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UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF CALIFORNIA

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SAN FRANCISCO DIVISION

11 INTERSERVE, INC. dba TECHCRUNCH, a
 Delaware corporation, and CRUNCHPAD,
 12 INC., a Delaware corporation,

CASE NO. C 09-cv-5812 RS

13 Plaintiffs,

**FUSION GARAGE’S MOTION FOR
 ADMINISTRATIVE RELIEF OR, IN THE
 ALTERNATIVE, MOTION TO CHANGE
 TIME REGARDING PLAINTIFFS’
 MOTION FOR PRELIMINARY
 INJUNCTION AND FUSION GARAGE’S
 MOTION TO DISMISS**

14 vs.

15 FUSION GARAGE PTE LTD., a Singapore
 company,

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Defendant.

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1 There are presently two motions pending before the Court: (i) Defendant Fusion Garage
2 PTE, Ltd.'s ("Fusion Garage") Motion to Dismiss, to Strike, and for a More Definite Statement
3 ("Motion to Dismiss") and (ii) Plaintiffs' Motion for a Preliminary Injunction ("PI Motion").¹
4 Fusion Garage respectfully moves, pursuant to Local Rules 6-3 and 7-11, to set the hearing dates
5 on its Motion to Dismiss and Plaintiffs' PI Motion on the same date, May 6, 2010, or another later
6 date that is convenient on the Court's calendar.

7 When this matter was assigned to the Honorable James Ware, the Court set a May 3, 2010
8 hearing on Fusion Garage's Motion to Dismiss. Fusion Garage's Motion to Dismiss explains in
9 detail why Plaintiffs' complaint fails to state a claim, and the analysis in that motion bears upon
10 Plaintiffs' inability to show a likelihood of success on the merits on the PI Motion.

11 Plaintiffs subsequently filed their PI Motion and set a hearing date for May 3, 2010.
12 However, they filed a motion to accelerate the hearing on the PI motion to March 29, 2010.
13 Fusion Garage opposed the motion to advance the hearing date. Judge Ware declined to advance
14 it, ruling that the PI Motion would instead be heard on May 3, 2010 along with Fusion Garage's
15 Motion to Dismiss. (Dkt. No. 33).

16 After the Court re-assigned the case to the Honorable Richard Seeborg, Plaintiffs re-
17 noticed their PI Motion for April 29, 2010. They re-noticed the PI Motion without consulting with
18 Fusion Garage's counsel. As discussed below, Plaintiffs' chosen date of April 29, 2010 does not
19 provide Fusion Garage with adequate time to fully and fairly oppose the PI Motion.

20 For instance, Plaintiffs have agreed to make a 30(b)(6) deponent available for deposition
21 on April 2, 2010, and that deposition is relevant to Fusion Garage's opposition to the PI Motion.
22 Given that Fusion Garage's opposition to the PI Motion would be due April 8, 2010 if the PI
23 Motion were heard on April 29, 2010, Fusion Garage would not have adequate time to receive and
24 review the deposition transcript or incorporate the testimony into their opposition to the PI Motion
25 under the schedule that Plaintiffs unilaterally selected. Furthermore, despite filing a PI Motion,

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27 ¹ A motion for protective order is under submission before Magistrate Judge Trumbull. That
28 motion for protective order is not at issue here.

1 Plaintiffs have currently produced only 330 pages of documents in response to Fusion Garage's
2 discovery requests. It would be highly prejudicial if Fusion Garage were forced to file its
3 opposition brief to the PI motion before receiving even a substantial portion of Plaintiffs'
4 document production.

5 Moreover, there is no urgency to Plaintiff's PI Motion. Plaintiffs' PI Motion seeks to
6 impound the revenues that Fusion Garage earns from its product. Accordingly, Plaintiffs are
7 seeking to strangle Fusion Garage's business, not prevent any supposed imminent, irreparable
8 harm that requires a hearing earlier than May 6, 2010.

9 After this case was re-assigned, Fusion Garage sought Plaintiffs' agreement to re-set both
10 Motions to May 6, 2010. Plaintiffs responded that they would only agree to a May 6, 2010
11 hearing date if Fusion Garage would present a witness, Mr. Chandra Rathakrishnan, for deposition
12 by April 15, 2010. However, Mr. Rathakrishnan lives and works in Singapore, and Plaintiffs have
13 previously requested that Mr. Rathakrishnan sit for deposition in the United States if possible.
14 Fusion Garage has agreed to work with Plaintiffs to try and coordinate a deposition in the United
15 States when Mr. Rathakrishnan is traveling here on business. However, Fusion Garage's counsel
16 is not presently certain that Mr. Rathakrishnan will be traveling to the United States by April 15,
17 2010. In any event, Plaintiffs do not need Mr. Rathakrishnan's deposition by April 15, 2010, since
18 they already filed the PI Motion.

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1 Hearing the Motion to Dismiss and the PI Motion on different dates would be inefficient,
2 unnecessary, and prejudicial because the resolution of the Motion to Dismiss will likely moot the
3 issues in the PI Motion. It is axiomatic that a plaintiff seeking a preliminary injunction must
4 establish that it is likely to succeed on the merits. Plaintiffs would have no chance of success on
5 the merits if the Motion to Dismiss is successful. Accordingly, Fusion Garage respectfully
6 requests that the Court set both motions for hearing on May 6, 2010, or another later date that is
7 convenient for the Court.

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9 DATED: March 30, 2010

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

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12 By /s/ Patrick Doolittle
13 Patrick C. Doolittle
14 Attorneys for Certain Individual Defendants
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