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6 Attorneys for Plaintiffs

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 TECHCRUNCH, INC., et al.) Case No. C 09-cv-05812 (RS) (PSG)
12 Plaintiffs,)
13 vs.) STATUS CONFERENCE STATEMENT
14 FUSION GARAGE PTE. LTD.,)
15 Defendant.)
16)
17)

18 Plaintiffs TechCrunch, Inc., and CrunchPad Inc. (collectively "TechCrunch") submit this
19 status conference statement for the Court's consideration in connection with the February 9, 2012,
20 hearing as to whether the Court should enter default against defendant Fusion Garage PTE, Ltd.

21 **A. The Court should enter default against Fusion Garage and set a prove-up**
22 **hearing for TechCrunch to establish its damages on March 1, 2012.**

23 On December 29, 2011, the Court entered an Order Granting Counsel's Motion to Withdraw,
24 in which the Court: (1) granted leave for Fusion Garage's former counsel, Quinn Emanuel Urquhart
25 Sullivan LLP, to withdraw from the case; (2) ordered Fusion Garage to obtain new counsel by
26 February 1, 2012; and (3) ordered Fusion Garage to appear and show cause on February 9, 2012
27 "why its answer should not be stricken and its default entered" if its counsel failed to make an
28 appearance by February 1, 2012. Dkt. No. 236.

Fusion Garage did not retain new counsel. The Court therefore should strike its answer and

1 enter default against Fusion Garage. TechCrunch is prepared to prove the damages it has suffered as
2 a result of the causes of action alleged in the operative complaint. Dkt. No. 167. TechCrunch
3 proposes to prepare and file its motion for entry of judgment and serve it on Fusion Garage (via its
4 former counsel and by international post) by **February 23, 2012**, following which TechCrunch
5 proposes a prove-up hearing for **March 1, 2012**. TechCrunch intends to submit an expert report
6 concerning damages and will be prepared to supply live testimony from TechCrunch and its experts
7 if the Court so desires.

8 **B. Enforcement remains troublesome because Fusion Garage has limited property**
9 **in the United States.**

10 It appears that Fusion Garage has limited assets in the United States. TechCrunch thus will
11 need to enforce any judgment the Court may enter via international treaties concerning the
12 enforcement of foreign judgments. Discovery to date indicates that Fusion Garage has or had an
13 account at Wells Fargo and a PayPal account for collecting money from pre-ordered products, with a
14 balance (as of more than a year ago) of approximately \$38,000. We have no way of knowing
15 whether any assets remain in either account. Fusion Garage also has an interest in two registered
16 domain names: (1) www.fusiongarage.com, registered at Spot Domain LLC to Fusion Garage's
17 principal, Chandrasekhar Rathakrishnan; and (2) www.thejoojoo.com, registered at GoDaddy LLC
18 to Aga Reszka (apparently a web designer). TechCrunch asks that the Court's default judgment
19 specifically identify these four assets and allows TechCrunch to enforce its judgment on any
20 domestic property, including these domain names.

21 TechCrunch hopes to learn more about Fusion Garage's domestic property from the
22 company's former PR firm, McGrath/Power Public Relations, and its principal, Jonathan Bloom.
23 TechCrunch issued a revised notice of subpoena for documents to McGrath/Power on January 3,
24 2012, along with a deposition subpoena to Mr. Bloom. We are working with counsel for these
25 witnesses (Quinn Emanuel) to obtain the requested documents and information.

26 **C. Fusion Garage appears to have declared bankruptcy in Singapore, and its**
27 **creditor has signaled its intent to destroy evidence in Singapore.**

28 There is reason to believe that Fusion Garage is attempting to dissolve itself and dissipate its
assets in a Singapore-based proceeding. TechCrunch was not formally notified of this proceeding

1 but instead learned of it through online news sources. See [http://e27.sg/2012/01/11/fusion-garage-is-](http://e27.sg/2012/01/11/fusion-garage-is-officially-done-but-are-they-out/)
2 [officially-done-but-are-they-out/](http://e27.sg/2012/01/11/fusion-garage-is-officially-done-but-are-they-out/) (last visited Feb. 3, 2012). In a January 5, 2012 notice published in
3 an online newspaper, Mr. Rathnakrishnan indicated his intent to resolve “under Section 320(3) of the
4 Companies Act, Cap. 50 that the books, accounts, and documents of the Company and of the
5 Liquidators be disposed of one day after the dissolution of the Company.” **Tab A.** On January 17,
6 2012, we wrote to Fusion Garage’s Liquidators—Mr. Goh Thien Phong and Mr. Chan Kneng Tek of
7 PricewaterhouseCoopers LLP—warning them of Fusion Garage’s obligations to preserve evidence
8 under federal law, and requesting that they confirm that they would not countenance the destruction
9 of any evidence. **Tab B.** Fusion Garage’s liquidators replied on January 19, 2012, noting only that,
10 if the company so resolves, “the books and records of the Company will be destroyed” and that this
11 practice is “normal” in Singapore. **Tab C.** We responded on January 20, asking that they reconsider
12 this position and warning that TechCrunch would pursue any available remedies against Fusion
13 Garage and anyone who countenances the destruction of evidence. **Tab D.**

14 In light of the apparent effort to dissipate Fusion Garage’s assets, we ask that the Court’s
15 default judgment order apply to Fusion Garage PTE Ltd. and its owners and investors, including
16 Chandrasekar Rathakrishnan, Bruce Lee, Raffles Technology, Stamford Technology, CSL Group (a
17 Malaysian company), Robert Tan Kah Boon, and Purple Ray.

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Respectfully submitted,

Dated: February 3, 2012

WINSTON & STRAWN LLP

By: /s/ David S. Bloch
David S. Bloch
Nicholas W. Short

Attorneys for Plaintiffs

Tab A

In the Matter of the Companies Act, Cap. 50**And****In the Matter of****FUSION GARAGE PTE. LTD.
(PROVISIONAL LIQUIDATORS APPOINTED)
CO. REG. NO. 200801933E****NOTICE OF MEETING TO CREDITORS**

NOTICE IS HEREBY GIVEN that pursuant to Section 296 of the Companies Act, Cap. 50, a meeting of creditors of Fusion Garage Pte. Ltd. will be held at 5 Harper Road, #03-01, Singapore 36963 on 20 January 2012 at 1500 hours for the following purposes:

- (1) To lay before the creditors a full statement of the affairs of the Company, showing the assets and liabilities of the Company.
- (2) To consider where appropriate the nomination of Liquidators in the winding up.
- (3) To resolve that the Liquidators' remuneration be based on their normal scale rates and be paid out of the Company's assets.
- (4) To consider where appropriate appointment(s) of and to a Committee of Inspection.
- (5) To resolve under Section 320(3) of the Companies Act, Cap. 50 that the books, accounts and documents of the Company and of the Liquidators be disposed of one day after the dissolution of the Company.
- (6) Any other business.

The above meeting is held in view of the fact that the following resolutions are to be proposed at an Extraordinary General Meeting of shareholders of the Company to be held preceding the above meeting: -

- (a) That the Company be wound-up voluntarily as it cannot by reason of its liabilities continue its business.
- (b) That Messrs Goh Thien Phong and Chan Kheng Tek all of PricewaterhouseCoopers LLP, 8 Cross Street #17-00 PWC Building Singapore 048424 be appointed Liquidators of the Company, jointly and severally, for the purpose of the winding-up, and that their remuneration be based on their normal scale rates and be paid out of the Company's assets.

Dated this 5th day of January 2012.

To:



Chandrasekar s/o Rathakrishnan
Director

Tab B

WINSTON & STRAWN LLP

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January 17, 2012

VIA FEDERAL EXPRESS

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[65] 6236-3300
[65] 6236-4005

Mr. Goh Thien Phong
Mr. Chan Kneng Tek
PricewaterhouseCoopers LLP
8 Cross Street
PWC Building
Singapore 048242
Singapore

DAVID S. BLOCH
Partner
(415) 591-1452
dbloch@winston.com

Re: Fusion Garage PTE. Ltd., Co. Reg. No. 200801933E

Dear Sirs:

I write regarding the *Matter of Fusion Garage PTE. Ltd., Co. Reg. No. 200801933E*, in which you have been appointed Liquidators. Put briefly, Fusion Garage PTE Ltd. has an obligation to retain its books, accounts, and other documents due to ongoing litigation in the United States.

This firm represents TechCrunch Inc. and CrunchPad, Inc., in a civil case in United States federal court against Fusion Garage PTE Ltd. That case, *Interserve, Inc. et al. v. Fusion Garage PTE. Ltd.*, No. 3:09-cv-05812-RS (PSG) (N. D. Cal.), is ongoing. Fusion Garage's books, accounts, and documents are essential for a complete resolution of the matters disputed therein.

In the January 5, 2012, Notice of Meeting to Creditors, Chandrasekar Rathakrishnan, as Director of Fusion Garage PTE Ltd. indicates an intention to resolve "under Section 320(3) of the Companies Act, Cap. 50 that the books, accounts, and documents of the Company and of the Liquidators be disposed of one day after the dissolution of the Company." Destruction of these materials would breach Fusion Garage's obligations under United States law. Fusion Garage has outstanding obligations to provide documents, as well as a continuing obligation under the Federal Rules of Civil Procedure to preserve relevant documents.

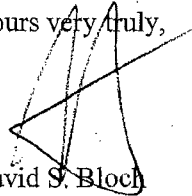
WINSTON & STRAWN_{LLP}

January 17, 2012
Page 2

Should Fusion Garage be permitted to destroy its documents, we will pursue all available remedies against not only Fusion Garage, but also the directors, officers, and others who authorized the destruction.

Please confirm that you, as Liquidators, will not countenance the destruction of these crucial documents. Thank you.

Yours very truly,



David S. Bloch

DSB/ge

cc: Chandrasekar Rathakrishnan, c/o:
Evette Pennypacker, Quinn Emanuel
Thomas Watson, Quinn Emanuel

SF:326547.1

Tab C

FUSION GARAGE PTE. LTD.
(PROVISIONAL LIQUIDATORS APPOINTED)
Co. Reg. No. 200801933E

c/o PricewaterhouseCoopers LLP
8 Cross Street #17-00
PWC Building
Singapore 048424
Telephone : (65) 6236 3388
Facsimile : (65) 6236 4044

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101 California Street
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USA

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Attention: Mr David S. Bloch

19 January 2012

Our Ref : CM/BRS/CKT/PKB/LLF/KLT/FGPL

Dear Sirs

FUSION GARAGE PTE. LTD. ("the Company")
(PROVISIONAL LIQUIDATORS APPOINTED)

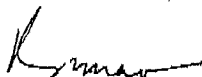
We refer to your letter dated 17 January 2012.

Please note that if the resolution to destroy records is approved by the creditors at the meeting, the books and records of the Company will be destroyed upon dissolution of the Company after the affairs of the Company have been wound up.

Under the Singapore Companies' Act provisions, it is normal for the creditors to approve the destruction of records immediately after the dissolution of the Company. If no resolution is passed by creditors, the Liquidators are required to keep the records for 2 years after the dissolution of the Company.

We hope the above clarifies the position. Should you have any questions, please do not hesitate to contact either Ms Lu Let Fun at 6236 4024 or Ms Kuan Lin Tar at 6236 4235.

Yours faithfully
For and on behalf of
FUSION GARAGE PTE. LTD.
(PROVISIONAL LIQUIDATORS APPOINTED)



P K Bala
For and on behalf of
Provisional Liquidators

Copy: Mr Chandrasekar Rathakrishnan
Director of Fusion Garage Pte Ltd (Provisional Liquidators Appointed)
Evette Pennypacker, Quinn Emmanuel
Thomas Watson, Quinn Emmanuel

Tab D

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January 20, 2012

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Mr. P. K. Bala
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PWC Building
Singapore 048424
Singapore

Re: Fusion Garage PTE. Ltd., Co. Reg. No. 200801933E

Dear Mr. Bala:

Thank you for your response. However, your letter clarifies only that Fusion Garage (through its representative, Chandrasekhar Rathnakrishnan) and its Liquidators reserve the right to destroy important evidence regardless of Fusion Garage's obligations under United States law and the Federal Rules of Civil Procedure.

If Fusion Garage does indeed destroy its books and records, the United States District Court for the Northern District of California may, upon request, issue a judgment or other sanctions, potentially including money damages and the seizure of assets, against the company and its directors. This, in turn, could adversely affect the creditors' ability to recover from Fusion Garage's estate.

Should you choose this course of conduct, TechCrunch and Crunchpad will pursue all available remedies against Fusion Garage and those who countenanced the destruction of its documents.

Yours very truly,


David S. Bloch

DSB/lb

cc: Chandrasekar Rathakrishnan, c/o:
Evette Pennypacker, Quinn Emanuel
Thomas Watson, Quinn Emanuel

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