

1 GARY E. WEISS (STATE BAR NO. 122962)  
 gweiss@orrick.com  
 2 I. NEEL CHATTERJEE (STATE BAR NO. 173985)  
 nchatterjee@orrick.com  
 3 JULIO C. AVALOS (STATE BAR NO. 255350)  
 javalos@orrick.com  
 4 ORRICK, HERRINGTON & SUTCLIFFE LLP  
 1000 Marsh Road  
 5 Menlo Park, CA 94025  
 Telephone: +1-650-614-7400  
 6 Facsimile: +1-650-614-7401

7 WARRINGTON S. PARKER (STATE BAR NO. 148003)  
 wparker@orrick.com  
 8 ORRICK, HERRINGTON & SUTCLIFFE LLP  
 The Orrick Building  
 9 405 Howard Street  
 San Francisco, CA 94105-2669  
 10 Telephone: +1-415-773-5700  
 Facsimile: +1-415-773-5759

11 Attorneys for Plaintiff  
 12 FACEBOOK, INC.

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

16  
 17 FACEBOOK, INC.,

18 Plaintiff,

19 v.

20 STUDIVZ LTD., VERLAGSGRUPPE  
 21 GEORG VON HOLTZBRINCK GmBH,  
 HOTLZBRINCK NETWORKS GmBH,  
 22 HOLTZBRINCK VENTURES GmBH, and  
 DOES 1-25,

23 Defendant.

Case No. 5:08-cv-03468 JF

**MOTION FOR ADMINISTRATIVE  
 RELIEF PURSUANT TO CIVIL L.R.  
 7-11 REQUESTING THAT THE  
 COURT SET A STATUS  
 CONFERENCE FOR OCTOBER 3,  
 2008 OR AS SOON THEREAFTER AS  
 IS POSSIBLE**

Room: Courtroom 3, 5th Floor  
 Judge: Hon. Judge Jeremy Fogel

1 **I. REQUESTED RELIEF**

2 Pursuant to Civil L.R. 7-11, Plaintiff respectfully requests that the Court set a status  
3 conference on October 3, 2008 or as soon thereafter as is practicable. Plaintiff requests a status  
4 conference to discuss and resolve existing and potential calendar issues. While there is a case  
5 management conference scheduled for November 4, 2008, at least one calendaring issue relates to  
6 a hearing set in October 2008.

7 The existing calendar issue that requires resolution is as follows: Defendant  
8 Verlagsgruppe Georg von Holtzbrinck GmbH's ("VGH"), one of the defendants to this lawsuit,  
9 has filed a motion to dismiss for lack of personal jurisdiction. The hearing date on that motion is  
10 October 31, 2008. Plaintiff's opposition is due October 10, 2008. However, Plaintiff has  
11 requested discovery and has been required to file a motion to obtain it. That motion will not be  
12 heard until October 14, 2008. Plaintiff, therefore, must obtain a continuance of the October 31,  
13 2008 hearing date in order to obtain the benefits of its discovery motion.

14 In addition, Plaintiff anticipates that the remaining Defendants will file motions to  
15 dismiss. Plaintiff anticipates that those motions will need to be scheduled and, if they are motions  
16 to dismiss for lack of personal jurisdiction, that the motions will need to be set so that discovery  
17 may be taken and used. The status conference would, therefore, also consider the issue of  
18 personal jurisdiction discovery and its anticipated length.

19 **II. FACTUAL BACKGROUND**

20 **A. Facebook Has Sued Defendants Because They Improperly Accessed**  
21 **Facebook's Website And Copied Facebook's Look And Feel**

22 Facebook, Inc., headquartered in Palo Alto, California, developed and operates the most  
23 popular online "social network" on the Internet, www.facebook.com. Facebook's servers are  
24 located in Santa Clara, California. Defendant StudiVZ Ltd. is headquartered in Berlin, Germany.  
25 StudiVZ operates a number of social networking websites throughout Europe that, as noted in the  
26 complaint filed July 18, 2008, are knock-offs of Facebook, both in terms of look and feel and  
27 features offered. These websites include the German-language sites [www.studivz.net](http://www.studivz.net),  
28 [www.schuelervz.net](http://www.schuelervz.net) and [www.meinvz.net](http://www.meinvz.net), the French-language site [www.studiqg.fr](http://www.studiqg.fr), the Italian-

1 language site [www.studiln.it](http://www.studiln.it), the Spanish-language site [www.estudiln.net](http://www.estudiln.net) and the Polish-  
2 language site [www.studentix.pl](http://www.studentix.pl). All of these websites were built by accessing the Facebook  
3 website and copying its look and feel.

4 Defendant Verlagsgruppe Georg von Holtzbrinck GmbH (“VGH”) is the parent company  
5 of Defendants Holtzbrinck Networks GmbH (“HNG”), headquartered in Munich, Germany,  
6 Macmillan Publishers headquartered in New York, Holtzbrinck Ventures GmbH (“HVG”), also  
7 headquartered in Munich and StudiVZ. VGH is a major multinational holding corporation that  
8 owns publishing and web-based companies around the world.

9 **B. Defendants Have, As They Twice Promised, Filed A Motion To Dismiss As To**  
10 **One Defendant**

11 Facebook sent a cease and desist letter to Defendants on July 9, 2008. Declaration of  
12 Warrington S. Parker (“Parker Decl.”) ¶ 2. In response, StudiVZ sent a letter asserting that this  
13 Court did not have personal jurisdiction over it and warning that it would file a motion to dismiss  
14 on those and other grounds. Parker Decl. Ex. A.

15 After service of the complaint, in a conversation with counsel for Facebook, Defendants  
16 confirmed their intent to file a motion to dismiss for lack of personal jurisdiction. Parker Decl. ¶  
17 13, Ex. K. In response, Plaintiff met and conferred with Defendants’ counsel regarding discovery  
18 and its scope. At the time, Defendants did not dispute that discovery was an option available to  
19 Plaintiff. Parker Decl. Exs. B & C.

20 However, when Plaintiff actually began to engage in the concrete conversations necessary  
21 to obtain discovery, Defendants took the position that they “may not” file motions to dismiss for  
22 lack of personal jurisdiction. Parker Decl. Ex. C

23 **C. Plaintiff Seeks Discovery And Defendants File Their First Motion To Dismiss**  
24 **Which Creates A Scheduling Issue**

25 In response to Defendants’ representation that they would be seeking to dismiss the  
26 complaint for lack of personal jurisdiction, on September 9, 2008, Plaintiff filed a Motion for  
27 Personal Jurisdiction Discovery noticed for October 14, 2008 along with an accompanying  
28 Motion to Shorten Time seeking to expedite the October 14 hearing to September 23, 2008. *See*

1 Dkt. 11 and 13, respectively. On September 15, 2008, Judge Lloyd denied Plaintiff's Motion to  
2 Shorten Time. Dkt. 20. Accordingly, a hearing on Plaintiff's Motion for Personal Jurisdiction  
3 Discovery will not be held until October 14, 2008, four days after Plaintiff's Opposition to  
4 VGH's Motion to Dismiss for Lack of Personal Jurisdiction.

5 On September 10, 2008, one of the Defendants, VGH, filed its motion to dismiss for lack  
6 of personal jurisdiction. The hearing date on that motion is October 31, 2008. *See* Dkt. 15.

7 VGH had to file its motion to dismiss when it did because it was served under the Hague  
8 Convention on August 21, 2008. Parker Decl. Ex. D. It therefore had 20 days to file a response  
9 pursuant to Federal Rule of Civil Procedure 4.

10 Only after VGH was served did the remaining three defendants then agree to waive  
11 service. Parker Decl. Ex. E. This could only have been a strategic move to increase delay. In  
12 July 2008, Facebook had asked Defendants' California-based counsel to waive service of the  
13 complaint. Parker Decl. Ex. F. However, Plaintiff only received a response on August 25, 2008,  
14 after service on VGH. Parker Decl. Ex. E.

15 As a result of the waiver of service of process, and citing to Fed. R. Civ. Pro. 4, the  
16 remaining Defendants claim that they have 90 days from the waiver of process – until October 22,  
17 2008 – to respond to the complaint. Parker Decl. Ex. G.

18 **D. The Scheduling Issues**

19 The first scheduling issue is the hearing date on VGH's motion to dismiss. Plaintiff will  
20 not know whether it is entitled to obtain discovery until after the hearing on Plaintiff's discovery  
21 motion set for October 14, 2008. However, the opposition to VGH's Motion to Dismiss for Lack  
22 of Personal Jurisdiction is due October 10, 2008. Plaintiff will neither have any discovery nor  
23 know if it is entitled to discovery at that point.<sup>1</sup>

24 The second issue pertains to the timing of discovery and the dates for hearings on the  
25 pending motion and any other motions to dismiss that are filed. To avoid having further  
26 situations where hearing dates are not coordinated—as reflected in the hearing dates for the

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27 <sup>1</sup> Plaintiff's counsel agreed to the October 31 hearing date in the good faith expectation that, based on an expedited  
28 schedule, personal jurisdiction discovery would be had from the Defendants prior to Plaintiff's filing of an opposition  
to any motions to dismiss based on lack of personal jurisdiction.

1 motions on calendar—Plaintiff proposes that there be a status conference to coordinate the filing  
2 of motions to dismiss and any discovery that might take place. Furthermore, if the taking of  
3 discovery is opposed, and Defendants’ current position is that Plaintiff is not entitled to  
4 discovery, Dkt. 22, there will need to be a schedule for any hearing on motions to allow  
5 discovery.<sup>2</sup>

6 Plaintiff has refused to agree to a status conference. Parker Decl. Exs. H, I, J.

7 **III. DISCUSSION**

8 Plaintiff requests a status conference to resolve the various scheduling issues in the most  
9 efficient manner possible. To date, the parties have not been able to work out the differences.

10 Case law allows discovery when a defendant challenges personal jurisdiction. *Harris*  
11 *Rutsky & Co. Ins. Services v. Bell & Clements Ltd.*, 328 F.3d 1122, 1135 (9th Cir. 2003)  
12 (reversing dismissal when court did not allow discovery to be used by plaintiff to establish prima  
13 facie case for personal jurisdiction). Defendants have opposed discovery. Dkt. 22. This required  
14 the filing of a motion.

15 In addition, Defendants have twice promised to file a motion to dismiss and have now  
16 filed one. Still, Defendants are unwilling to meet and discuss a discovery schedule or the scope  
17 or nature of discovery. They insist that Plaintiff should await the filing of any motions on  
18 October 22, 2008. Dkt. 22.

19 Respectfully, this requires court intervention. At a status conference, the parties and the  
20 court can easily set a new hearing date on the pending motion to dismiss. The Court can set  
21 hearing dates for any motions to dismiss the remaining three defendants intend to file. That  
22 hearing date can take into account the time needed to seek discovery by motion, if required. It  
23 can take into account the time needed to take the discovery.

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28 <sup>2</sup> The parties met and conferred and were unable to reach agreement. Parker Decl. Exs. H, I & J.

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**IV. CONCLUSION**

Plaintiff respectfully requests that the Court schedule a status conference for October 3, 2008 or as soon thereafter as is practicable.

Dated: September 25, 2008

ORRICK, HERRINGTON & SUTCLIFFE LLP

/s/ Warrington S. Parker /s/

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Warrington S. Parker  
Attorneys for Plaintiffs  
FACEBOOK, INC.

