm understanding, is there
15 anything in writing, any agreement that you had with
16 Mr. Rahthakrishnan, that limited or controlled your
17 discretion in determining what you were going to
18 publicly disclose about the CrunchPad while it was
19 in process?

20 MR. BRIDGES: Objection, argumentative,
21 vague and ambiguous, assumes facts not in evidence.

22 THE WITNESS: There are a couple of
23 occasions where I've talked to Chandra about what I
24 might want to disclose. And we had conversations
25 and, as cofounders of the entity, made agreements

1 that maybe we shouldn't write as much as I wanted
2 to. So his input was very much taken into account
3 when I wanted to make public statements about the
4 CrunchPad.

5 BY MR. STERN:

6 Q. So you took his statements into account;
7 is that right?

8 A. I mean, we made decisions together.

9 Q. Would there be emails that would reflect
10 these decisions that were made together?

11 A. I don't know.

12 Q. The fact that the CrunchPad was supposed
13 to boot directly from the browser, that was
14 something that you published; is that right?

15 MR. BRIDGES: Objection, vague and
16 ambiguous, misstates testimony.

17 BY MR. STERN:

18 Q. You can answer.

19 A. I believe -- I believe in my very first
20 post I wrote that I would like for a device to boot
21 directly to a browser.

22 Q. You didn't believe that was proprietary
23 or confidential information, did you?

24 [A. I'm not comfortable making legal
25 conclusions.

1 A, B and C that show screens, and screens by
2 definition have aspect ratios as two-dimensional
3 objects.

4 Q. Can you tell me, what was the operating
5 system for the CrunchPad?

6 A. It was a Linux-based operating system.

7 Q. Is the JooJoo's operating system Linux
8 based?

9 MR. BRIDGES: Objection, lacks
10 foundation and competence.

11 THE WITNESS: I haven't held a JooJoo.
12 I'm not sure.

13 MR. BRIDGES: Really, if you want to,
14 give him a JooJoo and have him answer these
15 questions. You've asked him many, many questions
16 about the JooJoo. I'm giving you foundation and
17 competence objections for a reason. If you would
18 like to --

19 MR. STERN: I think the record is clear
20 that the witness has alleged appropriation and has
21 never seen, touched, felt or has any other input
22 about what a JooJoo is. I'm thrilled with that
23 answer. I'm good. We can move on.

24 MR. BRIDGES: And the lawsuit was filed
25 before the JooJoo was shipped.

1 (Deposition Exhibit 5
2 marked for identification.)

3 BY MR. STERN:

4 Q. You see Exhibit 5 is an email from Ms.
5 Harde -- that's H-a-r-d-e -- to Mr. Rahthakrishnan.
6 Do you see that?

7 A. Yes.

8 Q. And it's dated October 29th, 2008,
9 correct?

10 A. Yes, yes.

11 Q. And you've seen this email before?

12 A. Probably.

13 Q. Okay. Do you see that it refers to the
14 fact that Ms. Harde is commenting to
15 Mr. Rahthakrishnan that she is in receipt of his cap
16 table?

17 A. Yes.

18 Q. And do you see it also says that she is
19 expecting to receive bios of team members. Do you
20 see this?

21 A. Yes.

22 Q. As of October 29th, 2008, did Fusion
23 Garage and TechCrunch form any sort of agreement to
24 create a partnership for the CrunchPad product
25 development?

1 MR. BRIDGES: Objection, calls for a
2 legal conclusion, vague and ambiguous.

3 [THE WITNESS: I'm not comfortable making
4 legal conclusions.

5 BY MR. STERN:

6 Q. That is to say, you're not comfortable
7 saying when an agreement -- when a partnership
8 agreement started?

9 MR. BRIDGES: Objection, legal
10 conclusion, vague and ambiguous.

11 BY MR. STERN:

12 Q. You can answer the question.

13 [A. The question -- I'm not even sure it was
14 a question. I'm not comfortable making legal
15 conclusions.

16 Q. Do you believe there was a partnership
17 between Fusion Garage and TechCrunch?

18 MR. BRIDGES: Objection, legal
19 conclusion -- I think we've been over that -- asked
20 and answered.

21 [THE WITNESS: I'm not comfortable making
22 legal conclusions.

23 BY MR. STERN:

24 Q. But you're comfortable telling the Court
25 when the partnership was aborted; is that correct?

1 Q. Okay. So my question is, you feel
2 comfortable telling His Honor when the partnership
3 was aborted, correct?

4 MR. BRIDGES: Objection, argumentative,
5 vague and ambiguous.

6 THE WITNESS: I feel comfortable with
7 what I've written in paragraph 25.

8 BY MR. STERN:

9 Q. So can you tell me, so you will agree
10 with me that you believed there was a partnership
11 between Fusion Garage and TechCrunch, correct?

12 A. I'm not comfortable --

13 MR. BRIDGES: Objection to the extent it
14 calls for a legal conclusion, vague and ambiguous.

15 THE WITNESS: I'm not comfortable
16 drawing legal conclusions.

17 BY MR. STERN:

18 Q. I'm not comfortable with you drawing
19 legal conclusions, either. I'm trying to find out,
20 could you tell me, sir, and tell the Court, why it
21 is you're comfortable explaining when a partnership
22 ended but not explaining when a partnership was
23 created.

24 MR. BRIDGES: Objection, argumentative,
25 vague and ambiguous.

1 BY MR. STERN:

2 Q. So but in all events, can you answer my
3 question? It's why is it that you felt comfortable
4 telling the Court in paragraph 25 when a partnership
5 ended but not telling me when a partnership
6 commenced?

7 MR. BRIDGES: Objection, legal
8 conclusion, asked and answered; vague and ambiguous,
9 argumentative.

10 THE WITNESS: I don't have an answer.

11 BY MR. STERN:

12 Q. There's a question pending.

13 A. I don't have an answer.

14 Q. I appreciate that. I appreciate the
15 candor that you don't have an answer.

16 MR. BRIDGES: Move to strike the
17 colloquy.

18 BY MR. STERN:

19 Q. Can you tell me, sir, since you answered
20 this question, the document that's reflected as
21 Exhibit 3, did you pen this document? Did you
22 author it?

23 MR. BRIDGES: Objection. To the extent
24 it encroaches upon attorney-client privilege, I'm
25 going to instruct him to that extent to limit his

1 answer.

2 THE WITNESS: Based on attorney-client
3 privilege, I'm not comfortable answering that at
4 all.

5 BY MR. STERN:

6 Q. Again, I want to make it clear, I'm
7 asking the following question: Did you write this
8 document?

9 MR. BRIDGES: And just to be clear, did
10 he originate every word in that document; is that
11 what you're asking?

12 MR. STERN: That's the first question.

13 BY MR. STERN:

14 Q. Did you originate every word in that
15 document?

16 A. No.

17 Q. Did you author any of the words in this
18 document?

19 MR. BRIDGES: I think that's going to
20 be -- no, I'll leave that.

21 THE WITNESS: Pardon?

22 MR. BRIDGES: I'll leave that. I'm not
23 going to object.

24 THE WITNESS: Yes.

25 BY MR. STERN:

1 it to mean more in that particular paragraph.

2 Q. So if you look at paragraph -- page 2,
3 paragraph four, you testified, and the record will
4 reflect this, that you understood that when you used
5 the word "partnership," it meant at least there
6 would be a collaboration between you and Fusion
7 Garage. If you look at paragraph four you
8 state, "In late September 2008, the parties agreed
9 to collaborate on the project."

10 Do you see that?

11 A. Yes.

12 Q. So do you believe that in late September
13 2008 you and Fusion Garage agreed to a partnership?

14 MR. BRIDGES: Objection to the extent it
15 calls for a legal conclusion, vague and ambiguous,
16 asked and answered.

17 THE WITNESS: I'm not comfortable making
18 legal conclusions.

19 BY MR. STERN:

20 Q. Just so we're clear on this subject, you
21 cannot identify any date when you believe TechCrunch
22 and CrunchPad and Fusion Garage first entered into a
23 partnership?

24 MR. BRIDGES: Objection, calls for a
25 legal conclusion, asked and answered.

1 would -- you know, that we would pay him and that he
2 would perform duties in connection with CrunchPad.

3 Q. Did you pay him?

4 A. I would have to guess that we did, but
5 I'm not sure.

6 Q. Let me see if I understand. You don't
7 know whether Mr. Monier was either an employee or
8 contractor of CrunchPad, right?

9 [A. I'm not comfortable making a conclusion
10 on that.

11 Q. Yes. And you don't know whether he was
12 an employee or contractor of TechCrunch, right?

13 A. Correct.

14 Q. And you don't know whether he was paid
15 by anybody, right?

16 A. I don't directly pay employees, so I
17 have no direct knowledge of that.

18 Q. And you don't know what, if any, he
19 contributed to this particular TechCrunch project --
20 I'm sorry, CrunchPad project, right?

21 MR. BRIDGES: Objection, vague and
22 ambiguous.

23 THE WITNESS: He drove the second
24 prototype of the product, which was a large step
25 forward from the first prototype. He worked with

1 hardware providers here in California and with
2 Fusion Garage in Singapore and brought the product
3 to another level. So I would say that he did quite
4 a bit.

5 BY MR. STERN:

6 Q. And was there any form of compensation
7 Mr. Monier was supposed to get if the CrunchPad
8 project reached a certain level?

9 MR. BRIDGES: Objection, vague and
10 ambiguous.

11 THE WITNESS: At that point we were
12 talking about, you know, who was the founding team
13 of CrunchPad, and Louis was on that list, as was
14 Chandra and others, me and Heather I think in
15 particular.

16 Later Louis backed out and he was no
17 longer on that list. So it would have been equity
18 in CrunchPad. It would have been the compensation
19 in addition to the salary.

20 BY MR. STERN:

21 Q. Did you have an agreement with
22 Mr. Monier that in exchange for his services he was
23 going to get an equity position in CrunchPad?

24 MR. BRIDGES: Objection, vague and
25 ambiguous.

1 THE WITNESS: I'm just not comfortable
2 making legal conclusions on what an agreement might
3 or might not be.

4 BY MR. STERN:

5 Q. I want to make it very clear. We're
6 going to move to compel on this "I'm not
7 comfortable." Witnesses are not here to tell me
8 what they're comfortable about. They either have an
9 answer to a question or not.

10 My question is, was there an agreement
11 that you had with Mr. Monier where he was going to
12 receive some sort of equity position in CrunchPad
13 for the services he provided?

14 MR. BRIDGES: Objection, vague and
15 ambiguous.

16 You can answer, but it's vague and
17 ambiguous.

18 THE WITNESS: I just -- if you -- group
19 of founders putting together a project, work on the
20 project at the same time they work on financing and
21 everything else? Eventually everything's
22 paperworked, usually right around the financing.
23 You do everything at once. It's easier. You don't
24 waste legal time in the meantime.

25 So if you're talking about a written

1 BY MR. STERN:

2 Q. Okay. So is Mr. Monier in a position to
3 say he too is a partner of Fusion Garage?

4 MR. BRIDGES: Objection, vague and
5 ambiguous and may call for a legal conclusion.

6 THE WITNESS: Yes, that really does call
7 for a legal conclusion on the investing of stock and
8 the way stock is handled with founders and
9 employees. I'm not in a position to answer that.

10 BY MR. STERN:

11 Q. Let me ask you this: How is CrunchPad
12 in a different position than Mr. Monier is in? I
13 mean, let me see if I can wrap this in. You believe
14 that CrunchPad was a collaborator of Fusion Garage,
15 correct?

16 MR. BRIDGES: Objection, misstates
17 testimony, vague and ambiguous.

18 BY MR. STERN:

19 Q. Yes or no?

20 A. No. I'm trying to remember the
21 question. "Do you think CrunchPad was a
22 collaborator with Fusion Garage?" Yes.

23 Q. And you think that Mr. Monier was a
24 collaborator with Fusion Garage on the CrunchPad
25 project, correct?

1 MR. BRIDGES: Objection, vague and
2 ambiguous.

3 THE WITNESS: Yes.

4 BY MR. STERN:

5 Q. And in this case CrunchPad is claiming
6 that as a result of its collaborative efforts
7 certain obligations are owed by my client, Fusion
8 Garage, to CrunchPad, right?

9 MR. BRIDGES: Objection, assumes facts
10 not in evidence, vague and ambiguous.

11 THE WITNESS: Yes, that's not a question
12 I'm prepared to answer.

13 BY MR. STERN:

14 Q. You don't know?

15 A. Rephrase the question or restate the
16 question, please.

17 Q. You said you read the complaint in this
18 case before it was filed, right?

19 A. I did say that, yes.

20 Q. Okay. You're aware of the fact that
21 CrunchPad is claiming in this case that it is a
22 fiduciary of Fusion Garage, correct?

23 MR. BRIDGES: Objection.

24 THE WITNESS: I would have to be
25 referred to the documents. Which document?

1 BY MR. STERN:

2 Q. It's Exhibit 2.

3 A. Exhibit 2?

4 Q. Yes.

5 A. Which page?

6 Q. Start at page 15. Do you see this claim
7 for breach of fiduciary duty?

8 A. Yes.

9 Q. Look on page 16. Do you see paragraph
10 79 says that defendant breached its fiduciary duties
11 to TechCrunch? Do you see that?

12 A. Yes.

13 Q. Well, you believe that defendant was a
14 fiduciary of TechCrunch, right?

15 A. This seems to be a legal conclusion
16 you're asking me to draw.

17 Q. Well, but you're a lawyer, right?

18 MR. BRIDGES: Objection, he is not here
19 in the capacity as a lawyer. Don't wave me off,
20 Mr. Stern. I'm entitled to make the objection.

21 MR. STERN: You can make your objection.

22 MR. BRIDGES: But stop waiving your hand
23 in my face. So the objection is based on a legal
24 conclusion. He's here testifying as a percipient
25 witness, not as a member of the bar, not as an

1 expert witness.

2 BY MR. STERN:

3 Q. Are you still a lawyer?

4 A. How do you define a lawyer? I'm no
5 longer a member of the State Bar of California. I
6 suspended my license this year.

7 Q. You did pass the Bar at some point,
8 didn't you?

9 A. I did pass the Bar.

10 Q. And you understand that -- maybe you
11 don't. Let me ask you this: Is it your
12 understanding that partners owe each other fiduciary
13 duties?

14 MR. BRIDGES: Objection, calls for a
15 legal conclusion, argumentative.

16 BY MR. STERN:

17 Q. Do you understand that?

18 [A. I'm not comfortable making legal
19 conclusions.

20 Q. I don't care about what you're
21 comfortable with making. I want to make that clear.
22 The question stands, if you have an understanding or
23 not. If you want to say under oath that you have no
24 understanding, say it.

25 Do you have an understanding that

1 partners owe each other fiduciary duties?

2 MR. BRIDGES: I'm going to object that
3 it calls for a legal conclusion, but you may answer
4 the question.

5 THE WITNESS: It's my understanding that
6 I'm not here to answer questions about whether or
7 not something is -- what its definition is under the
8 law, and I've hired counsel to do that and represent
9 me in that.

10 BY MR. STERN:

11 Q. Are you refusing to answer the question?

12 [A. I'm not comfortable answering that
13 question.

14 Q. You're refusing to answer the question?
15 Your counsel is not instructing you not to answer,
16 so this is a decision you're making on your own.

17 I'm asking the question, do you
18 understand that partners under California law owe
19 each other fiduciary responsibilities?

20 MR. BRIDGES: Same objection, but you
21 may answer.

22 [THE WITNESS: I'm not comfortable
23 drawing legal conclusions.

24 BY MR. STERN:

25 Q. I'm not asking for a legal conclusion;

1 I'm asking for your understanding. I'm asking
2 what's inside your own mind.

3 Is it your understanding -- you're not
4 providing legal advice. The question is, is it your
5 understanding, Mr. Arrington, that partners owe each
6 other fiduciary responsibilities?

7 MR. BRIDGES: Same objection about legal
8 conclusion.

9 You may answer.

10 [THE WITNESS: I'm not comfortable
11 answering the question.

12 MR. STERN: We're moving to compel on
13 this whole area of not comfortable. The witness is
14 evading an answer. I want to make it clear, Andrew,
15 you're not instructing him, so this is clearly a
16 witness-driven evasion and we're going to move on
17 this.

18 MR. BRIDGES: No. Well, first of all I
19 move to strike the colloquy, but I'm going to
20 respond, which is, this is a witness who is here
21 trying to testify forthrightly, accurately and
22 carefully. You have been repeatedly trying to take
23 him into territory that is the subject of legal
24 analysis by the litigators on the case. You're
25 asking him questions that call for legal

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1 A. Sometimes.

2 Q. Okay. Now, I want to ask you a question
3 about no-shop provisions. Do you know what a
4 no-shop provision is?

5 A. Uh-huh.

6 Q. What do you understand the no-shop
7 provision to be?

8 MR. BRIDGES: You need to say yes or no,
9 by the way.

10 THE WITNESS: Yes.

11 BY MR. STERN:

12 Q. What do you understand the no-shop
13 provision to be?

14 A. Generally speaking, it is a clause that
15 says that during certain periods of time you're not
16 shopping your company; you're not looking for other
17 partners, buyers, etcetera.

18 Q. Take a look at paragraph seven on page 3
19 of Exhibit 7 and read that to yourself?

20 MR. BRIDGES: If you're going to ask him
21 questions about the document, I want to make sure
22 he's familiar with the document in its entirety.

23 THE WITNESS: Okay.

24 BY MR. STERN:

25 Q. You understand that this no-shop

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1 [provision has a 60-day window, right?

2 A. This clause has a 60-day window.

3 Q. Why did CrunchPad offer Fusion Garage a
4 no-shop provision that was only 60 days long?

5 A. My guess, and this is a guess because I
6 did not draft this document, but my strong guess is
7 that this was a form that Heather used and she
8 didn't take it out.

9 Q. What does that mean, she didn't take it
10 out?

11 A. The idea was get something over for them
12 to look at.

13 MR. STERN: If there was a concern about
14 the no-shop and it being something real, we would
15 have -- you know, if we were really concerned about
16 them leaving or something breaking down, we would
17 have had them sign this or something. I mean, we
18 would have been concerned that was something was
19 done, you know, to protect us legally in that sense.

20 Q. Take a look at the email at the top of
21 Exhibit 7. It says:

22 "Attached for your review is our letter
23 of intent to acquire Fusion Garage."

24 Do you see that?

25 A. Uh-huh.

1 you and Mr. Rahthakrishnan had reached an agreement
2 that Fusion Garage would take an eight percent
3 equity ownership in CrunchPad as part of the merger;
4 is that right?

5 A. I think it's more complicated than that.
6 You know, there's vesting provisions and taking on
7 some debt, etcetera, which certainly is part of the
8 purchase price.

9 But roughly speaking, yes, eight percent
10 is the number we are talking about.

11 Q. Well, what I'm asking is, was this a
12 proposal or had there been an agreement reached as
13 of this date?

14 A. I don't recall. But very likely we had
15 come to agreement verbally or in person with him
16 before we would have sent something like this over.

17 Q. Well, I'm asking you, do you know as the
18 corporate designee for the topics that were
19 identified today, do you know whether or not on
20 December 18th an agreement had been reached?

21 MR. BRIDGES: Objection, vague and
22 ambiguous.

23 THE WITNESS: I'm not comfortable using
24 or defining the word "agreement." In my eyes, yes,
25 we had come to an agreement, but not in a legal --

1 I'm not making a legal conclusion here. But yes, we
2 had come to an agreement.

3 However, we were concerned about their
4 cap table. We were concerned about a number of
5 issues that needed to be cleared up before we were
6 going to do any kind of deal with them. So those
7 needed to be cleared up.

8 BY MR. STERN:

9 Q. So you believe that on December 18, 2008
10 you and Fusion Garage had reached an agreement,
11 whether it was tentative or otherwise, that Fusion
12 Garage would receive an eight percent equity
13 interest in CrunchPad, right?

14 A. We had a meeting of the minds around the
15 combination of the entities.

16 Q. And the number was eight percent?

17 MR. BRIDGES: Objection, misstates the
18 testimony.

19 THE WITNESS: As I've said, it's a more
20 complicated deal than that.

21 BY MR. STERN:

22 Q. Well, the financial terms are identified
23 in paragraph two; is that correct?

24 A. Correct.

25 Q. And those are the terms that you claim

1 to?

2 Q. No. I'm asking you a question. You can
3 tell me that you don't remember. It's entirely up
4 to you. The question stands.

5 A. I have no recollection of that.

6 Q. Didn't you in fact tell Mr. --

7 A. In fact, I was disappointed that he
8 would even suggest that. I brought -- the next time
9 Chandra was in our office, I brought both Nik and
10 Chandra into our office -- those two clearly had an
11 issue with each other -- and the three of us talked
12 about this issue. And I was very specific about the
13 issues. I said, "You guys need to work together."
14 I was very open about this.

15 Q. In fact, on August 17th, 2009, Mr.
16 Cubrilovic suggested to you that you poach Fusion
17 Garage employees, you asked to speak to him about
18 the subject, and then on August 18th, a day later,
19 he repeated his suggestion to you; isn't that right?

20 A. I need to see what you're referring to.

21 Q. I'm just asking you, do you recall it?

22 A. Absolutely not.

23 MR. STERN: Next in order.

24 (Deposition Exhibit 9

25 marked for identification.)

1 BY MR. STERN:

2 Q. This is a document that was produced to
3 us by TechCrunch. It's an email that's been
4 authored in part by you and by Mr. Cubrilovic.

5 MR. BRIDGES: Move to strike the
6 characterization of the document.

7 MR. STERN: Well --

8 BY MR. STERN:

9 Q. Looking at the bottom of the page, the
10 lower 40 percent of the front page, do you see where
11 it says August 17th, 2009 at 9:02 a.m.?

12 A. Yes.

13 Q. "Nik Cubrilovic wrote." Do you see
14 that?

15 A. Yes.

16 Q. Now, you see that he's writing that to
17 you; is that right?

18 A. Yes.

19 Q. Okay. And in it, he says:

20 "Have you spoken to Chandra in the past
21 few days? Just want you to know what he does
22 doesn't know so far."

23 Do you see that? Do you see what I'm
24 reading?

25 A. Yes.

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1 Q. Okay. Do you see when he says, "Just
2 want to know what he does doesn't know so far"?

3 A. I don't know what that means.

4 Q. He says:

5 If you let me run with this, I'll meet
6 with him tomorrow, and between his recently
7 found frankness, my new contacts in the
8 Singapore government and the local VCs/
9 investors I have met, I am sure I can get this
10 all back on track."

11 Do you see that?

12 A. Yes.

13 Q. Okay. He's talking about getting
14 something back on track as of August 17th, 2009. Do
15 you see that?

16 A. No. What part are you reading from now?

17 Q. Just what I just read. He's talked
18 about getting this all back on track. Do you see
19 that?

20 A. Yes.

21 Q. And so Mr. Cubrilovic was telling you
22 that something was not on track before August 17th,
23 2009, correct?

24 A. Repeat your question.

25 Q. You understood that Mr. Cubrilovic was

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1 telling you that something was not on track?

2 A. Yes.

3 Q. And he continues and he says:

4 "I can get everything here in Singapore
5 to the point where it is all prepped so we are
6 really to pull the trigger, come back there,
7 meet you with guys, work out what we are going
8 to do, and then decide if we either do nothing
9 or proceed under a new form with," and he
10 says, "new Singapore company, CrunchPad with a
11 parent company in the U.S., debt raised from
12 government/local investors, Fusion Garage team
13 under that company new and trimmed up, shop
14 the hardware, spec around, find a new role for
15 Chandra," right?

16 That's one option. Then it goes, option
17 two is:

18 "We kill the project and Fusion Garage
19 also dies. His talk about raising money to do
20 it himself-I think is highly unlikely."

21 Do you see that?

22 A. Yes.

23 Q. And then option three is, "We just poach
24 his guys, run it ourselves."

25 Do you see that?

1 A. Yes.

2 Q. And that was something that your agent,
3 I don't know if he was an employee or contractor,
4 was telling you, correct?

5 A. Yes.

6 Q. Is that right?

7 A. Yes.

8 Q. And on August 19th, you responded to
9 that with the following statement:

10 "If you're around, let's discuss this."

11 Do you see that?

12 A. Uh-huh.

13 Q. Now, you didn't tell him in this email,
14 you shouldn't even be thinking this, right?

15 MR. BRIDGES: Objection, argumentative.

16 THE WITNESS: I did not see that in this
17 email, no.

18 BY MR. STERN:

19 Q. Did you fire Mr. Cubrilo --

20 A. Cubrilovic, no.

21 Q. Cubrilovic. When he made these
22 suggestions to you that you should poach the
23 employees of your partner, you didn't fire him?

24 A. No.

25 Q. Did you send him back anything in

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1 writing that suggested that under no circumstances
2 should we even consider stealing employees from
3 Fusion Garage?

4 A. I don't recall.

5 Q. Then on the 18th, which is just before
6 you sent your message, unless there's a time shift
7 because -- do you know if Mr. Cubrilovic was in the
8 United States or in Singapore when he was writing
9 this?

10 A. I do not know.

11 Q. He says, "Quick update on the rest of my
12 day yesterday and this morning so far." Do you see
13 the asterisks?

14 A. Uh-huh.

15 Q. He says:

16 "I met a guy called James Chan who works
17 for a local VC firm (Walden). Told me
18 Chandra's reputation is horrible. - I was
19 getting advice from him going through the
20 dif," presumably different "scenarios. His
21 conclusion/advice was to set up local
22 Singapore company and hire Chandra's guys."

23 Do you see that?

24 A. Yes.

25 Q. Do you remember responding to that

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1 email?

2 A. I responded to both of these emails and
3 also in the presence of Chandra. Saying this was --
4 one is it's impossible because there's probably
5 intellectual property owned that certainly can't be
6 stolen; but secondly, it's unethical. And I did
7 this with Chandra in the room. I said, "Chandra is
8 my partner on this. You weren't there to do due
9 diligence on people. And I think there's emails to
10 support that. You were there to look at the project
11 and help with the software and help with the
12 project, and you took it on yourself to do all these
13 other things." And I said, "If I have to choose
14 between Chandra and you, Nik, it's going to be
15 Chandra." And this was done with Chandra in the
16 room.

17 Q. Did you tell Mr. Cubrilovic --

18 A. I told him it was highly unethical.

19 Q. -- on the 17th or the 18th, did you tell
20 him right away?

21 MR. BRIDGES: Objection, vague and
22 ambiguous.

23 THE WITNESS: I probably didn't read
24 this when I wrote this response. Like, let's
25 discuss when you're back, type of answer. As soon

1 as it became -- I understood what he was proposing,
2 I said, "One, it's impossible; and two, it's
3 unethical. We're not going to do it. We have a
4 partner. He's our partner. We trust him them.
5 Want to get this product out."

6 BY MR. STERN:

7 Q. And Mr. Cubrilovic four days later
8 continued suggesting that you poach Fusion Garage
9 employees; isn't that right?

10 A. I don't know. What are you referring to
11 now?

12 (Deposition Exhibit 10
13 marked for identification.)

14 THE WITNESS: Thank you.

15 BY MR. STERN:

16 Q. This is Mr. Cubrilovic again, August
17 23rd. Do you see that?

18 A. Uh-huh.

19 Q. He says, "I am checking out, heading to
20 the airport."

21 You agree with me this is August 23rd,
22 2009 at 9:00 a.m., right?

23 MR. BRIDGES: Objection, competence.
24 Are you asking if that's what the document says?

25 THE WITNESS: The document says August

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1 23rd, 2009.

2 BY MR. STERN:

3 Q. Good. And it's directed to you, right?

4 A. And Heather, yes.

5 Q. It doesn't say "confidential" on it,
6 does it?

7 A. No.

8 Q. It doesn't say that it's a secret, does
9 it?

10 A. No.

11 Q. He's in fact sending it to Ms. Harde as
12 well, isn't he?

13 A. Yes.

14 Q. And he says:

15 "I'm checking out, heading to the airport
16 and flying out in a couple of hours. I have
17 over 40 pages of notes since getting here.
18 I've been spending today and last night
19 punching it all into docs. I have shared the
20 folder. It is in with you guys. There's a
21 lot that I will need to follow up on when I
22 get back there."

23 And then he continues and says on number
24 one:

25 "CrunchPad, completed software audit,

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1 software roadmap and a full understanding of
2 where we are, what it will take from here and
3 potential issues with Fusion Garage."

4 And you understand "FG" is Fusion Garage?

5 A. Yes.

6 Q. And he says:

7 "I know all of the Fusion Garage
8 employees well now. Depending on what we do
9 with Fusion Garage, I am sure we can take
10 advantage of some of the internal resentment
11 to poach the key guys away."

12 Do you see that?

13 A. Yes.

14 Q. So would you agree with me that
15 Mr. Cubrilovic is telling you on August 17th, on
16 August 18th and on August 23rd that he thinks it's a
17 plan to steal Fusion Garage employees, right --
18 that's an option?

19 MR. BRIDGES: Objection, compound, vague
20 and ambiguous, argumentative.

21 THE WITNESS: Basically, yes.

22 BY MR. STERN:

23 Q. How many times did -- I mean, let me ask
24 you, Mr. Arrington, as a person who runs a blog, you
25 try to make yourself clear, wouldn't you agree, to

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1 document.

2 But that led to some concern at the time
3 that maybe something was going on. I talked to
4 Chandra about it. He said, "Everything's fine."

5 BY MR. STERN:

6 Q. You mean you heard that CrunchPad was a
7 customer of their products?

8 A. There was some discussion of that. I'm
9 hearing this thirdhand now through Brian, but yes.

10 Q. But that led you to believe that somehow
11 Fusion Garage was not recognizing CrunchPad as a
12 partner but rather just seeing them as a purchaser
13 of the product? --

14 MR. BRIDGES: Objection, competence,
15 vague and ambiguous.

16 BY MR. STERN:

17 Q. First of all, let me ask you --

18 MR. BRIDGES: By the way, Mr. Stern,
19 let's do about two more minutes and then take a
20 break. It's been over an hour.

21 BY MR. STERN:

22 Q. Can you tell me, what are you aware of
23 Fusion Garage's current funding?

24 MR. BRIDGES: Objection, vague and
25 ambiguous.

1 THE WITNESS: What I read in the press.

2 That's about it.

3 BY MR. STERN:

4 Q. What do you read in the press?

5 A. They said they raised, I think, a \$2
6 million round. And then I think they said we have
7 another big round coming. But, again, I don't know.
8 That's about all I know about it.

9 Q. Did you ever raise a \$2 million round
10 for the acquisition of Fusion Garage?

11 MR. BRIDGES: Objection, vague and
12 ambiguous.

13 THE WITNESS: We never closed on the
14 round that was offered.

15 BY MR. STERN:

16 Q. Who offered the money?

17 A. In the term sheet it was First Round
18 Capital, SoftTech VC. Ron Conway I think had signed
19 up, maybe not formally, and they were going to put
20 together the rest of the round as needed.

21 Q. Do you remember what the total round was
22 going to be?

23 A. We were targeting a couple of million
24 dollars, \$2.

25 Q. But that round never closed; is that

1 different documents and communications with all
2 sorts of different people that \$2 million was the
3 amount of cash that you needed to -- and I want to
4 use your language -- to be able to do production of
5 the CrunchPad device up to 1,000 units. Is that
6 what you said?

7 MR. BRIDGES: Objection, misstates
8 testimony.

9 THE WITNESS: \$2 million seemed to be
10 roughly the amount needed to get to the point where
11 we could start producing CrunchPads.

12 BY MR. STERN:

13 Q. Okay, all right. Now, you testified --
14 that you understand that my client has raised how
15 much money?

16 A. This is based on what I'm reading in the
17 press.

18 Q. Yes.

19 A. That he said he had raised a couple of
20 million dollars.

21 Q. Did you also read in the press that in
22 addition to the couple of million dollars he's
23 already raised, there's also additional funding
24 that's coming in?

25 A. I read something about him saying there

1 got, the \$2 million investors, where are they from?
2 What's your understanding?

3 A. I don't know.

4 Q. Do you know if they're Asian investors?

5 MR. BRIDGES: Objection, foundation.

6 THE WITNESS: Yes, I don't know. The
7 chiropractor, I don't know if he's in Florida or
8 where. I don't know where these guys are.

9 BY MR. STERN:

10 Q. Okay. Do you have any reason -- have
11 you heard from any source that in fact he didn't get
12 \$2 million in funding?

13 MR. BRIDGES: Objection, argumentative.

14 THE WITNESS: No.

15 BY MR. STERN:

16 Q. Have you ever seen any information that
17 the funding he's getting is contingent on any
18 particular event taking place or not taking place?

19 MR. BRIDGES: Objection, lacks
20 foundation, vague and ambiguous.

21 THE WITNESS: The funding that I've read
22 that he's getting? I don't believe so.

23 BY MR. STERN:

24 Q. Do you have any information as to where
25 within the \$2 million funding he's gotten that he's

1 MR. BRIDGES: Objection, argumentative.

2 THE WITNESS: I'm not sure I always try
3 to be complete.

4 BY MR. STERN:

5 Q. That is to say, would you say when you
6 speak, you don't speak with full truth but only in
7 half truths?

8 MR. BRIDGES: Objection, argumentative,
9 misstates the testimony.

10 THE WITNESS: I try to speak in full
11 truths.

12 BY MR. STERN:

13 Q. I just want to make sure. I may get the
14 same answers I got from you before but if I do, I'll
15 have to deal with it.

16 Can you tell me what contributions
17 CrunchPad or TechCrunch made to the -- well,
18 withdraw that.

19 Can you tell me about any ownership
20 rights that either TechCrunch or CrunchPad has in
21 the intellectual property relating to the CrunchPad?

22 MR. BRIDGES: Objection, calls for a
23 legal conclusion, vague and ambiguous.

24 THE WITNESS: I'm not comfortable making
25 legal conclusions.

1 BY MR. STERN:

2 Q. Can you tell me about any contributions
3 that CrunchPad or TechCrunch made to the
4 hardware-software design or other aspects of the
5 JooJoo?

6 MR. BRIDGES: Objection, foundation,
7 vague and ambiguous.

8 You can answer.

9 [THE WITNESS: I'm not comfortable making
10 legal conclusions.

11 BY MR. STERN:

12 Q. Can you tell me about any contributions
13 that either CrunchPad or TechCrunch made to the
14 hardware/software design or other aspects of the
15 CrunchPad?

16 [A. I'm not comfortable making legal
17 conclusions.

18 MR. BRIDGES: I don't think it's
19 actually calling for legal conclusions.

20 THE WITNESS: Okay.

21 MR. BRIDGES: I'm not objecting on that
22 basis.

23 MR. STERN: Well, my understanding is
24 you never instructed him not to answer.

25 MR. BRIDGES: I haven't even made an

1 parties to Fusion Garage.

2 A. At a high level, I know about Chandra
3 talking about constantly raising small amounts of
4 money mostly to make payroll and some vendor third-
5 party costs. It's limited to what I know is
6 basically in the emails, and that's really all I
7 know about it.

8 Q. Do you know anything else other than
9 what you just told me? Is there any other
10 information you have about the details of loans that
11 have been made to Fusion Garage?

12 A. Offhand, no. I would have to refer back
13 to the emails. In general, it was just there were a
14 lot of people that had loaned money, according to
15 Chandra, and, you know, some of them were happy
16 converting, some of them weren't, so they needed to
17 be paid back. So our request was that he just get
18 it cleaned up.

19 Q. Do you know what the status of those
20 loans are today?

21 A. No.

22 Q. Do you know many of the loans are
23 outstanding?

24 A. I don't know.

25 Q. Do you know how many of the loans have

1 [been repaid?

2 A. I don't know.

3 Q. Do you know if any of the loans are
4 secured?

5 A. No.

6 Q. Do you know any of the terms of the
7 loans?

8 A. There was some discussion of, you know,
9 seven percent per month interest on at least one
10 loan, but that was it. I never saw any paperwork or
11 anything like that. I'm not sure there was
12 paperwork around it. So no, not really. Just
13 mostly things that Chandra told me in emails that he
14 sent.

15 Q. Right now does CrunchPad sell a product?

16 A. No.

17 Q. Does TechCrunch sell a product?

18 MR. BRIDGES: Objection, vague and
19 ambiguous.

20 THE WITNESS: I hate to ask. What do
21 you mean by "sell"? Like we're in business?

22 BY MR. STERN:

23 Q. Do you sell or license a web-based
24 product?

25 MR. BRIDGES: Objection, vague and

1 ambiguous.

2 BY MR. STERN:

3 Q. Well, you mentioned TechBase.

4 A. We have events we sell tickets to and
5 sell sponsorships to; we have an advertising-
6 supported -- a number of advertising-supported
7 websites; another website, CrunchBase, which is
8 advertising and subscription supported.

9 [Q. Do you sell a web tablet?

10 A. We do not.

11 Q. Right now are you in the process of
12 developing a web tablet?

13 MR. BRIDGES: Objection, vague and
14 ambiguous.

15 THE WITNESS: We continue to have hopes
16 of doing something in that regard and occasionally
17 have discussions with people around opportunities.

18 BY MR. STERN:

19 Q. When was the last time that you put
20 together a proposal to any company about developing
21 a web tablet?

22 MR. BRIDGES: Objection, vague and
23 ambiguous.

24 THE WITNESS: Would you repeat the
25 question, please?

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1 MR. BRIDGES: That was implied in your
2 question. That's why I was voicing the objection.

3 THE WITNESS: Sorry. What was the
4 question?

5 BY MR. STERN:

6 Q. Is this your blog?

7 A. Yes, at least the first few pages are,
8 yes.

9 Q. Turn to page 4 where it says, "Here's
10 the plan." Do you see that?

11 A. Yes.

12 Q. It says --

13 A. That an unnumbered page, right? You're
14 talking about the fourth loose page?

15 BY MR. STERN:

16 Q. Fourth page that it says, "Here's the
17 plan." By the way, when you publish these blogs, do
18 you actually write them or do you have a group of
19 people who are writing under your name?

20 A. When it's under my name, it's entirely
21 written by me. Occasionally there will be minor
22 edits from another editor.

23 Q. So was this written by you?

24 A. Yes.

25 Q. So it says:

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1 "Here's the plan. We will organize a
2 small team of people to spec this out. First
3 is the marketing document that just outlines
4 what the machine will do -- we have a first
5 draft of that already and will post it soon.
6 Then we'll spec out the hardware and get
7 people to help write the customized Linux and
8 Firefox code."

9 Do you see that?

10 A. Yes.

11 Q. First of all, do you know if the JooJoo
12 uses Linux?

13 MR. BRIDGES: Objection, confidential.

14 THE WITNESS: I believe it does.

15 BY MR. STERN:

16 Q. You believe it?

17 A. I believe it does. It did when we were
18 working with that team.

19 Q. Okay. And do you know if it relies on
20 Firefox code?

21 A. I do not. When we were working with
22 them, it was based on WebKit, which is a different
23 source code.

24 Q. And then it says:

25 "Once we've completed the design, we will

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1 start to work with the supply chain company to
2 get an idea on the cost of the machine (the
3 goal is \$200), and hopefully build a few
4 prototypes. Anyone who contributes
5 significantly to the project would get one of
6 those first prototypes. If everything works
7 well, then we'd then open source the design
8 and software and let anyone build one that
9 wants to."

10 Did I read that accurately?

11 A. Yes.

12 Q. Now, when you posted this, you knew that
13 this was going to be read by the public, correct?

14 A. Yes.

15 Q. And you intended the public to rely on
16 this; is that right?

17 MR. BRIDGES: Objection, calls for a
18 legal conclusion, vague and ambiguous.

19 THE WITNESS: Yes. I'm not sure what
20 you mean by rely on it.

21 BY MR. STERN:

22 Q. Well, did you want people to believe it?

23 MR. BRIDGES: Objection, vague and
24 ambiguous.

25 THE WITNESS: I simply wrote what I

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1 felt.

2 BY MR. STERN:

3 Q. Well, when you tell people that if you
4 made a, quote, significant contribution to this,
5 you'll get a free CrunchPad, did you mean that?

6 A. Yes.

7 Q. Did you mean that if everything works
8 well, that your company would open source the design
9 and software and let anyone build one that wants to?

10 A. Yes, that was the intention then.

11 Q. Did you ever write a post that withdrew
12 this plan?

13 MR. BRIDGES: Objection, argumentative,
14 vague and ambiguous.

15 THE WITNESS: Which part of the plan?

16 BY MR. STERN:

17 Q. Any part of the plan.

18 A. Other than the goal of the price, I
19 don't believe so.

20 Q. Did you ever think about posting a blog
21 that would state:

22 "You know, we've rethought our original
23 plan and now the plan is that if you make a
24 contribution to the development of this, we at
25 TechCrunch are going to claim a proprietary

1 ownership in what is developed and only allow
2 it to be developed by us and by nobody else"?

3 MR. BRIDGES: Objection, argumentative,
4 misstates the evidence, assumes facts not in
5 evidence, vague and ambiguous.

6 THE WITNESS: No.

7 BY MR. STERN:

8 Q. You claim that the JooJoo that's owned
9 by my client or that my client is selling is in fact
10 owned by you in part, correct?

11 MR. BRIDGES: Objection, calls for a
12 legal conclusion.

13 THE WITNESS: Yes, I don't want to talk
14 about legal conclusions.

15 BY MR. STERN:

16 Q. Well, you claim that whatever monies my
17 client is making from the sale of those products
18 should at least in part be yours; is that right?

19 A. What I've claimed is that we really
20 believed in your client and wanted to do something
21 really special with them, and as far as I can tell,
22 they used us and threw us away.

23 Q. My client gets sued for patent
24 infringement -- let me give you a hypothetical,
25 Mr. Arrington. If my client has received a demand

1 of 2009.

2 Are you aware of any individual or group
3 of investors who had committed to putting \$2 million
4 into CrunchPad?

5 MR. BRIDGES: Objection, vague and
6 ambiguous.

7 THE WITNESS: I'm sorry, you said up
8 until November?

9 BY MR. STERN:

10 Q. Of 2009.

11 A. But not including November?

12 Q. I'm sorry, good point. Up through and
13 including November 30th, 2009, are you aware of any
14 individual or group of investors who had committed
15 to putting \$2 million into CrunchPad?

16 MR. BRIDGES: Objection, vague and
17 ambiguous.

18 THE WITNESS: No.

19 MR. STERN: I think we're good. Thank
20 you.

21 THE VIDEOGRAPHER: This concludes
22 today's deposition --

23 MR. BRIDGES: No, it does not.

24 THE VIDEOGRAPHER: Oh, pardon me.

25 MR. BRIDGES: Let's take a break. I'm

1 A. Our plan actually was not to merge the
2 company; it was to acquire the assets. And I don't
3 mean to mince words; but I think the intention was
4 that we were looking at an asset purchase, so
5 partially because of the difficulties with their
6 capitalization and the jurisdiction. But yes.

7 Q. Let's take that. Prior to this
8 situation, had you been involved in the acquisition
9 of the assets of a foreign company?

10 A. No.

11 Q. And you wouldn't characterize yourself
12 as an expert in the field of acquisition of foreign
13 tech companies; is that correct?

14 A. I would not.

15 Q. And is Ms. Harde, is she an expert in
16 that?

17 A. No.

18 Q. With respect to Mr. Cubrilovic --

19 A. Cubrilovic.

20 Q. -- Cubrilovic, Cubrilovic, you testified
21 that his conduct was completely inappropriate and
22 undermined the partnership. The record will reflect
23 that.

24 So you told Mr. Cubrilovic that there was
25 a partnership between Fusion Garage and CrunchPad;

1 is that correct?

2 MR. BRIDGES: Objection, misstates the
3 evidence and vague and ambiguous.

4 THE WITNESS: I may or I probably
5 misspoke. I don't remember the specific words with
6 Nik, other than being very upset with him in
7 undermining the relationship. The point was that he
8 had -- he was completely out of line, completely.

9 BY MR. STERN:

10 Q. And he was conducting a -- you would
11 agree with me that in the normal course before
12 somebody reaches a deal on acquiring of a company,
13 they've done a due diligence before the deal is
14 reached, right?

15 MR. BRIDGES: Objection.

16 THE WITNESS: Yes, I can't speculate on
17 what other people would do. In this case we worked
18 with Chandra for a year -- not a year, but a long
19 time. I felt like we kind of knew what we were
20 getting into. We felt good about it.

21 BY MR. STERN:

22 Q. But Mr. Cubrilovic was doing due
23 diligence as late as September or October of 2009;
24 is that right?

25 MR. BRIDGES: Objection, vague and

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1 ambiguous.

2 THE WITNESS: He was engaging in some
3 sort of investigation in Singapore that I was
4 completely opposed to.

5 BY MR. STERN:

6 Q. He was a rogue. He was just rogue,
7 right?

8 A. He was partially rogue, yes.

9 Q. But you didn't fire him, did you?

10 A. I did not. But he mostly -- he almost
11 entirely was off the project after that and focused
12 on internal TechCrunch matters.

13 MR. STERN: Okay.

14 THE VIDEOGRAPHER: This concludes
15 today's deposition of Mr. Michael Arrington. We are
16 off the record at 7:15 p.m.

17 (Proceedings adjourned at 7:15 p.m.)

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