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Exhibit A

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EXPERT REPORT

of

GREG J. REGAN

TECHCRUNCH, INC.

v.

FUSION GARAGE PTE LTD.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
CASE NO. 09-CV-5812 RS (PSG)

Greg J. Regan, CPA/CFF, MBA, CFE
March 22, 2012

Table of Contents

I. Introduction

The opinions expressed in this report and information presented in the accompanying exhibits are my present opinions. Amendments or supplements to this report and its accompanying exhibits may be required because of developments prior to or at trial, including, but not limited to, the discovery of new evidence, expert discovery, and the testimony of other witnesses.

I may use selected exhibits attached to this report, documents reviewed in connection with their preparation, enhanced graphic versions of selected exhibits included in this report, and additional graphics illustrating concepts described in this report at trial.

A. Nature of My Assignment

I have been retained, through my employer, Hemming Morse LLP, Certified Public Accountants, Litigation and Forensic Consultants, by Winston & Strawn, LLP. I have been asked to determine the loss of value TechCrunch experienced of its ownership in CrunchPad Inc., if any, due to the actions of FusionGarage. I understand that a default has been entered against FusionGarage, and have been asked to assume that liability for damages will be established as a matter of law.

B. Qualifications

I am a Certified Public Accountant ("CPA"), licensed in the State of California and New York. I hold the Certified in Financial Forensics ("CFF") certification from the American Institute of Certified Public Accountants ("AICPA"). I have a Masters in Business Administration ("MBA") with an Emphasis in Finance. While obtaining my MBA, I focused my studies on issues such as financial projections for corporate entities as well as the valuation of start-up companies.

My work in the accounting profession includes experience as an auditor at Ernst & Young LLP, as the Controller of a publicly traded software company, and as a consultant. I have been qualified to testify in federal and state courts as well as in arbitrations. In my work as an expert, I have been retained by the U.S. Securities & Exchange Commission as well as the California Attorney General.

I am a member of the AICPA and the California Society of Certified Public Accountants ("CalCPA"). I currently serve on the AICPA's Forensic & Litigation Services ("FLS") Committee and am Chair of the AICPA's Damages Task Force. The twelve-member FLS committee oversees and provides guidance to the AICPA's members in their practice as it relates to litigation consulting and dispute resolution. I am on the 10-member Planning Committee for the AICPA's 2012 National Forensic and Business Valuation Conference. I am also an officer of CalCPA's statewide Litigation Services Steering Committee.

I am also an Adjunct Professor at Golden Gate University where I teach graduate level accounting courses. These courses include instruction related to disputes involving economic damages. The AICPA has selected materials from these courses for its national education platform associated with the CFF certification for accounting practitioners.

Since 2003, I have worked on more than 100 complex litigation matters. My work has involved analysis of lost profits and lost business value as well as other forms of economic damages involving entities across a diverse range of industries, such as high technology companies, retail, real estate, finance, and manufacturing. My expert qualifications, including my testimony in the last four years and the publications I have authored, are described in my C.V. attached hereto as Exhibit A.

My firm is being compensated for my review and analysis in this matter at my standard hourly rate, which is currently $410 per hour.

C. <u>Evidence Relied Upon</u>

In undertaking my assignment, I have considered information from a variety of sources, each of which is of a type that is reasonably relied upon by experts in my field. Those sources are identified in the citations within this report and accompanying exhibits. I have also spoken with Mr. Arrington, CrunchPad Inc.'s CEO at the time of the events described in this report.

From time to time in this report I may refer to certain sources supporting a statement that I have made. It should be understood that these sources are not necessarily exhaustive and I may refer to additional support should that become necessary. I have also relied upon my own professional judgment and expertise gathered during the more than 15 years I have been practicing accounting, analyzing data, including financial statements, and transactions that are the subject of legal disputes.

D. <u>Summary of Opinions</u>

This section summarizes my present opinions:

- I have concluded that the "but-for" fair value of TechCrunch's interest in CrunchPad Inc. was $7.8 million as of November 16, 2009. As of November 17, 2009, there was no actual fair value of CrunchPad Inc. that could have been recoverable by TechCrunch. Thus, TechCrunch lost the entire value of its investment as of November 17, 2009. See § III of this report entitled "CrunchPad Inc.'s Lost Business Value."

- TechCrunch incurred at least $357,000 of direct costs related to the establishment of CrunchPad Inc. and the CrunchPad. Such costs include, but are not limited to, the allocation of management resources to product and market development efforts, computer equipment-related costs, and travel costs to coordinate efforts with FusionGarage. These costs do not include the benefits of TechCrunch's devotion of its publicity mechanism to the promotion of the CrunchPad. See § IV of this report entitled "TechCrunch's Out Of Pocket Losses."

- If awarded by the Trier of Fact, pre-judgment interest would total $2.0 million. See § VIII of this report entitled "**Pre-Judgment Interest**" for further analysis of this amount.

II. Background

A. TechCrunch

The Wall Street Journal characterized TechCrunch as "one of the most influential blogs in Silicon Valley."[1] During 2009, TechCrunch had between 4 million and 6 million monthly unique readers.[2] Keath Teare, one of the experienced entrepreneurs associated with the CrunchPad project, testified "everyone in Silicon Valley who is involved in any way whatsoever with the business of technology startups...[reads] TechCrunch."[3] In 2008, TIME Magazine named TechCrunch's founder, Mr. Arrington, one of the "100 most influential people in the world."[4] For this reason, Mr. Arrington was, at times, referred to as a start-up "kingmaker."[5] In other words, positive product publicity and reviews by Mr. Arrington could significantly enhance the probability of that product's success, but, a negative product review on TechCrunch could be devastating for product marketability.[6]

B. CrunchPad Inc.

In October 2008, TechCrunch incorporated CrunchPad Inc. as a subsidiary.[7] Mr. Arrington was the entity's CEO. TechCrunch anticipated that CrunchPad Inc. would control the design, manufacturing, and marketing of its CrunchPad product (see further discussion of this product below).

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[1] "The TechCrunch site, founded in 2005, has grown into one of the most influential blogs in Silicon Valley, covering industry buzz and news. The company includes a family of tech sites beyond its flagship Techcrunch.com, including sites dedicated to mobile services and gadgets." (http://online.wsj.com/article/SB10001424052748704654004575518541484986702.html, accessed February 21, 2012).

[2] Teare Deposition, 88:5-20.

[3] Teare Deposition, 89:12-17.

[4] Amended Complaint For Breach Of Fiduciary Duty, Fraud And Deceit, And Unfair Competition (the "Complaint"), ¶ 13.

[5] Teare Deposition, 89:25-92.1.

[6] Teare Deposition, 92:2-12.

[7] Complaint, ¶ 22.

C. FusionGarage

FusionGarage collaborated with CrunchPad Inc. to develop the CrunchPad. In approximately June 2009, FusionGarage began to encounter financial difficulties. At that time, the intensity of the acquisition-related negotiations between CrunchPad Inc. and FusionGarage increased. Mr. Rathakrishnan, FusionGarage's CEO, stated that he would accept a 35% equity interest in CrunchPad Inc. to consummate a merger of the entities.[8] The expected acquisition of FusionGarage was not, however, consummated.

FusionGarage failed to timely meet certain of its CrunchPad deliverables.[9] For example, TechCrunch anticipated that the product would be unveiled at the TechCrunch 50 conference in September 2009.[10] When FusionGarage was not ready at that time, the product release was rescheduled for the CrunchUp Conference in November 2009.[11] As late as November 2009, FusionGarage reported to TechCrunch that it was "on track"[12] and "[on] course"[13] to meet this timetable. Once again though, FusionGarage failed meet its commitments in time for CrunchUp.

On November 17, 2009, FusionGarage terminated its involvement with the CrunchPad project.[14] Subsequently, the operations of CrunchPad Inc. were effectively shuttered. Ultimately, FusionGarage did release a version of a tablet device in early April 2010, which it branded the joojoo.[15] To date, the joojoo device has failed to obtain a meaningful share of the market for tablet devices.

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[8] TC0005161-62, e-mail from Mr. Rathakrishan dated June 27, 2009, "The crux is you need to acquire a 'clean' company (FusionGarage) to make this deal work at your end. Accordingly, the offer is 35% of CrunchPad for FusionGarage (inclusive of all equity, stock options and loans flushed)…I would like to humbly request that you consider increasing the offer to acquire FusionGarage. It will be great if you would consider increasing the offer of 35% to 40% instead…To be clear, I am not saying that I will only do this if the offer is increased by 5%. I am saying that while I would be thankful for that, I will do the deal even if it stays 35%."

[9] Complaint, ¶ 43 and 44.

[10] Complaint, ¶ 45.

[11] Complaint, ¶ 49.

[12] Complaint, ¶ 51.

[13] Complaint, ¶ 54.

[14] Complaint, ¶ 59.

[15] http://www.engadget.com/2010/04/03/joojoo-ships-to-actual-consumers-gets-dissected-for-good-measur/ (accessed February 21, 2012)

D. The CrunchPad Product

The CrunchPad product sought to establish a market for tablet devices prior to the release of products such as the iPad or Android. The first prototype of the CrunchPad was built in approximately August 2008.[16] A second prototype was announced in January 2009.[17] At that time, Mr. Arrington made the following TechCrunch post:[18]

> We've completed our original goal of building a 'dead simple and dirt cheap touch screen web tablet to surf the web.' The hardware is nearing lockdown. Software development is rolling.

Thus, in January 2009, there was a substantial window of time to get the CrunchPad to market if FusionGarage had delivered on its commitments to develop and integrate software for the CrunchPad. The CrunchPad product received significant interest from important market participants. For example, Intel, the Fortune 100 semiconductor manufacturer, made resources available so that the parties could "establish a market position for the device that would be strong."[19] Intel's attention to the CrunchPad was a "good validation that the concept was timely."[20] The CrunchPad also received other independent validation. For example, the publication Popular Mechanics distinguished the CrunchPad as one of the "10 Most Brilliant Products of 2009."[21]

1. The Size of the Market for Tablet Devices

The market for tablet computing devices continues to develop and is growing rapidly.[22] Strategy Analytics, a consumer electronics market research firm, began to publish data on the

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[16] http://techcrunch.com/2008/08/30/update-on-the-techcrunch-tablet-prototype-a/ (accessed February 21, 2012)

[17] http://www.washingtonpost.com/wp-dyn/content/article/2009/01/19/AR2009011900287.html (accessed February 21, 2012)

[18] http://techcrunch.com/2009/01/19/techcrunch-tablet-update-prototype-b/ (accessed February 29, 2012)

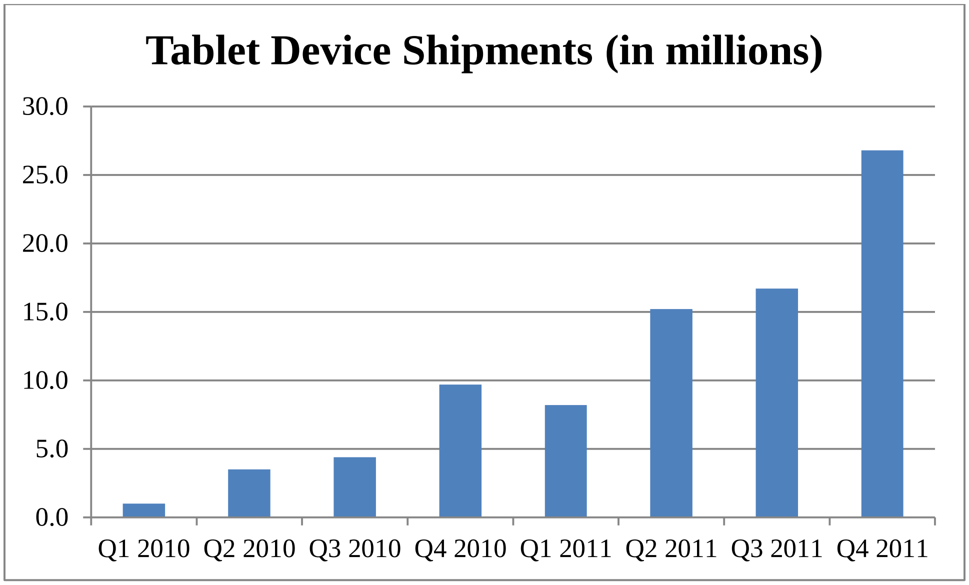
[19] Teare Deposition, 133:3-21.

[20] Teare Deposition, 190:6-192:10, including "…Intel certainly would have seen prototypes of anything that was being built and would have a much greater awareness than we would have had at that point. So that was in a way a good validation that the concept was timely."

[21] http://www.popularmechanics.com/print-this/4332415?page=all (accessed February 2, 2012).

[22] PC World, "Android's Tablet Share at 39 Percent as Sales Triple, Says Study," January 26, 2012, "Apple shrugged off the much-hyped threat from entry-level Android-based models. It is inevitable that Apple loses market share as more vendors enter the tablet space, according to Neil Mawston, executive director at Strategy Analytics. But its

market in the second calendar quarter of 2010 (the iPad was launched at the end of the first calendar quarter). The following chart summarizes unit sales of tablet devices to present (see **Exhibit 1**):



TechCrunch was aware that the CrunchPad was likely to experience competition from Apple. TechCrunch anticipated that the “but-for” scheduled release of the product at the TechCrunch conference in November 2009, before the holiday season and approximately four months before the release of the iPad in March 2010, would have provided an advantageous head start.[23] From a valuation perspective, the expected emergence of the iPad would have displaced sales of some CrunchPads. It is also likely, however, that the iPad would have validated the product category and amplified CrunchPad’s probability of success.[24] This validation would have been particularly relevant given the existence of individuals that will not purchase Apple products, preferred open-source software,[25] preferred lower price points, or were ardent followers of Mr. Arrington.

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tablet business is still growing at a healthy rate, he said.” (accessed February 2, 2012, http://www.pcworld.com/article/248776/androids_tablet_share_at_39_percent_as_sales_triple_says_study.html).

[23] Teare Deposition, 130:10-19. Teare Deposition, 225:4-8, “But in the context of that time, it was a novel idea; that if market timing allowed execution to take place when we all wanted it to, I think it would have been a significant business.”

[24] Teare Deposition, 130:10-19. *Id.*, 225:4-8, “But in the context of that time, it was a novel idea; that if market timing allowed execution to take place when we all wanted it to, I think it would have been a significant business.”

[25] The CrunchPad was designed to operate on open source software. See, e.g., http://www.pcworld.com/article/169395/alleged_crunchpad_specs_revealed_will_michael_arrington_beat_the_apple_tablet.html

In fact, the similarities between the CrunchPad and the Android device support a conclusion that the CrunchPad could have become an established product in the tablet device market.[26] The Android platform continues to accumulate market share, and there is an expectation that other products will also acquire meaningful, if minority market shares from the iPad.[27] In fact, Strategy Analytics found that nearly 75% of potential tablet purchasers were open to purchasing non-iPad products.[28] In other words, a viable market for tablet computing devices such as the CrunchPad existed.

2. *BestBuy's Endorsement Provided a Substantial Market Opportunity*

One distribution strategy was to market and sell CrunchPads through Best Buy stores. I understand that Best Buy was willing to concede unusually generous terms to CrunchPad Inc. Specifically, Best Buy offered two specific terms which would have provided a major advantage for the CrunchPad.[29] First, Best Buy [redacted] Second, Best Buy [redacted].

3. *Sales of HP's Tablet Support CrunchPad's Strategy*

The CrunchPad was designed to offer a basic web-browsing experience at an affordable price, as outlined in Mr. Arrington's initial blog post. In November 2009, the CrunchPad was projected to sell for $399 at launch. By contrast, many early tablet devices sold for $500 or more.[30] The

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[26] Teare Deposition, 271:13-25, "[I]f you look back from today and look at the Android platform, which is remarkably similar architecturally to the CrunchPad where the iPad isn't, except from the hardware point of view. But from the software point of view, the iPad is very different, the Android is very close. It refers to a browser. The Chrome OS is even closer still. You know, you can see that there's a -- a space in the market even now for a browser based -- a browser user interface on top of an operating system. So one would anticipate Michael to stuck with it."

[27] *Id.*

[28] http://www.strategyanalytics.com/default.aspx?mod=pressreleaseviewer&a0=5056

[29] Arrington Deposition, 317:3-319:6, including, [redacted]

[30] Indeed, many of these competitors were smaller than the CrunchPad, more expensive, and released later in time when components were generally cheaper and more powerful. The original 10" Apple iPad launched in April 2010 for $500 (http://money.usnews.com/money/business-economy/articles/2010/03/31/ipad-launch-what-buyers-need-

experience of the HP TouchPad lends validation to the CrunchPad's pricing strategy, which was premised on the existence of demand for affordable tablet devices.

HP launched the TouchPad in July 2011 at a unit price of $499. However, lackluster sales caused HP to discontinue the TouchPad and seek a buyer for the division responsible for its operating system (WebOS) in August of 2011.[31] Best Buy itself had taken delivery of approximately 270,000 TouchPads, of which approximately 245,000 were still on hand as of August 16, 2011.[32] On August 20, 2011, Best Buy announced that it was clearing its inventory of TouchPads by reducing the unit price to $99. Despite significant uncertainty about future support for both the TouchPad and WebOS, Best Buy sold all its online stock by 11:25 am the next day, and had to cancel excess orders.[33] Best Buy also implemented one TouchPad per customer policies in its stores using a ticket system to allocate in-store inventory.

HP offered its own stock of TouchPads at the same price on the online auction site eBay, and sold out within "hours," straining the infrastructure eBay itself.[34] On December 9, 2011, HP announced that it would release the source code to WebOS as an open source project.[35] HP later released more refurbished TouchPads that sold out in "minutes."[36] While the HP Touchpad ended up selling for less than the projected price of a CrunchPad, the dramatic increase in demand illustrates that there is significant demand for open-source tablet devices at lower price points.

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to-know), the 9" HP Slate was launched in October 2010 for $799 (http://en.wikipedia.org/wiki/HP_Slate_500), and the 7" Samsung Galaxy Tab was also launched October 2010 for $650 (http://www.itworld.com/mobile-amp-wireless/123579/samsung-galaxy-tab-price-leaked-it-too-high). Other marginal products such as the Dell Streak (Mini 5) which had only a 5" screen, was launched in July 2010 for $500 (http://androidandme.com/2010/06/news/dell-streak-5-coming-unlocked-for-500-next-month/), and the 10" Viewsonic G Tablet was launched in October 2010 for $429.

[31] http://gizmodo.com/5832291/hp-killing-webos

[32] http://allthingsd.com/20110816/ouchpad-best-buy-sitting-on-a-pile-of-unsold-hp-tablets/

[33] http://forums.bestbuy.com/t5/Best-Buy-Geek-Squad-Policies/HP-TouchPad-FAQs/m-p/315434/thread-id/3887

[34] http://www.tomshardware.com/news/HP-TouchPad-Firesale-ebay-refurb-99-Touchpad,14208.html

[35] http://www.hp.com/hpinfo/newsroom/press/2011/111209xa.html

[36] http://news.softpedia.com/news/99-HP-TouchPad-Sells-Out-in-Minutes-Yet-Again-eBay-Faints-239872.shtml

4. *The CrunchPad Had Competitive Advantages Unavailable to the joojoo*

In the "but-for" environment considered by this report,[37] the CrunchPad would have had numerous advantages over the joojoo that was released by FusionGarage. These include an ability to leverage:

- TechCrunch's continued positive product-related endorsements,
- Increased accessibility to TechCrunch's user-base for the purpose of targeting sales,
- A release timeline that would have beaten the iPad to market as opposed to debuting simultaneously with or subsequent to that product,
- Supplier relationships with market-leading companies such as Intel,
- The significant assistance of BestBuy including payment for units at the time of order and the provision of free or reduced cost shipments,
- A geographic affiliation with Silicon Valley instead of an unknown Singaporean start-up,
- A lower price point then the $499 joojoo,[38] and
- A development process that benefitted from more productive communication between the participants.

In any event, as described in below, the valuation approaches below incorporate specific measures to address the heightened risk associated with a start-up entity such as CrunchPad Inc.

III. CrunchPad Inc.'s Lost Business Value

I have computed the damage to TechCrunch as the difference between CrunchPad Inc.'s 1) unimpaired business value based upon expected future performance as of the date of FusionGarage's wrongdoing (the "but-for" value), and 2) the impaired business value measured as of the date of the injury (the actual value).[39] In other words, this report estimates the price that

[37] I have assumed that disputes between TechCrunch or its management and FusionGarage were not a constraint to the success of CrunchPad Inc.

[38] http://news.cnet.com/8301-19882_3-10410393-250.html , including "Rathakrishnan said the product, now named JooJoo, will soon be available for preorder for $499, well above the sub-$300 price point that Arrington hoped to deliver the product at. Shipping will start in 8 to 10 weeks."

[39] This approach is generally accepted when computing lost business value damages. See, for example, Litigation Services Handbook, The Role of the Financial Expert, 4th Edition, Chapter 11 "Valuing Losses in New Businesses," §5.c.ii and . *See also*, *Id.*, Chapter 13, "Business Valuation," §2.a, defining fair value for shareholder rights disputes as "The value of the shares immediately before the effectuation of the corporate action to which the dissenter

a willing buyer would have paid to a willing seller on that date in exchange for an equivalent interest in CrunchPad Inc. The measurement of lost business value damages is an accepted approach when a business has been destroyed.[40]

Applicable professional standards suggest that multiple valuation approaches should be used and reconciled prior to reaching a valuation conclusion.[41] In this case, I have applied several market-based and income-based approaches, which are two of the most common valuation approaches.[42]. These approaches calculate the loss of value of TechCrunch's interest in CrunchPad Inc. that occurred on November 17, 2009,[43] the date I understand that TechCrunch became conclusively aware of FusionGarage's exit from the CrunchPad joint venture.

The lost business value approach to compute damages relies upon an *ex-ante* methodology.[44] That is, the information included in the analysis relies only on information known at the time of the breach.[45] This approach does not overlook the risks to market acceptance faced by the CrunchPad. These risks are addressed in the development of the expected cash flows used in the valuation as well as the discount rate applied to those cash flows. At the conclusion of this section, I have provided a reconciliation of these alternative valuation methods.

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objects…" *See also*, "Do Business Valuations and Lost Profits Methodologies Produce the Same Damage Result," Dunn on Damages, Winter 2011, by Marcie D. Bour.

[40] SSVS No. 1, Interpretation No. 1-01, ¶¶ 10-11, "If a start-up business is destroyed, is the economic damages computation within the scope of the Statement? Conclusion. There are two common measures of damages: lost profits and loss of value. If a valuation analyst performs an engagement to estimate value to determine the loss of value of a business or intangible asset, the Statement applies."

[41] SSVS No. 1, ¶ 42.

[42] SSVS No. 1, ¶ 31. I have not applied the third approach, which is the Asset Approach. I have made this determination because the cost incurred to create CrunchPad Inc. and develop the CrunchPad do not reasonably compare to the prospective market opportunity for the entity and its product. That is, the fair market value of the CrunchPad is substantially driven by the idea of the new product market, which does not have a readily measurable replacement cost.

[43] SSVS No. 1, Appendix B, International Glossary of Business Valuation Terms, Fair Market Value is "the price, expressed in terms of cash equivalents, at which property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arms length in an open and unrestricted market, when neither is under compulsion to buy or sell and when both have reasonable knowledge of the relevant facts."

[44] SSVS No. 1, ¶ 43, "Generally, the valuation analyst should consider only circumstances existing at the valuation date and events occurring up to the valuation date."

[45] "Battles of Exes: Understanding the Effect of the Ex Ante and Ex Post Approaches on Damage Calculations," AICPA FVS Consulting Digest, September 2011.

A. The Market Approach

This valuation approach attempts to identify comparable market-driven metrics, which can be applied by reference to the subject interest.

1. *Evidence From Sophisticated Investors*

The evidence below supports a valuation of CrunchPad Inc.'s equity in the range of $12 to $15 million.

a) Summer 2009

Intel was involved in extensive negotiations to invest in CrunchPad Inc. Intel is a sophisticated investor, and its investment professionals operate Intel Capital.[46] On May 21, 2009, Intel Capital indicated to Mr. Teare that it [redacted]."[47]

Later, LG, the multinational electronics manufacturer based in Seoul, Korea, also communicated [redacted] Specifically, in June 2009, LG stated that [redacted][48] In fact, LG even sought [redacted][49]

This valuation range was relevant at least as of the end of June 2009. Subsequent to that time, development of the CrunchPad continued including with the production of prototype C. In addition, product awareness continued to expand through publicity associated with TechCrunch's industry conferences and related blog posts. These factors suggest that the "but-for" risk associated with CrunchPad Inc. could have decreased in the time period leading up to November 17, 2009. It is generally accepted that when risk decreases, valuations increase.[50]

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[46] http://www.intel.com/about/companyinfo/capital/index.htm

[47] FG0001090, email from Marc S. Yi (of Intel Capital) to Keith Teare.

[48] FG0001091, email dated June 29, 2009 from David S. Kim to Mr. Teare.

[49] *Id.*, '[redacted]"

[50] This concept is addressed extensively in a forthcoming practice aid from the AICPA entitled *Discount Rates, Risk, and Uncertainty in Economic Damages Calculations*. I am a principal author of this practice aid. The practice aid has been authorized for publication by the same AICPA committee that authorized SSVS No. 1. I anticipate it will be published in March 2012. In addition, this concept is evident in the step-down of discount rates applied by venture capital firms to value start-up enterprises as those enterprises advance through lifecycle stages, which is addressed below in the section of this report regarding discount rates.

FusionGarage represented to investors that [redacted] [51] Therefore, I have not adjusted this valuation range.

b) September 2009

In late September 2009, TechCrunch's executives worked towards the completion of a round of Series A preferred stock. At that time, the valuation of CrunchPad's equity was [redacted].[52]

Ultimately, CrunchPad Inc. did not raise equity capital from these parties. Nevertheless, the absence of such funding would not have precluded the launch of the CrunchPad. In fact, members of the CrunchPad management team advocated for, and implemented a strategy to bring the product to market without venture-based funding. In particular, CrunchPad Inc. formulated a working-capital-based plan to fund growth through pre-sales of the CrunchPad.[53]

2. *Offers to FusionGarage*

Mr. Rathakrishnan testified that [redacted] [54] This range may be supported by [redacted],[55] however, I have not seen evidence related to the post-money valuation of FusionGarage.

While FusionGarage's only product, the joojoo, was similar to the CrunchPad, the comparability of FusionGarage to CrunchPad Inc. is otherwise limited. Indeed, there are significant reasons to expect that CrunchPad Inc. would be valued at a premium to FusionGarage (see § II.D.4).

3. *Price-to-Sales Multiples of Other Contemporaneous Transactions*

This approach is referred to as the Guideline Company Transactions Method.[56] It involves identification of contemporaneous unrelated sales of similarly situated business. To perform this

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[51] FG0001089, e-mail dated October 20, 2009 from Mr. Tan with Subject "Investment Opportunity"

[52] TC00000659-669, e-mail with attachment dated September 29, 2009 from Ms. Harde to Mr. Arrington, "[redacted]…"

[53] Teare Deposition, 243:11-244:5.

[54] Rathakrishnan Deposition 189:6-12.

[55] MP028191 at198, "[redacted]" *See also*, MP027608 at 612.

[56] SSVS No. 1, ¶ 36.

analysis, I used the "Pratts Stats" database;[57] a source of data that is widely used by valuation professionals. I have identified sales of private companies within the high technology industry that closed from 2006 through 2009;[58] however I have removed entities that had abnormally high price-to-sales ratios as well as entities outside of the United States.[59] The remaining entities had an average Market Price-to-Sales multiple of 0.7 times annual sales (see **Exhibit 2)**.[60] Based upon the high end of the valuation range identified above ($15 million), this multiple implies that CrunchPad Inc.'s annual sales should have been approximately $22.6 million.[61]

To gauge CrunchPad Inc.'s ability to achieve this level of sales, I assumed the following:

- A reduced expected weighted-average first year unit price of the CrunchPad of $299 (as opposed to $399). This lower price addressed the risk associated with potential competitive pricing demands (*i.e.*, the release of the iPad and other products).[62]
- Limited benefit from ancillary revenue sources in the amount of approximately 7% of CrunchPad Inc.'s total annual revenue. The presence of these revenue streams was consistent with CrunchPad's contemporaneous internal modeling and my understanding of available revenue streams realized by peer entities.

Under these conditions, the sale of approximately 70,000 CrunchPads would have been required in the first year to justify a $15 million valuation (see **Exhibit 3**). Based upon the analysis below, in my opinion, this is a reasonable and likely conservative volume of expected sales. In fact, these measures indicate that even if the price-to-sales multiple identified above were 50% overstated (*i.e.*, if the multiple should be approximately 0.5 times sales), the required first year volume of CrunchPad sales (approximately 95,000 units) would still be reasonable. Indeed, even

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[57] http://www.bvmarketdata.com/PSAdvSearch.asp

[58] This range includes codes 3571 – Electronic Computers, 3572 – Computer Storage Devices, 3575 – Computer Terminals, 3576 – Computer Communications Equipment, and 3577 – Computer Peripheral Equipment

[59] Removing these entities is conservative as, all else equal, a lower price-to-sales multiple requires an expectation of larger sales to generate equivalent market value.

[60] The specific metric tracked in the Pratts Stats database is market value of invested capital, which includes both debt and equity capital. The valuation ranges used above exclude the FusionGarage's debt, and so do the calculations in this section of my analysis.

[61] Using this type of multiple, it is also important that sales grow in subsequent annual periods. CrunchPad Inc. clearly had this expectation for the CrunchPad, including the anticipated release of future generations of the product. In my discussion with Mr. Arrington, he confirmed that subsequent generations were expected to produced, which would generate significant revenue growth for CrunchPad Inc.

[62] This reduction is conservative because it required more CrunchPads to have been sold to achieve required sales levels.

in December 2009, Mr. Rathakrishan anticipated that [redacted].[63] Furthermore, CrunchPad Inc. itself expected [redacted][64]

a) Market Share

Approximately 18.6 million tablet devices were sold during calendar year 2010 (see **Exhibit 1**). The sale of 70,000 units of the CrunchPad during this period (*i.e.*, Year 1 sales) would have represented significantly less than a 1% market share; 0.38%. This market share seems reasonable, and is likely to be conservative, in consideration of the CrunchPad's four month head start and its price point. Further, this infers a market position that is immaterial to Apple's actual share, and roughly a quarter of the much less high profile Android offerings.[65] In fact, approximately 500,000 non-iPad or Android tablet devices were sold during calendar 2010.[66] Thus, the CrunchPad would have needed to secure less than 20% of this sub-market to reach the threshold of sales relevant to warrant a valuation of approximately $15 million.

b) TechCrunch User Base

As described above, the informed testimony is that TechCrunch had a unique base of at least approximately 4 million users in 2009 (see § II.A). This user base would have constituted a prime opportunity for sales of the CrunchPad, particularly given the product's expected head start to the market. Although the testimony is that TechCrunch community grew in size during calendar 2010, which is the period relevant to the analysis, assuming its minimum size, the CrunchPad again would have required penetration of less than 2% to achieve the level of sales associated with a $15 million valuation.[67] Mr. Arrington believes that the level of success of

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[63] FG0033338, a December 29, 2009 e-mail from Mr. Rathakrisnan stating '[redacted]"

[64] TC00008699 at 8703.

[65] Android's only offerings through Q3 2010 featured devices with a tablet form factor, but software designed for smartphones. The first Android tablet with dedicated tablet software launched in Q1 2011.

[66] See Exhibit 1.

[67] 70,000 units ÷ 4,000,000 users = 1.8%. To the extent that there is a risk that Mr. Teare's testimony overstates the size of TechCrunch's user base, I also I have used compete.com's website tracking analytics. In December 2010, compete.com reported that TechCrunch had more than 1.5 million unique users. Based on this data, penetration of less than 5% of TechCrunch's user base would have been required. I have de-emphasized this data point because website tracking analytics frequently understate unique user data. See, for example, http://venturebeat.com/2007/02/22/traffic-measuring-continued-why-compete-doesnt-work-and-why-quantcast-does/ and http://www.seomoz.org/blog/testing-accuracy-visitor-data-alexa-compete-google-trends-quantcast.

sales to the TechCrunch community alone would have been substantially higher. Moreover, the estimate is conservative because it ignores the possibility of sales to non-TechCrunch users, including through CrunchPad Inc.'s expected strategic arrangement with BestBuy.

c) Best Buy Per Store Sales

As of February 27, 2010, there were 1,143 Best Buy and Best Buy Mobile stores in the United States.[68] Based on this data, on average, each Best Buy or Best Buy Mobile location would have to have sold less than 65 units during calendar 2010.[69] Considering the price point of the device, the lack of early competitors, the willingness of Best Buy to promote the CrunchPad, and the demand demonstrated by sales of the HP TouchPad through this channel, it is reasonable to expect that CrunchPad could have achieved this level of sales – particularly in combination with other distribution channels.

d) FusionGarage Used the Kindle as a Benchmark

In August 2009, in a communication to a potential investor, FusionGarage's representative, Stuart Tan, highlighted the Amazon's e-Book reader product, the Kindle, as a reasonable proxy for expected sales of the CrunchPad. Even while doing so, however, Mr. Tan expressed [redacted]. Mr. Tan quantified [redacted][70]

Product	Unit Sales	Sales Amount
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

Assuming the reliability of FusionGarage's benchmarking of the Kindle products,[71] this data point provides further support for the reasonableness of a conclusion that the CrunchPad could have sold 70,000 units in its first year of production. That is, if the first quarter of Kindle sales were annualized, then 600,000 units would have been sold – suggesting that to reach the level of

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[68] Best Buy Form 10-K for the Fiscal Year ended February 27, 2010 at page 9.

[69] 70,000 units ÷ 1,143 stores = 61.2 units/store.

[70] FG0000016, the Kindle sales have been estimated based upon Mr. Tan's representation that the Kindle2 [redacted]"

[71] Amazon did not transparently disclose sales of its Kindle device at this time. Nevertheless, third-parties estimated that Amazon sold approximately 1.072 million Kindles in the first year. http://booksahead.com/?p=921 (accessed February 29, 2009). That estimate indicates that Mr. Tan's representation about Kindle sales may have been conservative.

sales associated with a $15 million valuation, the CrunchPad would have need to achieve only approximately 10% of the volume of Kindle sales.

B. The Income Approach

The Income Approach commonly relies upon a discounted cash flow computation ("DCF"). A DCF computation is premised upon projected free cash flow ("FCF"), which is typically defined as the amount of cash that the subject being valued is able to generate after setting aside funds required to change its net asset base. The following sections of this report set forth the basis for the determination of the inputs to the DCF models used in my analysis of the valuation of CrunchPad Inc.

1. Elements of a DCF Calculation

The computation of FCF requires certain adjustments to an earnings stream:

a) Working Capital Adjustments

A company must generally increase its working capital to support increases in forecasted sales, which is the case here. Based upon the entities identified in my review of the Pratt's Stats database, the typical working capital requirement was approximately 6% of sales (see **Exhibit 2**). Therefore, I have reduced CrunchPad's expected future cash flows by 6% of the growth in sales in each period to set aside the working capital necessary to support this growth. I have not adjusted this rate to account for a potential reduction associated with the prospective Best Buy arrangement.

b) Capital Expenditures and Depreciation Would Offset

When determining FCF, it is also appropriate to 1) remove non-cash expenditures such as depreciation, and 2) add-back purchases of capital expenditures. Here, CrunchPad anticipated outsourcing its manufacturing processes. Thus, its capital expenditures would generally have been limited to internal operating needs. In these circumstances, it is typically reasonable to offset annual capital expenditures and commensurate depreciation expense (*i.e.*, no change from earnings to FCF).

c) Income Tax Effects

A business valuation computation incorporates assumptions that would be expected by a purchaser of the subject interest, and a purchaser would evaluate cash flow on an after-tax basis. For purposes of this analysis, I have estimated CrunchPad's applicable tax rate to be 35%.[72] This

[72] http://www.irs.gov/pub/irs-pdf/i1120.pdf

is a typical effective income tax rate by U.S. domiciled entities without tax assets such as those arising from development-stage losses, which CrunchPad had not accumulated.

d) Discount Rate

The FCF used to calculate CrunchPad's valuation is expected to occur over several future periods, accordingly, it must be discounted to present value. The discount rate used to perform a lost business value calculation takes into consideration a perpetual timeline and the perspective of a purchaser. Accordingly, the discount rate used to perform a lost business value calculation is often characterized as a required rate of return. The specific discount rates I have applied are discussed in greater detail below.

e) Terminal Value

The second principal component of a lost business value calculation is its terminal value. The terminal value of a company is the present value at a future point in time of all cash flows of a company based upon a stable long-term growth expectation. In this instance, the terminal value is used to establish the value of FCF generated after the conclusion of the forecasted period. It is reasonable to compute the terminal value of CrunchPad at least in part because management anticipated that subsequent generations of the product would be developed. An accepted formula to compute terminal value follows:

Terminal value = FCF_{n+1} * (1 + g) / (r – g)

Where:

FCF_{n+1} = The FCF calculated in the last period of the lost profits analysis

g = the long term growth rate; 3.0%.[73]

r – discount rate.

2. *<u>The Income Approach Using the Venture Capital Method</u>*

In this approach, I have adopted CrunchPad Inc.'s management projections of its market opportunity. CrunchPad Inc. prepared two financial scenarios for CrunchPad sales; 1) a Base Case and 2) 50% of Base Case. These scenarios forecasted sales and earnings for a three-year

[73] I have used a long-term growth rate of 3.0%. This rate may understate CrunchPad Inc.'s likely future growth; however, it is a commonly accepted measure of the expected long-term economic growth and only slightly exceeds inflation. In addition, given the significant discount rates applied in my analysis, the valuation calculations are insensitive to this input. Finally, I note that it is conservative to apply a lower long-term growth rate (i.e., a higher rate would equate to a higher valuation).

period. In the Base Case scenario, the CrunchPad would have obtained approximately 2.5% share of the tablet market during calendar years 2010 and 2011.

It is typical for venture-capital firms to address the risks and uncertainties of investments in start-up entities through the application of relatively high discount rates.[74] As described above, I have studied these discount rates, and developed practice guidance for CPAs in the application of discount rates. Specifically, venture capitalists typically apply discount rates that range from 50-70% for a start-up entity to 40-60% for an entity pursuing first-stage financing.[75] These discount rates are much higher than the typical rate of return associated with more mature companies because these rates are designed to address the increased risks of these scenarios, including an absence of historical information, uncertainty about the future including technological developments and competition, as well as an absence of short-term liquidity for the investment.

In the fall of 2009, while CrunchPad Inc. exhibited some of the characteristics of an entity seeking first-stage financing, I have used a start-up based discount rate of 80%. This rate exceeds the upper-end of the discount range typically applied by venture capitalists because I have not otherwise adjusted CrunchPad Inc.'s financial forecasts. In this scenario, CrunchPad Inc.'s valuation would have been approximately $64 million (see **Exhibit 4**).

CrunchPad Inc.'s 50% of Base Case scenario assumed that its market penetration would be exactly half of the Base Case Scenario (or a share of approximately 1.2%). In the 50% of Base Case scenario, however, relatively higher operating costs would have reduced its comparable probability. Discounted to present value at a slightly reduced discount rate of 70%, in this more conservative scenario, CrunchPad Inc. would have had a valuation of approximately $25 million (see **Exhibit 5**).

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[74] See, for example, Sahlman, William. "A Method For Valuing High-Risk, Long-Term Investments: The 'Venture Capital Method.'" *Harvard Business School Publication 9-288-006* (August 2003): 6–7. See also the Stanford Business School analysis located at http://www.stanford.edu/class/msande272/resources/Valuation%20Lecture%202006.pdf , at p.9, which presents a similar hierarchy of discount rates applied by venture capitalists.

[75] The Sahlman study summarizes the traits of a start-up as including "…an organization that is prepared to commence operations. A start-up should be able to demonstrate a competitive advantage. Most high-technology firms should have a product in prototype form embodying a proprietary technology." An entity receiving first-stage financing is typically "on-going businesses. A first-stage company is generally not profitable, but it normally has an established organization, a working product, and, preferably, some revenues. First-stage funds are usually used to establish a company's first major marketing efforts, and to hire sales and support personnel in anticipation of higher sales volume. Often, funds are also applied to product enhancements or product line expansion."

3. *The Income Approach Using an Alternative Assumption Regarding CrunchPad's Market Opportunity*

I have prepared an alternative estimate of CrunchPad's unit sales to assess the sensitivity of the price-to-sales model considered above. Specifically, I have assumed that the unit price of the CrunchPad was $299, which was significantly lower than the unit prices used in the CrunchPad Inc. models addressed above. I then assumed that the unit price would be reduced by 10% in each successive year. I also assumed that only 160,000 CrunchPads were sold during calendar 2010 (Year 1), which was the equivalent of approximately 0.9% market share.[76] I assumed CrunchPad maintained a similar market share in Year 2 (0.6%). I did not reduce anticipated unit production costs, which had the effect of significantly reducing CrunchPad Inc.'s expected profitability.

This method to estimate value significantly reduces valuation risk. This is because there is an increased probability CrunchPad Inc. could have achieved these results. As a result, it is appropriate to apply a reduced discount rate within the range addressed in the venture capital method described above. Notwithstanding this reduction, I have applied a discount rate of 60%, which is the midpoint of the range for start-up entities and represents a significant valuation reduction for risk. This method results in a valuation of CrunchPad Inc. of approximately $15 million immediately prior to November 17, 2009. This model as well as an explanation of other assumptions is presented in **Exhibit 6**.

C. TechCrunch's Lost Business Value Associated With CrunchPad Inc. Was Approximately $7.8 Million as of November 17, 2009

A reconciliation of valuation methods typically requires the results of each method to be assessed for reliability.[77] The following table summarizes the range of fair market value of CrunchPad Inc. immediately prior to November 17, 2009 as provided by the methods described above:

	Method	**CrunchPad Valuation**
1	Market Approach – Intel/LG/Series A	$12 to $15 million
2	Market Approach – Mr. Rathakrishan	$30 to $40 million
3	Market Approach – Price-to-Sales	$15 million
4	Income Approach – CrunchPad Projections	$25 to 64 million
5	Income Approach – Alternative Projections	$15 million

Of these methods, the market approach offered by Mr. Rathakrishan and the income approach based upon CrunchPad Inc.'s scenarios depart from the range. As such, I have emphasized the

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[76] At least in part, I selected this level of unit sales to test the sensitivity of the unit estimates used in the price-to-sales multiple above. This level is more than two times the 70,000 used in that approach.

[77] SSVS No.1, ¶¶ 42, 68.

remaining indications of value, which conform around the range of $12 million to $15 million. The use of these methods indicates that significant upside exists even when a conservative discount rate for risk is applied.[78] As such, it is reasonable to conclude that this range reflects the valuation of CrunchPad Inc. immediately prior to November 17, 2009.

On a pro-rata basis, TechCrunch's interest would be valued between $7.8 million and $9.8 million (*i.e.*, 65% of the range). When the interest being valued is less than 100% of the entity, it is relevant to consider whether any further valuation adjustments are appropriate.[79] At least in part due to TechCrunch's 65% interest in CrunchPad Inc., a discount for lack of control does not appear to be applicable.[80] Given that TechCrunch's interest was in a private entity, however, it is relevant to consider a discount for the lack of general marketability of CrunchPad Inc. equity interests. Such a valuation adjustment, however, is incorporated into my analysis already through the contemporaneous investment offers or through the venture capital discount rates that include marketability considerations.[81] Nevertheless, to account for the fact that the lower end of the valuation range was in part informed by the September 2009 investor activities that occurred in close time proximity to November 2009 and to further reduce marketability risk, I have concluded that TechCrunch's interest in CrunchPad Inc. should be valued at $7.8 million immediately prior to November 17, 2009.

IV. TechCrunch's Out Of Pocket Losses

TechCrunch made significant cash contributions to the development of CrunchPad Inc. and the CrunchPad.[82] I have reviewed an accounting of such contributions, which include:[83]

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[78] This analysis was performed using CrunchPad Inc.'s continuing operating value as opposed to liquidation value. This is because CrunchPad Inc. was a development-stage company without significant identifiable assets to liquidate.

[79] SSVS No.1, ¶ 40, "During the course of a valuation engagement, the valuation analyst should consider whether valuation adjustments (discounts or premiums) should be made to a pre-adjustment value. Examples of valuation adjustments for valuation of a business, business ownership interest, or security include a discount for lack of marketability or liquidity and a discount for lack of control."

[80] There are other indicators that TechCrunch exercised significant control over the CrunchPad including the fact that Mr. Arrington had developed the product concept and other members of its management had conceptualized the new market for the product.

[81] I also note that CrunchPad Inc. was attractive enough to receive offers from many desirable and sophisticated investors, including Intel and LG. Indeed, Best Buy's inclination to partner with CrunchPad is another indication of CrunchPad's desirability as a business entity in the technology industry. Further, secondary markets such as SecondMarket have provided new avenues of liquidity for the equity of larger private enterprises. CrunchPad Inc. would have been similar to the type of companies listed on SecondMarket. Indeed, all 10 of the 10 most watched venture backed enterprises are in the technology industry and 50% are in the San Francisco Bay Area.

[82] These contributions are summarized in ¶¶ 56-57 of the Complaint.

- [redacted] for salaries,
- [redacted] for computer and other electronic equipment
- [redacted] for legal bills, and
- [redacted] in cash advances to suppliers on behalf of FusionGarage.

In total, TechCrunch contributed approximately $357,000. (*Id.*) TechCrunch was not reimbursed for these expenses, and the return on these expenditures that it anticipated, in the form of enhanced CrunchPad Inc. value, was also lost on November 17, 2009.

V. Pre-Judgment Interest

I have been asked to prepare computations to address the potential that the Trier of Fact may award pre-judgment interest in this matter. I have accumulated interest through April 30, 2012, which I have used as a current estimate of the date of judgment in this matter. This calculation was prepared using a 10% interest rate on a simple basis.[84] The amount of pre-judgment interest related to TechCrunch's lost business value is $1.9 million and the amount related to out-of-pocket losses is $87,000.[85] In total, pre-judgment interest is $2.0 million (see **Exhibit 7**).

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[83] TC00019224-19336.

[84] http://law.justia.com/codes/california/2009/civ/3287-3291.html

[85] For simplicity, this amount has been calculated as if all expenses were incurred on November 17, 2009.

HEMMING MORSE, LLP
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LITIGATION & FORENSIC CONSULTANTS

Exhibit A

CURRICULUM VITAE

www.hemming.com

Greg Regan, CPA/CFF, MBA

Employment & Education

2012 – Present	**Hemming Morse, LLP** ***Certified Public Accountants*** ***Litigation and Forensic Consultants*** Partner
2003 – 2011	**Hemming Morse, Inc.** ***Certified Public Accountants*** ***Litigation and Forensic Consultants*** Director, 2007-2011 Manager, October 2003-2006
2009 – Present	**Golden Gate University** Adjunct Professor Introduction to Financial Forensic Accounting, Spring 2009-present An In-Depth Analysis of Economic Damages, Fall 2010
1999 – 2003	**SupportSoft, Inc. (Nasdaq: SPRT)** Controller, February 2001-October 2003 Accounting Manager, April 1999-February 2001
1995 – 1999	**Ernst & Young, LLP** Senior Auditor, October 1997-April 1999 Staff Auditor, October 1995-September 1997
2004 – 2007	**University of San Francisco** Masters in Business Administration with emphasis in Finance Beta Gamma Sigma Honor Society
1995	**Georgetown University, Washington, D.C.** B.S. Accounting, Minor in Theology

Professional & Service Affiliations

- **Certified Public Accountant, State of California, 1998**
- **Certified Public Accountant, State of New York, 2010**
- **Certified Fraud Examiner**
- **Certified in Financial Forensics, 2008**
- **American Institute of Certified Public Accountants**
  – Forensic & Litigation Services Committee, 2010-present
  – Co-chair, Economic Damages Task Force
  – National Forensic Conference - Planning Committee, 2011 and 2012
  – CPA Ambassador, January 2006-present
  – Board of Examiners, Uniform CPA Examination Contributor

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Professional & Service Affiliations continued

- **California Society of Certified Public Accountants**
  – State Accounting Principles and Auditing Standards Committee, Member, 2005-2010
  – Co-chair, San Francisco Chapter Litigation Consulting Services Committee, 2006-present
  State Steering Committee, 2007-present
  – Economic Damages Section
  Member, 2004-present
  Secretary, 2008-2009
  Vice Chair, 2010-present
  – CalCPA Leadership Institute, Spring 2006
  – Leadership Identification and Development Committee, 2007-present
- **California CPA Education Foundation**
  – Accounting & Auditing Curriculum Advisory Committee, 2007-present
- **Association of Certified Fraud Examiners**
- **Financial Executives International (FEI)**
  – Silicon Valley Chapter
- **Georgetown University,** Alumni Admissions Committee
- **Advisory Board to Golden Gate University Forensic Accounting Program,** August 2008-present
- **American Bar Association**
  – Section of Litigation
  – Section of International Law
  – Section of Antitrust Law
- **Legal Aid of San Mateo County**
  – Board of Directors, Treasurer

Publications

- *"Causation Scenarios for the Damages Expert"*
  Dunn on Damages, Winter 2011
- *"2010 Federal Rules of Civil Procedure Changes"*
  AICPA.org, November 2010
- *"Selecting the Right Investigative Resource"*
  (Co-author) Journal of Accountancy, December 2009
- *"Discount Rates and Lost Profits... Where's The Risk?"*
  (Co-author) CPA Expert, Summer 2009
- *"Discount Rates and Lost Profits: A Review of Case Law"*
  The Witness Chair, Winter 2009
- *"CFFs: CPAs Looking Behind Closed Doors"*
  CalCPA Magazine, September 2008
- *"Discount Rates and Lost Profits ... Where's The Risk"*
  The Witness Chair, Summer 2008
- *"Software Revenue Recognition on the Rise"*
  (Co-author) Journal of Accountancy, December 2007
- *"FAS 123R: Accounting for Stock Options, Tips for an Increasingly Complex Task"*
  CalCPA Magazine, March 2007
- *"Forensic Accounting: Is It Right For You?"*
  CalCPA.org, February 2005
- *"Talk it Over"*
  CalCPA Magazine, December 2004

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Presentations

- *"Emerging Financial Forensic Accounting"*
  AICPA National Forensic Accounting Conference
  September 2011
- *"Review of Notable Recent Cases – Economic Damages"*
  AICPA National Forensic Accounting Conference
  September 2011
- *"Forensic Accounting: Bridging the Gap between Theory and Practice"*
  AAA, National Conference, August 2011
- *"Causation Scenarios and the Damages Expert"*
  CalCPA Economic Damages and Fraud Committees
  August 2011
- *"Ethics and the Expert"*
  AAA, Forensic and Investigative Accounting Section Research Conference, March 2011
- *"Bridging the Gap - The Road to the CFF"*
  AAA, Forensic and Investigative Accounting Section Research Conference, March 2011
- *"Educating Legally Aware Accountants"*
  AAA, Forensic and Investigative Accounting Section Research Conference, March 2011
- *"Revenue Recognition"*
  Licensing Executives Society, October 2009
- *"Accounting for Devices With Embedded Software"*
  Revenue Recognition for MedTech Companies
  June 2009
- *"Recessionary Implications for CPAs"*
  Cal Society of CPAs, Economic Damages Section
  May 2009
- *"Analyzing Earnings Releases"*
  San Jose Mercury News, October 2008, January 2010
- *"The Subprime Debacle & Debate About Fair Value Accounting"*
  San Francisco, Barristers Club, August 2008
- *"IPOs: Promises and Pitfalls"*
  Guest Lecturer, Golden Gate University Law School
  March 2008, March 2009
- *"The Foreign Corrupt Practices Act: An Independent Monitor's Perspective"*
  Cal Society of CPAs, San Francisco Chapter Litigation Section, January 2008
- *"Options Backdating: What you need to know"*
  (Panel member) CalCPA Litigation Society
  October 2006
- *"I've Sold Software: How and When Do I Recognize Revenue?"*
  Hemming Morse Training, November 2005
- *"Facts about Fraud"*
  Cal Society of CPAs, CPE Extravaganza
  June 2005, June 2006
- *"Fraud/Corporate Investigations"*
  JHI Members Conference, 2004

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AICPA CFF Education, Spring 2010-Present

- Fundamentals of the Legal System & Engagement Administration
- Reporting, Expert Reports, and the Provision of Testimony
- Financial Statement Investigations

Testimony

Trial

- **Boris Kriman, et al. v. Victor Mayorkis, et al. (2012)**
  Superior Court of the State of California,
  County of San Mateo, Case No. CIV 491312
- **First National v. Federal Realty Investment Trust (2008) (2009)**
  U.S. District Court, Northern District of California,
  San Jose Division, Case No. C-03-02013 RMW

Arbitration

- **Curriculum Associates, LLC v. Let's Go Learn, Inc. (2011)**
  American Arbitration Association
  No. 74-117-Y-00247-11
- **Craig W. Story, Seller Representative of PHSI v. U.S. Water LLC (2011)**
  JAMS Reference No. 1100063613

Deposition

- **Boris Kriman, et al. v. Victor Mayorkis, et al. (2011)**
  Superior Court of the State of California,
  County of San Mateo, Case No. CIV 491312
- **Underground Solutions, Inc. v. P&F Distributors, et al. (2011)**
  Superior Court of the State of California,
  County of San Mateo, Case No. CIV 470876
- **Graco, Inc. v. PMC Global, Inc., et al. (2011)**
  U.S. District Court, District of New Jersey
  Case No. 08-CIV-1304 (FLW) (JJH)
- **Paul A. DiMartini and Britt T. Johnson v. Purcell Tire & Rubber Company, et al (2010)**
  U.S. District Court, State of Nevada
  Case No. 3:09-cv-00279-HDM (VPC)
- **First National v. Federal Realty Investment Trust (2008)**
  U.S. District Court, Northern District of California,
  San Jose Division, Case No. C-03-02013 RMW

SEC Enforcement - Investigation Interviews

- Re: Bell MicroProducts, Inc. (March 2009)
- Re: Connectics, Inc. (August 2007)

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Selected Experience

- Engaged as the damages expert by the defendant, a financial services company, to analyze and respond to restitution claims of a class of 78,000 plaintiffs.
- Engaged as the accounting expert by the plaintiff, to evaluate shareholder oppression claims and valuation of minority share of a multitude of privately owned business.
- Expert for the defendant. Assessed post-acquisition profitability of the entity to determine implications of EBITDA on Purchase Price and Earn-Out Dispute.
- Expert for the plaintiff. Analyzed the pre- and post-acquisition accounting for an entity to assess implications on Post Closing performance commitments.
- Consultant for the defendant. Assessed the standalone profitability of a joint venture operated as a division of a parent.
- Directed an investigation of revenue recognition and related revenue reserves for the special committee of the board of a NASDAQ-traded pharmaceutical company pursuant to a Securities and Exchange Commission (SEC) subpoena.
- Directed an investigation of vendor allowance accounting for the Audit Committee of a publicly traded technology distributor.
- Consultant for the SEC. Assisted the accounting expert in assessing whether the financial statements of a high-technology company were prepared in accordance with Generally Accepted Accounting Principles (GAAP) and whether related audits were performed in accordance with Generally Accepted Auditing Standards (GAAS).
- Consultant for the SEC. Evaluated the consistency of the accounting principles applied by a consumer products company with GAAP and assessed the compliance of an audit in accordance GAAS.
- Lead the restatement of pre-IPO high-tech companies to establish compliance with SOP 97-2 and SAB 104.
- Assisted independent monitor in an evaluation of the compliance of a medical device company with the terms of its settlement arrangements with the U.S. Department of Justice and the SEC.
- Consultant for the SEC. Evaluated the compliance of a consumer products company with SEC regulations and addressed the response of the auditor in accordance with GAAS.
- Consultant for the SEC. Evaluated the consistency of the accounting principles of a major telecommunications company with GAAP and assessed the compliance of an audit in accordance with GAAS.
- Engaged by the Audit Committee of a Nasdaq-traded high-technology company. Investigated possible manipulation of financial statement information by accounting personnel.
- Consultant for plaintiff, a leading developer of enterprise application software technologies and products. Assisted the damage expert in determination of damages.
- Accounting expert for the defendant. Plaintiff claimed that the defendant, a software company, improperly recognized revenue and presented misleading disclosures. Assisted the expert in the evaluation of revenue recognition and disclosure in compliance with GAAP and SEC regulations.
- Consultant for defendant, a telecommunications equipment company. Defendant claimed that plaintiff was responsible for certain lease guarantees subsequent to its divestiture from the plaintiff. Assisted the damage expert in evaluating the divestiture accounting and the plaintiff's lost profits.

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CrunchPad, Inc. **Exhibit 1**

Tablet Market Statistics

Source: Strategy Analytics market surveys

	Q1 2010	Q2 2010	Q3 2010	Q4 2010	Q1 2011	Q2 2011	Q3 2011	Q4 2011
Global Shipments (millions)								
Total	**1.0**	**3.5**	**4.4**	**9.7**	**8.2**	**15.2**	**16.7**	**26.8**
Apple		3.3	4.2	7.3		9.3	11.1	15.4
Android		0.1	0.1	2.1		4.6	4.5	10.5
Microsoft		0	0	0		0.7	0.4	0.4
QNX		0	0	0		0.5	0.2	
Others		0.1	0.1	0.3		0.1	0.5	0.5
Apple		94%	96%	75%		61%	67%	58%
Android		3%	2%	22%		30%	27%	39%
Microsoft		0%	0%	0%		5%	2%	2%
QNX		0%	0%	0%		3%	1%	0%
Others		3%	2%	3%		1%	3%	2%
Q/Q Growth								
Global Shipments		**250%**	**26%**	**120%**	**-15%**	**85%**	**10%**	**60%**
Apple			27%	74%			19%	39%
Android			0%	2000%			-2%	133%
Microsoft							-43%	0%
QNX							-60%	-100%
Others			0%	200%			400%	-8%
Y/Y Growth								
Global Shipments					**720%**	**334%**	**280%**	**176%**
Apple						182%	164%	111%
Android						4500%	4400%	400%
Microsoft								
QNX								
Others						0%	400%	54%
Seasonality Index								
Annual Distribution	5%	19%	24%	52%	12%	23%	25%	40%
Quarter					Q1	Q2	Q3	Q4
Factor					8.82%	20.77%	24.31%	46.11%

Sources of Market Share Information:
http://www.strategyanalytics.com/default.aspx?mod=pressreleaseviewer&a0=5167
http://www.strategyanalytics.com/default.aspx?mod=pressreleaseviewer&a0=5005
http://www.businesswire.com/news/home/20110721005317/en/Strategy-Analytics-Apple-iOS-Captures-61-Percent
http://www.fiercemobilecontent.com/press-releases/strategy-analytics-apple-android-capture-94-percent-share-global-tablet-shi#_ftn1
http://www.pcworld.com/article/248776/androids_tablet_share_at_39_percent_as_sales_triple_says_study.html

CrunchPad, Inc. **Exhibit 2**

Comparable Transactions

Source: PrattsStats (exhibit highlights selected relevant data)

NAICS	**ReportDate**	**CompanyName**	**SaleCountry**	**NetSales**	**Fit Group**	**Working Capital/Sales**	**Market Price to Sales**
334119	4/28/2006	Spitz, Inc.	United States	$11,478,000	3	5%	0.7
334112	6/25/2008	InLine Corporation	United States	$3,203,313	3	7%	0.5
334119	2/22/2006	Undisclosed	United States	$5,104,000	2	0%	1.3
334112	1/30/2007	Midrange Computer Solutions, Inc.	United States	$55,095,000	2	6%	0.3
334119	4/29/2008	Quest Retail Technology Pty Ltd	Australia	$15,102,000	2	-1%	3.6
334111	12/11/2008	Augmentix Corporation	United States	$14,590,019	2	-13%	2.3
334119	5/27/2009	Tizor Systems, Inc.	United States	$1,952,295	2	51%	1.6
334119	8/16/2006	Iridian Technologies, Inc.	United States	$5,101,060	1	-146%	6.8
334119	9/1/2006	Convedia Corporation	Canada	$13,724,630	1	45%	7.7
334112	2/9/2007	Consumer Division of SimpleTech, Inc.	United States	$133,678,000	1	0%	0.4
334113	3/9/2007	Smart Systems International, Inc.	United States	$1,563,223	1	-136%	4.4
334119	5/25/2007	Princeton Server Group, Inc.	United States	$1,833,376	1	4%	3.6
334119	8/6/2007	PIPS Technology	United Kingdom	$26,400,000	1	29%	4.4
334111	9/12/2007	ATCA and compact PCI product lines of Intel Corporation	United States	$82,378,000	1	0%	0.4
334119	6/25/2008	Bocom Multimedia Display Company Limited and subsidiary	China	$4,401,510	1	53%	4.1
334119	6/25/2008	World Wide Packets, Inc.	United States	$22,554,000	1	-10%	12.4
334119	6/25/2008	Data Management business of Pearson plc	United States	$114,677,000	1	7%	1.9

Qualitative Relevance to CrunchPad Inc.	Count	Averages		
Low	10	**1**	**3%**	**3.2**
Medium	5	**2**	**3%**	**1.5**
High	***2***	***3***	***6%***	***0.7***

CrunchPad, Inc. **Exhibit 3**

Market Approach

CrunchPad Inc. Valuation - Upper End of Range	[a]	$ 15,000,000	
Sales Multiple (Ex. 2 - Fit Group 3)	[b]	0.7	
Implied Sales	[c]=[a]/[b]	$ 22,613,000	
Est. CrunchPad Inc. Revenue Distribution (based on Ex. 6)			% of Total
Sponsorship Revenue		500,000	2.2%
Search/Retail Revenue		957,244	4.2%
Accessory Revenue		1,307,273	5.8%
Product Sales	[d]	19,848,483	87.8%
Total Sales	see [c]	22,613,000	100.0%
Est Sale Price	[e]	$ 299.00	
Units Sold	[f]=[d]/[e]	66,383	
Units Rounded Up	[g]	70,000	
December 2010 Tablet Market Size (Units - Ex. 1)	[h]	18,600,000	
Market Share	=[g]/[h]	0.38%	
2009 Monthly TechCrunch Unique Users	[i]	4,000,000	
Techcrunch User Penetration	=[g]/[i]	1.75%	
December 2010 TechCrunch Unique Users[1]	[j]	1,503,091	
Techcrunch User Penetration	=[g]/[j]	4.66%	

Notes:

1 - Source: http://siteanalytics.compete.com/techcrunch.com/

CrunchPad, Inc. **Exhibit 4**

Internal Projections

Source: TC00000742 at 752, for Financial Results through Operating Margin. [1]

Period	**Year 1**	**Year 2**	**Year 3**
Contemporaneous CrunchPad Inc. Projections			
Revenue Projection			
Unit Price	$ 399	$ 335	$ 279
Unit Sales	500,000	1,500,000	5,000,000
Unit Revenue	$ 173,015,200	$ 427,981,100	$ 1,201,000,400
Total Revenue	183,858,200	495,039,000	1,431,159,900
Cost Projection			
Unit COGS	133,085,100	359,786,700	1,044,809,800
Accessories COGS	1,380,000	9,870,000	47,500,000
Total COGS	134,465,100	369,656,700	1,092,309,800
Operating Margin	$ 22,609,600	$ 76,129,200	$ 262,406,900
Operating Margin %	12.3%	15.4%	18.3%
Computations for Lost Business Value Purposes			
Earnings after tax at 35%	$ 14,696,240	$ 49,483,980	$ 170,564,485
Working Capital Offset (see Ex. 2) @ 6% of growth		$ (17,524,419)	$ (52,718,468)
Free Cash Flow	$ 14,696,240	$ 31,959,561	$ 117,846,017
Number of periods	1	2	3
Discount Factor at Rate of 80%	0.556	0.309	0.171
PV of Earnings	$8,164,578	$9,864,062	$20,206,793

Year 3 Free Cash Flow	$ 117,846,017	
FCF for Terminal Value - Growth @ 3%	$ 121,381,397	
Terminal Value - Risk @ 80.0%	$ 157,638,178	
Terminal Value Discount Periods (years)	3.08	
Discounted Terminal Value @ Nov-09		$ 25,737,786
Sum of PV of Earnings (Years 1-3)		$ 38,235,433
Total Lost Business Value		$ 63,973,219

	2010	2011
Total Market Unit Sales (see Ex. 1)	18,600,000	66,900,000
Unit Sales as a % of Total Market Sales	2.7%	2.2%

Notes:

1 - This was the latest dated forecast identifiable in the documents produced as measured by Mod_Date in the metadata.

CrunchPad, Inc. **Exhibit 5**

Internal Projections (50% of Base Case)

Source: TC00000742 at 751, for Financial Results through Operating Margin. [1]

Period		**Year 1**		**Year 2**		**Year 3**
Contemporaneous CrunchPad Inc. Projections						
Revenue Projection						
Unit Price	$	399	$	335	$	279
Unit Sales		250,000		750,000		2,500,000
Unit Revenue	$	85,910,300	$	212,399,900	$	599,802,700
Total Revenue		92,517,000		244,855,900		722,788,500
Cost Projection						
Unit COGS		66,642,500		179,893,300		522,404,900
Accessories COGS		693,000		4,949,000		23,750,000
Total COGS		67,335,500		184,842,300		546,154,900
Operating Margin	$	1,720,100	$	15,257,900	$	113,250,500
Operating Margin %		1.9%		6.2%		15.7%
Computations for Lost Business Value Purposes						
Earnings after tax at 35%	$	1,118,065	$	9,917,635	$	73,612,825
Working Capital Offset (see Ex. 2) @ 6% of growth			$	(8,579,099)	$	(26,915,193)
Free Cash Flow	$	1,118,065	$	1,338,536	$	46,697,632
Number of periods		1		2		3
Discount Factor at Rate of 70%		0.588		0.346		0.204
PV of Earnings		$657,685		$463,161		$9,504,912

Year 3 Free Cash Flow	$	46,697,632		
FCF for Terminal Value - Growth @ 3%	$	48,098,561		
Terminal Value - Risk @ 70.0%	$	71,788,897		
Terminal Value Discount Periods (years)		3.08		
Discounted Terminal Value @ Nov-09			$	13,979,976
Sum of PV of Earnings (Years 1-3)			$	10,625,759
Total Lost Business Value			$	24,605,735

	2010	2011
Total Market Unit Sales (see Ex. 1)	18,600,000	66,900,000
Unit Sales as a % of Total Market Sales	1.3%	1.1%

Notes:

1 - This was the latest dated forecast identifiable in the documents produced as measured by Mod_Date in the metadata.

CrunchPad, Inc. **Exhibit 6**

Discounted Cash Flow Approach [1]

Quarter	Q4 2009	Q1 2010	Q2 2010	Q3 2010	Q4 2010	Q1 2011	Q2 2011	Q3 2011	Q4 2011	Q1 2012	Q2 2012	Q3 2012	Q4 2012
Revenue Projection													
Unit Price	$ 299	$ 299	$ 299	$ 299	$ 299	$ 269	$ 269	$ 269	$ 269	$ 242	$ 242	$ 242	$ 242
Unit Sales [2]	2,000	**17,131**	40,353	47,232	55,284	42,827	100,883	118,081	138,210	107,067	252,208	295,201	345,524
Unit Revenue	$ 598,000	$ 5,122,063	$ 12,065,630	$ 14,122,439	$ 16,529,868	$ 11,524,641	$ 27,147,668	$ 31,775,487	$ 37,192,204	$ 25,930,443	$ 61,082,253	$ 71,494,846	$ 83,682,458
Sponsorship Revenue	50,000	100,000	150,000	200,000	250,000	300,000	350,000	400,000	450,000	500,000	550,000	600,000	650,000
Search and Retail Revenue	17,940	153,662	361,969	423,673	495,896	345,739	814,430	953,265	1,115,766	777,913	1,832,468	2,144,845	2,510,474
Accessory Revenue	24,500	209,850	494,328	578,595	677,227	524,626	1,235,819	1,446,487	1,693,068	1,311,565	3,089,548	3,616,218	4,232,669
Total Reveunue	690,440	5,585,575	13,071,927	15,324,707	17,952,991	12,695,006	29,547,917	34,575,239	40,451,037	28,519,921	66,554,268	77,855,910	91,075,601
Cost Projection													
Unit Cost	$ 266	$ 266	$ 266	$ 266	$ 240	$ 240	$ 240	$ 240	$ 209	$ 209	$ 209	$ 209	$ 209
Unit COGS	532,000	4,556,751	10,733,972	12,563,775	13,268,122	10,278,387	24,211,967	28,339,342	28,885,807	22,376,905	52,711,470	61,697,109	72,214,517
Accessories COGS	12,250	104,925	247,164	289,297	338,614	262,313	617,910	723,244	846,534	655,782	1,544,774	1,808,109	2,116,335
Total COGS	544,250	4,661,677	10,981,136	12,853,072	13,606,735	10,540,700	24,829,876	29,062,586	29,732,340	23,032,687	54,256,244	63,505,218	74,330,851
Operating Costs													
Labor	428,100	428,100	652,691	720,274	799,122	641,383	1,146,970	1,297,790	1,474,064	1,116,130	2,257,161	2,596,210	2,992,801
Other SG&A	135,000	135,000	359,591	427,174	506,022	348,283	853,870	1,004,690	1,180,964	823,030	1,964,061	2,303,110	2,699,701
Warranty Expense	22,530	192,976	454,577	532,068	312,647	218,931	515,719	603,633	706,533	494,979	1,165,981	1,364,744	1,597,390
Total Operating Costs	585,630	756,076	1,466,858	1,679,516	1,617,792	1,208,597	2,516,559	2,906,112	3,361,561	2,434,139	5,387,203	6,264,064	7,289,891
Operating Margin	$ (439,440)	$ 167,823	$ 623,933	$ 792,118	$ 2,728,464	$ 945,709	$ 2,201,481	$ 2,606,541	$ 7,357,136	$ 3,053,095	$ 6,910,822	$ 8,086,628	$ 9,454,859
Operating Margin %	-63.6%	3.0%	4.8%	5.2%	15.2%	7.4%	7.5%	7.5%	18.2%	10.7%	10.4%	10.4%	10.4%
Earnings after tax at 35%	$ (285,636)	$ 109,085	$ 405,556	$ 514,877	$ 1,773,501	$ 614,711	$ 1,430,963	$ 1,694,252	$ 4,782,139	$ 1,984,511	$ 4,492,034	$ 5,256,308	$ 6,145,658
Working Capital Offset (see Ex. 2) @ 6% of growth			$ (391,033)	$ (115,831)	$ (135,577)	$ 281,874	$ (879,824)	$ (260,620)	$ (305,047)	$ 634,216	$ (1,979,605)	$ (586,394)	$ (686,356)
Free Cash Flow	$ (285,636)	$ 109,085	$ 14,523	$ 399,046	$ 1,637,925	$ 896,585	$ 551,138	$ 1,433,632	$ 4,477,091	$ 2,618,727	$ 2,512,429	$ 4,669,914	$ 5,459,302
Number of periods (quarters)		1.5	2.5	3.5	4.5	5.5	6.5	7.5	8.5	9.5	10.5	11.5	12.5
Discount Factor at Rate of 60%		0.838	0.745	0.663	0.589	0.524	0.466	0.414	0.368	0.328	0.291	0.259	0.230
PV of Earnings		$91,457	$10,826	$264,495	$965,293	$469,815	$256,783	$593,899	$1,649,077	$857,641	$731,609	$1,209,105	$1,256,788
Final Year Free Cash Flow	$ 15,260,372												
FCF for Terminal Value - Growth @ 3%	$ 15,718,184												
Terminal Value - Risk @ 60.0%	$ 27,575,761												
Terminal Value Discount Periods (years)	3.08												
Discounted Terminal Value @ Nov-09		$ 6,473,774											
Sum of PV of Earnings (2010-2012)		$ 8,356,788											
Total Lost Business Value		$ 14,830,562											
Total Market Unit Sales (see Ex. 1)		1,000,000	3,500,000	4,400,000	9,700,000	8,200,000	15,200,000	16,700,000	26,800,000				
Implied current period market share		1.7%	1.2%	1.1%	0.6%	0.5%	0.7%	0.7%	0.5%				
Annual Market Share					0.9%				0.6%				

Notes:

1 - the source for assumptions regarding the relative percentage of ancillary revenue and cost-to-revenue relationships is CrunchPad Inc.'s forecasts at TC00000742 at 751

2 - the revenue forecast was premised upon the Seasonality Index computed in Ex. 1.

CrunchPad, Inc. **Exhibit 7**

Calculation of Interest

Interest Commencment	11/17/2009		
Estimated date of judgment	4/30/2012		
Years	2.45		
Interest rate (annual)	10%		
Interest factor	**0.245**		
CrunchPad Inc. Valuation at November 17, 2009		$	12,000,000
TechCrunch Interest in CrunchPad Inc.			65%
Lost Business Value		$	7,800,000
Interest factor	0.245		
Prejudgment Interest		$	1,911,000
Out-of-Pocket Expenses		$	357,000
Interest factor	0.245		
Prejudgment Interest		$	87,000
Total Prejudgment Interest		**$**	**1,998,000**