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10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12 SAN JOSE DIVISION

14 FACEBOOK, INC.,
 15 Plaintiff,

16 v.

17 STUDIVZ LTD., , HOLTZBRINCK
 NETWORKS GmbH,
 18 HOLTZBRINCK VENTURES
 GmbH, and DOES 1-25,
 19 Defendants.

Case No. 5:08-CV-03468 JF
 Assigned To: Hon. Jeremy Fogel

DECLARATION OF STEPHEN S. SMITH IN SUPPORT OF MOTION OF DEFENDANTS FOR PROTECTIVE ORDER (1) STAYING DISCOVERY NOT RELATED TO DISPUTED MATERIAL ISSUES RAISED IN DEFENDANTS' MOTIONS TO DISMISS FOR LACK OF PERSONAL JURISDICTION AND *FORUM NON CONVENIENS* AND (2) PREVENTING DISCOVERY PRODUCED IN THIS ACTION FROM BEING USED IN FOREIGN COURTS

[Notice of Motion and Memorandum of Points and Authorities; and (Proposed) Order Filed Concurrently]

Date: December 9, 2008
 Time: 10:00 a.m.
 Dept./Place: Courtroom 2, 5th Floor
 Hon. Howard R. Lloyd

GREENBERG GLUSKER FIELDS CLAMAN
 & MACHTINGER LLP
 1900 Avenue of the Stars, 21st Floor
 Los Angeles, California 90067-4590

DECLARATION OF STEPHEN S. SMITH

I, Stephen S. Smith declare:

1. I am an attorney at law duly licensed to practice in the State of California and before the United States District Court for the Northern District of California, and am a partner at Greenberg Glusker Fields Claman & Machtinger LLP, counsel of record for Defendants StudiVZ Ltd., Holtzbrinck Networks GmbH, and Holtzbrinck Ventures GmbH (“Defendants”). I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto under oath.

2. Attached hereto as Exhibit “A” are true and correct copies of the discovery requests Facebook propounded on Defendants on October 14, 2008 and October 15, 2008. Defendants filed motions to dismiss on October 22, 2008.

3. On October 27, 2008, I spoke by telephone with Warrington Parker, counsel for Facebook. During that call he asked me whether Defendants objected to Facebook being able to use discovery in this action in the German Action. I said that Defendants do so object. Mr. Parker informed me that Facebook intends to use the discovery from this action in the German Action.

4. Attached hereto as Exhibit “B” is a true and correct copy of a letter dated October 28, 2008 from Mr. Parker. The first numbered paragraph of that letter addresses Facebook’s intent to use discovery obtained in this action in “any litigation, here or around the world.”

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On October 27, 2008, Mr. Parker and I spoke on the telephone. During that call I and my partner, Aaron Moss, asked Mr. Parker what issues from the Motions to Dismiss were in dispute. Mr. Parker refused to answer that question. We also asked Mr. Parker for the factual basis upon which Facebook was asserting that the Court could exercise personal jurisdiction over the defendants. Again, Mr. Parker refused to say. I then explained again that Defendants were willing to engage in discovery directed at any material issues raised by the Motions to Dismiss that were in dispute, but that Defendants could not and would not simply agree to wide-ranging discovery into any and all possible issues without knowing the basis upon which Facebook claimed personal jurisdiction. The call ended without resolution of the issue.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct, and that this declaration was executed in Los Angeles, California on October 31, 2008.

/s Stephen S. Smith
Stephen S. Smith