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 14 and CRUNCHPAD, INC.

15 **UNITED STATES DISTRICT COURT**  
 16 **NORTHERN DISTRICT OF CALIFORNIA**

Winston & Strawn LLP  
 101 California Street  
 San Francisco, CA 94111-5894

17 **INTERSERVE, INC., dba TECHCRUNCH, )**  
 18 **a Delaware corporation, and CRUNCHPAD, )**  
 19 **INC., a Delaware corporation, )**  
 20 Plaintiffs, )  
 21 vs. )  
 22 **FUSION GARAGE PTE. LTD., a Singapore )**  
 23 **company, )**  
 24 Defendant. )

25 **Case No. CV-09-5812 RS (PVT)**  
 26 **PLAINTIFFS' OPPOSITION TO**  
 27 **DEFENDANT'S MOTION TO COMPEL**  
 28 **PRODUCTION**  
 Date: May 11, 2010  
 Time: 10:00 A.M.  
 Place: Courtroom 5, 4th Floor, San Jose  
 (motion to shorten time pending)

1 Plaintiffs Interserve and CrunchPad (collectively TechCrunch) oppose Defendant’s motion to  
2 compel as improper and unnecessary.

3 Defendant Fusion Garage seeks immediate production of all documents that TechCrunch  
4 have agreed to produce. Ironically, it is *Defendant’s failure* to produce documents and *Defendant’s*  
5 *delaying tactics*--in the face of this Court’s previous Order allowing expedited discovery--that  
6 should trouble the Court. Plaintiffs have filed a separate motion to compel today to address those  
7 issues. Meanwhile, Defendant’s motion is both unnecessary and overreaching.

8 The motion is unnecessary because TechCrunch is meeting its production obligations. It is  
9 producing the highest priority documents first and expeditiously continuing to process documents for  
10 production. TechCrunch already produced several hundred pages of highly relevant documents that  
11 were available when Defendant made its request for key documents supporting TechCrunch’s case.  
12 Core documents are already in Defendant’s possession. And even now, TechCrunch is reviewing for  
13 production additional materials acquired from TechCrunch’s computer systems. TechCrunch  
14 expects to be in position to produce all agreed-upon documents for which the custodian is Michael  
15 Arrington, TechCrunch’s founder and point-person for the CrunchPad project, and TechCrunch’s  
16 Rule 30(b)(6) designee, by Tuesday, April 6, 2010. It will continue to process the remaining  
17 documents in a rolling fashion on a custodian-by-custodian basis.

18 The motion is also overreaching and unduly hurried, because the motion demands complete  
19 production of all documents that TechCrunch agreed to produce. TechCrunch and its counsel are  
20 expeditiously reviewing and producing documents. Complete production may take several more  
21 weeks, perhaps as long as two months. A rolling production that provides the highest priority  
22 documents first is reasonable. Fusion Garage’s demand for immediate production is preposterous,  
23 especially given that the case is in its earliest stage. Though there is a preliminary injunction motion  
24 pending and while the Court has granted TechCrunch’s request for expedited discovery *from*  
25 *Defendant*, there has been no Case Management Conference and there is no discovery cut-off date.  
26 The pendency of a preliminary injunction motion does not entitle the non-moving party to complete  
27 discovery, despite all burdens, on an impossible schedule. In fact, courts routinely rule on  
28 preliminary injunctions motions before formal discovery begins: “a court’s findings of fact and

1 conclusions of law at the preliminary injunction stage are often based on incomplete evidence and a  
2 relatively hurried consideration of the issues” as compared to a full trial on the merits. *Natural*  
3 *Resources Defense Council v. Pena*, 147 F.3d 1012, 1023 (D.C. Cir. 1998); *accord Thomas & Betts*  
4 *Corp. v. Panduit Corp.*, 138 F.3d 277, 292 (7th Cir. 1998) (same); *Vision Center Northwest, Inc. v.*  
5 *Vision Value, LLC*, 673 F. Supp. 2d 679, 684 (N.D. Ind. 2009); *cf. Gerling Global Reinsurance*  
6 *Corp. of America v. Quackenbush*, No. 00-0506, 2000 WL 777978, at \*1 (E.D. Cal. June 9, 2000)  
7 (granting preliminary injunction despite the fact that “discovery is incomplete”).

8 In reality, while TechCrunch is working expeditiously to produce additional documents to  
9 Defendant, it is Defendant itself that possesses the most relevant documents in this case--**and it still**  
10 **is refusing to produce them**, despite this Court’s Order directing expedited discovery (Dkt. No. 19).  
11 Given that this case concerns the collaboration between TechCrunch and Defendant to create the  
12 “CrunchPad,” and Defendant’s secret plan to usurp the project and sell the product itself as the  
13 “JooJoo,” falsely presenting a public façade at odds with the sheltered truth, Defendant should  
14 already possess copies of all communications between it and TechCrunch and likely has *sole*  
15 *possession* of all communications concerning its planning for the abrupt decision to abort the shared  
16 venture and seize the business opportunity for itself, and the contradiction between its public  
17 advertising and its private truth.

18 There is no need for a Court order compelling discovery from TechCrunch on an impossible  
19 schedule. Nor should the Court reward Defendant with a one-sided order that entitles only  
20 Defendant to immediate document production and the threat of Rule 37 sanctions. The Court should  
21 deny the motion outright.

22 Respectfully submitted,

23 Dated: April 5, 2010

WINSTON & STRAWN LLP

24 By: /s/ \_\_\_\_\_

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