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13 Attorneys for Defendant Fusion Garage PTE Ltd.

14
 15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17 SAN FRANCISCO DIVISION
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19 TECHCRUNCH, INC., a Delaware
 corporation, and CRUNCHPAD, INC., a
 20 Delaware corporation,
 21 Plaintiffs,
 22 vs.
 23 FUSION GARAGE PTE. LTD., a Singapore
 company,
 24 Defendant.

CASE NO. C 09-cv-5812 RS (PSG)

**QUINN EMANUEL URQUHART &
 SULLIVAN LLP'S NOTICE OF MOTION
 AND MOTION TO WITHDRAW AS
 COUNSEL OF RECORD FOR
 DEFENDANT FUSION GARAGE PTE.
 LTD.; AND**

**MEMORANDUM OF POINTS AND
 AUTHORITIES**

Date: January 19, 2012
 Time: 1:30 p.m.
 Judge: Hon. Richard Seeborg
 Location: San Francisco, Courtroom 3 - 17th
 Floor

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NOTICE OF MOTION AND MOTION

Please take notice that, on January 19, 2012 at 1:30 p.m. in the Courtroom of the Honorable Richard Seeborg of the United States District Court for the Northern District of California, San Francisco Courthouse, Courtroom 3 - 17th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102, Quinn Emanuel Urquhart & Sullivan LLP (“Quinn Emanuel”) will, and hereby does, move this Court pursuant to Civil Local Rule 11-5 for an order permitting Quinn Emanuel to withdraw as counsel of record for Fusion Garage. This motion is made on the grounds of non-payment of attorneys’ fees and costs and a breakdown of the attorney-client relationship between Quinn Emanuel and Fusion Garage, and is supported by this Notice, the accompanying Memorandum of Points and Authorities, the declaration of Claude M. Stern filed contemporaneously herewith, the papers and pleadings on file in this action, and the argument and other evidence to be presented at the hearing of this matter.

STATEMENT OF ISSUES (Civ. L. R. 7-4(a)(3))

1. May Quinn Emanuel withdraw as counsel of record for Fusion Garage due to non-payment of attorneys’ fees and costs and a breakdown of the attorney-client relationship that has made it unreasonably difficult, if not impossible, for Quinn Emanuel to continue to adequately and properly represent Fusion Garage?

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. QUINN EMANUEL SHOULD BE GRANTED LEAVE TO WITHDRAW AS**
3 **COUNSEL OF RECORD FOR DEFENDANT FUSION GARAGE PTE. LTD.**

4 Civil Local Rule 11-5(a) provides:

5 Counsel may not withdraw from an action until relieved by order of
6 Court after written notice has been given reasonably in advance to
7 the client and to all other parties who have appeared in the case.

8 Civil Local Rule 11-4(a)(1) requires attorneys practicing in this district to “comply with
9 the standards of professional conduct required of members of the State Bar of California.” Rule 3-
10 700 of the Rules of Professional Conduct of the State Bar of California governs an attorney’s
11 withdrawal as counsel. Under that rule, an attorney may seek to withdraw for several reasons.
12 Among these reasons are that the client “renders it unreasonably difficult for the member to carry
13 out the employment effectively,” “breaches an agreement or obligation to the member as to
14 expenses or fees,” or “[t]he member believes in good faith, in a proceeding pending before a
15 tribunal, that the tribunal will find the existence of other good cause for withdrawal.” CAL. R.
16 PROF. CONDUCT 3-700(C)(1)(d), 3-700(C)(1)(f), 3-700(C)(6).

17 Courts have repeatedly held that failure or inability to pay for legal services constitutes
18 good cause for withdrawal. *See Leatt Corp. v. Innovative Safety Technology, LLC*, 2010 WL
19 444708, at *2 (S.D. Cal. 2010); *Canandaigua Wine Co., Inc. v. Edwin Moldauer*, 2009 WL 89141,
20 at *2 (E.D. Cal. 2009); *Schueneman v. 1st Credit of America, LLC*, 2007 WL 1969708, at *7 (N.D.
21 Cal. 2007).

22 Additionally, a breakdown of the attorney client relationship is ground for granting an
23 attorney leave to withdraw. *See, e.g., Leatt Corp.*, 2010 WL 444708 at *2; *Canandaigua Wine*
24 *Co., Inc.*, 2009 WL 89141 at *2. Where issues of confidentiality prevent counsel from further
25 disclosure and the court accepts the good faith of counsel’s representations, the court should find
26 the conflict sufficiently established and permit withdrawal. *Aceves v. Superior Court*, 51 Cal.
27 App. 4th 584, 592 (1996); *see also* Cal. Bus. & Prof. Code § 6068(e) (it is the duty of a lawyer to
28 “maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets,
of his or her client”).

1 Before withdrawing for any reason, an attorney must take “reasonable steps to avoid
2 reasonably foreseeable prejudice to the rights of the client, including giving due notice to the
3 client, allowing time for employment of other counsel, complying with rule 3-700(D), and
4 complying with applicable laws and rules.” CAL. R. PROF. CONDUCT 3-700(A)(2).

5 Finally, permission to withdraw is committed to the discretion of the trial court. *See*
6 *United States v. Carter*, 560 F.3d 1107, 1113 (9th Cir. 2009).

7 As set forth in the attached Declaration of Claude M. Stern (“Stern Decl.”), Quinn
8 Emanuel seeks leave to withdraw as counsel of record for Defendant Fusion Garage because
9 Fusion Garage has not paid Quinn Emanuel for services rendered and the associated costs for
10 several months. Stern Decl. ¶ 3. During that time, Quinn Emanuel has acted on behalf of Fusion
11 Garage by seeking discovery from Plaintiffs, responding to written discovery propounded by
12 Plaintiffs, conducting third party discovery (including a deposition of Keith Teare), engaging in
13 settlement negotiations, and preparing a motion to compel that is scheduled to be heard on January
14 3, 2012, among other tasks that cannot be disclosed on privilege and work product grounds. *Id.*

15 Further, a breakdown of the attorney-client relationship has occurred that has made it
16 impossible for Quinn Emanuel to continue to adequately and properly represent Fusion Garage.
17 Specifically, and without disclosing the details, Fusion Garage and Quinn Emanuel have had a
18 breakdown in communication that Quinn Emanuel can more fully explain to the Court *in camera*
19 if requested by the Court. Stern Decl. ¶ 4. The circumstances have placed Quinn Emanuel in a
20 position where it can no longer provide effective representation to Fusion Garage. *Id.*

21 No prejudice, harm or delay will result from granting Fusion Garage’s motion. The parties
22 are still engaged in fact discovery and the Court has indicated that it is amenable to continuing the
23 May 29, 2012 trial date until January or February 2013, which will be further discussed at the
24 December 15, 2011 case management conference.

25 On numerous occasions (at least on November 25, 2011, December 1, 2011, December 2,
26 2011, December 8, 2011, and December 12, 2011), Quinn Emanuel informed Fusion Garage either
27 orally or in writing that Quinn Emanuel would resign as counsel for Fusion Garage and would
28

1 seek leave of court to withdraw from this case, and that Fusion Garage needed to retain new
2 counsel. Stern Decl. ¶ 5.

3 **II. CONCLUSION**

4 For the reasons set forth herein, Quinn Emanuel respectfully requests that it be granted
5 leave to withdraw as Defendant Fusion Garage's counsel.

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7 DATED: December 13, 2011

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

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By /s/ Claude M. Stern
Claude M. Stern
Attorneys for Defendant Fusion Garage PTE. Ltd.

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