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7
8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION
10

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. 09-cv-5812 RS

**DECLARATION OF CHANDRASEKAR
RATHAKRISHNAN IN SUPPORT OF
OPPOSITION TO PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION**

Date: May 13, 2010

Time: 1:30 p.m.

Dept.: Hon. Richard Seeborg

1 I, CHANDRASEKAR RATHAKRISHNAN declare as follows:

2 1. I am the founder and Chief Executive Officer of Fusion Garage PTE., Ltd. ("Fusion
3 Garage"), the Defendant in this action. I submit this declaration in support of Fusion Garage's
4 Opposition to Plaintiffs' Motion for a Preliminary Injunction. Unless otherwise noted, I make this
5 declaration of personal knowledge, and if called and sworn as a witness, I could and would testify
6 competently thereto.

7 *Introduction*

8 2. Fusion Garage is a technology company based in Singapore that was formed in
9 February 2008. It is involved in the design and development of hardware and software. Its
10 current product is the JooJoo, a web tablet device. A web tablet is a device used for performing
11 tasks involving the use of the Internet. It is designed for people to access websites, play games,
12 and watch movies, among other uses. It does not have all the functionality of a computer since it
13 is designed more for recreational use. A unique aspect of the JooJoo is that the web browser boots
14 without an operating system; the browser, in effect, is the operating system.

15 3. TechCrunch is a web blog. A blog is a type of online journal that allows its authors
16 to reflect, share opinions, and discuss various topics. My understanding is that TechCrunch is
17 very popular and widely read technology-oriented blog based in the Silicon Valley. It reports on
18 new products and devices that are released in the technology industry and also comments and
19 critiques on companies in the technology industry. Michael Arrington is the founder of the
20 TechCrunch blog and I believe he is the primary editor of the blog as well.

21 4. My understanding is that plaintiff CrunchPad, Inc. is a company that Mr. Arrington
22 was planning to use to acquire Fusion Garage.

23 5. In summary—and as set forth in detail below—Fusion Garage began developing its
24 product before it even met TechCrunch. Fusion Garage continued down the path of developing its
25 product while TechCrunch washed in and out of acquisition discussions with Fusion Garage.
26 After meeting TechCrunch, Fusion Garage was prepared to be acquired by TechCrunch if the
27 parties were able to come to mutually agreeable terms. Fusion Garage was interested in being
28 acquired by TechCrunch because we believed that TechCrunch would be able to market our

1 product extensively given the wide readership of the TechCrunch blog. However, if the parties
2 did not consummate an acquisition, Fusion Garage always had a contingency plan to raise
3 sufficient financing to release its product on its own.

4 6. Fusion Garage did not push TechCrunch out of what plaintiffs call the Crunchpad
5 web tablet "project." Rather, after TechCrunch had expressed an interest in acquiring Fusion
6 Garage and its technology, the parties engaged in sporadic acquisition discussions from
7 approximately December 2008 to November 2009 that never resulted in an acquisition. The
8 parties were never able to come to terms and Plaintiffs never provided a final term sheet or final
9 letter of intent or an acquisition. During the pendency of these acquisition discussions, Fusion
10 Garage continued down the path of designing and developing its product. TechCrunch now
11 apparently claims that it has some rights in Fusion Garage's technology and JooJoo product even
12 though it never acquired Fusion Garage. This is false. TechCrunch's contention that it made
13 numerous contributions to the product that became Fusion Garage's JooJoo product is grossly
14 inaccurate. The conception, blueprint, and design of Fusion Garage's product all emanated from
15 Fusion Garage, and TechCrunch wanted to acquire Fusion Garage for that reason. Fusion Garage
16 wrote the software code for the JooJoo product, designed the hardware for the product, and
17 developed the product.

18 ***Fusion Garage's First Meeting With TechCrunch/Arrington in September 2008***

19 7. In July 2008, Mr. Arrington publicly posted on the TechCrunch blog a challenge
20 "to himself and the world" to build "a dead simple web tablet for \$200."
21 (<http://www.techcrunch.com/2008/07/21/we-want-a-dead-simple-web-tablet-help-us-build-it/>.) A
22 true and correct copy of this blog post is attached hereto as Exhibit A. Mr. Arrington solicited the
23 public at large to assist on the project and stated "[i]f everything works well, we'd then open
24 source the design and software and *let anyone build one that wants to.*" My understanding is that
25 Mr. Arrington or one of his colleagues eventually came up with the name "CrunchPad" for the low
26 cost web tablet he first wrote about in July 2008.

1 8. This July 2008 blog post articulated the intention to use a Linux kernel operating
2 system and Firefox, a web browser, two “off the shelf” or open source software products, to drive
3 the tablet.

4 9. At this point, Fusion Garage already had its own customized software browser
5 operating system under development and was not using Ubuntu or Firefox.

6 10. I first met Mr. Arrington in September 2008 at a conference called TechCrunch 50
7 and explained to him the software development efforts Fusion Garage was undertaking. After
8 learning about Fusion Garage's technology and development efforts in this first meeting,
9 TechCrunch, through Mr. Arrington, eventually offered to pursue an acquisition of Fusion Garage.

10 ***The Parties' Failed Acquisition Discussions***

11 11. TechCrunch first offered to pursue an acquisition of FusionGarage in late 2008.
12 Attached hereto as Exhibit B is a true and correct copy of a Letter of Intent that TechCrunch sent
13 Fusion Garage in or about December 2008 in connection with acquisition discussions. Fusion
14 Garage did not sign this Letter of Intent that TechCrunch proposed. No acquisition happened at
15 this time, though the parties continued over the ensuing months to have on-and-off verbal and
16 email discussions about a potential acquisition.

17 12. The parties' acquisition discussions in the few months following December 2008
18 were very limited. Based on my reading of a TechCrunch blog post that Mr. Arrington wrote in
19 January 2009, it appears that Mr. Arrington had an encounter at a conference in Germany where
20 someone spit on him. Mr. Arrington wrote in his blog post that in light of this incident, he had
21 "decided the right thing to do is take some time off and get a better perspective on what I'm
22 spending my life doing." Accordingly, I had little contact with Mr. Arrington in the first few
23 months of 2009 regarding a potential acquisition because my understanding was that he was
24 taking some time off during that period for personal reasons. Heather Harde of TechCrunch
25 confirmed to me that Mr. Arrington was taking time off during this period.

26 13. In the event that TechCrunch had acquired Fusion Garage, I and some of my team
27 members would have become members of CrunchPad, Inc., the business that was to become the
28 acquiring entity of Fusion Garage. As a result, I made joint presentations to venture capitalists

1 with TechCrunch personnel in the April through June 2009 time frame to have funding in place if
2 an acquisition happened. The project to commercialize the CrunchPad was contingent upon
3 CrunchPad, Inc. receiving adequate outside funding to acquire Fusion Garage.

4 14. On June 27, 2009, Mr. Arrington wrote a email to me stating that he was "putting
5 together a long email to investors this evening outlining where we stand and why they should put
6 consider an investment without the asian money. It isn't going to be easy, but I'll try. *One thing*
7 *that just isn't clear is where you stand wrt our offer to acquire the company.*" A true and correct
8 copy of this email is attached hereto as Exhibit C. Mr. Arrington's email suggested that Fusion
9 Garage would be providing funding from an Asian source. Fusion Garage never promised an
10 Asian investment, however. Fusion Garage did inform Mr. Arrington that we had an Asian
11 investor who was interested in investing, but that he needed time to perform due diligence.

12 15. I wrote back to Mr. Arrington's email noting that "I want to make this work with
13 you guys and have been keen on the acquisition." This email is in the email string attached as
14 Exhibit C.

15 16. Mr. Arrington wrote back to me that "You don't seem to be able to speak
16 authoritatively for your investors [sic] and creditors. For reputation reasons I'm forced to notify
17 our investors the deal is off. ¶ Let's talk Monday and see where we stand. At this point it looks
18 like our position is to turn the project off completely. ¶ Copying keith so that he can gracefully
19 wind down discussions he is leading." This email is in the email string attached as Exhibit C.

20 17. I wrote back to Mr. Arrington by email indicating various frameworks for an
21 acquisition and noting that I was generally willing to go forward with an acquisition whereby
22 Fusion Garage would obtain 35% equity in the acquiring Company, CrunchPad, Inc. I asked,
23 however, for Fusion Garage to receive 40% of the equity. Moreover, the email exchange listed
24 more than just 35% equity as my requirement for agreeing to a deal. TechCrunch and Fusion also
25 Garage would have needed to address the treatment or repayment of loans that Fusion Garage had
26 obtained from outside parties. And while I was generally willing to go forward with an
27 acquisition, Fusion Garage's investors and creditors would have had to agree to the deal, too, and
28 they had not done so.

1 18. After this email exchange, no acquisition term sheet or letter of intent was sent to
2 us, nor was one ever signed.

3 19. In October 2009, Heather Harde of TechCrunch sent me a capitalization table
4 regarding the proposed acquisition. A true and correct copy of Ms. Harde's email and the
5 capitalization table is attached hereto as Exhibit D. This capitalization table offered Fusion
6 Garage only 23.5% of the equity in the acquiring Company, CrunchPad, Inc. Accordingly, up
7 until November 2009, material terms were still being proposed and offered.

8 20. Fusion Garage, in turn, counter-offered with a different deal structure whereby
9 TechCrunch and/or CrunchPad, Inc. would obtain 10% equity in Fusion Garage as part of an
10 acquisition.

11 21. The parties never reached agreement on an acquisition. The parties never even
12 agreed on how much equity TechCrunch and Fusion Garage each would have in a new acquiring
13 entity, or whether TechCrunch would obtain an equity stake in Fusion Garage as part of a different
14 deal structure.

15 ***No Contract Exists Between TechCrunch and Fusion Garage***

16 22. Because the parties never agreed to an acquisition, Fusion Garage and TechCrunch
17 never entered into a merger agreement or acquisition agreement.

18 23. Fusion Garage and TechCrunch never entered into a development agreement or
19 invention assignment agreement, either. I have searched Fusion Garage's files and have not been
20 able to locate a non-disclosure agreement (NDA), either. I do not believe the parties ever entered
21 into an NDA.

22 24. Fusion Garage and TechCrunch never signed any contract.

23 25. I have reviewed the plaintiffs' complaint in this action. Paragraph 31 of the
24 complaint states that the parties had a development process in place. The parties never had an
25 agreed "development process" as Fusion Garage is not a "work for hire" company. Fusion Garage
26 never had any contracts in place with TechCrunch and we were never hired by them to develop a
27 product. To the contrary, Fusion Garage was developing its own browser operating system and
28 hardware, and *if* an acquisition was completed, then what Fusion Garage had under development

1 would have become named the CrunchPad. Fusion Garage had planned to be acquired by
2 CrunchPad, Inc. and we shared updates and progress regarding our product along the way.
3 However, given that the acquisition never happened, we obtained financing from other sources
4 and launched our product on our own.

5 ***Prototype A***

6 26. TechCrunch contends that Fusion Garage's product is a later iteration of a prototype
7 that TechCrunch developed and/or that TechCrunch personnel made contributions to Fusion
8 Garage's product. These contentions are false.

9 27. As noted, prior to the time that I met Mr. Arrington/TechCrunch for the first time,
10 Mr. Arrington wrote a blog post in July 2008 challenging himself and the world to develop a low
11 cost (approximately \$200), simple web tablet.

12 28. My understanding is that people at TechCrunch then assembled what they called
13 "Prototype A" of a web table. TechCrunch reported on their prototype A in a blog post in August
14 2008. (<http://www.techcrunch.com/2008/08/30/update-on-the-techcrunch-tablet-prototype-a/>). A
15 true and correct copy of this blog post is attached hereto as Exhibit E.

16 29. TechCrunch's blog post regarding Prototype A described it as follows: "A humble
17 (and messy) beginning. Prototype A has been built. It's in a temporary aluminum case that a
18 *local sheet metal shop put together for us* that's at least twice as thick as it needs to be, but the
19 hardware has been defined and is nearing lockdown...We've learned a lot about building a
20 hardware device over the last few weeks, and it's clear that it is quite possible to build a high
21 performance web tablet in the price range we anticipated."

22 30. This blog post regarding Prototype A was written before I first met TechCrunch or
23 Arrington.

24 31. Fusion Garage had no involvement in working on this Prototype A since we had
25 not even met TechCrunch or Arrington yet. I do not believe I have ever even seen this Prototype
26 A other than the picture of the device that TechCrunch posted on the Internet in its August 2008
27 blog post. The picture suggests that Prototype A was essentially a heavy-looking metal box.

28 ***Prototype B***

1 32. TechCrunch published a public blog post regarding a "Prototype B" of a web tablet
2 in January 2009. (<http://www.techcrunch.com/2009/01/19/techcrunch-tablet-update-prototype-b/>).
3 A true and correct copy of this blog post is attached hereto as Exhibit F. At this point,
4 TechCrunch was still using Ubuntu software on its tablet. Ubuntu is an open-source operating
5 system.

6 33. At this point in time, Fusion Garage and TechCrunch were still in sporadic
7 acquisition discussions. However, TechCrunch was not using the software operating system that
8 Fusion Garage was developing. Moreover, Fusion Garage had no input into the hardware
9 prototype that TechCrunch had put together. I understood that an individual named Louis Monier,
10 who was working for or with TechCrunch, was coordinating TechCrunch's web tablet efforts.
11 Fusion Garage was not paid for any of this work. My understanding is that Mr. Monier was paid
12 for his work, however. Moreover, my understanding is that TechCrunch used a third-party
13 vendor, Dynacept, to put together the outer case and helped build the hardware of prototype B
14 using existing motherboards and parts.

15 34. Based on what Mr. Monier of TechCrunch told me, for both Prototype A and B,
16 TechCrunch took existing parts (motherboards and other components) from personal computers
17 and other devices and did not have an original design manufacturer (ODM) or original equipment
18 manufacturer (OEM) lined up to build anything specific. TechCrunch's "design" was generally
19 restricted to building a case that could hold the parts together. My understanding is that
20 TechCrunch assembled this motley version of hardware to show its blogging community that it
21 could develop a "proof of concept" for the web tablet that Mr. Arrington had blogged about in July
22 2008. Mr. Monier and Heather Harde of TechCrunch told me that the proof of concept was also
23 for the purpose of raising funding for CrunchPad, Inc.

24 35. In or about February 2009, Louis Monier of TechCrunch told me words to the
25 effect that the web tablet project "had no legs." Mr. Monier also told me that there was no funding
26 available for the web tablet project. Mr. Monier further indicated to me that TechCrunch had
27 realized that the price point Mr. Arrington had envisioned for a web table (approximately \$200)

1 was not feasible. Mr. Monier said that being successful in the hardware business was difficult.
2 He told me words to the effect that Fusion Garage should figure out what to do on its own.

3 ***Prototype C: Fusion Garage's Product***

4 36. Up until this February 2009 discussion with Mr. Monier, Fusion Garage had
5 focused primarily on developing software. Based on my discussion with Mr. Monier, we at
6 Fusion Garage realized that we needed to develop the hardware, too. As a result, Fusion Garage
7 hired three consultants to work on hardware. Fusion Garage thus took control of the design and
8 development of all aspects of the web tablet device—including both software and hardware. We
9 developed a hardware platform and installed our software (that Fusion Garage had been
10 developing for months) onto the device.

11 37. We unveiled this new prototype to TechCrunch in April 2009. Mr. Arrington then
12 reinvigorated the acquisition discussions. Neither Mr. Monier nor TechCrunch personnel had any
13 role in the development of this new prototype. I remember Mr. Monier saying words to the effect
14 that Fusion Garage had “brought the project back from the dead.” TechCrunch then referred to
15 this prototype as “Prototype C.”

16 38. After I showed TechCrunch and Mr. Arrington the prototype that Fusion Garage
17 had developed, TechCrunch posted another blog post about a web tablet on April 10, 2009.
18 (<http://www.techcrunch.com/2009/04/10/about-those-new-crunchpad-pictures/>) A true and
19 correct copy of this blog post is attached hereto as Exhibit G. This blog post related to Fusion
20 Garage's Prototype – what TechCrunch started calling Prototype C. By the time this prototype
21 was created, Fusion Garage had taken over the entire development of the web tablet device. The
22 prototype also reflected ongoing development work that Fusion Garage had been undertaking
23 since prior to the time that Fusion Garage had even met Mr. Arrington or TechCrunch. Mr.
24 Arrington conceded as much in his blog post regarding Prototype C when he announced to the
25 world that “[i]n fact, all the credit should go to Fusion Garage.” He further wrote that “Ok, so
26 now that what’s done is done, where do things stand? Well, I’m not ready to say yet. But one
27 thing I’ve learned about hardware in the last year is that you need partners to actually make things
28

1 happen, and the credit for what we saw today goes entirely to the Fusion Garage team. Those
2 guys are rock stars."

3 39. Mr. Arrington's blog post of April 10, 2010 contained pictures of the web tablet
4 that Fusion Garage had created. What happened was that he took pictures of the prototype and
5 packaging in April 2009 while I was showing it to him for the first time at his office. Mr.
6 Arrington then "leaked" those pictures online. He did so by publishing these pictures to his
7 personal "posterous" account and then removing them after the pictures were picked up by other
8 sites. (Posterous is a web site that allows users to post pictures and other content.) In effect, Mr.
9 Arrington staged the leak to make it appear that TechCrunch had played a role in developing the
10 web tablet device and to affiliate TechCrunch with the web tablet that Fusion Garage had created.

11 40. The hardware and software in what TechCrunch called Prototype C was developed
12 and designed by Fusion Garage, not TechCrunch. Prototype C was not an iteration of the previous
13 prototypes A and B. Hardware specifications were different from previous prototypes. Prototype
14 C did not even use the same processor or chipsets. Prototype B had used a VIA processor and
15 chipset while Prototype C used an Intel Atom processor. Prototype C had a capacitive touch
16 screen while Prototype B had a resistive touch screen. (Capacitive touch screens rely on the
17 electrical properties of the human body (capacitance) to detect when and where on a display the
18 user touching. Resistive touch screens, on the other hand, are composed of multiple layers that are
19 separated by thin spaces. Pressure applied to the surface of the display by a finger or stylus causes
20 the layers to touch, which completes electrical circuits and tells the device where the user is
21 touching.) The software in Prototype C was completely different than in Prototype B. Prototype
22 C contained software that Fusion Garage had developed. This software included a browser
23 operating system based off merging a Linux kernel and a webkit rendering engine. Unlike
24 Prototype B, Prototype C did not use Ubuntu. The industrial design of Prototype C also was
25 completely different than that of Prototypes A and B. Just contrasting the facts from Mr.
26 Arrington's blog posts of July 2008, and August 2008 with that of his post from April 2009 shows
27 the lack of similarities between Prototype C and other prototypes. The software demonstrations
28

1 that Mr. Arrington embedded in his posts about Prototype B and C shows a complete difference
2 between those two devices.

3 41. I understand that Mr. Monier left TechCrunch in or about April or May 2009.
4 Notably, TechCrunch's April 2009 post regarding Prototype C omits any reference to Monier,
5 even though he was TechCrunch's consultant. I surmise that this is because he did not work on
6 Prototype C.

7 42. TechCrunch did not contribute any source code, hardware design, software design,
8 or technology to Prototype C. "Prototype C" was a completely different product than Prototype A
9 and Prototype B.

10 43. TechCrunch did not pay Fusion Garage any salaries or fees in connection with our
11 development of Prototype C. My understanding is that all of TechCrunch's expenses were
12 incurred up and until Prototype B, which were, in effect, for TechCrunch's own commissioned
13 experiments.

14 44. TechCrunch did pay a vendor approximately \$23,500 at Fusion Garage's request
15 for a capacitive touch screen. However, this touch screen was not eventually used in any Fusion
16 Garage product. The capacitive touch screen was not used for any public demonstrations, either.

17 ***The Launch Prototype: Fusion Garage's Product***

18 45. TechCrunch posted another blog post regarding the web tablet in June 2009.
19 (<http://www.techcrunch.com/2009/06/03/crunchpad-the-launch-prototype/>). A true and correct
20 copy of this blog post is attached hereto as Exhibit H. At this stage, Fusion Garage had
21 performed, and was performing, all the design and development work related to the web tablet.
22 Fusion Garage was also still contemplating being acquired by TechCrunch, but as discussed
23 above, the parties could never agree to terms.

24 ***My Presence at TechCrunch's Offices Was For Acquisition Discussions***

25 46. I did not work in TechCrunch's offices on a "virtually daily basis" from April to
26 July 2000 on "the joint development of the product," as TechCrunch alleges in its Complaint. I was
27 in TechCrunch's offices on numerous occasions, however. I was in California during that period
28 and met with TechCrunch staff *when required for acquisition discussions* or meetings with

1 external parties like venture capitalists for the purpose of fund raising for the proposed acquiring
2 entity, CrunchPad, Inc. The acquisition never happened.

3 47. Mr. Arrington told me that TechCrunch/CrunchPad, Inc. could not acquire Fusion
4 Garage unless funding was in place and they needed my help to search for such funding. In the
5 interest of furthering the acquisition, I attended these meetings with venture funding groups.
6 These meetings were either held both at TechCrunch's offices and at offices of the venture
7 capitalists. Again, I was not paid for any of these meetings or for being a party to discussions.

8 ***TechCrunch's Trip to Singapore***

9 48. Mr. Arrington states in his declaration at paragraph 20 that "TechCrunch senior
10 technologists Brian Kindle (hardware) and Nik Cubrilovic (software) spent the bulk of August in
11 Taiwan and Singapore working with Fusion Garage on software, design, user interface issues, and
12 with the parties' jointly selected manufacturer, Pegatron, on hardware and pricing." This statement
13 is false. I also do not know how Mr. Arrington would have a basis to make this statement since he
14 was not in Asia at the time and would not have personal knowledge of what Messrs. Kindle and
15 Cubrilovic were doing.

16 49. Messrs. Kindle and Cubrilovic came to Singapore in the summer of 2009 for the
17 ostensible purpose of conducting due diligence of Fusion Garage as part of the acquisition. Mr.
18 Kindle was to conduct due diligence of the hardware and Mr. Crubilovic was to conduct due
19 diligence regarding the software. Both individuals were supposed to stay for about three days.

20 50. Mr. Kindle stayed for two days and then left for Taiwan to meet with an ODM,
21 Pegatron, and perform due diligence regarding Pegatron in the event an acquisition happened.

22 51. Mr. Cubrilovic was also supposed to stay for three days but ended up staying
23 almost three weeks (during these three weeks, I was in India for a period of about three or four
24 days). During this time, he only came into Fusion Garage's office three times: once for a
25 discussion regarding due diligence that lasted approximately two hours, once for approximately
26 fifteen (15) minutes to collect a device and the final time for approximately fifteen (15) minutes to
27 meet up with one of my staff members and go to a party. For the remaining days, Mr. Cubrilovic
28 did not come into the office. I know this because I was at Fusion Garage's offices for most of the

1 time Mr. Cubrilovic was in Singapore and my staff reported to me regarding Mr. Cubrilovic's
2 activities when I was not there.

3 52. Fusion Garage only allowed Mr. Kindle and Mr. Cubrilovic to see limited
4 information regarding the technology that Fusion Garage had in development because we
5 understood they were doing due diligence. They were not shown any source code or design
6 documents.

7 ***TechCrunch Did not "Host" Fusion Garage Personnel***

8 53. Mr. Arrington and TechCrunch have alleged and/or attested that they hosted my
9 team while we were in the Bay Area and that they sponsored my team with Visas. These
10 assertions are false. We applied for Visas directly and asked TechCrunch to provide a letter to
11 support our applications. Mr. Arrington and TechCrunch did not provide us with temporary
12 housing, either. We did write to TechCrunch asking for housing recommendations, but they came
13 up empty and we had to look for accommodation ourselves. TechCrunch did not pay for our
14 accommodations.

15 54. My team did fly to the Bay Area in the September 2009 timeframe in anticipation
16 of completion of an acquisition and possible participation at a user conference. The Fusion
17 Garage and TechCrunch teams did not integrate nor did Fusion Garage personnel spend much time
18 at TechCrunch Offices. We only went to the TechCrunch office approximately three times
19 between September 8 and October 15, 2009 to discuss a possible acquisition and to make product
20 demonstrations. When the product was not working properly for the demonstrations, we tried to
21 fix the product on-site. TechCrunch did not follow through on the acquisition.

22 55. Fusion Garage employees did not turn to TechCrunch personnel for leadership nor
23 guidance to solve either hardware or software challenges.

24 ***Pegatron***

25 56. Mr. Arrington and TechCrunch claim in this lawsuit that Fusion Garage had
26 problems with Pegatron, the ODM. This contention is ironic given that Mr. Arrington threatened
27 to stop acquisition discussions and "shut down the project" because *he* was unhappy with
28 Pegatron. Fusion Garage had located Pegatron to be an ODM. Pegatron had initially told us that

1 they would manufacture the product without any outlay of what are called non-recurring
2 engineering fees (NRE). After being awarded the manufacturing project, Pegatron reversed course
3 and demanded a payment of \$700,000 NRE. Mr. Arrington was furious and demanded that
4 Pegatron not be associated with the project. Mr. Arrington also said that he did not understand
5 how TechCrunch could move forward on the acquisition without funding as it did not have the
6 means to pay \$700,000.

7 57. Plaintiffs allege in their complaint at paragraph 53 that Fusion Garage "concealed
8 the loss of the most critical supplier to the project", i.e., Pegatron. This allegation makes no sense
9 to me given TechCrunch's other allegations. If TechCrunch was involved in the development of
10 Fusion Garage's product as it claims, and provided leadership, ongoing support, and contributions
11 on a daily basis as it claims, it would have known that Fusion Garage parted ways with Pegatron.

12 ***Taking Down Blog***

13 58. TechCrunch asserts that the fact Fusion Garage took down its blog from its website
14 is some sort of an admission of wrongdoing. This assertion is wrong. We took down the blog
15 simply because we were in the process of redesigning our website and engaging in re-branding
16 efforts.

17 ***The JooJoo Domain Name***

18 59. Fusion Garage did register the domain name "thejoojoo.com." We had no
19 obligation to inform TechCrunch what domain names we were registering or how we were
20 conducting our business. Fusion Garage was never hired or employed by TechCrunch; we were
21 only in acquisition discussions and Fusion Garage planned to carry on its business if TechCrunch
22 did not acquire us.

23 ***An Injunction Would Lead to Irreparable Injury to Fusion Garage***

24 60. Fusion Garage would suffer great harm if the Court issued the injunction that the
25 plaintiffs are seeking. As I understand it, plaintiffs want to impound Fusion Garage's revenues
26 into a Court-controlled or Court-administered account. However, Fusion Garage, like any
27 business, needs its revenues to operate as an ongoing viable business.

61. Moreover, Fusion Garage has obtained financing from investors. These investors would refuse to invest further if they thought that Fusion Garage would not be able to obtain its ongoing revenues.

62. Fusion Garage has also entered into an arrangement with a company, CSL Group, regarding the manufacturing of the JooJoo device. Under the arrangement, CSL advances the manufacturing (material) costs to make the JooJoo device. Upon sale of a JooJoo device, CSL then recoups that money through product revenues and is also paid a small premium. Under this arrangement, Fusion Garage does not need to incur large manufacturing costs since they are being advanced by CSL. However, if the Court impounded Fusion Garage's revenues, Fusion Garage would not be able to meet its obligations to CSL. This would be irreparable to Fusion Garage since we could no longer manufacture and sell our product.

63. Every JooJoo presently comes with a one-year warranty. An injunction freezing Fusion Garage's revenues could easily force Fusion Garage out of business, which would mean that there would be no company left to honor the one-year warranty on each JooJoo that has been sold.

Investors in Fusion Garage

64. Given that no acquisition happened, Fusion Garage lined up other investors and funding sources. Fusion Garage has previously raised approximately \$3,400,000 in funding from its investors. I expect Fusion Garage to close on another round of funding of approximately \$3 million within approximately the next month.

65. Given the funding that Fusion Garage has raised to date, Mr. Arrington's and plaintiff's belief that Fusion Garage is a financially unstable company is unfounded. Moreover, given that CSL is advancing manufacturing costs, Fusion Garage is not improperly dissipating assets and is behaving as a conservative and responsible business.

66. In the event the Court requests the identity of Fusion Garage's investors, I would be happy to provide that information to the Court. I am concerned with providing information about two investors (which I will call Investor A and Investor B) to TechCrunch, however, because they

1 are a blog and seem intent on publishing information about Fusion Garage to embarrass the
2 Company and interfere with our business relationships.

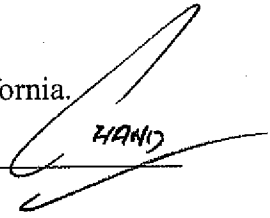
3 ***PayPal Account***

4 67. Fusion Garage's PayPal account is not mine. The business name associated with
5 the account is FusionGarage and the type of PayPal account is a business account. The PayPal
6 account was created as a business account with FusionGarage Pte., Ltd. as the business. The
7 email address used to create the PayPal account was also that of the Company's:
8 payments@fusiongarage.com. My name is on the account as the person required for the account
9 setup. To date, Fusion Garage has not withdrawn any of the revenues sitting in the PayPal
10 account.

11 68. In any event, Fusion Garage is not using PayPal as a payment processor any longer.
12 It is taking orders directly through its website via a credit card processing company.

1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct.

3 Executed this 23rd day of April 2010 at San Francisco, California.

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