

Exhibit A

(Deposition Testimony for the Public Record)

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1 MR. STERN: Are there any of these 15
2 topics that he is not going to be providing
3 information with respect to?

4 MR. BRIDGES: I don't think there was
5 any. I think he's here for all 15 topics.

6 MR. STERN: Okay.

7 MR. BRIDGES: It's just that there were
8 objections in the normal course.

9 BY MR. STERN:

10 Q. And I take it you're here both in your
11 capacity as a representative of Interserve and in
12 your capacity as a representative of CrunchPad,
13 Inc.?

14 A. Yes.

15 Q. And is there any information that you
16 have in your capacity as a representative of
17 Interserve that you lack with respect to your
18 capacity on behalf of CrunchPad?

19 A. I honestly don't understand what you
20 just asked.

21 Q. You have the same information for both
22 companies; is that right?

23 MR. BRIDGES: Objection. I believe this
24 deposition is as to TechCrunch only, is it not?

25 MR. STERN: That's fine, okay. We'll

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1 understand it that way, then.

2 BY MR. STERN:

3 Q. With respect to the documents that you
4 reviewed to prepare yourself for the deposition, is
5 it your understanding that all of those documents
6 were prepared in the normal course of business by
7 either CrunchPad or TechCrunch?

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

10 THE WITNESS: I don't know of any that
11 weren't.

12 BY MR. STERN:

13 Q. Good. That is to say, for example, what
14 you didn't review were legal memoranda created by
15 your lawyers?

16 A. Is that a question?

17 Q. That's a question.

18 A. What is the question exactly?

19 Q. You didn't review legal memoranda
20 prepared by your lawyers prepared for this
21 deposition?

22 A. Correct, yes.

23 Q. Okay, good. So let me ask you first,
24 are there any topics here that you reviewed and
25 said, "I'm not in a position to answer any questions

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1 about a particular topic," when you reviewed the
2 topics you said, "I just don't know anything about
3 the topic"?

4 A. There are questions -- there are issues
5 here that I think raise legal issues that I'm not
6 prepared to discuss myself, No. 3, for example,
7 although I'm perfectly happy to talk about the
8 relationship as I saw it between the parties.

9 So to the extent, you know, that these
10 require legal analysis, it's not something that I'm
11 going to be talking about. But there's nothing on
12 here that I feel uncomfortable talking about.

13 Q. But you certainly are in a position to
14 talk about why or to what extent Interserve or
15 CrunchPad believes there was a partnership agreement
16 or a partnership with Fusion Garage?

17 MR. BRIDGES: Objection to the extent it
18 calls for a legal conclusion. He's not here to
19 discuss legal conclusions.

20 THE WITNESS: I'm perfectly happy to
21 talk about how I saw the relationship, but to derive
22 a legal conclusion as to what that is, no, I'm not
23 going to discuss that.

24 BY MR. STERN:

25 Q. Well, first, let me ask you, in this

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1 case did you read the complaint that was filed in
2 this case?

3 A. Yes.

4 Q. Did you read it before it was filed?

5 A. Yes.

6 Q. Did you make sure when you read it that
7 it was accurate?

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

10 THE WITNESS: Are you asking do I
11 believe it was accurate?

12 BY MR. STERN:

13 Q. Yes.

14 A. Yes.

15 Q. You also signed a sworn statement, a
16 declaration. Do you recall that?

17 A. No.

18 MR. STERN: Let's mark this next in
19 order.

20 (Deposition Exhibit 2
21 marked for identification.)

22 BY MR. STERN:

23 Q. Do you recognize this document,
24 Mr. Arrington?

25 A. Yes.

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1 Q. This is the Complaint in this lawsuit?

2 A. Yes.

3 Q. Now, I think when I asked you before
4 whether or not you reviewed it and thought it was
5 accurate, this was the document I was referring to.

6 Just to confirm that, you reviewed this
7 document before it was filed and you believed it was
8 accurate, correct?

9 A. Yes.

10 Q. Okay.

11 MR. STERN: Next in order.

12 (Deposition Exhibit 3
13 marked for identification.)

14 BY MR. STERN:

15 Q. Do you recognize Exhibit 3?

16 MR. BRIDGES: I'll ask him to review it
17 before he answers the question.

18 THE WITNESS: Exhibit 3 is the document
19 you just handed me?

20 BY MR. STERN:

21 Q. Exhibit what?

22 A. I'm sorry? Oh, the whole document.

23 Q. Do you recognize this document called
24 Exhibit 3?

25 Well, direct your attention to paragraph

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1 7, I mean, to page 7. This document indicates it
2 was electronically filed in federal court. Do you
3 see that? Do you see where it says "Michael
4 Arrington" as the signature space?

5 A. Yes.

6 Q. Did you in fact review this document and
7 tell your lawyers that they should file it?

8 A. I don't recall.

9 Q. You don't recall ever reviewing this
10 document; is that correct?

11 MR. BRIDGES: Objection, asked and
12 answered.

13 MR. STERN: I'm just asking the
14 question.

15 MR. BRIDGES: I think you asked it
16 before. Isn't that the nature of asked and
17 answered? Asked and answered is the objection.

18 MR. STERN: Fine. You can make the
19 objection.

20 THE WITNESS: I don't recall.

21 BY MR. STERN:

22 Q. So to the best of your recollection
23 right now, as you're looking at this document this
24 is the first time you recall seeing this document?

25 MR. BRIDGES: Objection, asked and

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1 answered.

2 THE WITNESS: This looks familiar, yes.

3 BY MR. STERN:

4 Q. Well, you say it looks familiar. Do you
5 recall reviewing the sworn statement that you were
6 to submit to federal court in this case in support
7 of a request for an injunction?

8 A. No, I do not.

9 Q. Do you recall -- do you have any
10 understanding that Interserve and CrunchPad have
11 filed a Motion For a Preliminary Injunction in this
12 case?

13 A. I would defer to my counsel.

14 Q. There's nothing to defer to your counsel
15 about. I'm not asking about what your counsel
16 knows; I'm asking are you aware of the fact that
17 Interserve and CrunchPad have filed a motion for a
18 preliminary injunction in this case?

19 A. I believe I am.

20 Q. But you're not sure?

21 A. Not one hundred percent, no.

22 Q. Okay. And you're not -- I just want to
23 make clear, you don't recall reviewing -- and here's
24 my question: Do you recall reviewing the first
25 seven pages of Exhibit 3 and telling your lawyers

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1 that they can file this as a sworn statement for
2 you?

3 A. I recall -- I recall reviewing the first
4 few pages of Exhibit 3.

5 Q. You recall reviewing the first few pages
6 of Exhibit 3; is that correct?

7 A. I've read through page 7, yes.

8 Q. Okay. Do you recall -- when you say
9 first few pages, how many is few?

10 A. Seven.

11 Q. Do you recall when you first reviewed
12 the first seven pages of Exhibit 3?

13 A. I do not.

14 Q. Was it in the last week?

15 A. I do not recall.

16 Q. Okay. But in all events, did you
17 understand that this was a sworn statement that was
18 being submitted to federal court signed by you?

19 A. I don't recall.

20 Q. Directing your attention to paragraph --
21 well, let me ask you, do you recall reviewing this
22 document to make sure that it was absolutely
23 accurate before it was submitted to Court?

24 A. Yes.

25 Q. And when you reviewed this document,

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1 whenever it was, it was your belief that this
2 document was absolutely accurate, correct?

3 MR. BRIDGES: Objection, asked and
4 answered.

5 THE WITNESS: Yes.

6 BY MR. STERN:

7 Q. Okay. That is to say, you didn't think
8 that there were any mistakes in the document, right?

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

11 THE WITNESS: Yes.

12 BY MR. STERN:

13 Q. Okay. So directing your attention to
14 paragraph 31, to the last sentence that's on line 25
15 on page 6, do you see that?

16 A. To the last sentence?

17 Q. Yes. That sentence reads:

18 "The parties agreed that each would bear
19 its own losses of time, energy and money if
20 the project was not successful, and to share
21 the profits if it was."

22 Do you see that?

23 A. Yes.

24 Q. Did you understand that the parties were
25 Fusion Garage and TechCrunch?

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

3 THE WITNESS: You know, I think in this
4 case it might have been CrunchPad and Fusion Garage,
5 but at the time roughly, yes, I mean, me.

6 BY MR. STERN:

7 Q. I'm sorry. Let me just see if I can get
8 your answer again.

9 Well, was the agreement with Fusion
10 Garage with CrunchPad or with TechCrunch?

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

13 THE WITNESS: The project was at first
14 an informal gathering of resources, some TechCrunch,
15 some Fusion Garage, some third parties that we
16 hired. CrunchPad was incorporated for the sole
17 purpose of combining the assets from TechCrunch that
18 were being put into CrunchPad with the Fusion Garage
19 assets. That's why the question is somewhat
20 difficult to answer.

21 BY MR. STERN:

22 Q. But I'm not asking about -- move to
23 strike. Listen to my question.

24 The agreement that's referred to in the
25 second -- I'm sorry, the last sentence of paragraph

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1 31 on page 6, that sentence again which reads:

2 "The parties agreed that each would bear
3 its own losses of time, energy and money if
4 the project was not successful, and to share
5 the profits if it was."

6 My question is, in that sentence, who
7 were the, quote, "parties," close quote, to this
8 agreement?

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

11 THE WITNESS: Fusion Garage on one end
12 and us on the other.

13 BY MR. STERN:

14 Q. Okay. Who is "us"?

15 A. That's the part that's difficult to
16 define.

17 Q. Well, you're here as a 30(b)(6) witness
18 on the subjects as they're identified. Can you tell
19 me, sir, who were the parties on the side other than
20 Fusion Garage?

21 A. TechCrunch, CrunchPad, a subsidiary we
22 created. Those were the corporate entities.

23 Q. Okay. So it's your testimony that when
24 it refers to the parties in that last sentence of
25 paragraph 31 on page 6 of Exhibit 3, the parties

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1 were CrunchPad, TechCrunch and Fusion Garage; is
2 that correct?

3 A. Yeah. It might have been more informal,
4 or me and Chandra, for example, but yes.

5 Q. Well, was the agreement between Michael
6 Arrington individually and Chandra Rathakrishnan
7 individually or was it between --

8 A. No.

9 Q. I'm sorry?

10 A. No.

11 Q. It wasn't an individual agreement
12 between individuals, correct?

13 A. Correct.

14 Q. It was an agreement between entities,
15 and those were CrunchPad and TechCrunch on the one
16 hand and Fusion Garage on the other; is that
17 correct?

18 A. Yes.

19 Q. Okay. So this was not an agreement only
20 between CrunchPad and Fusion Garage, correct?

21 A. Correct.

22 Q. Okay. And can you tell me the date that
23 the parties reached this agreement?

24 MR. BRIDGES: Objection, vague and
25 ambiguous, may call for a legal conclusion.

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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

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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,

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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

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1 was?

2 MR. BRIDGES: I'm sorry, could you --

3 (Record read.)

4 THE WITNESS: Did I make that statement?

5 BY MR. STERN:

6 Q. That's the question.

7 A. We both did pending a merger, of course.

8 Once a merger was closed, then, you know, they were

9 one and the same entities.

10 Q. So your testimony is that you made that
11 statement?

12 A. We both did.

13 Q. Well, when you say you both did, I want
14 to first make clear, when you say "both," you mean
15 you and Mr. Rahthakrishnan, right?

16 A. I don't have a recollection of making
17 the statement directly, but certainly that's how
18 things played out. That's how we operated and we
19 very well might have had that explicit conversation.

20 Q. Well, I'm asking specifically, do you
21 recall a specific conversation that you had with
22 Mr. Rahthakrishnan where either you or he said the
23 specific words that each of the parties would bear
24 their own losses of time, energy and money if the
25 project was not successful, but they would share the

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1 profits if it was?

2 A. I do not recall a specific date that
3 those words were said.

4 Q. And do you recall -- I didn't ask about
5 a specific date. My question is, do you recall
6 Mr. Rahthakrishnan or yourself actually making that
7 statement?

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

10 THE WITNESS: Which statement?

11 BY MR. STERN:

12 Q. The statement I've read now four times.

13 A. I don't know if what you're asking is if
14 that literally in quotations statement was made or
15 if the general agreement was reached.

16 Q. I'm asking whether or not the literal
17 statement was ever made by you or
18 Mr. Rahthakrishnan?

19 A. I don't recall.

20 Q. So you don't recall Mr. Rahthakrishnan
21 making that statement, correct?

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

24 THE WITNESS: I do not recall.

25 BY MR. STERN:

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1 Q. You don't recall yourself ever making
2 that statement, correct?

3 MR. BRIDGES: Same objection.

4 THE WITNESS: That specific quoted
5 statement, I do not recall.

6 BY MR. STERN:

7 Q. Can you tell me what words, if any, you
8 said to Mr. Rahthakrishnan, if any, to impart to him
9 the belief that you thought the parties should bear
10 their own losses of time, energy and money if the
11 project was not successful, and you should share the
12 profits if it was?

13 A. I'm sorry, could you repeat the
14 question?

15 Q. My question is, the question is, can you
16 tell me what words, if any, you said to
17 Mr. Rahthakrishnan, if any, to impart to him the
18 belief that you thought the parties should bear
19 their own losses of time, energy and money if the
20 project was not successful, and that you would share
21 the profits if it was?

22 A. Okay, sure. While we were trying to
23 figure out how to clean up his capitalization table,
24 thinking about funding, whether that funding would
25 come from Asia or Europe -- I'm sorry, Asia or the

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1 United States, we continued to operate and push the
2 project forward.

3 And it was very clear between the two of
4 us that expenses would mostly accrue to his team,
5 that we would help when we needed to, but the idea
6 was that to keep things clean, that's where the
7 expenses should lie, and that's certainly how we
8 operated. And there were explicit conversations
9 around this.

10 Q. When you say that expenses would mostly
11 accrue to his team, what does that mean?

12 A. It means that we were operating as a
13 team and that the expenses went through
14 CrunchPad/Fusion Garage.

15 Q. What did you mean by "his team," that
16 expenses would mostly accrue to "his team"?

17 A. The people that worked for him.

18 Q. Okay. So did you understand that in
19 developing the CrunchPad, Mr. Rahthakrishnan's team
20 at Fusion Garage would be incurring expenses?

21 A. Yes.

22 Q. And you understood that he should be
23 picking up those expenses?

24 A. Yes.

25 Q. Okay. And you understood that the

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1 people at TechCrunch would be incurring expenses?

2 A. Yes.

3 Q. And that the people at TechCrunch should
4 pick up those expenses?

5 A. Yes.

6 Q. Okay. Now, the question is, did you or
7 Mr. Rahthakrishnan ever discuss what conditions had
8 to take place in order for the project to be defined
9 as, quote, "successful," close quote?

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

12 THE WITNESS: Certainly going to market
13 with an announcement that we were ready and we were
14 taking orders was a key factor in -- a key milestone
15 in the project.

16 BY MR. STERN:

17 Q. That wasn't my question. Move to
18 strike.

19 My question was, did you and
20 Mr. Rahthakrishnan discuss what would be the
21 definition of a, quote, "successful," close quote,
22 project?

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

25 THE WITNESS: Success was determined

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1 based on a desire to push the project forward, that
2 we had a workable and sellable product.

3 BY MR. STERN:

4 Q. Today, as we sit here today, do you
5 consider the JooJoo to be a successful product?

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

8 THE WITNESS: I don't even know what
9 that's relevant to.

10 BY MR. STERN:

11 Q. That's not the -- do you have an answer
12 to the question?

13 A. Define "successful product."

14 Q. It's not part of my testimony,
15 Mr. Arrington. You have a sworn statement that
16 you've made to Judge Seeborg that says that the
17 parties agreed that each would bear its own losses
18 of time, energy and money if the project was not
19 successful, and to share the profits if it was.

20 And my question is, and I can't force you
21 to answer -- I'm just asking the question -- can you
22 tell me, sir, whether or not the JooJoo is, in your
23 estimation, a successful product?

24 MR. BRIDGES: Objection, vague and
25 ambiguous, lacks foundation, competence.

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1 THE WITNESS: I would love to answer the
2 question if you unpack it and explain it further.

3 BY MR. STERN:

4 Q. What did you mean by the phrase
5 "successful"?

6 MR. BRIDGES: Objection, asked and
7 answered.

8 THE WITNESS: We're back to this now?

9 BY MR. STERN:

10 Q. We haven't moved from this. We haven't
11 moved from this. We're not going to move off this.

12 This is a sworn statement by you to Judge
13 Seeborg, so he's going to want to know and I want to
14 know exactly what was understood by you and
15 Mr. Rahthakrishnan with respect to this
16 understanding which you testified to.

17 So my question is, what -- let me
18 rephrase the question.

19 MR. BRIDGES: I move to strike the
20 colloquy so far.

21 BY MR. STERN:

22 Q. The question is, can you tell me whether
23 or not you and Mr. Rahthakrishnan ever defined what
24 the phrase, quote, "successful," close quote, is in
25 this agreement that you claim you had with him per

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1 paragraph 31 on page 6 of Exhibit 3?

2 A. Sure.

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

5 Go ahead.

6 THE WITNESS: The notion was that we
7 wanted to combine the entities as soon as -- as soon
8 as his cap table could be cleaned up. Obviously a
9 combination of the entities would mean that we were
10 operating under a single set of financial statements
11 and there would no longer be separate financial
12 statements. That was the goal.

13 In that sense, the definition of success
14 might be moving towards a merger.

15 BY MR. STERN:

16 Q. So it was your understanding that the
17 phrase "success" was defined to mean when a merger
18 took place?

19 A. Partially.

20 Q. Well, other than a merger taking place,
21 what other conditions had to exist in order for the
22 project to be considered successful?

23 A. If you imagine a team working on a
24 product informally -- that happens in Silicon Valley
25 all day every day -- you're working towards whatever

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1 you're working towards as a team.

2 In our case we were working towards the
3 launch of the CrunchPad. To get there, you have to
4 overcome many pretty huge obstacles in terms of
5 finding the right partners, designing things
6 properly and building software, etcetera. We were
7 working furiously on all of that.

8 We were working furiously on vendor
9 relationships and on trying to secure financing and
10 third parties for retail relationships and things
11 like that. All of those needed to come together.
12 Once they came together, it was important that we
13 were a single entity, say, before we started making
14 any actual sales of the product.

15 So it was my goal and his to move towards
16 a merger as soon as we could get his capitalization
17 table cleaned up, close on financing and start
18 selling the product. And so all of those together I
19 think are sort of what we were aiming for as a team.

20 Q. And that's -- just so I understand, the
21 merger taking place, the closing of financing and
22 the selling the project, those would all be the
23 definitions of success?

24 A. Partially.

25 Q. Well, other than those three things, is

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1 case when you had sent a letter of intent with
2 respect to the eight percent ownership on December
3 18th, 2008?

4 A. The LOI is a material part of the
5 transaction, the end deal is. In this case raising
6 financing, merging the companies, launching the
7 product, those are important. The ideal is to
8 socialize the deal among insiders. That's it.

9 Q. In your four years at Wilson Sonsini,
10 did you ever see an oral financing deal, that is to
11 say, a deal where someone acquired an interest in a
12 company for cash that was not papered?

13 MR. BRIDGES: Objection, vague and
14 ambiguous. I think it misstates the evidence.

15 BY MR. STERN:

16 Q. That's a yes or no question.

17 A. The --

18 Q. It's a yes or no question.

19 A. No, no.

20 MR. BRIDGES: If he wants to explain,
21 you should let him explain. He's answered the
22 question but he's entitled to explain it if he wants
23 to.

24 THE WITNESS: One of the reasons why I
25 left the law firm was that you always were there at

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1 the end. Everything was done. All the action was
2 over and then you were there to paper it. So much
3 happens before the lawyers are brought in -- so much
4 happens. And then you, you know, make it formal at
5 the end.

6 BY MR. STERN:

7 Q. That's part of the Silicon Valley
8 custom, to make it formal at the end, isn't it?

9 A. I didn't mean to put as much emphasis on
10 that statement as you did.

11 Q. The Silicon Valley custom is to paper
12 the deal at the end, right?

13 A. I'm not really sure what you're saying.

14 Q. Silicon Valley custom is that after
15 there is a financing deal, you reflect the deal in
16 written paper signed by the principals, right?

17 A. Certainly to have the actual closing,
18 you paper it.

19 Q. Have you ever seen a closing where there
20 wasn't paper signed by the parties?

21 A. Absolutely. Well, I've heard of deals
22 where venture financing and other things occurred
23 based on a check being handed over and cashed and
24 people are that eager to get a deal done, but those
25 are more rumors than anything.

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1 Q. I'm glad you said that.

2 MR. BRIDGES: Move to strike the
3 colloquy.

4 BY MR. STERN:

5 Q. Let's talk about mergers and
6 acquisitions.

7 While you are in your four years at
8 Wilson Sonsini --

9 A. I was at Wilson Sonsini for two years,
10 and I was at O'Melveny & Myers for one.

11 Q. In the three years that you were at
12 Wilson Sonsini and O'Melveny & Myers, did you ever
13 work on a merger?

14 A. Yes.

15 Q. In any of the mergers that you worked
16 on, did the merger become completed before the
17 parties had signed the paperwork?

18 MR. BRIDGES: Objection, vague and
19 ambiguous and -- that's all. That's all I have to
20 say.

21 THE WITNESS: No.

22 BY MR. STERN:

23 Q. But my question stands: Why was there
24 an -- I can represent to you that there was no
25 letter of intent on the 35 percent. And just so

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1 we're clear, the 35 percent, it is your statement
2 under oath, you told Judge Seeborg on Exhibit 3,
3 line 19:

4 "By the end of June 2009, the parties had
5 agreed on the basic terms of their eventual
6 plan to merge Fusion Garage into CrunchPad
7 with Fusion Garage receiving 35 percent of the
8 merged company's stock."

9 Do you see that?

10 A. Uh-huh, yes.

11 Q. Okay. When you made that statement, you
12 called that the eventual plan to merge. Do you see
13 that?

14 A. Yes.

15 Q. When you say "eventual," you meant it
16 was the final plan to merge, correct?

17 MR. BRIDGES: Objection --

18 THE WITNESS: Eventual.

19 BY MR. STERN:

20 Q. Well, what do you mean by "eventual"?

21 A. I meant eventual. Let's get it closed,
22 and when it's closed, that will be what it is.

23 Q. And there was no deal after that deal,
24 right?

25 A. I don't know what that question means.

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1 Q. Well, when you say the eventual plan to
2 merge, did you mean that it was an interim -- well,
3 maybe this is an English language issue. Do you
4 know what the word "interim" means?

5 A. Yes.

6 Q. So when you used the word "eventual,"
7 did you mean to say "interim," this was just an
8 interim plan to merge?

9 A. I just meant eventual.

10 Q. Well, when you say "eventual," did you
11 mean it was the final plan to merge?

12 A. If you struck that wording, the sentence
13 would have been the same. The basic terms were that
14 we were planning to merge.

15 Q. Was that the last plan to merge with
16 Mr. Rahthakrishnan?

17 A. We were -- right until the end when they
18 emailed us, that was what we were trying to make
19 happen.

20 Q. Okay. So what you were trying to make
21 happen as of on November 2009 was 35 percent; is
22 that right?

23 A. By "you," I mean us.

24 Q. CrunchPad, TechCrunch.

25 A. Chandra. I mean, there are emails

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1 saying, "Let's get this done." In fact, more push
2 by him than anything. My goal was to get the
3 product done. I assumed as two parties working in
4 good faith together, you know, we would get the
5 paperwork done eventually. We seemed to have a
6 basic agreement of terms that sort of worked.

7 MR. STERN: Next in order.

8 (Deposition Exhibit 8
9 marked for identification.)

10 BY MR. STERN:

11 Q. Now, you told Judge Seeborg in paragraph
12 19 of your declaration that the eventual plan to
13 merge involved Fusion Garage receiving 35 percent of
14 the merged company's stock, correct?

15 A. Yes.

16 Q. And you told Judge Seeborg that that was
17 an agreement that had been reached at the end of
18 June 2009, correct?

19 MR. BRIDGES: I just want to --
20 Mr. Stern, you keep saying he's told Judge Seeborg.
21 I think this is clearly in a declaration that was
22 filed before Judge Weir, I believe. You can talk
23 about what's in his deposition, but he's not
24 testifying before Judge Seeborg.

25 BY MR. STERN:

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1 Q. You meant to make this statement to a
2 federal judge, didn't you?

3 A. In this exhibit, yes.

4 Q. And you thought they would be read and
5 relied on by a federal judge, didn't you?

6 A. Yes.

7 Q. So go to paragraph 19 again.

8 A. Yes.

9 Q. And my question was, you understood that
10 this eventual plan to merge that you're referring to
11 was what you claimed was the basis of an agreement
12 between the parties, right?

13 A. Yes.

14 Q. Okay. And can you tell me, this
15 agreement, in your declaration you refer to it as
16 being reflected in Exhibit K; is that right?

17 A. What is Exhibit K? Here's Exhibit K.
18 Well, that's an email from Chandra to me and to
19 Heather.

20 Q. Okay. So my question is, do you see in
21 this email he is responding to a proposal that you
22 had previously made to him; is that correct?

23 A. Which email, the first one at 12/30 --
24 no, the first email that he sent to me, 3:01.

25 Q. 3:01.

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1 A. Okay. It looks like he's responding to
2 the emails that are right below it.

3 Q. Okay, that's fine. But the point is, at
4 2:17 p.m. on June 27th, you wrote Mr. Rahthakrishnan
5 that:

6 "Let's talk Monday and see where we
7 stand. At this point it looks like our
8 position is to turn the project off
9 completely."

10 Do you see that?

11 A. Yes.

12 Q. So on June 27th, when you talk about the
13 project, you're talking about the CrunchPad project,
14 right?

15 A. Yes.

16 Q. And you were talking about turning it
17 off completely, right?

18 A. Yes.

19 Q. What did you mean by that?

20 A. It was about this period Chandra would
21 occasionally go dark for long periods of time. It
22 was about this period that we got Brian involved
23 because Chandra was going dark. I needed to make
24 sure the hardware was where we thought it would be.

25 About this time we thought about sending

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1 guys out to find out what was going on out there.

2 We needed to, you know, move or not on the
3 financing, the term sheet that had been provided to
4 us by First Round Capital.

5 And the real question on whether to move
6 on that -- there were two questions -- one was, is
7 the product real, like, is this real, are we ready
8 to go? And the other issue is, can we make this
9 work for everyone, including all these debt guys
10 with, you know, the valuation we were talking about.

11 And those were two questions that were
12 sort of up in the air. "Chandra, how are things
13 going with the project? Chandra, you're not
14 answering," etcetera. Chandra, are your investors
15 okay with a deal where -- you know, as outlined here
16 you get 35 percent, you figure it out on your end,
17 you give us a clean entity?"

18 And he wasn't responding, it looks like.
19 And so I said, you know, "Look, I can't keep these
20 investors sitting around."

21 Q. So --

22 A. So he sent this email.

23 Q. You know, so if you were going to turn
24 the project off, what would that mean you would have
25 done?

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1 A. If I was literally to turn the project
2 off, it would mean we were turning the project off.

3 Q. What does that mean?

4 A. It means it's done.

5 Q. What does that mean? Does that mean you
6 find another investor other than Fusion Garage?

7 A. Fusion Garage was never an investor;
8 they were a partner.

9 Q. Does it mean finding another partner
10 other than Fusion Garage?

11 A. At that stage it would be difficult
12 because we built so much with them.

13 Q. So what would you do? What is the
14 dynamic of what happens when you, quote, turn the
15 project off?

16 A. Might have to find another partner to
17 help us build the hardware who could be more
18 reliable. We would have to of course come to an
19 agreement with Fusion Garage on how that would look.
20 You know, to some extent this was a threat to get
21 him to move, to get him to do something.

22 Q. I won't even touch that. I like that, a
23 threat to get him to move. Let me --

24 MR. BRIDGES: Objection to the colloquy.
25 Mr. Stern, you insist on trying to make triumphalist

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1 comments throughout. Let's dispense with the
2 colloquy. You can ask the questions and get
3 answers.

4 BY MR. STERN:

5 Q. Can you tell me, I take it that the
6 agreement that you had with Mr. Rahthakrishnan that
7 was formed at some point that you don't remember or
8 can't identify that established a partnership, that
9 agreement allowed you the unilateral right to,
10 quote, turn to project off?

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

13 THE WITNESS: You seem to be critiquing
14 my management style. I mean, I made a statement.

15 BY MR. STERN:

16 Q. No. My question is this: Was it your
17 understanding in your own mind that the agreement
18 that you had reached with Mr. Rahthakrishnan,
19 whether you characterize it as a partnership
20 agreement or a joint venture agreement or however
21 you characterize it, that that agreement allowed you
22 to simply walk away from the deal when you felt it
23 was appropriate?

24 MR. BRIDGES: Objection, calls for a
25 legal conclusion, vague and ambiguous. But go

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1 ahead.

2 THE WITNESS: I remember when Brian
3 Kindle came back from Singapore and Taiwan and he
4 said, "There's some weird stuff going on out there.
5 I think they're trying to steal the project." He
6 had some statements to make. Those were in the
7 documents. I remember saying to him and to Chandra
8 later on that, "There's no way either of us can move
9 forward without the other. We have been working on
10 this together for too long. This is our project,
11 all of us. We are cofounders of this project, all
12 of us. It's impossible for that to happen."

13 And I remember saying to Chandra, "My
14 team is concerned about your team. My team is very
15 concerned about the way things are going. They've
16 even said that they're concerned that you're making
17 a move without us. You're referring to us as a
18 customer, etcetera." That was the statement.

19 I said, "Chandra, I just want to
20 reiterate. That's not happening, right? We're
21 doing this together. There's no way you're going to
22 try to do this apart. You couldn't do this without
23 us."

24 He said, "Of course, that's ridiculous.
25 This is just a miscommunication."

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1 MR. STERN: Move to strike.

2 BY MR. STERN:

3 Q. Listen to my question. My question was,
4 was it your understanding that the agreement that
5 you had with Mr. Rahthakrishnan was such that you
6 could unilaterally turn the project off?

7 MR. BRIDGES: Objection, same
8 objections.

9 BY MR. STERN:

10 Q. Yes or no.

11 MR. BRIDGES: It calls for a legal
12 conclusion.

13 MR. STERN: Yes or no.

14 MR. BRIDGES: Excuse me. Please don't
15 interrupt me when I'm making a proper objection.

16 Objection, legal conclusion, vague and
17 ambiguous.

18 THE WITNESS: If there's a project that
19 needs both sides to happen, if one side simply
20 refuses to do something anymore, then the project
21 can't happen.

22 So from a -- not from a legal standpoint
23 but from just a realistic standpoint, if one side
24 didn't want to do it anymore, then theoretically,
25 yes.

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1 BY MR. STERN:

2 Q. And so when you received
3 Mr. Rahthakrishnan's response on June 27 at 3:01
4 p.m., can you tell me -- first of all, did you
5 respond to this email?

6 A. I don't recall.

7 Q. Well, let me suggest to you, we don't
8 have a response to this email from you. So if we
9 don't have a response to this email from you, would
10 it be fair to say that you didn't respond to this
11 email by email?

12 MR. BRIDGES: Objection, calls for
13 speculation.

14 THE WITNESS: Yes, I don't know. Your
15 client would have it, I assume. If I respond --

16 BY MR. STERN:

17 Q. I'm saying, if nobody has a response
18 from you to the email from Mr. Rahthakrishnan of
19 June 27th, 2009, 3:01 p.m., is it fair to assume
20 that you didn't respond to this email at least by
21 email?

22 MR. BRIDGES: Objection, calls for
23 speculation.

24 A. Yes, I don't know.

25 MR. BRIDGES: Excuse me, let me finish

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1 my objection. Calls for speculation, vague and
2 ambiguous.

3 BY MR. STERN:

4 Q. You said you don't know. Did you
5 respond to this email through a phone call?

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

8 THE WITNESS: We had a -- we spoke via
9 text message, phone call and email and in person, so
10 I don't recall. And sometimes the conversations
11 would spread over all four, right?

12 BY MR. STERN:

13 Q. So as far as you know, as you sit here
14 today, you don't know if you responded to this email
15 of June 27th, 2009, 3:01 p.m. at all, correct?

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

18 THE WITNESS: I don't recall.

19 BY MR. STERN:

20 Q. Good. I'll take that. So then the
21 question is -- now let's look at Exhibit 8.

22 A. I'm sorry?

23 Q. Exhibit 8.

24 A. Yes.

25 Q. Do you have that?

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1 A. Yes.

2 Q. Now, this is dated September 29th, 2009,
3 three months later. Do you see that?

4 A. Yes.

5 Q. And it's an email from Ms. Harde to you.
6 Do you see that?

7 A. Yes.

8 Q. And in it, she's identifying various
9 options. Do you see that? She says, "Here are the
10 updated options for the cap table."

11 A. Uh-huh.

12 Q. Do you see that? And some of the
13 options are Fusion Garage at 30 percent, and some of
14 the options are Fusion Garage at 35 percent.

15 A. Uh-huh.

16 Q. Do you see?

17 A. Yes.

18 Q. Did you communicate any of these options
19 to Mr. Rahthakrishnan?

20 A. Yes. We had a very blunt -- we treated
21 Chandra as a founder of the company. We had a
22 meeting in our conference room where -- I don't know
23 if it was right before this or right after, but
24 where when he had a whiteboard. Heather, Chandra
25 and I met, and we wrote, you know, different

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1 options. And I said a key factor for me was
2 retaining voting control of the company given that I
3 didn't know his investors. And Chandra -- and I
4 said, "That's frankly what we're looking for here,"
5 and we were trying to make it work.

6 So yes, Chandra was, you know, completely
7 aware of this, and I believe, you know, this kind
8 of -- I believe she even sent this to him or would
9 have. There was nothing we were hiding from him at
10 any point ever.

11 Q. Just so that we're clear about this,
12 essentially after June 27th, 2009, you and Ms. Harde
13 were proposing options where Fusion Garage didn't
14 get 35 percent in CrunchPad but would get less than
15 35 percent?

16 MR. BRIDGES: Objection.

17 BY MR. STERN:

18 Q. Yes or no.

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

21 THE WITNESS: Yes, it's difficult when
22 you're not -- you're not recognizing that -- you're
23 assuming Fusion Garage is a constant. This was a
24 company that's raising new money constantly, more
25 debt, more capital acquired. I don't know. I mean,

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1 we have to look at like how much capital did they
2 raise then and before.

3 But largely speaking, we were always
4 trying to find a way to make a deal work where
5 everyone could sort of make money and be happy.

6 MR. STERN: Move to strike.

7 BY MR. STERN:

8 Q. Listen to my question. My question had
9 nothing to do with what you just said.

10 The question is, after June 27, 2009, you
11 and Mr. Harde were in fact proposing options where
12 Fusion Garage obtained less than 35 percent of an
13 equity position in CrunchPad, correct?

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

16 THE WITNESS: No, incorrect. And a big
17 part of it is, again, you're ignoring accrued
18 expenses, assumed debt, etcetera. And we were
19 trying to make that work. And that is something
20 that has to be considered when you're looking at a
21 deal to turn apples and oranges into apples.

22 BY MR. STERN:

23 Q. So it's your sworn testimony that after
24 June 27, 2009, CrunchPad or TechCrunch never
25 proposed to Fusion Garage to take an equity position

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1 in CrunchPad of less than 35 percent?

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

4 THE WITNESS: I'm certainly not
5 necessarily saying that.

6 BY MR. STERN:

7 Q. Well, I'm asking you.

8 A. What I'm saying is that we were, all of
9 us including Chandra, were bending over backwards to
10 try to make find a way to make a deal work with a
11 cap table that was impossibly complicated and
12 included some really random characters. We were
13 trying to financially engineer things to make it
14 work for everyone, and that's with spreadsheets and
15 everything else, also while negotiating with venture
16 capitalists on the other end, none of which would be
17 considered out of the ordinary in Silicon Valley.

18 Q. Did you propose to acquire Fusion Garage
19 for less than 35 percent of an equity ownership
20 interest in CrunchPad after June 27th, 2009?

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

23 THE WITNESS: The reality of the
24 situation is Chandra, Heather, me sitting in a
25 conference room and trying to figure out how to

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1 divide up the equity. If you want to characterize
2 that as offers and -- I don't know how to even
3 respond. These emails are suggestive of we're
4 trying to make it work within certain parameters
5 like we continued to have voting control.

6 Chandra was a founder of the company. He
7 was representing himself as a founder of the
8 company. We were trying to make everything work.

9 MR. STERN: I want to give notice that
10 we're moving to strike all this --

11 MR. BRIDGES: You've given notice since
12 about 10:30 this morning --

13 MR. STERN: Well, it's our position
14 that --

15 MR. BRIDGES: Excuse me. Allow me to
16 finish the sentence.

17 You've been giving notice since 10:40
18 this morning. You've threatened to call Magistrate
19 Trumbell. If you want to do it right now, we can do
20 it right now. You know, I asked you to do it this
21 morning. You didn't want to do it this morning.

22 MR. STERN: What we're going to do is
23 tomorrow we're going to file a motion and we're
24 going to tell the Court -- we're going to show the
25 Court what's been going on, and we think the Court,

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1 correct?

2 A. Correct.

3 Q. Even though you say it never closed,
4 what do you mean by that -- there was no paper on
5 the deal?

6 A. They sent us a term sheet by email.

7 Q. Did you sign it?

8 A. It's not customary to sign the term
9 sheet, so no.

10 Q. Let me see if I get this straight. It's
11 your sworn testimony that in Silicon Valley it's not
12 customary to sign term sheets; is that right?

13 A. It's my belief that, particularly around
14 financing, that signing of term sheets is actually
15 pretty rare, yes.

16 MR. BRIDGES: We've gone a couple of
17 minutes. Let's take a break now.

18 THE VIDEOGRAPHER: We are off the record
19 at 4:26 p.m.

20 (Brief recess.)

21 THE VIDEOGRAPHER: We're back on the
22 record at 4:47 p.m.

23 BY MR. STERN:

24 MR. STERN: Next exhibit.

25 //

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1 (Deposition Exhibit 11
2 marked for identification.)
3 BY MR. STERN:
4 Q. Have you ever seen this document which
5 is Exhibit 11?
6 A. I don't recall.
7 Q. You see it's directed to you?
8 A. Yes, to Chandra and to me.
9 Q. And this says it's dated October 26th,
10 2009, correct?
11 A. It does say that, yes.
12 Q. And it's sent from Ms. Heather Harde,
13 correct?
14 A. Yes.
15 Q. She's your CEO, correct?
16 A. She's a CEO on TechCrunch, yes.
17 Q. Within it there's a cap table, correct?
18 A. Yes.
19 Q. And this is dated October 26th, 2009,
20 right?
21 A. Where is that date?
22 Q. It's on the email, October 26th, 2009.
23 A. Yes, the email is, yes.
24 Q. And you turn the page and there's a
25 document and it says "CrunchPad Series A." Do you

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1 see that, top left corner?

2 A. Yes.

3 Q. You recognize a Series A as an initial
4 financing for a startup?

5 A. Yes.

6 Q. And you see that on column B there are
7 various different bolded words, and one of them is
8 "Series A Assumptions." Do you see that?

9 A. Yes.

10 Q. And across in column C are the
11 valuations that are identified. Do you see that as
12 well?

13 A. Yes.

14 Q. You see it says "Series A raise" and
15 then the number \$2 million? Do you see that?

16 A. Yes.

17 Q. And that means that what you're going to
18 try to do is raise \$2 million of outside money,
19 correct?

20 A. Yes.

21 Q. And then it says "Pre-Money Valuation,"
22 and it says \$10 million, correct?

23 A. Yes.

24 Q. And that means before the money is
25 infused into the company, the company has a

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1 valuation, according to somebody, of \$10 million,
2 correct?

3 A. Yes.

4 Q. And next column says, "Assumption of
5 Fusion Garage Debt." Do you see that?

6 A. Yes.

7 Q. And that says \$513,000, correct?

8 A. Yes.

9 Q. And that means it assumes that when the
10 company starts out, that one of the parties who is
11 going to be having an equity ownership in the
12 company is going to start off with a debt of
13 \$513,000, correct?

14 A. No. What that means is that the entity,
15 in this case CrunchPad, would have debt of \$513,000
16 that would be assumed and remain debt.

17 Q. Correct. What I meant was that the debt
18 that they were assuming was debt that originally
19 belonged to Fusion Garage.

20 A. Correct.

21 Q. Okay. But the debt ultimately would be
22 assumed by CrunchPad?

23 A. Right.

24 Q. The next column says "CrunchPad
25 Debt Covered (sic) to Equity," and it says \$319,000?

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1 Do you see that?

2 A. Yes.

3 Q. And that's essentially the same for
4 CrunchPad, namely, that CrunchPad had a debt of
5 \$319,000 which was going to be assumed by the
6 company itself, correct?

7 A. Incorrect. It says "convered," which is
8 a typo. It means converted. And in this case the
9 CrunchPad debt, which is TechCrunch's debt, would be
10 converted to stock instead of being repaid in cash.

11 Q. I see, okay. So it was going to be
12 \$319,000 of CrunchPad stock provided; is that
13 correct?

14 A. There would be \$319,000 in stock given
15 to TechCrunch in CrunchPad at the valuation of \$10
16 million pre.

17 Q. Exactly. But the \$319,000 is \$319,000
18 of CrunchPad stock being given to TechCrunch?

19 A. Correct.

20 Q. And then it says "Post-Money Valuation,"
21 which is essentially if you take all the numbers and
22 add them up, it comes out to \$12,313,000; is that
23 right -- 513,000?

24 A. Yes.

25 Q. And that's simply adding the four rows

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1 above?

2 MR. BRIDGES: Objection.

3 THE WITNESS: It's adding the first
4 three, not the fourth, but yes.

5 BY MR. STERN:

6 Q. I'm sorry, that's fine, okay.

7 And then on column B it says "Fusion
8 Garage." Do you see that?

9 A. Yes.

10 Q. And then it says "Fusion Garage Total
11 Cap Table." Do you see that?

12 A. Yes.

13 Q. And then across where it says
14 "Standalone Companies Today," do you see that? It
15 says, "common shares, 1 million --" it says
16 1,393,000 something; is that right?

17 A. It does, yes.

18 Q. And that's the number of outstanding
19 shares of common stock for Fusion Garage, correct?

20 A. That's what it says, yes.

21 Q. And that should comprise, according to
22 this document, columns F and G, a hundred percent of
23 the outstanding stock?

24 A. Yes.

25 Q. And column H and I say -- I can't read

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1 that. Can you read that what it says in bold
2 letters? Step -- do you see that column?

3 MR. DOOLITTLE: "Step 1: CP acq FG."

4 BY MR. STERN:

5 Q. You understood that "Step 1" means that
6 CrunchPad is acquiring Fusion Garage, right?

7 A. Correct.

8 Q. And what's happening is that as part of
9 the acquisition 3,071,895 shares of CrunchPad stock
10 are being given to Fusion Garage; is that fair?

11 A. I believe so.

12 Q. And that represents 23.5 percent of all
13 CrunchPad stock, right?

14 A. Yes.

15 Q. Okay. So everything I've read so far is
16 accurate, right?

17 MR. BRIDGES: Objection, vague and
18 ambiguous, lacks foundation.

19 BY MR. STERN:

20 Q. According to this cap table, Fusion
21 Garage is getting 23.5 percent of CrunchPad?

22 A. Yes, except that you're not taking into
23 account assumed debt, which again is the apples and
24 oranges issue. So it would be 23.5 percent plus
25 assumption of \$513,000 in debt. Also, I'm not sure

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1 what currency this is. I guess we're assuming it's
2 U.S. dollars, but I'm not sure. It might be
3 Singapore. But yes, other than that --

4 Q. Do you have information it's in any
5 other currency?

6 A. Every once in a while we get confused,
7 but I think it's probably U.S. dollars.

8 Q. I mean, look at the valuation. The
9 valuation is \$10 million; it's not --

10 A. Sometimes we get dollar figures from
11 Chandra on debt, and it was Singapore and we thought
12 it was U.S., etcetera, but I don't know. I mean,
13 obviously at the end it wasn't like it was 10X; it
14 was one and a half X or something.

15 Q. All right. But in all events, according
16 to this cap table Fusion Garage is getting 23.5
17 percent of CrunchPad, not 35 percent, correct?

18 A. Correct.

19 Q. And according to this cap table, 76.5
20 percent of CrunchPad remains in CrunchPad, correct?

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

23 BY MR. STERN:

24 Q. I'm just looking at the table.

25 A. Yes.

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1 Q. So my question is, can you tell me why
2 it is that on October 26th, 2009, TechCrunch or
3 CrunchPad are sending Mr. Rahthakrishnan a cap table
4 showing that he's getting 23.5 percent of CrunchPad?

5 A. I'm not sure, but I believe -- I believe
6 there was an additional equity grant to Chandra and
7 his employees for employment options which would
8 have to be reissued at the time of the acquisition,
9 which isn't on here. I'm not sure of that, but I
10 believe when we were talking about this lower number
11 that there was a separate discussion about
12 employment options being granted as well, and most
13 of those were to Chandra, but I'm not one hundred
14 percent sure.

15 Q. Okay. But in all events, take a look at
16 Exhibit 8. Keep it in front of you with Exhibit 11.

17 A. Okay.

18 Q. So you're looking at Exhibit 8?

19 A. Eight, yes.

20 Q. Okay. Look at Exhibit 8. There are
21 five options. You see the first one says:

22 "Fusion Garage at 30 percent and
23 TechCrunch accrued expenses as equity
24 participation."

25 Do you see that?

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1 A. I'm sorry, repeat that, please.

2 Q. If you look at Exhibit 8, look at
3 enumerated paragraph one, it says:

4 "Fusion Garage at 30 percent and
5 TechCrunch accrued expenses as equity
6 participation."

7 Do you see that?

8 A. Yes.

9 Q. When it says "TechCrunch accrued
10 expenses," that's what we're talking about is taking
11 the debt and converting it to equity, right?

12 A. Yes.

13 Q. And the next sentence says:

14 "This gets Chandra 20.8 percent over 14.4
15 percent pre/post Series A."

16 Do you see that?

17 A. Yes.

18 Q. That means that Chandra will be
19 getting -- if I understand this correctly, pre-money
20 that would be 20.8 percent and post-money it would
21 be 14.4 percent?

22 A. Yes.

23 Q. Okay, we're reading that correctly.
24 That's where Fusion Garage gets 30 percent of
25 CrunchPad, right?

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

3 THE WITNESS: I think, I mean, you're
4 saying that's number one. Yes, in the option, yes.

5 BY MR. STERN:

6 Q. Yes, we're just reading the number one
7 option, right? The number two option is Fusion
8 Garage at 30 percent also but TechCrunch accrued
9 expenses instead of equity assumed debt.

10 Do you see that?

11 A. Yes.

12 Q. Chandra remains unchanged, but it
13 changes your equity participation. Do you see that?

14 A. Yes.

15 Q. Option three is Fusion Garage at 35
16 percent and then TechCrunch accrued expenses as
17 equity participation, and then it shows Chandra
18 getting 24.4 percent, and then it's showing pre- and
19 post-money valuations, right?

20 A. Yes.

21 MR. BRIDGES: I'm sorry. I wanted to
22 object, vague and ambiguous. Please leave me time
23 to object.

24 BY MR. STERN:

25 Q. You understand what pre- and post-money

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1 valuations means?

2 A. Yes.

3 Q. Four is Fusion Garage at 35 percent and
4 TechCrunch accrued expenses as assumed debt. Do you
5 see that?

6 A. Yes.

7 Q. And again, it talks about Chandra being
8 unchanged, right?

9 A. Correct.

10 Q. The first four options involve Fusion
11 Garage getting either 30 or 35 percent equity in
12 CrunchPad, right?

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

15 BY MR. STERN:

16 Q. This isn't hard. It's put
17 straightforward. Want me to repeat it?

18 A. No, yeah. I mean, with a lot of
19 assumptions like --

20 Q. Yes, there are other variables.

21 A. -- what happens with the debt. But it's
22 30 or 35 percent plus there's actually nothing in
23 here about what happens to Fusion Garage debt.

24 Q. Right. This doesn't talk about Fusion
25 Garage debt.

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1 A. It does not, correct.

2 Q. I know. That's fine. But five is yet
3 another option.

4 A. It does, I'm sorry. It says \$513,000
5 assumes Fusion Garage debt, so it's assuming -- all
6 of this is assuming assumption.

7 Q. I'm not even worried about the Fusion
8 Garage debt. One, two, three and four identified in
9 Exhibit 8 are all various different options either
10 with Fusion Garage getting 30 percent or 35 percent
11 equity, right?

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

14 THE WITNESS: Yes.

15 BY MR. STERN:

16 Q. Okay. Option five reads as follows:

17 "Only real way for you to have control is
18 for TechCrunch to get five percent equity,
19 me," presumably Heather, "staying at ten
20 percent and Fusion Garage total equity not
21 more than 23.5 percent."

22 Do you see that?

23 A. Yes.

24 Q. Now, when Ms. Harde was writing this to
25 you -- first of all, let me ask you, do you and

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1 Ms. Harde have a purely professional relationship?

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

4 THE WITNESS: Yes.

5 BY MR. STERN:

6 Q. I mean, I'm just -- there's no
7 common-law marriage or any sort of romantic
8 relationship between you?

9 A. Are these appropriate questions?

10 Q. I'm trying to find out if she's a person
11 of interest other than working for you, any other
12 interest she has.

13 A. It's purely a professional relationship.

14 Q. The question is, when she says the only
15 real way for you to have control, why is she
16 pointing out that that's the only way for you to
17 have control?

18 A. We --

19 Q. Go ahead.

20 A. As we spoke with Chandra in one of the
21 emails, which doesn't -- isn't here, but from
22 Chandra to us talks about the need for us, being
23 TechCrunch, to have control of the entity largely
24 because we don't know who these investors were of
25 Fusion Garage and we were concerned because some of

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1 them were -- "loanshark" is a tough word, but they
2 were charging very high interest rates and we were
3 concerned about it. So having voting control of the
4 entity was important for us.

5 Q. So the reason I ask that question is
6 that in options one, two, three and four when it
7 talks about you having either 57 percent or 59
8 percent or 53 percent or 55.3 percent -- do you see
9 that, those numbers?

10 A. Uh-huh.

11 Q. Those are before any additional shares
12 of CrunchPad are given to the outside investors,
13 right?

14 MR. BRIDGES: Objection, vague and
15 ambiguous. Do you want him to repeat the question?

16 THE WITNESS: Yes, repeat the question,
17 please.

18 BY MR. STERN:

19 Q. In other words, options one, two, three
20 and four show what Fusion Garage is getting and then
21 creates the reserve for all other stock being in
22 CrunchPad. But what it doesn't address is the
23 outside investors, the people who are putting real
24 money in --

25 A. Yes.

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1 Q. -- what percentage of CrunchPad they're
2 getting, right?

3 A. So I think it does address that in the
4 assumptions below number five where we're talking
5 about -- we're assuming we're going to raise \$2
6 million on a 10-pre.

7 Q. Right.

8 A. And we also assume, say, an option pool
9 which is additional dilution.

10 Q. Yes.

11 A. I'm assuming that, say, if you look at
12 number one, that where it says, "You are 57.8
13 percent/39.9 percent," that is before and after the
14 Series A, and "you" is TechCrunch, Heather, me all
15 put together.

16 Q. Yes. So that's exactly right. So
17 according to this hypothetical, numbers one, two,
18 three and four post-money, after the outside
19 investors put their money in, TechCrunch would get
20 39.9 or 41.2 or 37 percent or 38.3 percent remaining
21 interest in CrunchPad, right?

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

24 THE WITNESS: Apparently, yes.

25 BY MR. STERN:

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1 Q. Okay. And those numbers that I just
2 read, those percentages, those were all below fifty
3 percent?

4 A. They are below fifty percent, yes.

5 Q. But number five, number five talks about
6 how you could maintain control, namely, how if you
7 give a certain amount of CrunchPad to Fusion Garage
8 and you allow for a certain amount of CrunchPad to
9 go to the outside investors who are infusing
10 capital, you get to maintain control, meaning you
11 maintain at least fifty percent ownership in
12 CrunchPad, right?

13 A. That is what number five talks about,
14 yes.

15 Q. And so that 23.5 assumes that you're
16 going to be maintaining control, right?

17 MR. BRIDGES: Objection.

18 BY MR. STERN:

19 Q. Put another way, the 23.5 to Chandra, to
20 Fusion Garage, assumes that you're going to be
21 maintaining control of CrunchPad?

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

24 THE WITNESS: Yes. I mean, I think the
25 idea is how to work this out so that we have voting

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1 control of the entity, yes.

2 BY MR. STERN:

3 Q. And that's ultimately what was proposed
4 to Chandra on October 26th, about a month later, in
5 Exhibit 11, namely, that he was getting 23.5 percent
6 interest. What wasn't identified in here was that
7 you would be maintaining voting control, right?

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

10 THE WITNESS: We had these discussions
11 with Chandra. We said very clear that voting
12 control is important for us and we wrote on the
13 whiteboard in the conference room. I actually --
14 maybe we didn't take a picture -- if we took a
15 picture, it would have popped up in discovery of
16 that board. But we had that discussion.

17 However, there's a couple of things that
18 are odd. For example, in Exhibit 11, the
19 post-money, post-Series A equity for Fusion Garage
20 is 19.1 percent. That --

21 BY MR. STERN:

22 Q. Where are you?

23 A. This is L16. And that shows a
24 post-Series A Fusion Garage percentage of 16 -- I'm
25 sorry, 19.1 percent.

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1 Q. Right.

2 A. Now, that's different than Exhibit 8
3 which talks about, say, example one where Fusion
4 Garage is getting 30 percent, TechCrunch is
5 assuming -- is converting debt to equity which is
6 sort of the best case for everyone except
7 TechCrunch. This gives Chandra 20.8 percent and
8 14.4 percent. There's something different in these
9 numbers.

10 And I think what they are, because he
11 started off higher but ended up lower in Exhibit 8.
12 In Exhibit 11, he started off lower but ended up
13 higher. And I think there was an additional
14 document around this Exhibit 11 that may have talked
15 about equity option grants to Chandra and his team,
16 or it might be that it didn't include an option
17 pool. So there's lots of things in there that I
18 don't know.

19 But what is clear is that we, including
20 Chandra, were trying to find a way to make it work
21 and it started to, with the \$10 million pre, to make
22 it work so that we could convert the debt and be
23 okay with the debt investors of Fusion Garage and
24 still have a situation where everyone had a lot of
25 up side.

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1 Q. But what's also clear is that as of
2 September 29, 2009 or October 26th, 2009, what there
3 isn't is a cap table that shows that what is being
4 agreed upon by TechCrunch and Fusion Garage is that
5 CrunchPad -- that Fusion Garage for certain is
6 getting 35 percent of CrunchPad, right?

7 MR. BRIDGES: Objection, argumentative,
8 vague and ambiguous.

9 THE WITNESS: Yes, this was fluid. We
10 were constantly trying to make it work with a very,
11 very difficult cap table. I mean, that's why it was
12 October instead of December the previous year.

13 BY MR. STERN:

14 Q. The \$2 million -- let me see if I --
15 ignoring now the question of equity distribution and
16 allocation, the \$2 million that you were going to
17 get from the outside investors, that money was going
18 to be used operationally, correct?

19 A. Correct.

20 Q. You understand what I mean by
21 "operationally?" It wasn't going to be put in the
22 bank; it was going to be used to run the company,
23 right?

24 A. I don't know where you're getting that
25 from. What we were going to do with the money was

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1 largely around paying off of lot of sub costs
2 involved with getting the product to market. If you
3 mean by that operationally, then I agree.

4 Q. But what I mean by the -- you thought
5 that for \$2 million if you had \$2 million in cash,
6 you would be able to bring the product to market,
7 right?

8 A. I think that actually provided a little
9 bit of a buffer, but yes.

10 Q. Okay. And in various different -- I
11 mean, I could show you various different
12 evaluations, although I think it's sort of
13 unnecessary, but to gild the lily...

14 (Deposition Exhibit 12
15 marked for identification.)

16 THE WITNESS: Thank you.

17 BY MR. STERN:

18 Q. Do you recognize this document?

19 A. Not particular, no.

20 Q. Well, what's really more important than
21 anything is if you take a look at page -- well, this
22 document is dated June 19th, 2009. Do you see that?

23 A. Yes.

24 Q. It's an email prepared by Heather Harde.
25 Do you see that?

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1 A. Yes.

2 Q. First there's a -- it purports to have
3 both a term sheet and a cap table as well as a
4 financial model for the company, right?

5 A. Yes.

6 Q. Take a look at, if you would, Exhibit --
7 or look at the bottom of the righthand side of
8 the -- bottom -- you see the numbers that says "FG"?

9 A. Which page? Oh, they're numbered.

10 Q. "FG" on the lower righthand side of the
11 page? Do you see that, those numbers?

12 A. Where it says FG000, for example?

13 Q. Those are the numbers.

14 A. Okay.

15 Q. If you take a look at those numbers,
16 take a look at the page that's marked FG994, FG994.
17 Do you see that? I mean, they're all cumulative,
18 which is what I'm about to ask you. Do you have
19 that?

20 A. Yes.

21 Q. FG994 shows an estimated startup
22 expenses through the initial production. Do you see
23 that?

24 A. Yes.

25 Q. And if you look at it, it has a run rate

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1 of some nine months, May, June, July, August,
2 September, October, November, December, January. Do
3 you see that?

4 A. Yes.

5 Q. And then if you look at the columns
6 down, it goes everything from the design and
7 development expense to the headcount, including all
8 the people that would be involved as well as various
9 miscellaneous including travel, legal, etcetera. Do
10 you see that?

11 A. Yes.

12 Q. And if you look at the numbers at the
13 very bottom of the page there's a row. Do you see
14 on the left it says \$194,000 going all the way to
15 the right of \$1,933,000?

16 A. Yes.

17 Q. And you recognize that \$1,933,000 is the
18 total, that's the total expenses that would be
19 anticipated or estimated to be incurred from May
20 through January with respect to all of these
21 expenses for production of the product, correct?

22 A. Correct.

23 Q. And you were seeking, if you remember
24 the valuations we saw, the cap tables,
25 Mr. Arrington --

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1 BY MR. STERN:

2 Q. When did you first read that he did?

3 A. I'm not sure I did read that. I mean,
4 his email to me said he had it. I think there
5 were -- I don't know, post --

6 Q. You testified that in the press of the
7 information you learned, you learned that he had
8 closed \$2 million in funding. I'm not saying that
9 it happened; I'm just saying that's what --

10 A. Yes, I mean, I think I read that. Maybe
11 he said, "I am closing." I don't know.

12 Q. Okay. You don't know?

13 A. Yes.

14 Q. All right.

15 MR. STERN: You want to take a break?

16 MR. BRIDGES: No. Let's keep going for
17 a little bit longer. It's this allergy that kicks
18 up in the afternoon. That's all.

19 BY MR. STERN:

20 Q. Was there a period of time during 2009
21 when you stopped focusing on the business of the
22 CrunchPad project?

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

25 THE WITNESS: Can you be more specific?

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1 BY MR. STERN:

2 Q. Was there an event that took place where
3 you believed that someone spat on you at some sort
4 of event and, as a consequence, you decided to focus
5 your attention -- well, first of all, let's start
6 there.

7 Was there some sort of event where you
8 believe that somebody spat on you?

9 A. Yes.

10 Q. Do you recall when that was?

11 A. January of '09. At an event in Germany
12 someone spat on me.

13 Q. And is it the case that -- did you speak
14 to Mr. Rahthakrishnan about that event?

15 A. I don't recall.

16 Q. As a result of that event taking place,
17 did you take any sort of measures to contemplate
18 your life or to otherwise remove yourself from the
19 distraction of either CrunchPad's business or
20 TechCrunch's business?

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

23 THE WITNESS: I took most of February
24 off, mostly off-line during that period.

25 BY MR. STERN:

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1 Q. And can you tell me exactly what you did
2 during that period?

3 A. Skied a little bit, was in Hawaii a
4 little bit.

5 Q. You said you took most of February --
6 that's February 2009 -- off?

7 A. Yes.

8 Q. And during the period of time that you
9 were taking off, who was the person that was most
10 responsible for the CrunchPad project? Was that
11 Mr. Monier?

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

14 THE WITNESS: Louis and Chandra.

15 BY MR. STERN:

16 Q. I'm sorry?

17 A. Louis Monier and Chandra.

18 Q. And you say that you were back in full
19 capacity as of March of 2009?

20 A. Yes.

21 Q. When you publish something in your
22 blogs, you make statements in your blogs, do you try
23 to be honest?

24 A. Yes.

25 Q. Do you try to be complete?

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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.

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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

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1 objection on that basis, Mr. Stern. I'm advising my
2 client here to try to help clarify so that we can
3 try to get you an answer to your question. I assume
4 that's acceptable?

5 MR. STERN: I don't know.

6 THE WITNESS: Please repeat the
7 question.

8 BY MR. STERN:

9 Q. The question is --

10 MR. BRIDGES: Could we have the court
11 reporter --

12 BY MR. STERN:

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

17 MR. BRIDGES: The objection is asked and
18 answered, but you may proceed, and compound.

19 THE WITNESS: In my eyes, CrunchPad
20 includes people who said they were part of
21 CrunchPad, Chandra, his employees, Brian Kindle, Nik
22 Cubrilovic, Louis Monier, and even others at
23 TechCrunch, and they built all of the CrunchPad.

24 BY MR. STERN:

25 Q. Is it fair to say that you can't in your

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1 own mind distinguish contributions that were made
2 either by the folks at TechCrunch, the folks at
3 CrunchPad or the folks at Fusion Garage?

4 MR. BRIDGES: Objection, misstates
5 testimony.

6 THE WITNESS: We had their employees,
7 Fusion Garage people who live in Singapore, in our
8 office; our guys were there. I was on the phone;
9 they were here. Chandra was here for months working
10 together making high-level and low-level product
11 decisions. It's very difficult to say where one
12 thing started and another thing ended. Especially
13 when you work collaboratively as a team, you trust
14 each other.

15 BY MR. STERN:

16 Q. If that's your answer, that's fine.

17 A. So I think the answer is, in some cases,
18 yes, it is difficult to distinguish between what one
19 person did and what another person did.

20 Q. I wasn't asking whether it was
21 difficult; I was saying, are you capable of telling
22 me any aspects of the hardware/software design or
23 other aspects of the CrunchPad that were contributed
24 not by the Fusion Garage people but by either the
25 TechCrunch people or the CrunchPad people?

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1 MR. BRIDGES: Objection, asked and
2 answered, compound, vague and ambiguous.

3 THE WITNESS: Beyond what I've already
4 said, specifically, decisions, especially high-level
5 ones, went through me conferring with Chandra and
6 others, but very rarely would we disagree, but we
7 made decisions together. There were occasions or
8 times when I would insist on a certain way of going.
9 Certain things were important over others.
10 Occasionally Chandra would as well.

11 The overall blueprint of the device was
12 mine. If you look at the original post that I did
13 compared to the device that was eventually launched
14 by Fusion Garage, the blueprint was exactly the
15 same.

16 BY MR. STERN:

17 Q. Is it your belief that if somebody took
18 your post that was public and designed a product
19 that had features that were contained in your post
20 that you owned the blueprint for the product that
21 was developed by that person?

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

24 THE WITNESS: In general, no.

25 BY MR. STERN:

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1 Q. In general, no. So let me just make
2 sure we're clear about this. Can you tell me -- I
3 keep asking, but can you identify -- well, let me
4 change the question.

5 Please identify every contribution that
6 someone from TechCrunch or CrunchPad but not Fusion
7 Garage made to the hardware/software design or other
8 aspects of the CrunchPad.

9 MR. BRIDGES: Objection, it's asked and
10 answered earlier today, compound, vague and
11 ambiguous.

12 BY MR. STERN:

13 Q. You testified about some things this
14 morning. The high-level things.

15 A. It's virtually impossible to answer the
16 question because it was a collaborative process. We
17 were all working together.

18 Q. And that's the best you can give me; is
19 that fair?

20 MR. BRIDGES: Objection, the question
21 earlier was asked and answered. It's now -- we're
22 now six hours into the deposition. He's answering
23 questions you've asked him before. I'm going to
24 object on the grounds of argumentative, vague and
25 ambiguous.

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1 BY MR. STERN:

2 Q. You can answer the question. Is that
3 the best you can give me, that it's virtually
4 impossible to answer it?

5 A. That's my answer, yes.

6 Q. Okay. Can you tell me what
7 contributions anyone from TechCrunch or CrunchPad
8 but not Fusion Garage made to the source code that
9 existed at any point in time for either the
10 CrunchPad or the JooJoo?

11 MR. BRIDGES: Objection, compound, lacks
12 foundation with respect to the JooJoo, vague and
13 ambiguous, and also to a certain extent asked and
14 answered.

15 But go ahead.

16 THE WITNESS: One part of that I can
17 answer directly easily is the first prototype of the
18 CrunchPad was designed entirely by Nik on the
19 software side -- hardware with a little bit of help.
20 But, you know, that was the -- I believe a mostly
21 commercial installation of Linux with some
22 customizing. That was entirely, though, Nik.

23 I believe with prototype B where Louis
24 was involved as well, that's when we moved to mostly
25 Fusion Garage software. At that point they were

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1 taking over. The actual coding was done by Fusion
2 Garage employees.

3 BY MR. STERN:

4 Q. Can you tell me any architectural
5 feature of the JooJoo software product that was
6 contributed by anybody associated with TechCrunch or
7 CrunchPad but not Fusion Garage?

8 MR. BRIDGES: Objection, vague and
9 ambiguous, lacks foundation.

10 THE WITNESS: I'm not sure what you mean
11 by "architectural." Do you mean design? Do you
12 mean --

13 BY MR. STERN:

14 Q. Yes, yes.

15 A. Again, I point back to my original post
16 which talked about booting immediately to the
17 browser. But things like single buttons; camera
18 facing the front. When you turn the device, it
19 flips the aspect, so you can turn it this way, turn
20 it that way and see differently. The fact that when
21 you're outside of typing a URL or something else,
22 you don't see the chrome of the browser was
23 something earlier on that we had together agreed was
24 a really good idea.

25 There are examples like that, again, we

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1 were doing collaboratively. A lot of these were at
2 my insistence; some were ideas from other people
3 including Chandra's team. But, you know, nearly
4 every aspect of it was something I was involved in.

5 Q. Well, you've now said that a lot of
6 these were at my insistence but some of them were
7 ideas from Chandra. But that wasn't my question.

8 I keep -- I'm asking for contributions
9 made by people at CrunchPad or TechCrunch but not
10 made by people at Fusion Garage.

11 MR. BRIDGES: Again, asked and answered
12 from this morning, vague and ambiguous.

13 THE WITNESS: The point is, you mostly
14 don't keep track. When you're building things as a
15 team and you're having fun and you're doing it
16 together, you don't keep track of every single
17 little feature. So you have to go back and look at
18 emails, well, I think I remember saying that, and
19 somebody else remembers the other thing. The point
20 is, we're doing it together -- in the same offices
21 often.

22 BY MR. STERN:

23 Q. Let me ask you, when you say single --
24 I'm sorry, booting directly to the browser, have you
25 used the iPad?

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1 A. Yes.

2 Q. Does the iPad boot directory to the
3 browser?

4 A. It does not, no.

5 Q. It does not. Have you ever used any web
6 tablet or other tablet that does boot directly to
7 the browser?

8 A. No, although Google's Chrome operating
9 system, not the browser, anticipates booting,
10 basically doing everything through a browser. That
11 was introduced in the summer of 2009.

12 Q. When you say "single buttons," what do
13 you mean, single buttons?

14 A. The idea of not having a lot of physical
15 buttons on a device is something Apple likes to do,
16 something other computer manufacturers don't
17 necessarily. It's something I like. I was trying
18 to do more things through software and having a more
19 elegantly designed device, something Chandra and I
20 agreed upon.

21 Q. I'm sorry?

22 A. Go ahead.

23 Q. The idea of having single buttons wasn't
24 an idea that you invented, correct?

25 A. Oh, I'm not sure I invented, you know,

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1 many of these ideas. It was more just coming to an
2 agreement on what the product would be and, you
3 know, moving forward. The sum total of a product is
4 what makes it unique and a work of art and something
5 interesting. Each individual feature may or may not
6 be intellectual property. That's a legal decision.
7 But the product as a whole is something that's
8 special and unique, and that is something we spent a
9 lot of time talking about making sure we were
10 aligned.

11 Q. Do you have anywhere -- in all of the
12 documents I've seen, I haven't seen a product
13 specification for the CrunchPad. And when I say a
14 "product specification," I mean a manual or a
15 pamphlet that you open it up and there is a
16 specification of the entire device from beginning to
17 end.

18 Have you ever seen such a document within
19 your company?

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

22 THE WITNESS: I've created product
23 documents in the past, product blueprints. Mostly
24 I've seen those in larger companies where they have
25 a lot of bureaucracy and a need for a lot of people

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1 to make decisions, much less so than smaller
2 companies, especially in small working groups. But
3 we did not have one other than the documents you've
4 seen. We talked about it.

5 MR. BRIDGES: Let's go a few more
6 minutes and then take a break.

7 BY MR. STERN:

8 Q. Have you ever heard of the phrase a
9 "teaming agreement"?

10 A. Teaming?

11 Q. T-e-a-m-i-n-g, teaming agreement.

12 A. I don't believe so.

13 Q. Have you ever heard of a situation,
14 whether you've heard it referred to as a teaming
15 agreement or not, where two companies come together
16 to develop technology?

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

19 BY MR. STERN:

20 Q. Like for example, Northrop Grumman and
21 SAIC getting together to develop the software that
22 would be used for Drone technology that would be
23 used in Afghanistan or Iraq?

24 MR. BRIDGES: Objection, foundation,
25 competence.

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1 THE WITNESS: I'm not familiar with that
2 at all.

3 BY MR. STERN:

4 Q. Have you ever seen any sort of agreement
5 where when parties collaborate on the development of
6 technology, the agreement specifies who owns what
7 aspects of the technology?

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

10 THE WITNESS: I can imagine such an
11 agreement, but no, I haven't seen one that I can
12 remember.

13 BY MR. STERN:

14 Q. Who did you work with when you were at
15 Wilson Sonsini?

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

18 THE WITNESS: Yes, I mean, I was an
19 associate. I worked for whoever the partners told
20 me to work for. But I was in the corporate group
21 with Larry Sonsini and partners I worked for.

22 BY MR. STERN:

23 Q. Well, can you remember, did you work
24 with Steve Bockner? Do you recall any individual
25 partners that you worked with?

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1 A. Sure. Larry Sonsini, Marty Korman --

2 Q. Marty? Marty's a good friend.

3 A. Jim Strawbridge, probably four or five
4 others.

5 Q. And in any of relationships that you had
6 with any of those parties, did any of them assign to
7 you the task of writing an agreement by which the
8 agreement would distinguish ownership features of a
9 particular technology between different entities?

10 A. No memory.

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

13 THE WITNESS: No, never.

14 BY MR. STERN:

15 Q. Have you ever seen such an agreement?

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

18 THE WITNESS: I have come across
19 technology licensing agreements and things like
20 that, due diligence of deals occasionally in small
21 transactions, things like that, but I've never
22 drafted one.

23 BY MR. STERN:

24 Q. You said, you testified many, many times
25 today, that the ultimate objective that you were

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1 trying the achieve with Fusion Garage was that you
2 were going to acquire Fusion Garage and Fusion
3 Garage was going to have an ownership interest in
4 CrunchPad, correct?

5 A. Yes.

6 Q. Okay. You understood that -- I think
7 you said -- maybe this is Silicon Valley custom or
8 however you characterized it -- that if that deal
9 with ultimately done, namely, Fusion Garage would
10 take an ownership interest in CrunchPad, that that
11 deal would be memorialized or reflected in some sort
12 of paper, right?

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

15 THE WITNESS: I would imagine there
16 would be an asset purchase, some kind of merger
17 document or something like that, yes.

18 BY MR. STERN:

19 Q. Okay. But you -- in your view, the deal
20 to reach that objective would have been agreed to
21 long before the actual paper was inked, right?

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

24 THE WITNESS: Not necessarily. I mean,
25 there can always be last minute changes and things

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1 that. But for the most part that the idea that
2 we're moving towards something and we have a pretty
3 good idea of what we're going to move towards, yes,
4 yes.

5 BY MR. STERN:

6 Q. Is there any reason that prevented you
7 from putting together a short agreement with Fusion
8 Garage that said, in sum and substance, Fusion
9 Garage and CrunchPad are going to work together to
10 develop a technology; Fusion Garage is going to
11 bring certain skills and talents to this
12 collaboration; CrunchPad is going to bring certain
13 skills and talents and monies to this collaboration;
14 and whatever is developed in the course of this
15 collaboration is jointly owned by both parties?

16 Did you ever consider writing a paper
17 that said the words in substance that I just
18 articulated?

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

22 THE WITNESS: No.

23 BY MR. STERN:

24 Q. And you never considered -- but nothing
25 prevented you from doing that, right?

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1 MR. BRIDGES: Objection, asked and
2 answered, argumentative, vague and ambiguous.

3 THE WITNESS: It never occurred to me,
4 which in hindsight, I wish it had. It would have
5 complicated the situation. You can imagine that
6 we're working towards a merger and we think we're
7 good to go on the merger. If you start talking
8 about some other agreement that you're signing and
9 entering into which requires possibly shareholder
10 approval, etcetera, it's just common: "Why are we
11 doing this? I though we were working on a merger."

12 I always thought that a merger was just
13 around the corner and we were going to get it done;
14 I really did -- I really did. I always thought it
15 was just around the corner. So no, I didn't.

16 MR. BRIDGES: Let's take a break.

17 MR. STERN: That's fine.

18 THE VIDEOGRAPHER: We are off the record
19 at 5:59 p.m.

20 (Brief recess.)

21 THE VIDEOGRAPHER: We're back on the
22 record at 6:17 p.m.

23 BY MR. STERN:

24 Q. Can you please tell me everything you
25 know about loans that have been extended by third

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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

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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

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1 because they're selling a product we designed
2 together.

3 Q. My question isn't whether or not they're
4 selling your product. My question is, right now you
5 would agree with me CrunchPad is not selling a web
6 tablet, right?

7 A. Correct.

8 Q. Right now TechCrunch is not selling a
9 web tablet, right?

10 A. Correct.

11 Q. So I understand you have claim to the
12 ownership of various either intellectual property or
13 aspects of JooJoo. That's not my question.

14 My question is, can you please describe
15 to Judge Seeborg how it is that when JooJoo sells a
16 JooJoo product today, how that takes money out of
17 the pocket of TechCrunch or CrunchPad?

18 MR. BRIDGES: I'm going to object.
19 First, I'm going to object, I think, to the colloquy
20 beforehand.

21 Actually, can you please reread the
22 question.

23 MR. STERN: Sure.

24 MR. BRIDGES: I'll ask the court
25 reporter to read the question.

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1 BY MR. STERN:

2 Q. I don't care. Can you please describe
3 to me --

4 MR. BRIDGES: I'm asking the court
5 reporter to reread the question. I want to make
6 sure I hear it from the court reporter because
7 sometimes you change -- when you read questions, I
8 think you're changing them. I'm not saying you're
9 trying to be subversive; I'm just saying you're
10 rephrasing the question. I'm interested in
11 rehearing the question.

12 (Record read.)

13 MR. BRIDGES: Move to strike the
14 colloquy and misstates the evidence, argumentative,
15 vague and ambiguous and assumes facts not in
16 evidence.

17 You may answer.

18 THE WITNESS: I believe that that is a
19 sale that should have been to the collaborative
20 effort. So that's the answer.

21 BY MR. STERN:

22 Q. Okay. What's CrunchPad's annual
23 revenue?

24 A. Zero.

25 Q. What's TechCrunch's annual revenue?

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1 A. I'm not comfortable disclosing that. Am
2 I bound to?

3 MR. BRIDGES: I think you need to.
4 We'll put it under the strictest confidentiality.
5 If you want to discuss it, then I'm happy to go
6 out --

7 BY MR. STERN:

8 Q. Your complaint -- you should read it --
9 seeks damages, so we're going to go -- and I want to
10 make it clear we're going to go up one side down the
11 other through your company financially to find out
12 everything we can. But I'm starting with the
13 basics, which is, can you tell me, sir, how much
14 money TechCrunch makes annually?

15 MR. BRIDGES: I move to strike the
16 colloquy, which is symptomatic of the overbearing
17 nature of your questioning, Mr. Stern. I think I
18 would like to have a brief powwow with the client to
19 discuss the importance of an answer to this
20 question. I mean, confidentiality protection is
21 available to it.

22 Is it all right to go off the record for
23 a minute?

24 MR. STERN: Yes.

25 THE VIDEOGRAPHER: We are off the record

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1 speculate at the beginning. That was seven hours
2 ago, so I don't want to speculate. I would rather
3 just give you the exact breakdown from Heather and
4 we can give that to you in discovery, whatever,
5 tomorrow.

6 BY MR. STERN:

7 Q. And let me ask you, do you recall --
8 let's mark this next in order.

9 (Deposition Exhibit 14
10 marked for identification.)

11 BY MR. STERN:

12 Q. Do you recognize this document?

13 A. The first page of it.

14 Q. You recognize that the first page and
15 the second page and the third page, going to the
16 fourth page, everything before the letter B on the
17 fourth page is the blog that you published on or
18 about July 21st, 2008?

19 MR. BRIDGES: Objection. Are you asking
20 if he remembers independently if that was the date?

21 MR. STERN: What? I'm asking whether he
22 recognizes that this was his blog.

23 MR. BRIDGES: You're not asking him if
24 he recalls the date independent of the document?

25 MR. STERN: Right.

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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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felt.

BY MR. STERN:

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

A. Yes.

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

A. Yes, that was the intention then.

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

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

THE WITNESS: Which part of the plan?

BY MR. STERN:

Q. Any part of the plan.

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

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

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

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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

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1 letter that says that the JooJoo is infringing
2 someone's patents, are you a partner in interest
3 with my client such that that you're equally
4 responsible for the development of the product?

5 MR. BRIDGES: Objection, hypothetical,
6 calls for facts not in evidence.

7 MR. STERN: Just asking.

8 THE WITNESS: Calls for a legal
9 conclusion.

10 BY MR. STERN:

11 Q. Let me ask you a question. Let me
12 reask.

13 I can just make a statement for you so
14 that you can assume this. You should assume that
15 under the United States Patent Act, if someone
16 makes, uses, sells or offers for sale an invention
17 or device that practices a claim of any patent, then
18 that person is infringing the patent.

19 So I want you to assume that my client
20 receives a demand letter from a third party that
21 says that, "You have made a device that infringes my
22 client's patents."

23 Now, my question is, is it your position
24 that CrunchPad and TechCrunch are responsible for
25 the manufacture of the JooJoo?

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1 MR. BRIDGES: Objection. That's
2 entirely hypothetical, speculative, assumes facts
3 not in evidence, calls for a legal conclusion.

4 THE WITNESS: Yes, I don't know the
5 answer to that because I don't know much about the
6 JooJoo. But I wish that were the case.

7 BY MR. STERN:

8 Q. You wish that it was the case that you
9 would be responsible for a patent infringement claim
10 that was received by my client; is that right?

11 A. I wish it was the case that we were a
12 single team working on the project trying to change
13 the world as we originally talked about and worked
14 on for almost a year, yes, and that means sharing
15 the good times and the bad.

16 Q. So just so that we're clear, it's your
17 understanding that under the partnership arrangement
18 you had with my client, you would also be liable for
19 patent infringement; is that correct?

20 MR. BRIDGES: Objection, calls for
21 speculation, it's hypothetical, speculative, assumes
22 facts not in evidence, vague and ambiguous,
23 argumentative.

24 THE WITNESS: That's a big stretch. Our
25 assumption would be that we merged the entities by

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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

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1 had a lot of interest in funding, and I believe we
2 could have closed funding at almost any point if we
3 chose to. The discussions with Chandra really
4 resulted in us not taking term sheets partially
5 because valuations were relatively low.

6 The first round term sheet was a \$3
7 million pre. That made it very difficult to work
8 with the existing capitalization table. Fusion
9 Garage would make that all work, but also just
10 because the capitalization wasn't clean, we were
11 concerned that converting debt from unsophisticated
12 investors to investors who want to be paid back
13 immediately, etcetera, may result in potential
14 liabilities.

15 Q. When you said that Fusion Garage's
16 capitalization table was not clean, what did that
17 mean?

18 A. It meant that he was raising --
19 according to him, he was raising money from a
20 variety of sources. Some of it was equity; some of
21 it was debt. Very little of it was from known
22 sources.

23 VCs often hesitate to invest in companies
24 where there are others investors that they don't
25 know because sometimes even smallest investors in a

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1 company can create the biggest problems. That's why
2 it was important to clean up the cap table, to have
3 a path towards converting debt, getting all that off
4 the table as much as possible. And it was something
5 we were working towards since December or November
6 of 2008.

7 Q. To your knowledge, had Fusion Garage's
8 cap table been cleaned up by the beginning of
9 November 2009?

10 MR. STERN: Objection, speculation.

11 BY MR. BRIDGES:

12 Q. I'm asking what you knew.

13 MR. STERN: Objection, speculation,
14 foundation.

15 THE WITNESS: I only knew what Chandra
16 told me for the most part.

17 MR. STERN: Same objections.

18 BY MR. BRIDGES:

19 Q. What did Mr. Rahthakrishnan tell you, if
20 anything, about efforts to clean up Fusion Garage's
21 cap table before November of 2009?

22 A. There was always an issue of we're
23 almost there, but not quite. We're almost getting
24 everyone to agreement. I need one more phone call
25 with the investors, etcetera.