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 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
 20 NETWORKS GMBH, HOLTZBRINCK
 VENTURES GMBH, DENNIS BEMMANN,
 21 MICHAEL BREHM, AND DOES 1-25,

22 Defendants.

Case No. 5:08-cv-03468 JF

**FACEBOOK'S MOTION TO
 COMPEL FURTHER DISCOVERY
 RESPONSES TO FACEBOOK'S
 SECOND ROUND OF DISCOVERY
 REQUESTS TO STUDIVZ LTD.,
 HOLTZBRINCK NETWORKS
 GMBH AND HOLTZBRINCK
 VENTURES GMBH**

Date: June 30, 2009
 Time: 10:00 a.m.
 Room: Courtroom 2, 5th Floor

Judge: Hon. Howard R. Lloyd

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1 **I. FACTUAL BACKGROUND**

2 The Court is by now well aware of the general background of this discovery dispute. *See,*
3 *e.g.*, Dkt. No. 91 (Motion to Compel First Round of Discovery). More recent events are
4 recounted in Facebook’s concurrently filed Motion in Opposition to Defendants’ Motion to
5 Quash. Thus, only a brief factual supplement specific to this Motion is required.¹

6 **A. Facebook Serves A Second Round of Limited Discovery.**

7 Facebook served its first round of jurisdictional and *forum non conveniens* discovery on
8 October 14, 2008, setting off a still-pending, seven-month discovery battle during which
9 Defendants have refused to produce even a single page of discovery relevant to specific
10 jurisdiction. *See* Dkt. No. 90, Ex. 10. On January 28, 2009, Facebook filed a motion to compel
11 further responses to that discovery. Dkt. No. 90. Five days later, on February 2, 2009, Facebook
12 served a second round of jurisdictional discovery requests (herein referred to as the “Second
13 Round of Jurisdictional Discovery”). Avalos Decl. ¶ 2; Ex. A. The Second Round of
14 Jurisdictional Discovery was tailored to take into account both Defendants’ non-California-based
15 U.S. contacts as well as crucial facts relating to personal jurisdiction and *forum non conveniens*
16 not known to Facebook at the time it propounded its first round of discovery in October 2008.
17 The discovery requests included a First Set of Requests for Admissions as well as a second set of
18 Requests for Production. *Id.* Defendants made no mention of the Second Round of Discovery at
19 the March 3, 2009 hearing on Facebook’s first Motion to Compel. Avalos Decl. ¶ 4.

20 However, on the very next day, March 4, 2009, Defendants responded to the Second
21 Round of Discovery with blanket objections. Avalos Decl. ¶ 5; Ex. A. The primary rationale
22 behind these objections anticipated Defendants’ alleged motivation for recently moving to quash
23 Facebook’s third-party subpoenas, namely, that due to some unknown and as-yet undisclosed
24 discovery limitation, Facebook was precluded from seeking more than one round of jurisdictional
25 discovery. According to the objection pasted into every discovery response:

26 ¹ Facebook hereby certifies that prior to bringing this Motion to Compel, it met and conferred
27 with opposing counsel regarding the disputed discovery. Avalos Decl. ¶ 7. The meet and confer
28 was held telephonically on May 26, 2009. *Id.* Defense counsel Stephen S. Smith represented that
his clients continue to believe that Facebook’s second round of discovery is untimely and/or
precluded by the Court’s previous orders. *Id.*

1 “[Defendant] . . . objects to this [discovery request] on the grounds that, in granting
2 Facebook’s request for a continuance on the hearing for StudiVZ’s Motion to Dismiss for
3 lack of personal jurisdiction and *forum non conveniens*, the District Court made its
4 decision based upon the then-pending discovery requests . . . Had Facebook been upfront
5 with the Court and StudiVZ and disclosed the fact that Facebook secretly planned to
6 propound six additional sets of discovery . . . StudiVZ believes that the Court would have
7 ruled differently and would have denied all of the relief requested by Facebook. StudiVZ
8 further objects to this RFA on the grounds that Facebook has failed to explain (1) why this
9 RFA was not propounded over four months ago (when Facebook propounded its other
10 discovery), and (2) why StudiVZ should have to respond to an RFA the response to which
11 would have been due long after the original hearing date of StudiVZ’s Motion to Dismiss,
12 which hearing date was selected in consultation with Facebook so that Facebook would
13 have many months to take jurisdictional discovery.”

14 *Id.* Sensitive to the Court resources being devoted to Facebook’s already-pending motion to
15 compel on its first round of discovery, Facebook forestalled moving to compel on its second
16 round until the first dispute was settled. *Id.* ¶ 6. However, given the unexpected time it has taken
17 to resolve that dispute and the upcoming July 10 hearing before Judge Fogel on Defendants’
18 motions to dismiss, Facebook can no longer wait for Defendants to voluntarily comply with their
19 discovery obligations. It is by now clear that Defendants fear the incriminating nature of their
20 personal jurisdiction discovery and will not easily produce it. The Court’s intercession is thus
21 unfortunately once again necessary.

22 **II. ANALYSIS**

23 **A. Facebook Is Entitled To The Sought-After Discovery In Order To Adequately 24 Challenge Defendants’ Motions to Dismiss.**

25 Under *Calder v. Jones*, 465 U.S. 783, 104 S.Ct. 1482 (1984), jurisdiction is established
26 over a defendant if the defendant (1) commits an intentional act (2) expressly aimed at the forum
27 state and (3) causes harm that the defendant knows is likely to be suffered in the forum state.
28 Facebook has alleged that Defendants are involved in a rampant global piracy enterprise, which,
for the past four years, has involved Defendants’ systematic unauthorized access to Facebook’s
servers, the theft of Facebook’s intellectual property from those servers, and the use of that
intellectual property in the development of a series of inferior counterfeit websites now offered to
and used by confused consumers all over the world, including California and the rest of the
United States. If true, these facts would more than establish this Court’s personal jurisdiction

1 over Defendants.

2 Once a defendant challenges a court’s personal jurisdiction over it, a plaintiff is permitted
3 to take discovery on jurisdictional issues. *See Harris Rutsky & Co. Ins. Servs., Inc. v. Bell &*
4 *Clements Ltd.*, 328 F.3d 1122, 1135 (9th Cir. 2003) (holding that it is an abuse of discretion to
5 refuse discovery regarding personal jurisdiction where jurisdiction has been challenged in a
6 motion to dismiss). Under Federal Rule of Civil Procedure 26(b)(1), parties may obtain any
7 discovery, not privileged, that is “relevant to any party’s claim or defense.” Fed. R. Civ. P.
8 26(b)(1). “The discovery standard is intentionally broad: requested discovery is relevant if it
9 ‘appears reasonably calculated to lead to the discovery of evidence relating to the claims or
10 defenses of any party.’” *Utstarcom, Inc. v. Starent Networks Corp.*, No C-04-1122PVT, 2005
11 WL 1397507, at *1 (N.D. Cal. Jun. 14, 2005) (internal citations omitted); *see also Micro Motion,*
12 *Inc. v. Kane Steel Co., Inc.*, 894 F.2d 1318, 1326 (Fed. Cir. 1990) (holding that discovery “is
13 allowed to flesh out a pattern of facts already known to a party relating to an issue necessarily in
14 the case”). In the case of jurisdictional discovery, a plaintiff should not be denied any discovery
15 that “may inform” its opposition to a jurisdictional motion. *Lofton v. Bank of America Corp.*,
16 2008 U.S. Dist. LEXIS 41005, *4-5, Case No. C 07-05892 SI (N.D. Cal. May 12, 2008) (Illston,
17 J.)

18 Facebook’s Second Round of Discovery will more than certainly “inform” its opposition
19 to Defendants’ Motions to Dismiss and the Court should compel its production.

20 **B. Requests for Admissions to Defendant StudiVZ**

21 Facebook’s Requests for Admissions to StudiVZ seek limited responses on discrete issues
22 of personal jurisdiction.² With the exception of Nos. 16 through 20, each Request deals with the
23 limited—though jurisdictionally crucial issue—of StudiVZ’s intentional, tortious and
24 unauthorized trespass to Facebook servers and Facebook intellectual property. Request Nos. 16

25 _____
26 ² Northern District of California Civil Local Rule 37-2 provides that a motion to compel further
27 responses to discovery requests “must set forth each request in full, followed immediately by the
28 objections and/or responses thereto.” As StudiVZ pasted largely the same objection into every
response to Facebook’s Requests for Admissions, Facebook hereby quotes StudiVZ’s objection
following the full list of Facebook’s Requests. Variations from the quoted objection are noted
where necessary.

1 through 20 seek information relevant to StudiVZ's current commercial contracts with thousands
2 of income-generating customers:

3 **REQUEST FOR ADMISSION NO. 1**

4 Admit that YOU accessed the FACEBOOK WEBSITE while designing at least one of the
5 STUDIVZ WEBSITES.

6 **REQUEST FOR ADMISSION NO. 2**

7 Admit that YOU have accessed or have had access to COMPUTER CODE for the
8 FACEBOOK WEBSITE.

9 **REQUEST FOR ADMISSION NO. 3**

10 Admit that YOU used FACEBOOK COMPUTER CODE in the design of at least one of
11 the STUDIVZ WEBSITES.

12 **REQUEST FOR ADMISSION NO. 4**

13 Admit that YOU intentionally designed at least one of the STUDIVZ WEBSITES to look
14 like the FACEBOOK WEBSITE.

15 **REQUEST FOR ADMISSION NO. 5**

16 Admit that YOU accessed the FACEBOOK WEBSITE for the purpose of copying ANY
17 design elements of the site.

18 **REQUEST FOR ADMISSION NO. 6**

19 Admit that YOU conceived of the idea for at least one of the STUDIVZ WEBSITES
20 while in the United States.

21 **REQUEST FOR ADMISSION NO. 7**

22 Admit that YOU accessed the FACEBOOK WEBSITE while in the United States in order
23 to develop at least one of the STUDIVZ WEBSITES or their predecessors.

24 **REQUEST FOR ADMISSION NO. 8**

25 Admit that STUDIVZ founder Ehssan Dariani accessed the FACEBOOK WEBSITE in
26 order to develop at least one of the STUDIVZ WEBSITES or their predecessors.

27 **REQUEST FOR ADMISSION NO. 9**

28 Admit that STUDIVZ founder Dennis Bemmann accessed the FACEBOOK WEBSITE in
order to develop at least one of the STUDIVZ WEBSITES or their predecessors.

1 **REQUEST FOR ADMISSION NO. 10**

2 Admit that STUDIVZ founder Ehssan Dariani accessed the FACEBOOK WEBSITE to
3 copy the layout of the FACEBOOK WEBSITE.

4 **REQUEST FOR ADMISSION NO. 11**

5 Admit that STUDIVZ founder Dennis Bemmann accessed the FACEBOOK WEBSITE to
6 copy the layout of the FACEBOOK WEBSITE.

7 **REQUEST FOR ADMISSION NO. 12**

8 Admit that YOU accessed the FACEBOOK WEBSITE to copy the layout of the
9 FACEBOOK WEBSITE.

10 **REQUEST FOR ADMISSION NO. 13**

11 Admit that STUDIVZ founder Ehssan Dariani accessed the FACEBOOK WEBSITE to
12 copy the functions of the FACEBOOK WEBSITE, including, but not limited to, the
13 FACEBOOK WEBSITE “Poke” or “Wall” features.

14 **REQUEST FOR ADMISSION NO. 14**

15 Admit that STUDIVZ founder Dennis Bemmann accessed the FACEBOOK WEBSITE to
16 copy the functions of the FACEBOOK WEBSITE, including, but not limited to, the
17 FACEBOOK WEBSITE “Poke” or “Wall” features.

18 **REQUEST FOR ADMISSION NO. 15**

19 Admit that YOU accessed the FACEBOOK WEBSITE to copy the functions of the
20 FACEBOOK WEBSITE, including, but not limited to, the FACEBOOK WEBSITE
“Poke” or “Wall” features.

21 **REQUEST FOR ADMISSION NO. 16**

22 Admit that all USERS OF STUDIVZ are required to agree to a terms of use agreement
23 prior to receiving full access to the STUDIVZ WEBSITES, their networks, or their
24 features.

25 **REQUEST FOR ADMISSION NO. 17**

26 Admit that since October 2005, COMPUTER CODE for at least one of the STUDIVZ
27 WEBSITES was or has been altered to account for USERS OF STUDIVZ residing in the
28 United States, including, but not limited to, the state of California.

1 **REQUEST FOR ADMISSION NO. 18**

2 Admit that STUDIVZ's business, income, revenue or profit models rely, at least in part,
3 on income from advertising, including, but not limited to, advertisements and
4 advertisement banners placed on the STUDIVZ WEBSITES.

5 **REQUEST FOR ADMISSION NO. 19**

6 Admit that the number of USERS OF STUDIVZ is a factor taken into account by YOU
7 when negotiating the cost of advertising on at least one of the STUDIVZ WEBSITES.

8 **REQUEST FOR ADMISSION NO. 20**

9 Admit that STUDIVZ's revenue is based, at least in part, on the total number of USERS
10 OF STUDIVZ.

11 **REQUEST FOR ADMISSION NO. 21**

12 Admit that at least one of the STUDIVZ WEBSITES was modeled after the FACEBOOK
13 WEBSITE.

14 **REQUEST FOR ADMISSION NO. 22**

15 Admit that YOU have accessed the FACEBOOK WEBSITE for commercial purposes.

16 In response to these Requests, StudiVZ submitted the following objection:

17 "StudiVZ hereby incorporates by reference the general objections set forth above.
18 StudiVZ further objects to this RFA on the grounds that a plaintiff is not entitled to take
19 discovery on personal jurisdiction as a matter of right. In order to do so, Facebook must
20 either make a *prima facie* showing of jurisdiction over StudiVZ, or it must identify
21 material jurisdictional issues that are in dispute. Facebook has done neither. StudiVZ
22 further objects to this RFA on the grounds that the definitions of "YOU" and "STUDIVZ
WEBSITES" are grossly overbroad. StudiVZ further objects to this RFA on the grounds
that it seeks information that is not relevant nor reasonably calculated to lead to the
discovery of admissible evidence.

23 StudiVZ further objects to this RFA on the grounds that, in granting in part Facebook's
24 request for a continuance on the hearing for StudiVZ's Motion to Dismiss for lack of
25 personal jurisdiction and *forum non conveniens*, the District Court made its decision based
26 upon the then-pending discovery requests. [See Dkt. No. 92, Judge Fogel January 28,
27 2009 Order]. Likewise, StudiVZ did not oppose Facebook's request to continue the
28 hearing on the personal jurisdiction portion of StudiVZ's Motion to Dismiss based upon
the existing discovery and the disputes related thereto. Had Facebook been upfront with
the Court and StudiVZ and disclosed the fact that Facebook secretly planned to propound
six additional sets of discovery (including more document demands to StudiVZ than had
been propounded before) a few days after the Court issued its ruling, StudiVZ would have

1 opposed Facebook’s request to continue even the personal jurisdiction portion of
2 StudiVZ’s Motion to Dismiss, and StudiVZ believes that the Court would have ruled
3 different and would have denied all of the relief requested by Facebook. StudiVZ further
4 objects to this RFA on the grounds that Facebook has failed to explain (1) why this RFA
5 was not propounded over four months ago (when Facebook propounded its other
6 discovery), and (2) why StudiVZ should have to respond to an RFA the response to which
7 would have been due long after the original hearing date of StudiVZ’s Motion to Dismiss,
8 which hearing date was selected in consultation with Facebook so that Facebook would
9 have many months to take jurisdictional discovery.”

7 Avalos Decl. ¶ 5, Ex. A. Buried within this meandering response are six individual objections
8 that are each equally meritless. Facebook addresses each in turn.

9 **(1) The “*Prima Facie*” Objection**

10 StudiVZ first objects that Facebook is not entitled to *any* personal jurisdiction discovery
11 because it has either not made a *prima facie* showing of jurisdiction over StudiVZ or identified
12 material jurisdictional issues that are in dispute. Advocacy of this objection to the Court would
13 open Defendants and their counsel to sanctions under Federal Rule of Civil Procedure 11. Under
14 Rule 11(b), “[b]y presenting to the court a pleading, written motion, or other paper – whether by
15 signing, filing, submitting, or later advocating it – an attorney or unrepresented party certifies that
16 to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable
17 under the circumstances (1) it is not being presented for any improper purpose, such as to harass,
18 cause unnecessary delay, or needlessly increase the cost of litigation.”

19 This litigation is nearing its one-year anniversary. Since its inception, the parties have
20 disputed not *whether* Facebook is entitled to personal jurisdiction discovery, but *what* scope of
21 personal jurisdiction it is entitled to. There can be no good faith basis for Defendants to now
22 object to personal jurisdiction discovery requests by claiming that Facebook is not entitled to the
23 discovery in the first place. Indeed, Defendants betray the sanctionable nature of this objection
24 when they admit—in the objection itself, no less—that the original February 13, 2009 hearing
25 date for Defendants’ Motions to Dismiss “was selected in consultation with Facebook so that
26 Facebook would have many months to take jurisdictional discovery.” *Id.* Defendants’ objection
27 is being brought simply to “harass, cause unnecessary delay, or needlessly increase the cost of
28 litigation.” It is no excuse for Defense counsel to now claim that although his clients did agree at

1 first to Facebook’s right to personal jurisdiction discovery, they have since changed their minds
2 having reviewed the incriminating evidence contained therein.

3 Even if it were possible that Defendants and their counsel had somehow propounded this
4 objection in good faith, it is nonetheless devoid of merit. Facebook is not required to make a
5 *prima facie* showing prior to recovering jurisdictional discovery. *See Orchid Biosciences, Inc. v.*
6 *St. Louis University*, 198 F.R.D. 670, 673 (S.D. Cal. 2001) (“[i]t would . . . be counterintuitive to
7 require a plaintiff, prior to conducting discovery, to meet the same burden that would be required
8 in order to defeat a motion to dismiss.”); *see also America West Airlines, Inc. v. GPA Group,*
9 *Ltd.*, 877 F.2d 793, 801 (9th Cir. 1989) (“[W]here pertinent facts bearing on the question of
10 jurisdiction are in dispute, discovery should be allowed.”). Second, even if there were such a
11 requirement, Facebook has met it. *See, e.g.*, Dkt. No. 140 (Facebook’s First Amended
12 Complaint); Dkt. No. 71 (Facebook’s First Opposition to Defendants’ Motions to Dismiss); *see*
13 *also, supra*, Section III.A (summarizing allegations made against Defendants).

14 Accordingly, the Court should overrule this objection.

15 **(2) The “Overbroad Definition” Objection**

16 StudiVZ next objects that Facebook is not entitled to *any* response to its Requests for
17 Admissions because the definitions of “STUDIVZ” or “YOU” included in the Requests are
18 “grossly overbroad.” This objection is absurd.

19 Facebook’s uncontroversial definition of the terms “STUDIVZ,” “YOU,” and “YOUR”
20 is: “[The term] means defendant StudiVZ, Ltd. and its directors, officers, subsidiaries,
21 predecessors, successors, assigns, agents, servants, employees, investigators, attorneys, AND
22 ALL other persons and entities representing it, acting on its behalf, OR purporting to act on its
23 behalf, including without limitation, Ehssan Dariani and Dennis Bemann.” It is a basic, law
24 school tenet of agency law that an employer or entity may be liable for the actions of its
25 employees, agents or contractors if those employees are acting within the scope of their
26 employment and/or are acting in furtherance of the employer’s interests. It is crucial to
27 Facebook’s jurisdictional argument that Facebook establish that StudiVZ unlawfully accessed
28 Facebook’s servers. As it is unlikely that StudiVZ, the corporate “person,” itself accessed

1 Facebook's websites, Facebook is required to define the term StudiVZ with reference to those
2 StudiVZ agents that the corporation may have charged with stealing Facebook's IP or those
3 agents doing so in order to further StudiVZ interests. For instance, in Request for Admission No.
4 1, Facebook writes, "Admit that YOU accessed the FACEBOOK WEBSITE while designing at
5 least one of the STUDIVZ WEBSITES." There is nothing objectionable in Facebook's
6 definitions (certainly nothing "grossly overbroad") and the Court should overrule this objection
7 accordingly. The correct course if, say, the Request touches upon privileged information, is for
8 Defendants to withhold that information with a valid accounting in a privilege log, not to simply
9 refrain from answering the Request altogether.

10 Accordingly, the Court should overrule this objection.

11 **(3) The "Relevancy" Objection**

12 StudiVZ's following objection is that each and every single one of Facebook's Requests
13 are irrelevant to the issue of personal jurisdiction. In other words, StudiVZ argues that a series of
14 Requests For Admissions narrowly tailored to target (1) StudiVZ's intentional torts aimed at a
15 California corporation; (2) StudiVZ's theft of Facebook's intellectual property, including source
16 code; and (3) StudiVZ's many thousands of commercial contracts with confused California
17 customers are somehow irrelevant to the Court's jurisdictional inquiry. Again, the objection is
18 absurd.

19 As noted above, relevance is broadly interpreted. *See, supra*, Section III.A (citing
20 *Utstarcom, Inc. v. Starent Networks Corp.*, No C-04-1122PVT, 2005 WL 1397507, at *1 (N.D.
21 Cal. Jun. 14, 2005) ("The discovery standard is intentionally broad: requested discovery is
22 relevant if it 'appears reasonably calculated to lead to the discovery of evidence relating to the
23 claims or defenses of any party.'") (internal citations omitted); *Micro Motion, Inc. v. Kane Steel*
24 *Co., Inc.*, 894 F.2d 1318, 1326 (Fed. Cir. 1990) (holding that discovery "is allowed to flesh out a
25 pattern of facts already known to a party relating to an issue necessarily in the case"); *Lofton v.*
26 *Bank of America Corp.*, 2008 U.S. Dist. LEXIS 41005, *4-5, Case No. C 07-05892 SI (N.D. Cal.
27 May 12, 2008) (Illston, J.) (plaintiff should not be denied any jurisdictional discovery "may
28 inform" its opposition to a jurisdictional motion). Each of Facebook's Requests for Admissions

1 will “inform” its opposition to Defendants’ motions to dismiss and are reasonably calculated to
2 lead to the discovery of evidence relating to StudiVZ’s claim that it lacks sufficient contacts with
3 California to justify an exercise of personal jurisdiction. Can it really be argued that StudiVZ’s
4 admission that it accessed the Facebook website while designing at least one of the StudiVZ
5 websites would be irrelevant to the issue of personal jurisdiction (RFA No. 1). Can Defendant in
6 good faith claim that an admission by StudiVZ that it generates income from its users in
7 California (RFA Nos. 18-20), or that it has entered into thousands of commercial contracts with
8 California residents (RFA No. 16), cannot be reasonably said to at least “inform” Facebook’s
9 opposition to Defendants’ motions to dismiss? The answer is clearly that StudiVZ cannot make
10 such claims, at least not without again violating Federal Rule of Civil Procedure 11(b).

11 Accordingly, the Court should overrule this objection.

12 **(4) The “Secret Discovery” Objection**

13 The next objection anticipates those recently made in Defendants’ Motion to Quash
14 Facebook’s Third-Party Subpoenas, and is as unavailing here as it is there. *See* Facebook’s
15 Concurrently Filed Opposition to Defendants’ Motion to Quash. StudiVZ claims that:

16 In granting in part Facebook’s request for a continuance on the hearing for StudiVZ’s
17 Motion to Dismiss for lack of personal jurisdiction and *forum non conveniens*, the District
18 Court made its decision based upon the then-pending discovery requests. Likewise,
19 StudiVZ did not oppose Facebook’s request to continue the hearing on the personal
20 jurisdiction portion of StudiVZ’s Motion to Dismiss based upon the existing discovery
21 and the disputes related thereto. Had Facebook been upfront with the Court and StudiVZ
22 and disclosed the fact that Facebook secretly planned to propound six additional sets of
23 discovery (including more document demands to StudiVZ than had been propounded
24 before) a few days after the Court issued its ruling, StudiVZ would have opposed
25 Facebook’s request to continue even the personal jurisdiction portion of StudiVZ’s
26 Motion to Dismiss, and StudiVZ believes that the Court would have ruled differently and
27 would have denied all of the relief requested by Facebook.

24 Avalos Decl. Ex. A. StudiVZ refers here to Judge Fogel’s January 28, 2009 Order *granting*
25 Facebook a continuance of the February 13 hearing so as to give Facebook the opportunity to
26 gather **additional personal jurisdiction discovery**. *See* Dkt. No. 92. Nothing in that order or in
27 Facebook’s motion that precipitated it supports the limitation Defendants wish for.

1 After it became clear that Defendants would not be producing any discovery related to
2 specific jurisdiction prior to the scheduled February 13, 2009 hearing on Defendants’ motions to
3 dismiss, Facebook moved Judge Fogel for a continuance. *See* Dkt. No. 77. In that motion,
4 Facebook requested that Judge Fogel issue “an order (1) continuing the February 13, 2009
5 hearing on Defendants’ motions to dismiss for 90 days in order to allow the parties **to complete**
6 **personal jurisdiction and forum discovery**, and (2) granting Facebook the right to file a
7 supplemental opposition once it receives the necessary discovery from Defendants.” *Id.* at 5:15-
8 20. In partially granting Facebook’s request, Judge Fogel ordered: “[T]he Court will grant
9 Facebook’s motion for a continuance. Facebook will be permitted to file a supplemental
10 opposition with respect to whether this Court has personal jurisdiction over StudiVZ **in light of**
11 **any newly discovered material**.” Dkt. No. 92 at 2:15-23. There is nothing in Facebook’s
12 requested relief or in Judge Fogel’s order indicating that a continuance would only be granted if
13 Facebook was limited to pre-existing jurisdictional discovery requests. In any event, in light of
14 Judge Fogel’s more recent decision lifting a stay on all personal jurisdiction discovery and
15 inviting Facebook to seek personal jurisdiction discovery that might “meaningfully inform” the
16 Court’s *forum non conveniens* analysis, Defendants’ highly speculative objection is now moot.
17 *See* Dkt. No. 155.

18 **(5) and (6) The “Lack of Explanation” Objections**

19 StudiVZ offers two final objections that, in addition to being factually misleading, are
20 wholly at odds with federal law. StudiVZ objects that “Facebook has failed to explain (1) why
21 this RFA was not propounded over four months ago (when Facebook propounded its other
22 discovery), and (2) why StudiVZ should have to respond to an RFA the response to which would
23 have been due long after the original hearing date of StudiVZ’s Motion to Dismiss, which hearing
24 date was selected in consultation with Facebook so that Facebook would have many months to
25 take jurisdictional discovery.” Avalos Decl. Ex. A.

26 Discovery in this case remains open. Judge Fogel has just lifted a stay on all personal
27 jurisdiction discovery expressly so that Facebook might seek additional discovery of the exact
28 sort Defendants are withholding. *See* Dkt. No. 155. There is no rule or precedent preventing a

1 party from serving their discovery in stages. Indeed, multiple rounds of discovery are the
2 overwhelming norm in civil litigation. Defendants' proposal would effectively preclude a party
3 from serving more than one round of discovery, or, at best, would impermissibly shift the burden
4 onto a discovering party to explain what took it so long in coming up with a certain discovery
5 request. This is not the law.

6 The final objection only adds insult to injury. In short, Defendants ask why they should
7 be required to respond to discovery requests propounded after the original date of their motion to
8 dismiss hearing, since, if the hearing had moved forward as scheduled, Facebook would not have
9 had the opportunity to propound the discovery in the first place. Substantively, this specious
10 argument is similar to the prior objection and should be dismissed for the same reason. Take for
11 instance, the common practice of suspending a proceeding in order to permit parties to engage in
12 settlement negotiations. If the settlement negotiations fall apart, and a party subsequently
13 propounds new discovery requests once the suspension is lifted, Defendants' proposal would
14 permit the receiving party to fend off the discovery simply by arguing that since, if the parties had
15 reached a settlement the discovery would never have been served, they should not have to
16 respond to it. The argument is all the more absurd in the current context, where Defendants now
17 seek to block discovery by pointing to a hearing date that was continued due to their own failure
18 to produce discovery. To be clear, Defendants received Facebook's first round of jurisdictional
19 discovery on October 14, 2008. Avalos Decl. ¶ 2. In the following weeks, they consulted with
20 Facebook (apparently in bad faith) regarding how long the personal jurisdiction process would
21 take. *Id.* at Ex. A (Defendants' admit that the February 13 hearing date "was selected in
22 consultation with Facebook so that Facebook would have many months to take jurisdictional
23 discovery."). However, just a week after filing their Motions to Dismiss, Defendants abruptly
24 reversed course, filing a Motion for Protective Order from Facebook's jurisdictional discovery
25 requests (which they already had in their possession when they first acknowledged that Facebook
26 was entitled to such discovery) and have since done everything in their power to suppress the
27 jurisdictional discovery they initially (and at various times since) agreed to produce.
28

1 The Court should no longer tolerate Defendants' obstructionist games. Its Requests for
2 Admissions are highly material to pending motions to dismiss and pose no undue burden.
3 Accordingly, Facebook respectfully requests that the Court compel proper responses from
4 Defendants.

5 **C. Requests for Admissions to Holtzbrinck Defendants**

6 Facebook served only five Requests for Admissions upon each of the Holtzbrinck
7 Defendants. These Requests target the jurisdictionally crucial issue of what knowledge the
8 Holtzbrinck Defendants had regarding StudiVZ's intentional torts aimed at California and
9 whether Defendants aided, abetted or contributed to those torts. Defendants' objections to these
10 five Requests correspond nearly exactly to StudiVZ's objections.

11 **REQUEST FOR ADMISSION NO. 1**

12 Admit that at the time YOU acquired an interest in STUDIVZ you were aware of
13 accusations by FACEBOOK that STUDIVZ was infringing FACEBOOK'S legal rights,
including, but not limited to, intellectual property rights.

14 **REQUEST FOR ADMISSION NO. 2**

15 Admit that YOU have knowledge that STUDIVZ accessed the FACEBOOK WEBSITE
16 for commercial purposes.

17 **REQUEST FOR ADMISSION NO. 3**

18 Admit that YOU have knowledge that STUDIVZ accessed the FACEBOOK WEBSITE
19 for the purpose of modeling at least one of the STUDIVZ WEBSITES after the
FACEBOOK WEBSITE.

20 **REQUEST FOR ADMISSION NO. 4**

21 Admit that YOU have knowledge of similarities between the FACEBOOK WEBSITE and
22 the STUDIVZ WEBSITES, including, but not limited to, visual similarities, functional
similarities, feature similarities, and layout similarities.

23 **REQUEST FOR ADMISSION NO. 5**

24 Admit that at the time YOU acquired an interest in STUDIVZ you were aware of
25 similarities between the FACEBOOK WEBSITE and the STUDIVZ WEBSITES,
26 including, but not limited to, visual similarities, functional similarities, feature similarities,
and layout similarities.

27 **RESPONSE FROM HOLTZBRINCK DEFENDANTS:**

28 [Defendant] hereby incorporates by reference the general objections set forth above.

1 [Defendant] further objects to this RFA on the grounds that a plaintiff is not entitled to
2 take discovery on personal jurisdiction as a matter of right. In order to do so, Facebook
3 must either make a *prima facie* showing of jurisdiction over [Defendant], or it must
4 identify material jurisdictional issues that are in dispute. Facebook has done neither.
5 [Defendant] further objects to this RFA on the grounds that there is no definition of
6 “YOU” despite plaintiff writing the word in all capital letters. Networks further objects to
7 this RFA on the grounds that, to the extent that the RFA is directed to [Defendant], the
8 definition of [Defendant] is overly broad and unduly burdensome. [Defendant] further
9 objects to this RFA on the grounds that it is vague and ambiguous, and not limited, with
10 respect to timeframe. [Defendant] further objects to this RFA on the grounds that it seeks
11 information that is not relevant nor reasonably calculated to lead to the discovery of
12 admissible evidence.

13 [Defendant] further objects to this RFA on the grounds that it is moot. Namely, Facebook
14 has already filed its opposition to [Defendant’s] motion to dismiss for lack of personal
15 jurisdiction and *forum non conveniens*, and these RFAs are specifically identified as being
16 “relating to personal jurisdiction.” [sic] In its request to continue the hearings on that and
17 other motions, Facebook asked the District Court to allow it to file supplemental
18 opposition papers with respect to *both* StudiVZ’s Motion to Dismiss and the Holtzbrinck
19 defendants’ Motion to Dismiss. (Docket No. 77 at 1:25-2:3; Docket No. 77-2). Because
20 the District Court found that Facebook failed to demonstrate any reason to continue the
21 hearing as to the Holtzbrinck defendants (Order at 2:15-17) (Docket No. 92), it denied
22 Facebook’s request to file a supplemental brief with respect to either of the Holtzbrinck
23 defendants. (Order at 2:20-22) (Docket No. 92) (ruling that Facebook would only be
24 “permitted to file a supplemental opposition with respect to whether this Court has
25 personal jurisdiction over StudiVZ in light of any newly discovered material”).

26 With one exception, Facebook’s response to the Holtzbrinck Defendants’ objections is
27 identical to its response above to StudiVZ’s objections. The Holtzbrinck Defendants argue that
28 Facebook is precluded from seeking additional personal jurisdiction discovery from them because
“the District Court . . . denied Facebook’s request to file a supplemental brief with respect to
either of the Holtzbrinck Defendants.” Although it is true that Judge Fogel’s January 28 Order
granting in part Facebook’s motion to enlarge time did not grant Facebook the right to file a
supplemental jurisdiction brief as to the Holtzbrinck Defendants, Judge Fogel’s more recent order
broadened the scope of personal jurisdiction discovery Facebook was permitted to take. *See* Dkt.
No. 155. In that order, Judge Fogel wrote, “it is possible, as Facebook has suggested, that the
personal jurisdiction inquiry meaningfully will inform the Court’s ultimate decision with respect
to *forum non conveniens*. Out of prudence, the Court will defer its ruling on *forum non*
conveniens until the issue of personal jurisdiction fairly can be presented.” *Id.* at 7:22-8:2. Thus,
the Court’s opinion expressly entertained that personal jurisdiction discovery would not only
inform the personal jurisdiction issue, but the forum issues as well. Accordingly, Judge Fogel

1 lifted the stay of all personal jurisdiction discovery with no limitation as to the party that might be
2 served with this discovery. Accordingly, it is now irrelevant whether or not Facebook was
3 permitted in January to file a Supplemental Opposition regarding the Court's jurisdiction over the
4 Holtzbrinck Defendants. Facebook is permitted to seek jurisdictional discovery from all the
5 Defendants and to apply that discovery not only in its jurisdictional arguments, but in its *forum*
6 *non conveniens* theories as well.

7 **D. Facebook's Second Set of Requests for Production**

8 **1. Production Requests Related to United States Contacts – RFP Nos. 31**
9 **– 38, 40-41.**

10 **REQUEST FOR PRODUCTION NO. 31:**

11 ALL DOCUMENTS that RELATE TO ANY contracts OR agreements between YOU
12 AND ANY business licensed, located, based, OR incorporated in the UNITED STATES OR
13 ANY PERSON currently OR formerly residing OR domiciled in the UNITED STATES.

14 **REQUEST FOR PRODUCTION NO. 32:**

15 ALL DOCUMENTS that RELATE TO ANY USER OF STUDIVZ residing OR
16 domiciled in the UNITED STATES, including ALL COMMUNICATIONS.

17 **REQUEST FOR PRODUCTION NO. 33:**

18 DOCUMENTS sufficient to IDENTIFY the number AND amount of sales of goods AND
19 services sold OR provided by YOU to current OR former UNITED STATES residents, including
20 PERSONS, businesses, AND USERS of STUDIVZ.

21 **REQUEST FOR PRODUCTION NO. 34:**

22 DOCUMENTS that RELATE TO ANY contacts OR COMMUNICATIONS YOU have
23 had, in the scope of STUDIVZ business, with PERSONS currently OR formerly residing OR
24 domiciled in the UNITED STATES.

25 **REQUEST FOR PRODUCTION NO. 35:**

26 DOCUMENTS sufficient to show, on a monthly basis, how many USERS OF STUDIVZ
27 have been registered on www.studivz.net, www.meinvz.net, www.studiqg.fr, www.studiln.it,
28 www.estudiln.net, www.studentix.pl, AND www.schuelervz.net since October 2005, AND how
many of those USERS OF STUDIVZ are residents of the UNITED STATES.

REQUEST FOR PRODUCTION NO. 36:

DOCUMENTS sufficient to show the number AND amount of accounts receivable owed
YOU by UNITED STATES residents, including PERSONS AND entities, as well as the goods
AND services for which the individual accounts receivable are owed to.

1 **REQUEST FOR PRODUCTION NO. 37:**

2 DOCUMENTS sufficient to show ALL of YOUR current AND former personal OR real
3 property currently OR previously located in the UNITED STATES.

4 **REQUEST FOR PRODUCTION NO. 38:**

5 ALL contracts involving YOU in which UNITED STATES law governs.

6 **REQUEST FOR PRODUCTION NO. 40:**

7 ALL DOCUMENTS RELATED TO YOUR promotions AND marketing activities
8 directed, at least in part, at UNITED STATES residents, including advertising or marketing done
9 in print media or over the Internet, including without limitation banner advertising, participation
in Google's AdSense program, or any other Internet-based advertising.

10 **REQUEST FOR PRODUCTION NO. 41:**

11 DOCUMENTS sufficient to identify ALL of YOUR business relationships with, OR
12 financial interests in, businesses incorporated, located, based, OR with facilities OR offices
13 located in the UNITED STATES, including, but not limited to, the nature of each relationship, the
14 name of each business, whether each business is incorporated, located, based OR has facilities
OR offices located in the UNITED STATES, AND ANY goods OR services provided by those
businesses.

15 **RESPONSE TO ABOVE REQUESTS FOR PRODUCTION:**

16 In response to these Requests for Production, StudiVZ submitted the same objection made
17 to Facebook's Requests for Admissions, quoted in full above.

18 Since serving its initial round of discovery requests on October 14, 2008, Facebook has
19 learned that StudiVZ has entered into thousands of commercial contracts with U.S. users of its
20 counterfeit websites. These users are located not only in California, but throughout the United
21 States. Accordingly, Facebook now seeks discovery relating to Defendants' non-California U.S.
22 contacts. Such discovery is permitted both by the discovery Rules and Federal Rule of Civil
23 Procedure 4(k)(2), which provides for nationwide aggregation of a Defendants' U.S. contacts for
24 purposes of personal jurisdiction: "For a claim that arises under federal law, serving a summons
25 or filing a waiver of service establishes personal jurisdiction over a defendant if (A) the defendant
26 is not subject to jurisdiction in any state's courts of general jurisdiction; and (B) exercising
27 jurisdiction is consistent with the United States Constitution and laws."
28

1 According to the Rule's Advisory Committee Notes:

2 Under the former rule, a problem was presented when the defendant was a non-resident of
3 the United States having contacts with the United States sufficient to justify the
4 application of United States law and to satisfy federal standards of forum selection, but
5 having insufficient contact with any single state to support jurisdiction under state long-
6 arm legislation or meet the requirements of the Fourteenth Amendment limitation on state
7 court territorial jurisdiction. In such cases, the defendant was shielded from the
8 enforcement of federal law by the fortuity of a favorable limitation on the power of state
9 courts, which was incorporated into the federal practice by the former rule.

7 Fed. R. Civ. P. 4 (Advisory Committee Notes). Thus, in cases like the instant litigation, where a
8 plaintiff claims not to be subject to personal jurisdiction in any one state, but whose infringing or
9 unlawful actions justify the application of U.S. law and federal standards of forum selection, a
10 plaintiff is permitted to aggregate the defendants' contacts with any U.S. state. *See, e.g., MGM*
11 *Studios, Inc. v. Grokster Ltd.*, 243 F. Supp. 2d 1073, 1094-96 (C.D. Cal. 2003) (permitting
12 nationwide aggregation of U.S. contacts in copyright infringement matter); *Griggs Group Ltd. v*
13 *Consolidated Shoe, Inc.*, 1999 U.S. Dist. LEXIS 5426, *6-7, Case No. C98-4676 FMS (N.D. Cal.
14 Apr. 8, 1999) (noting that nationwide aggregation of U.S. contacts under Rule 4(k)(2) was
15 possible in trade dress claims).

16 For these reasons, as well those cited above regarding StudiVZ's responses to Facebook's
17 Requests for Admissions, StudiVZ's objections to these RFPs should be overruled and the Court
18 should compel production of responsive documents.

19 **2. Facebook's "Compromise" Requests: RFP 39, 42 — 63**

20 Facebook only conditionally moves to compel further responses to Requests for
21 Production Nos. 39 and 42 through 63. Given Defendants' early objections that Facebook's first
22 round of Requests for Production were too broad, Facebook drafted a series of new Requests that
23 targeted the same information but in a manner that Facebook believed, based on the parties'
24 various meet and confers, Defendants would find more palatable. By the time oral argument was
25 held on Facebook's first motion to compel on March 3, 2009, Facebook had already served its
26 second round of discovery.

27 In response to defense counsel's objection that Facebook's first set of Requests for
28 Production of Documents were too broad, the Court responded:

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THE COURT: It often happens that in deciding discovery disputes, I in effect re-write the requests so that they say what I think is fair or appropriate as opposed to what they literally say. What I'm struggling with right now is to decide whether to give him anything or nothing. I'm not inclined to give him nothing, I'm inclined to give him something, and I'm struggling to define a something in a way that's reasonable.

Avalos Decl. Ex. B. Given the Court's statement, it would appear that Facebook's new Requests for Production are unnecessary. Thus, if the Court is inclined to narrow Facebook's first round of Requests for Production to what the Court believes "is fair or appropriate" and will issue a corresponding order, then Facebook will abide by that decision and not insist on further responses to Requests for Production Nos. 39 and 42 through 63. However, if the Court is not inclined to "re-write" Facebook's original requests, then Facebook respectfully requests that it adopt the revised Requests contained in Facebook's Second Round of Discovery.

REQUEST FOR PRODUCTION NO. 39:

ALL DOCUMENTS RELATED TO instances when YOU accessed the FACEBOOK website, www.facebook.com OR www.thefacebook.com in furtherance of STUDIVZ business or interests.

REQUEST FOR PRODUCTION NO. 39:

ALL DOCUMENTS RELATING TO the conception, design, and development of STUDIVZ and STUDIVZ'S WEBSITES, including but not limited to notes, journals, notebooks, and diaries RELATING TO the conception, design and development of STUDIVZ and STUDIVZ'S WEBSITES.

REQUEST FOR PRODUCTION NO. 43:

ALL DOCUMENTS RELATING TO ANY COMMUNICATIONS by YOU to ANY media or media outlets regarding STUDIVZ, STUDIVZ'S WEBSITES, FACEBOOK, or this lawsuit, including but not limited to correspondence, web blogs, news articles, video footage, audio recordings and press releases.

REQUEST FOR PRODUCTION NO. 44:

ALL DOCUMENTS that summarize, describe, REFER TO, or constitute EVIDENCE of STUDIVZ'S business management information and procedures, including descriptions of STUDIVZ'S WEBSITES' business model, various functionality and content concepts, and the type of information—personal, demographic or otherwise—that would be collected from users.

1 **REQUEST FOR PRODUCTION NO. 45:**

2 ALL DOCUMENTS reflecting COMMUNICATIONS between members of STUDIVZ
3 and ANY developer of the software and COMPUTER CODE used to create, run, operate
4 STUDIVZ'S WEBSITES, including all copies and versions of the software and
COMPUTER CODE.

5 **REQUEST FOR PRODUCTION NO. 46:**

6 ALL DOCUMENTS RELATING TO the research and development of STUDIVZ and
7 STUDIVZ'S WEBSITES.

8 **REQUEST FOR PRODUCTION NO. 47:**

9 An electronic image of the entire computer hard drive(s) or other computer memory
10 devices controlled and used by ANY member, agent, employee, or assignee, or consultant
11 of STUDIVZ, to the extent that computer was used to communicate regarding or reflects
12 the creation or development of STUDIVZ or STUDIVZ'S WEBSITES, or any software
reflecting the creation, development and operation of STUDIVZ or STUDIVZ'S
WEBSITES.

13 **REQUEST FOR PRODUCTION NO. 48:**

14 ALL DOCUMENTS REFERRING TO or EVIDENCING the use by any employee,
15 agent, consultant, or assignee of STUDIVZ or ANY other DEFENDANT of the
16 FACEBOOK website, including, but not limited to, DOCUMENTS REFERRING TO or
17 EVIDENCING access to the FACEBOOK WEBSITE, DOCUMENTS IDENTIFYING
the profile, user name, and ALL FACEBOOK activity of each PERSON that accessed the
FACEBOOK WEBSITE.

18 **REQUEST FOR PRODUCTION NO. 49:**

19 ALL DOCUMENTS that IDENTIFY or EVIDENCE each user account to used to access
20 the FACEBOOK WEBSITE by ANY agent, employee, assignee, or consultant of
21 STUDIVZ in furtherance of STUDIVZ business or interests, including, but not limited to,
the development, design, continued development, continued design, maintenance and
implementation of the STUDIVZ WEBSITES.

22 **REQUEST FOR PRODUCTION NO. 50:**

23 ALL DOCUMENTS in possession, custody or control of STUDIVZ that RELATE in
24 ANY way to the subject matter of this lawsuit.

25 **REQUEST FOR PRODUCTION NO. 51:**

26 ALL DOCUMENTS RELATING TO YOUR efforts to IDENTIFY and locate ANY and
27 ALL computers in YOUR possession, custody, control that could reasonably contain any
28 version of STUDIVZ COMPUTER CODE or DOCUMENTS EVIDENCING
STUDIVZ'S software, including but not limited to any deleted or corrupted information
present, stored, or residing on, or deleted from ANY and ALL computers in possession,

1 custody or control of STUDIVZ or ANY members, agents, employees, or assignees, or
2 consultants of STUDIVZ.

3 **REQUEST FOR PRODUCTION NO. 52:**

4 ALL DOCUMENTS RELATING TO YOUR efforts to locate, retrieve and/or recover any
5 COMMUNICATIONS, DOCUMENTS, content, COMPUTER CODE, or software that
6 might relate to the subject matter of this lawsuit, including but not limited to any deleted
7 or corrupted information present, stored, or residing on, or deleted from ANY and ALL
8 computers in possession, custody or control of STUDIVZ or ANY members, agents,
9 employees, or assignees, or consultants of STUDIVZ.

8 **REQUEST FOR PRODUCTION NO. 53:**

9 ALL DOCUMENTS REFERRING TO or RELATING TO or comprising the
10 memorialization of every investment in STUDIVZ and/or COMMUNICATIONS or
11 negotiations with any actual or potential investor, and the terms of such investment.

11 **REQUEST FOR PRODUCTION NO. 54:**

12 ALL DOCUMENTS summarizing, describing, REFERRING TO, RELATING TO, or
13 EVIDENCING information YOU downloaded, copied or obtained from the FACEBOOK
14 WEBSITE.

14 **REQUEST FOR PRODUCTION NO. 55:**

15 ALL DOCUMENTS summarizing, describing, REFERRING TO, RELATING TO, or
16 EVIDENCING the reasons for accessing the FACEBOOK WEBSITE.

17 **REQUEST FOR PRODUCTION NO. 56:**

18 ALL DOCUMENTS summarizing, describing, REFERRING TO, RELATING TO, or
19 EVIDENCING the reasons for downloading, copying or obtaining information from the
20 FACEBOOK WEBSITE.

20 **REQUEST FOR PRODUCTION NO. 57:**

21 ALL DOCUMENTS summarizing, describing, REFERRING TO, RELATING TO, or
22 EVIDENCING ANY business plan for STUDIVZ.

23 **REQUEST FOR PRODUCTION NO. 58:**

24 ALL DOCUMENTS sufficient to IDENTIFY ANY PERSON involved in any way in the
25 development of STUDIVZ OR STUDIVZ'S WEBSITES.

26 **REQUEST FOR PRODUCTION NO. 59:**

27 ALL DOCUMENTS IDENTIFYING ANY investors, potential investors, loans,
28 investments, gifts, contributions, offers to purchase, or other forms of financing
contributed to or received by STUDIVZ.

1 **REQUEST FOR PRODUCTION NO. 60:**

2 ALL DOCUMENTS AND COMMUNICATIONS that relate to the STUDIVZ
3 WEBSITES being modeled after or inspired by the FACEBOOK WEBSITE.

4 **REQUEST FOR PRODUCTION NO. 61:**

5 ALL DOCUMENTS AND COMMUNICATIONS that relate to the STUDIVZ
6 WEBSITES' layout being modeled after or inspired by the FACEBOOK WEBSITE.

7 **REQUEST FOR PRODUCTION NO. 62:**

8 ALL DOCUMENTS AND COMMUNICATIONS that relate to the STUDIVZ
9 WEBSITES' functionality or features being modeled after or inspired by the FACEBOOK
10 WEBSITE.

11 **REQUEST FOR PRODUCTION NO. 63**

12 ALL DOCUMENTS AND COMMUNICATIONS that relate to STUDIVZ'S accessing of
13 the FACEBOOK WEBSITE for commercial purposes.

14 Defendants' responses to these Requests was the same as that quoted above.

15 **III. CONCLUSION**

16 For the foregoing reasons, Facebook respectfully requests that the Court grant its Motion
17 to Compel Further Discovery Responses to Facebook's Second Round of Discovery Requests to
18 Defendant StudiVZ. Facebook also requests that the Court grant the concurrently filed Motion in
19 Opposition to Defendants' Motion to Quash Third-Party Discovery as well as Facebook's Motion
20 to Shorten Time on these motions.

21 Dated: May 26, 2009

ORRICK, HERRINGTON & SUTCLIFFE LLP

22 /s/ Julio Avalos /s/

23 JULIO C. AVALOS
24 Attorneys for Plaintiff
25 FACEBOOK, INC.

