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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

11 INTERSERVE, INC. dba TECHCRUNCH, a  
 Delaware corporation, and CRUNCHPAD,  
 12 INC., a Delaware corporation,  
 13 Plaintiffs,  
 14 vs.  
 15 FUSION GARAGE PTE LTD., a Singapore  
 company,  
 16 Defendant.  
 17

CASE NO. C 09-cv-5812 RS  
**FUSION GARAGE’S REVISED *EX*  
*PARTE* 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**

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**Introduction**

On March 30, 2010, Defendant Fusion Garage PTE, Ltd. (“Fusion Garage”) filed a motion to set the hearing dates on Fusion Garage’s Motion to Dismiss, to Strike, and for a More Definite Statement (“Motion to Dismiss”) and (ii) Plaintiffs' Motion for a Preliminary Injunction (“PI Motion”) for May 6, 2010. Fusion Garage now respectfully files this revised request and moves the Court to continue the hearing to May 27, 2010, or another date convenient on the Court’s calendar.

**Summary of the Action**

This case arises out of a failed merger. Plaintiff Interserve, Inc. dba TechCrunch (“TechCrunch”) is an Internet “blog” founded by blogger Michael Arrington. Mr. Arrington also formed another company, Plaintiff CrunchPad, Inc. (“CP, Inc.”) to acquire Fusion Garage. After the parties’ merger talks fell through, Plaintiffs filed this lawsuit to disrupt Fusion Garage’s introduction of its product to the market. While Plaintiffs allege that the parties were partners or joint venturers in connection with developing a web tablet product, they do not allege the existence of any partnership agreement, joint venture agreement, development agreement, non-disclosure agreement, confidentiality agreement, or any contract at all between the parties.

Given the lack of any legal relationship between the parties, Plaintiffs have asserted claims based on vague and non-specific allegations, including: "misappropriation of business ideas," false advertising under the Lanham Act, breach of fiduciary duty, fraud, and violations of California Business & Professional Code §§ 17200 and 17500. In discovery, Plaintiffs have disavowed any intellectual property infringement claim.

Fusion Garage has moved to dismiss the Complaint on numerous bases including, *inter alia*, (i) that no claim for misappropriation of business ideas exists under California law and/or such claim is preempted by the Uniform Trade Secrets Act; (ii) Plaintiffs' "business ideas" were posted on the Internet; (iii) Plaintiffs lack standing to assert a Lanham Act claim since they have no competing product; (iii) there are no actionable false statements to support the Lanham Act claim or fraud claim; and (iv) the parties were never part of a partnership or joint venture to support a breach of fiduciary duty claim.

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***The Pending Preliminary Injunction Motion***

On February 22, 2010, Plaintiffs filed the PI Motion. The PI Motion seeks limited, yet drastic, relief: plaintiffs seek to impound Fusion Garage's revenues in a Court-controlled account. The purpose of the PI Motion is therefore *not* to protect any trade secrets or confidential information, but to use this Court to strangle Fusion Garage's business.

In connection with filing their PI Motion, Plaintiffs sought to advance the hearing date and have the PI Motion heard earlier than the noticed date. Judge Ware declined to advance the hearing on the PI Motion. (Dkt. No. 33).

***Reasons for Fusion Garage's Motion to Change Time***

Since the time Fusion Garage filed its March 30, 2010 administrative motion, it has sought Plaintiffs' stipulation to continue the hearing dates approximately one month to allow Fusion Garage to obtain and review documents that Plaintiffs have promised to produce in advance of a 30(b)(6) deposition related to the PI motion and Fusion Garage's opposition thereto. Fusion Garage's request to Plaintiffs concerned a straightforward scheduling issue regarding the PI Motion pending before the District Court.

Plaintiffs declined Fusion Garage's request absent some form of provisional "sequestration" order or procedure requiring Fusion Garage to sequester its revenues pending the hearing on Plaintiffs' PI Motion. As Plaintiffs' demand was unreasonable and unwarranted—and in light of recent events—Fusion Garage respectfully submits that a one-month continuance of the hearing dates is appropriate and reasonable. The bases for Fusion Garage's request are as follows:

- Plaintiffs are the moving party on their PI Motion yet admit they have not produced responsive document relevant to the PI Motion.<sup>1</sup> They assert that Fusion Garage will receive Plaintiffs' remaining responsive documents late the week of March 29, 2010 and early the following week. To date, Plaintiffs have only produced a few hundred pages of documents. Fusion Garage has lost confidence that Plaintiffs will produce all responsive documents in a timely fashion since Plaintiffs have previously committed to provide most relevant documents by

1 now but did not fulfill that promise. Moreover, Fusion Garage is concerned that Plaintiffs will  
2 now produce an unreasonably high volume of documents immediately before the 30(b)(6)  
3 deposition that would make a document review unfeasible.

4 • Plaintiffs do not, and cannot, establish any risk of irreparable injury if the hearing is  
5 not continued one month. For example, Plaintiffs allege that they were partners or joint venturers  
6 with Fusion Garage and purport to have filed their PI Motion to preserve the viability of Fusion  
7 Garage. However, their PI Motion is a *non sequitur*: it would shut down Fusion Garage (by  
8 strangling its revenue stream) for the ostensible purpose of saving Fusion Garage.

9 • Plaintiffs' request for a provisional "sequestration of revenues" remedy pending the  
10 PI Motion is untenable. Plaintiffs have no right to such a remedy and there is no authority to hold  
11 hostage a company's revenues pending a trial (or hearing) on the merits.

12 • Based on Fusion Garage's review of the record, Plaintiffs' PI motion is not  
13 supported by any competent evidence to support the extraordinary relief it requests. Nevertheless,  
14 to avoid undue surprise on reply, Fusion Garage seeks to flesh out all discovery related to  
15 Plaintiffs' PI Motion before filing its opposition.

16 • Plaintiffs' written discovery responses to date have been insufficient. For example,  
17 Plaintiffs initially refused to respond to Interrogatories asking for all facts and documents  
18 supporting Plaintiffs' contention that the parties entered into a partnership or joint venture—even  
19 though that is Plaintiffs' central allegation in the case. Plaintiffs supplemented their responses last  
20 week and have "identified" all documents produced by either party in the case as those that  
21 Plaintiff contends support the existence of a partnership or joint venture. Fusion Garage  
22 anticipates the need to move to compel further responses to certain interrogatories.

23 ***Relief that Fusion Garage Requests***

24 Accordingly, Fusion Garage revises its scheduling request and asks that the Court re-set  
25 the hearings on the PI Motion and the Motion to Dismiss to May 27, 2010. In the alternative,  
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27 <sup>1</sup> Fusion Garage, on the other hand, has a motion for a protective order pending.  
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1 Fusion Garage respectfully requests that the Court conduct a telephonic, *ex parte*, hearing to  
2 discuss the scheduling of the pending motions.

3 Respectfully submitted,

4 DATED: April 1, 2010

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

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7 By /s/ Patrick Doolittle  
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8 Attorneys for Certain Individual Defendants  
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