

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: +1-650-614-7400
 5 Facsimile: +1-650-614-7401

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
 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
 SHORTEN TIME PURSUANT TO
 CIVIL L.R. 6-3**

Date:
 Time:
 Courtroom:
 Judge: Hon. Howard R. Lloyd

1 **I. INTRODUCTION**

2 Facebook propounded its first round of jurisdictional discovery requests over seven
3 months ago. Nearly three months ago, on March 3, 2009, the Court heard oral argument on
4 Facebook’s motion to compel that first round of discovery. Facebook had hoped to resolve one
5 discovery dispute before burdening the Court with another. However, that is no longer possible.
6 The delay caused by the stay of personal jurisdiction discovery, combined with both Defendants’
7 continued failure to abide with their discovery obligations and now Judge Fogel’s recent order
8 setting the hearing date on Defendants’ motions to dismiss for lack of personal jurisdiction for
9 July 10, 2009, forces Facebook to seek expedited relief on both its Motion to Compel Discovery
10 Responses to its Second Round of Jurisdictional Discovery as well as Defendants’ Motion to
11 Quash Facebook’s Third-Party Discovery.

12 Despite Judge Fogel’s May 4 Order expressly lifting the stay on all personal jurisdiction
13 discovery, Defendants have redoubled their suppression efforts, last week going so far as to file a
14 motion seeking to prevent Facebook from obtaining third-party discovery. Defendants’
15 obstructionist campaign must be stopped. The Court has tolerated it long enough. Judge Fogel
16 has lifted the stay of personal jurisdiction discovery and deferred his ruling on the issue of *forum*
17 *non conveniens* “until the issue of personal jurisdiction fairly can be presented.” Unless this
18 Court acts quickly and decisively, Defendants will have succeeded in suppressing evidence of
19 their contacts with California, substantially prejudicing Facebook’s ability to survive Defendants’
20 motions to dismiss. More importantly, a failure to hear and decide these discovery motions on an
21 expedited basis will prevent a “fair presentation” of the personal jurisdiction issue at the July 10
22 hearing, irrevocably frustrating the clear aim of Judge Fogel’s May 4 Order.

23 Accordingly, Facebook respectfully requests that the Court enter the attached proposed
24 order shortening time during which to brief and argue Facebook’s Second Motion to Compel and
25 Defendants’ Motion to Quash Third-Party Subpoenas. Facebook does not move for an overly
26 aggressive schedule, asking only that the hearing on Defendants’ motion to quash be heard one
27 week earlier than it is currently scheduled and that Facebook’s Motion to Compel, which in most
28 respects overlaps with the arguments raised in the motion to quash, be held on the same day.

1 **II. FACTUAL BACKGROUND**

2 On March 3, 2009, the parties held oral argument on Facebook’s first Motion to Compel.
3 Following that hearing, Defendants requested and obtained a one-week extension to file a letter
4 brief with the Court indicating Defendants’ proposed language for an order granting Facebook at
5 least some jurisdictional discovery. *See* Dkt. No. 114. The proposed language was never
6 submitted, however, and on March 19, 2009 Defendants moved for a stay of personal jurisdiction
7 discovery so as to allow Judge Fogel the opportunity to dispose of the case on *forum non*
8 *conveniens* grounds. *See* Dkt. No. 119. During the sixteen-days from March 3 to March 19,
9 Facebook believed that the Court would at any time issue an order granting Facebook’s first
10 Motion to Compel. Avalos Decl. ¶ 6. Accordingly, after receiving Defendants’ blanket
11 objections to its second round of discovery on March 4, Facebook chose not to immediately move
12 to compel further responses so as to not unnecessarily overburden the Court. *Id.*

13 While still awaiting a decision on the first motion to compel, on March 19, 2009,
14 Defendants filed a Motion for Administrative Relief Staying The Personal Jurisdiction Portion of
15 Defendants’ Motions to Dismiss pending the outcome of the *Forum non Conveniens* portion of
16 those motions. *See* Dkt. No. 119. Defendants argued that it was “a waste of this Court’s time and
17 resources to address all of the issues that will arise from discovery related solely to the issue of
18 personal jurisdiction over StudiVZ when *forum non conveniens* can be decided separately and
19 forthwith.” *Id.* at 2:4-6. Judge Fogel later agreed that personal jurisdiction discovery should be
20 stayed in order to see whether the case might be disposed of on *forum non conveniens* grounds
21 and thus negate the necessity for the personal jurisdiction discovery. *See* Dkt. No. 138. With a
22 stay in place, Facebook could not move to compel additional discovery.

23 On May 4, 2009, after a flurry of back and forth briefing and oral argument, Judge Fogel
24 determined that although he perceived Defendants’ *forum non conveniens* theory to have some
25 merit, the ruling was not so clear cut as to allow dismissal of the case prior to permitting
26 Facebook to complete personal jurisdiction discovery. *See* Dkt. No. 155. Holding that “it is
27 possible, as Facebook has suggested, that the personal jurisdiction inquiry meaningfully will
28 inform the Court’s ultimate decision with respect to *forum non conveniens*,” “[o]ut of prudence,

1 the Court will defer its ruling on *forum non conveniens* until the issue of personal jurisdiction
2 fairly can be presented.” *Id.* at 7:22 – 8:2. Accordingly, Judge Fogel ordered: “The stay of
3 personal jurisdiction discovery is hereby lifted.” *Id.* at 8:5-6. Judge Fogel set the personal
4 jurisdiction hearing for July 10, 2009. *Id.*

5 Following the lifting of the discovery stay, Facebook anticipated that an order on the
6 March 3 hearing was imminent. On Thursday, May 21, 2009, Facebook counsel Julio C. Avalos
7 telephoned Magistrate Judge Lloyd’s deputy and law clerks to inquire as to the status of the
8 order on Facebook’s first motion to compel. Avalos Decl. ¶ 7. Mr. Avalos was informed that
9 the Court was well aware of the pending motion and that an order would be issued in due time.
10 *Id.*

11 **III. ANALYSIS**

12 **A. Judicial Economy Favors Hearing Both Facebook’s Motion to Compel and** 13 **Defendants’ Motion to Quash on the Same Date.**

14 At the heart of Defendants’ objections to Facebook’s Second Round of Jurisdictional
15 discovery is the notion that Facebook was not permitted to propound additional discovery
16 requests following the original February 13, 2009 hearing date on Defendants’ Motions to
17 Dismiss. This argument is identical to the primary rationale behind Defendants’ Motion to Quash
18 Facebook’s Third-Party Subpoenas. Accordingly, judicial economy favors hearing both motions
19 at the same time.

20 **B. Expedited Briefing Is Required To Give Effect to Judge Fogel’s May 4 Order**

21 The July 10 hearing on Defendants’ personal jurisdiction challenge is now just six weeks
22 away. If Facebook is to have any hopes of compelling, receiving, and reviewing StudiVZ’s
23 personal jurisdiction discovery (as well as any discovery obtained from third-parties), a hearing
24 must be held no later than June 16, 2009. This date is only one week earlier than the currently
25 scheduled date for Defendants’ motion to quash.

26 Judge Fogel’s May 4 Order unambiguously contemplates that a “fair presentation” of the
27 personal jurisdiction issues requires personal jurisdiction discovery. *See* Dkt. No. 155.
28 Moreover, Judge Fogel’s order implies that personal jurisdiction discovery may very well be

