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 9 **UNITED STATES DISTRICT COURT**
 10 **NORTHERN DISTRICT OF CALIFORNIA**
 11 **SAN FRANCISCO DIVISION**

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TECHCRUNCH, INC., et al.)	Case No. 3:09-cv-05812 RS (PSG)
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Plaintiffs,)	NON-OPPOSITION AND REQUEST FOR
)	FURTHER RELIEF REGARDING QUINN
vs.)	EMANUEL’S MOTION TO WITHDRAW
)	AS COUNSEL OF RECORD FOR
FUSION GARAGE PTE. LTD.,)	DEFENDANT FUSION GARAGE PTE.
)	LTD.
Defendant.)	

Pursuant to Civil Local Rule 7-3(b), plaintiffs TechCrunch, Inc. and CrunchPad, Inc., do not oppose Quinn Emanuel’s motion to withdraw as counsel for Fusion Garage (Dkt. No. 230). We recognize that Quinn Emanuel has been put in an untenable situation by Fusion Garage and that a law firm should not be forced to continue representing a client that is both nonresponsive and unwilling to pay its lawyers.

At the same time, this case has been pending since 2009, and justice delayed is justice denied. Fusion Garage should not be permitted a holiday from this litigation through the expedient of cheating its counsel. The case was stayed between September and November 2011 so the parties could consummate a settlement agreement. See Dkt. Nos. 216, 218, 219, and 220. The settlement fell through, and we now know that Fusion Garage stopped paying its counsel long before. See

1 Declaration of Claude M. Stern, Dkt No. 230-1 at ¶ 3 (Fusion Garage has not paid Quinn Emanuel
2 since at least its motion to compel on September 9, 2011). The Court should not let Fusion Garage
3 further delay TechCrunch’s case.

4 It is well settled that corporations cannot represent themselves. Civil Local Rule 3-9. When
5 a corporate party’s counsel withdraws and there is no substitute counsel, courts should normally set a
6 tight deadline by which that party should secure new counsel or face default. *See Windermere*
7 *Holdings, LLC v. U.S. Wall Decor, LLC*, No. C 10–03955 LB, 2011 WL 3419467 (N.D. Cal. Aug.
8 4, 2011) (Beeler, M.J.) (setting a status conference 21 days after the date of the order granting
9 counsel’s motion to withdraw and warning defendants “that if they fail to timely file substitutions of
10 counsel or otherwise appear, they may face [plaintiff’s] motion for default judgment”); *Waters v.*
11 *E.P. Architectural Builders, Inc.*, No. C 10-03193 LB, 2011 WL 482769, at *3 (N.D. Cal. Feb. 7,
12 2011) (Beeler, M.J.) (giving corporate defendant 30 days from the date of the order to file a
13 substitution of counsel, and instructing Plaintiff to move for entry of default if no substitution is
14 filed); *Chevron TIC, Inc. v. Carbone Properties Manager, LLC*, No. C-08-0782 (JCS), 2009 WL
15 929060, at *8 (N.D. Cal. April 3, 2009) (Spero, M.J.) (granting default judgment against a corporate
16 defendant after that defendant failed to secure substitute counsel); *Madison v. Fonar Corp.*, No. C-
17 07-04211 RMW, 2009 WL 195897, at *1 (N.D. Cal. Jan. 23, 2009) (Whyte, J.) (granting motion to
18 withdraw and ordering Defendant to secure new counsel within 14 days or face a motion for the
19 entry of default); *Apple Computer Inc. v. Micro Team*, 2000 WL 1897354, *2 and *11 (N.D. Cal.
20 Dec. 21, 2000) (Trumbull, M.J.) (court entered default after granting motion to withdraw and
21 simultaneously ordering defendant to appear 14 days later and show cause why default should not be
22 entered for failure to defend). Thus, if Fusion Garage cannot find new lawyers, it must show cause
23 why a default should not issue. And under prevailing Northern District practice, its window to find
24 new counsel should be small: between two weeks and one month.

25 If instead some new law firm decides to roll the dice on Fusion Garage, the Court should
26 immediately order the parties to mediation--***in strict compliance with the Northern District of***
27 ***California’s ADR Rules, specifically including ADR Local Rule 6-10(a)(1)***--to see if the case can
28 be resolved without further expenditure of judicial resources. In addition, if the case proceeds, the

1 discovery responses TechCrunch and CrunchPad have been waiting for since September, 2011
2 should be served with all possible speed. The plaintiffs' Eighth Set of Requests for Production and
3 its Fourth Set of Interrogatories were served on August 26, 2011; they were originally due on
4 September 30 and then the response deadline was extended to December 16, 2011. Dkt Nos. 221
5 and 222. As a courtesy, TechCrunch agreed to suspend these deadlines (which it was fully prepared
6 to comply with), but it does not want to wait indefinitely for Fusion Garage to comply with its
7 discovery obligations.

8 So while TechCrunch and CrunchPad do not oppose Quinn Emanuel's motion, they ask for
9 the following relief to protect them from unwarranted prejudice:

- 10 1. The Court should issue an Order to Show Cause Why Default Should Not Be Entered, set
11 for hearing no more than 21 days after Quinn Emanuel's motion is granted.
- 12 2. If Fusion Garage does not retain new counsel before the hearing date on the Order to
13 Show Cause, default should be entered against Fusion Garage and in favor of
14 TechCrunch and CrunchPad. TechCrunch and CrunchPad will then promptly notice a
15 prove-up hearing for an award of damages and entry of default judgment.
- 16 3. If Fusion Garage obtains counsel on or before the Order to Show Cause date, the Court
17 should issue
 - 18 a. a referral to Magistrate Judge Laporte, sitting as the judge charged with
19 overseeing the Northern District of California's ADR program, to address issues
20 arising out of the prior mediation between the parties;
 - 21 b. an order referring the case to a magistrate judge for mediation under the auspices
22 of this Court and in full compliance with the Alternative Dispute Resolution
23 (ADR) Local Rules; and
 - 24 c. an order setting discovery deadlines to replace those suspended by stipulation and
25 Order of this Court dated December 16, 2011 (Dkt. No. 233), as set forth in the
26 attached Proposed Order.

27 TechCrunch and CrunchPad have no wish to saddle Quinn Emanuel with a default client.
28 But they deserve a speedy resolution of this case. To that end, the plaintiffs do not oppose Quinn

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Emanuel’s Motion, but do seek such relief as will ensure that the case is brought to as quick a conclusion as possible, as set forth above and in the attached Proposed Order.

Respectfully submitted,

Dated: December 27, 2011

WINSTON & STRAWN LLP

By: /s/ David S. Bloch
David S. Bloch
J. Caleb Donaldson

Attorneys for Plaintiffs TechCrunch Inc. and
CrunchPad, Inc.