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 14 and CRUNCHPAD, INC.

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

17 **Winston & Strawn LLP**
 18 **101 California Street**
 19 **San Francisco, CA 94111-5894**

20 **INTERSERVE, INC., dba TECHCRUNCH,)**
 21 **a Delaware corporation, and CRUNCHPAD,)**
 22 **INC., a Delaware corporation,)**
 23 **)**
 24 **Plaintiffs,)**
 25 **)**
 26 **vs.)**
 27 **)**
 28 **FUSION GARAGE PTE. LTD., a Singapore)**
 29 **company,)**
 30 **)**
 31 **Defendant.)**
 32 **)**

Case No. CV-09-5812 RS (PVT)

**PLAINTIFFS' OPPOSITION TO
 DEFENDANT'S MOTION TO SHORTEN
 TIME ON ITS MOTION FOR EXPEDITED
 DESIGNATION OF TRANSCRIPT OF
 TECHCRUNCH 30(B)(6) DEPOSITION**

Date: June 1, 2010
 Time: 10:00 A.M.
 Place: Courtroom 5, 4th Floor, San Jose
 (motion to shorten time pending)

1 The Court should refuse to shorten time for the same reasons set forth in Plaintiffs’
2 opposition on the merits, which it also files today.

3 The deposition of TechCrunch’s founder, CEO, Editor, and blogger, Michael Arrington, took
4 place on April 20, 2010. Because the deposition touched on a number of confidential topics,
5 including TechCrunch’s financials, TechCrunch requested that the transcript provisionally be
6 designated “Highly Confidential” under the Stipulated Protective Order governing this case, with the
7 understanding that non-confidential portions would be de-designated within 20 days. (Dkt. 35.)
8 This is the efficient and common practice in litigation, and one that the Stipulated Protective Order
9 specifically contemplates. TechCrunch therefore opposes Defendant’s motion to shorten time,
10 which would have the Court take part in undermining the Stipulated Protective Order it entered and
11 to which the parties agreed.

12 There is no need for expediting final designations. Because the TechCrunch deposition took
13 place on April 20, 2010, final designations are due Monday, May 10, 2010. This is three days before
14 the preliminary injunction hearing and just six days after the May 4, 2010, *hearing date* that
15 Defendant seeks for this motion. Defendant’s counsel will be able to share non-AEO portions of the
16 transcript with its client and receive meaningful input and feedback for the hearing. Oddly,
17 Defendant’s only other argument for why it needs rapid de-designation of the transcript is its desire
18 to file its preliminary injunction opposition brief publicly. Perhaps the parties could have agreed, if
19 Defendant had identified what portions of the deposition it wished to cite. But it has made no effort
20 to do so, and it has already filed its brief, which was due today, *Monday, April 26, 2010*. So
21 resolving this motion on Defendant’s preferred date of May 4 offers no help.

22 It is particularly ironic that Defendant now asks the Court to set aside the procedures set forth
23 in the Stipulated Protective Order and hold an expedited hearing. Defendant’s counsel, during
24 discussions at the deposition about confidentiality of the transcript, stated brusquely that counsel
25 would “*comply with the protective order to the letter with respect to this deposition.*”

26 As Defendant now concedes, Paragraph 5.2(b) of the Stipulated Protective Order allows
27 provisional designation of an entire transcript as “Confidential” or “Confidential – Attorneys’ Eyes
28 Only” for a period of 20 days. This gives the deposed party a full and fair opportunity to carefully

1 select appropriate portions for designation. TechCrunch’s Rule 30(b)(6) witness has already begun
2 reviewing the 390 pages of testimony, but he is not yet finished.

3 Rather than discuss an alternative designation schedule with TechCrunch, Defendant simply
4 wrote by email on the day after the deposition, April 21, 2010, and demanded de-designation of the
5 entire transcript *that very day*. TechCrunch’s counsel responded that afternoon, informing
6 Defendant of its intention to use Paragraph 5.2(b) and that Defendant’s written demand was not the
7 proper “voice-to-voice” conference of counsel that Paragraph 6.2 of the Stipulated Protective Order
8 requires. At no time did Defendant’s counsel verbally request immediate de-designation of the
9 entire transcript or verbally discuss an alternate designation schedule.

10 Failure to comply with Paragraph 6.2, and thus also Local Civil Rule 37’s meet and confer
11 requirement, is just one procedural defect associated with Defendant’s suite of motions.

12 Others include:

- 13 1. Defendant’s failure to file any declaration or stipulation supporting its
14 administrative motion to shorten time. Local Civil Rule 6-3(a) requires filing one
15 or the other. Defendant could file no stipulation, because it made no attempt to
16 even discuss a stipulation with TechCrunch. Defendant chose to omit a
17 declaration, in which it would have had to describe its non-existent efforts to
18 obtain a stipulation or its compliance with Local Civil Rule 37-1(a).
- 19 2. Defendant’s failure to file any declaration or stipulation supporting its
20 administrative motion to seal. Local Civil Rule 7-11(a), which explicitly applies
21 to sealing motions, requires filing one or the other. Defendant could file no
22 stipulation, because it made no attempt to even discuss a stipulation with
23 TechCrunch. Defendant chose to omit a declaration, in which it would have had
24 to describe its non-existent efforts to obtain a stipulation.
- 25 3. Failure to file a proposed order with its motion.

26 Defendant rushes to Court without complying with the local rules and seeks, on an expedited
27 basis, the marginal relief described above. It has failed to establish any basis for an expedited
28 hearing. Defendant has established a pattern of picking fights unnecessarily in this case. It has run

1 to court, wasted time, and imposed costs and burdens instead of engaging in level-headed
2 discussions with TechCrunch about the relief it seeks and why. The Court should not reward
3 Defendant's behavior. It should instead deny expedited consideration, deny Defendant's motion,
4 and permit TechCrunch to proceed with designation of its deposition transcript according to the
5 Stipulated Protective Order to which the parties agreed.

6 Respectfully submitted,

7 Dated: April 26, 2010

WINSTON & STRAWN LLP

8 By: /s/
9 Andrew P. Bridges
10 David S. Bloch
11 Matthew A. Scherb

Attorneys for Plaintiffs

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