

1 I. NEEL CHATTERJEE (State Bar No. 173985)
 nchatterjee@orrick.com
 2 JULIO C. AVALOS (STATE BAR NO. 255350)
 javalos@orrick.com
 3 ORRICK, HERRINGTON & SUTCLIFFE LLP
 1000 Marsh Road
 4 Menlo Park, CA 94025
 Telephone: 650-614-7400
 5 Facsimile: 650-614-7401

6 THOMAS J. GRAY (STATE BAR NO. 191411)
 tgray@orrick.com
 7 ORRICK, HERRINGTON & SUTCLIFFE LLP
 4 Park Plaza
 8 Suite 1600
 Irvine, CA 92614-2558
 9 Telephone: +1-949-567-6700
 Facsimile: 949-567 6710

10 Attorneys for Plaintiff
 11 FACEBOOK, INC.

12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA
 14 SAN JOSE DIVISION

16 FACEBOOK, INC.,
 17 Plaintiff,
 18 v.
 19 STUDIVZ LTD., HOLTZBRINCK
 NETWORKS GmbH, HOLTZBRINCK
 20 VENTURES GmbH AND DOES 1-25,
 21 Defendants.

Case No. 5:08-cv-03468 JF

**DECLARATION OF JULIO C.
 AVALOS IN SUPPORT OF
 FACEBOOK INC'S L.R. 6-3 MOTION
 TO STAY HEARING**

Date: April 10, 2009
 Time: 9:00 A.M.
 Room: 3, 5th Floor

Judge: Honorable Jeremy Fogel

1 I, Julio C. Avalos, declare as follows:

2 1. I am an attorney with the law firm of Orrick, Herrington & Sutcliffe LLP, counsel
3 for Plaintiff Facebook, Inc. I make this Declaration in support of Facebook's Motion to Stay
4 Hearing Pursuant to Northern District of California Civil Local Rule 6-3. I am an active member
5 in good standing of the California State Bar. Except as set forth herein, I have personal
6 knowledge of the facts stated herein and if called as a witness, could and would competently
7 testify thereto.

8 2. On December 16, 2008, I, along with my colleague Annette Hurst, attended the
9 hearing on Defendants' Motion for Protective Order before Judge Lloyd. A true and correct copy
10 of the relevant portion of that hearing transcript is attached hereto as **Exhibit A**.

11 3. On March 3, 2009, I, along with my colleague Thomas Gray, attended the hearing
12 on Facebook's Motion to Compel Discovery before Magistrate Judge Lloyd.

13 4. At the hearing, Magistrate Judge Lloyd indicated that he was inclined to grant
14 Facebook at least some of the discovery it sought. Magistrate Judge Lloyd instructed the parties
15 to submit, within twenty-four hours, letters to the Court containing proposed language for his
16 order granting (at least in part) Facebook's motion. Defense counsel requested an additional
17 twenty-four hours to speak to his clients in Germany. Judge Lloyd granted this request. Judge
18 Lloyd cautioned the parties to draft proposed language in the spirit of compromise, not each
19 side's respective "druthers." Facebook was instructed to assume that it was entitled to something,
20 but not everything that it sought. Defendants were likewise instructed to assume that Facebook
21 was entitled to something more than the nothing which Defendants were proposing. A true and
22 correct portion of the March 3, 2009 hearing transcript containing excerpts relevant to Facebook's
23 Motion is attached hereto as **Exhibit B**.

24 5. Two days later, on March 5, 2009, Facebook delivered to Magistrate Judge Lloyd
25 a letter containing its proposed language. A true and correct copy of this letter is attached hereto
26 as **Exhibit C**.

27 6. Defense counsel, Stephen S. Smith, did not submit proposed language. Instead,
28 Mr. Smith asked for an additional week to do so, during which he and/or general counsel for

1 Defendants would have “the opportunity to contact and discuss the issue with the relevant board
2 members.” A true and correct copy of this letter is attached hereto as **Exhibit D**.

3 7. On March 6, 2009, Magistrate Judge Lloyd granted Defendants’ request for an
4 additional week “to submit its letter.” This Interim Order appears as Document No. 112 on the
5 docket.

6 8. On March 12, 2009, Defendants submitted a letter that did not contain the
7 proposed language requested by Magistrate Judge Lloyd. Instead, Mr. Smith wrote: “StudiVZ
8 has major concerns with any order granting, even in part, Facebook’s motion to compel.” The
9 letter went on to request that Facebook’s “motion be held in abeyance.” A true and correct copy
10 of this letter is attached hereto as **Exhibit E**.

11 9. On March 12, 2009, Magistrate Judge Lloyd entered a Second Interim Order Re
12 Plaintiff’s Motion to Compel. The Interim Order reads: “Rather than submit the requested
13 proposal for the specific limits of jurisdictional discovery, defendants in their March 12, 2009
14 letter ask this court to stay any decision on compelling jurisdictional discovery until they seek
15 certain relief from the presiding judge. In view of the position taken by defendants in their March
16 12, 2009 letter, this court finds that plaintiff should be given an opportunity to respond.”

17 10. Accordingly, on March 16, 2009, Facebook submitted a letter objecting to
18 Defendants’ failure to abide by Magistrate Judge Lloyd’s order requesting the submittal of
19 proposed language. A true and correct copy of this letter is attached hereto as **Exhibit F**.

20 11. As of the date of this declaration, Magistrate Judge Lloyd has yet to issue an order
21 on Facebook’s motion to compel discovery.

22 I declare, under penalty of perjury, that the foregoing is true and correct to the best of my
23 knowledge.

24 Executed this 20th day of January, at Menlo Park, California.

25
26 /s/ Julio C. Avalos /s/
27 JULIO C. AVALOS
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CERTIFICATE OF SERVICE

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on March 20, 2009.

Dated: March 20, 2009

Respectfully submitted,

/s/ Julio C. Avalos /s/
Julio C. Avalos