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 15 Holtzbrinck Ventures GmbH

16 UNITED STATES DISTRICT COURT  
 17 NORTHERN DISTRICT OF CALIFORNIA  
 18 SAN JOSE DIVISION

19 FACEBOOK, INC.,  
 20 Plaintiff,

21 v.

22 STUDIVZ LTD., , HOLTZBRINCK  
 23 NETWORKS GmbH,  
 24 HOLTZBRINCK VENTURES  
 25 GmbH, and DOES 1-25,  
 26 Defendants.

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

**DECLARATION OF DR. ANTON G.  
 MAURER IN SUPPORT OF  
 DEFENDANTS' MOTION FOR  
 PROTECTIVE ORDER; EXHIBIT O**

[Reply Memorandum of Points and  
 Authorities; Supplemental Declaration of  
 Stephen S. Smith (with Exhibits D-N);  
 and Evidentiary Objections Filed  
 Concurrently]

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

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1 **DECLARATION OF DR. ANTON G. MAURER**

2  
3 I, Dr. Anton G. Maurer, declare:

4  
5 1. I am an attorney at law duly licensed to practice law in Germany, and I  
6 am in good standing with my local bar, which is the bar of Stuttgart, Germany. I  
7 am a partner with CMS Hasche Sigle, the largest German law firm, and my office is  
8 located at Schoettlestrasse 8, 70597 Stuttgart, Germany. I am counsel of record for  
9 StudiVZ Ltd. in the action pending as case no. 17 O 423/08 in the *Landgericht*  
10 *Stuttgart* (district court Stuttgart) in Stuttgart, Germany that was brought by  
11 StudiVZ Ltd. against Facebook, Inc. (the “German Action”). I have been practicing  
12 law since 1982 and have represented German and foreign clients in corporate and  
13 commercial disputes, among others, in the *Landgericht Stuttgart* and  
14 *Oberlandesgericht Stuttgart* (Stuttgart court of appeal). From April 1984 through  
15 March 1985, I worked as a foreign lawyer with the law firm of Johnson & Swanson  
16 in Dallas, Texas. On May 17, 2009, I will graduate with an LL.M. in U.S. and  
17 Global Business Law from Suffolk University, located in Boston, Massachusetts. I  
18 make this declaration in support of the Reply Memorandum of Points and  
19 Authorities in support of the Motion for Protective Order brought by Defendants  
20 StudiVZ Ltd., Holtzbrinck Networks GmbH, and Holtzbrinck Ventures GmbH  
21 (“Defendants”). I am fluent in both German and English. I have personal  
22 knowledge of the facts set forth herein and, if called as a witness, could and would  
23 testify competently thereto under oath.

24  
25 2. On November 18, 2008, Facebook, Inc. (“Facebook”) filed an  
26 Opposition to Defendants’ Motion for Protective Order. In support thereof,  
27 Facebook presented a Declaration from Dr. Katharina Scheja dated November 17,  
28 2008. In its brief, Facebook mischaracterized the Declaration of Dr. Katharina

1 Scheja and asserted that the proceeding scheduled in the German Action at the  
2 “*Landgericht Stuttgart*” on December 16, 2008 is not a “trial” as that term is used  
3 in the United States but instead is the German procedural equivalent of what in the  
4 U.S. “we would term a Case Management Conference.” (Facebook Opp. at 4:5-6;  
5 p.8 of 20) (Docket No. 59).

6  
7 3. Facebook’s Opposition brief further contends that the hearing in  
8 Germany on December 16 is not “a ‘trial’ in the sense that we use the word here in  
9 the United States -- a resolution on the merits. Instead, it is more akin to a Case  
10 Management Conference, where Facebook will not be expected to produce any  
11 documentary evidence.” (Facebook Opp. at 14:11-14; p.18 of 20) (Docket No. 59).

12  
13 4. For the following reasons, Facebook’s contentions (as outlined in  
14 Paragraphs 2 and 3 above) are factually wrong and without any legal basis.

15  
16 a. Under point no. 1 of its July 23, 2008 Order, the *Landgericht*  
17 *Stuttgart* scheduled a “*Früher erster Termin zur mündlichen Verhandlung*” (the  
18 literal translation of which is “early first date for oral trial”).

19  
20 b. Under point no. 2.2 of its July 23, 2008 Order, the *Landgericht*  
21 *Stuttgart* ordered that Facebook, as defendant, must respond to the Complaint  
22 within six weeks if it wishes to defend itself. By its further Orders dated September  
23 9, 2008 and October 15, 2008, and upon Facebook’s motions, the *Landgericht*  
24 *Stuttgart* first extended Facebook’s time to respond to October 24, 2008 and then to  
25 November 19, 2008.

26  
27 c. The German Code of Civil Procedure (“*Zivilprozessordnung*”)  
28 provides, at § 277 subsection 1 sentence 1, that a defendant has to present, in its

1 response to the Complaint, all defenses. Under point no. 2.2 of its July 23, 2008  
2 Order, the *Landgericht Stuttgart* referred to §§ 277 subsection 2, and 296  
3 subsections 1 and 3 of the German Code of Civil Procedure, and instructed  
4 Facebook to submit in its response to StudiVZ’s Complaint (i) all pleas and  
5 defenses against the Complaint, (ii) all offers to produce evidence and to state what  
6 that evidence is, and (iii) all opposition to evidence produced by StudiVZ Ltd., and  
7 all within the stipulated time frame of the response (*i.e.*; by November 19, 2008). If  
8 Facebook would have missed this deadline, Facebook would have been in default  
9 and all further defense of the lawsuit by Facebook would have been cut off unless  
10 Facebook could convince the court to excuse the delay. Thus, the Order required  
11 Facebook to present all of its defenses, including any documentary evidence and all  
12 offers to produce evidence, in its response to the Complaint that was due on  
13 November 19, 2008.

14  
15 d. And, in fact, on November 19, 2008, Facebook filed a lengthy  
16 response in the German Action presenting all of Facebook’s defenses and evidence.  
17 A true and correct copy of Facebook’s response in the German Action is attached  
18 hereto as “Exhibit O” (the “Response”). Facebook’s Response is eighty-eight  
19 pages long, consisting of a six page, single-spaced answer and attaching and  
20 incorporating by reference an exhibit “B1” that is an eighty-two page document  
21 containing a lengthy, single-spaced complaint that Facebook just filed on the same  
22 day -- November 19, 2008 -- against StudiVZ at the “*Landgericht Köln*” (district  
23 court Cologne), Germany, offers of purported proof on all significant issues, and a  
24 stack of exhibits that Facebook alleges support its new German lawsuit. This is  
25 obviously nothing like the report of the early meeting of counsel or “case  
26 management conference” statement in the instant U.S. federal lawsuit. The reason  
27 for that is simple -- Facebook must put forth all of its defenses and factual  
28 arguments now, because a trial date of December 16, 2008 was set in the German

1 Action months ago and the court in Stuttgart has denied two requests by Facebook  
2 to postpone it. If Facebook had not made all of its written arguments and submitted  
3 its offers of proof and alleged supporting evidence in the Response, then Facebook  
4 could not have submitted them later without court approval, and Facebook would  
5 have increased its risk of an adverse judgment at the December 16, 2008 trial.  
6 Facebook’s Response even contains a petition to dismiss the case based upon an  
7 alleged lack of admissibility of the claims filed by StudiVZ. This is a legal  
8 argument which will be decided by the “*Landgericht Stuttgart*” without taking any  
9 further evidence. If the “*Landgericht Stuttgart*” would find Facebook’s argument  
10 to be correct, it would dismiss the case after the oral trial on December 16, 2008.  
11 Therefore, based on its petition, even Facebook expects to have only one oral trial  
12 date.

13  
14 e. § 275 subsection 2 and § 300 subsection 1 of the German Code  
15 of Civil Procedure further discuss what can happen at the December 16, 2008  
16 “early first date for oral trial” in the German Action. Those sections state that the  
17 court shall render a judgment after such early first date of oral trial if the court finds  
18 that the matter is then ripe for decision. In Germany, a judgment is often rendered  
19 after the early first date of oral trial. Only if Facebook also requests the testimony  
20 of witnesses or expert reports could there possibly be (in the court’s discretion) a  
21 second oral trial date. Even if the Stuttgart court would conclude after the oral trial  
22 on December 16, 2008 that the German Action cannot be decided after the early  
23 first date of oral trial and that a second oral trial date is necessary, the Stuttgart  
24 court would make all appropriate orders to bring the German Action to a rapid  
25 conclusion and judgment.

26  
27 f. Upon information and belief, it is also my understanding that a  
28 Case Management Conference in the United States is an early pre-trial conference

1 under Rule 16 of the Federal Rules of Civil Procedure and that, absent a settlement,  
2 there can be no final judgment rendered at the end of a Case Management  
3 Conference. Therefore, it is completely inaccurate to say that the first early date of  
4 oral trial under the German Code of Civil Procedure is the same as a Case  
5 Management Conference.

6  
7 g. The Declaration of Dr. Katharina Scheja filed in opposition to  
8 the instant motion appears to me to be cautiously drafted and so does not say that a  
9 judgment will not be rendered after the December 16, 2008 early first date of oral  
10 trial in the German Action. Indeed, such a statement would have been wrong based  
11 upon the petition filed by Facebook. Instead, I note that Dr. Scheja states in the  
12 second sentence of Paragraph 4 of her Declaration that, if no settlement is made, the  
13 judge will “usually” schedule future hearings and deadlines. However, this  
14 statement does not exclude that a judgment will be rendered after such early first  
15 date of oral trial. In contrast to the courts in Frankfurt (the city in which Dr.  
16 Scheja’s office is located), the courts in the district of the “*Oberlandesgericht*  
17 *Stuttgart*” have a “rocket docket.” In my experience, the *Landgericht Stuttgart* will  
18 schedule a second date for oral trial only in cases that require the court to hear  
19 witnesses or experts for rendering a final judgment. Otherwise, the *Landgericht*  
20 *Stuttgart* will render a judgment after the early first date of oral trial.

21  
22 I declare under penalty of perjury under the laws of the State of California  
23 and the United States that the foregoing is true and correct to the best of my  
24 knowledge, and that this declaration was executed in Stuttgart, Germany on  
25 December 2, 2008.

26  
27 \_\_\_\_\_ /s Anton G. Maurer

28 Dr. Anton G. Maurer