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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
 NETWORKS GmbH, HOLTZBRINCK
 20 VENTURES GmbH AND DOES 1-25,

21 Defendants.

Case No. 5:08-cv-03468 JF

**DECLARATION OF JULIO C.
 AVALOS IN SUPPORT OF
 FACEBOOK'S OPPOSITION TO
 DEFENDANTS' MOTIONS TO
 DISMISS FOR LACK OF PERSONAL
 JURISDICTION AND *FORUM NON
 CONVENIENS***

Date: February 13, 2008
 Time: 10:00 a.m.
 Room: Courtroom 2, 5th Floor

Judge: Honorable Magistrate Judge
 Howard R. Lloyd, for
 Discovery Purposes

1 I, Julio C. Avalos, declare as follows:

2 1. I am an attorney with the law firm of Orrick, Herrington & Sutcliffe LLP, counsel
3 for Plaintiff Facebook, Inc.. I make this Declaration in support of Facebook's Opposition to
4 Defendants' Motions to Dismiss for Lack of Personal Jurisdiction and *Forum non conveniens*. I
5 am an active member in good standing of the California State Bar. Except as set forth herein, I
6 have personal knowledge of the facts stated herein and if called as a witness, could and would
7 competently testify thereto.

8 2. The Facebook website and service was launched in February 2004 by Mark
9 Zuckerberg while Mr. Zuckerberg was a student at Harvard University. Upon information and
10 belief based on online sources, Facebook's growth in 2004 and subsequent years was
11 unprecedented. ([http://www.insidefacebook.com/2008/08/19/mapping-facebooks-growth-over-](http://www.insidefacebook.com/2008/08/19/mapping-facebooks-growth-over-time/)
12 [time/](http://www.insidefacebook.com/2008/08/19/mapping-facebooks-growth-over-time/)). Upon information and belief, by December 2004, Facebook had reached nearly 1 million
13 active users. (<http://www.facebook.com/press/info.php?timeline>)

14 3. Upon information and belief, in June 2004, Facebook relocated to Palo Alto,
15 California. (<http://www.facebook.com/press/info.php?timeline>)

16 4. Upon information and belief based on an article from Fortune magazine date
17 November 28, 2005 and located online at
18 http://money.cnn.com/magazines/fortune/fortune_archive/2005/11/28/8361945/index.htm, by the
19 summer of 2005, Facebook had more than six million users. Currently, Facebook has over 150
20 million users.

21 5. Attached hereto as **Exhibit 1** is a true and correct copy of the International Herald
22 Tribune Article, "Facebook and StudiVZ battle over Germany," dated August 7, 2008. The
23 article is available at <http://www.iht.com/articles/2008/08/07/technology/social.php>. The article
24 describes Mr. Bemann as a "computer programmer" who "helped to design Internet routing
25 equipment in Colorado and California."

26 6. Attached hereto as **Exhibit 2** is a true and correct copy of StudiVZ Ltd's
27 Supplemental Responses to Facebook, Inc's First Set of Special Interrogatories, served on
28 December 24, 2008.

1 7. Attached hereto as **Exhibit 3** are true and correct copies of screenshots captured
2 from StudiVZ's Spanish Site (EstudiLN) and Facebook profile pages.

3 8. Attached hereto as **Exhibit 4** is a true and correct copy of an English language
4 translation of an interview with Mr. Dariani in the German periodical *Der Spiegel*. The article is
5 available online at <http://www.spiegel.de/international/0,1518,druck-446353,00.html>. In the
6 interview, Mr. Dariani admits that "we may have oriented ourselves along the lines of the
7 Facebook layout."

8 9. Facebook sent its first cease and desist letter to StudiVZ on June 8, 2006.
9 Attached hereto as **Exhibit 5** is a true and correct copy of that letter.

10 10. Facebook sent its second cease and desist letter to StudiVZ on January 3, 2007.
11 Attached hereto as **Exhibit 6** is a true and correct copy of that letter.

12 11. Upon information and belief based on internet news articles and inspection of
13 StudiVZ's websites, on or about October 2008, StudiVZ implemented a chat program onto its
14 meinvz.net site.

15 12. Upon information and belief based on internet news articles, in the fall of 2006 and
16 beginning of 2007, StudiVZ began opening a network of international websites, including sites in
17 Poland, Spain, Italy and France. (<http://en.wikipedia.org/wiki/StudiVZ>)

18 13. Facebook sent its third cease and desist letter to StudiVZ on July 9, 2008.
19 Attached hereto as **Exhibit 7** is a true and correct copy of that letter.

20 14. On November 26, 2008, I, along with my colleague Annette Hurst, met and
21 conferred with Defendants' counsel Stephen S. Smith and his partner William Walker. The
22 parties spent approximately one and a half hours discussing Facebook's discovery request-by-
23 request. With respect to Facebook's Request For Production No. 14, which requests "ALL
24 DOCUMENTS RELATED TO instances when YOU accessed [the] FACEBOOK website,
25 www.facebook.com OR www.thefacebook.com," Mr. Smith stated, "My major problem is that I
26 think this is where you cross from jurisdiction into merits. I think given the causes of action,
27 you're entitled to know whether there are contacts with California related to the claims you have
28 plead." Ms. Hurst then said, "There's no way to sort out the merits from the jurisdiction." Mr.

1 Smith responded, "I think it's going to be undisputed that those people that had user accounts and
2 used them in connection with their employment did at least what you claim they did. Now, we'll
3 have a huge fight as to whether that violates the anti-hacking statute, but it's going to be
4 undisputed that there were some users who accessed Facebook." Mr. Smith stated first that he
5 would produce discovery related to this access, but then insisted that the discovery would be
6 withheld unless Facebook first agreed to waive its right to compel further discovery.

7 15. On January 6, 2009, I, along with my colleague Tom Gray, met and conferred with
8 Defendants' counsel Stephen S. Smith and his partner William Walker. With respect to the
9 similarities in appearance and look and feel between Facebook and StudiVZ, Mr. Smith said,
10 "Look, do you actually think that I'm going to stand in front of a jury and say that there wasn't at
11 least an inspiration from Facebook in StudiVZ's appearance? Come on. Obviously they look
12 similar, but so do lots of these sites." Later, I asked Mr. Smith why StudiVZ had not produced
13 any discovery related to Facebook's Request for Production No. 14. Citing to my notes from the
14 November 26 meet and confer, I reminded him that he had earlier stated that he possessed
15 evidence that StudiVZ employees had, in the authorized scope of their employment, accessed
16 Facebook and, in Mr. Smith's words, "did at least what you claim they did." Mr. Smith
17 attempted to clarify that if he had said this, he had not meant to say that StudiVZ employees
18 copied Facebook. Rather, Mr. Smith now stated, the StudiVZ employees had simply accessed the
19 site in a "commercial" context. Mr. Smith stated that discovery related to this "commercial
20 access" would not be produced unless Facebook first agreed that it would not later move to
21 compel further production. Facebook refused to make this agreement and Defendants have
22 withheld this evidence.

23 16. Nearing the end of the January 6 meet and confer, my colleague Mr. Gray raised
24 the issue of Facebook's upcoming January 16 deadline to oppose Defendants' motions to dismiss.
25 Mr. Gray stated that it appeared unlikely that Facebook would receive the personal jurisdiction
26 discovery that it sought prior to January 16 and that the parties should agree to take the hearing
27 for Defendants' motions off calendar. Mr. Smith responded that he agreed to take the hearing off
28 calendar for defendant StudiVZ, but would prefer not to so with respect to the Holtzbrinck

1 defendants. He would agree to a continuance of a few weeks, but would not take the hearing off
2 calendar because, he said, "I'm still hopeful that you guys will agree to voluntarily dismiss them.
3 I'd agree to doing it without prejudice like we did for the other Holtzbrinck defendant. If you
4 guys find out something later on, you'd be free to add them again, but for now my goal is to get
5 them voluntarily dismissed without producing any discovery. I don't think they should be part of
6 this case." Mr. Gray responded that he would prefer to take the Holtzbrinck Defendants' motions
7 to dismiss hearing off calendar as well, but that the parties would talk about it again. The final
8 word on the subject came from Mr. Gray, who sought confirmation that Mr. Smith would agree to
9 take StudiVZ off calendar and grant a few week continuance with respect to the Holtzbrinck
10 defendants. Mr. Smith stated, "That's right, but just a few weeks, two or three weeks." On
11 January 14, 2008, two days before Facebook's deadline, Defendants' counsel advised Facebook
12 that it was renegeing on this offer and would insist that Facebook file its opposition to Defendants'
13 motions to dismiss on January 16.

14 17. Attached hereto as **Exhibit 8** is a true and correct copy of a screenshot of the
15 StudiVZ Registration page.

16 18. Attached hereto as **Exhibit 9** is a true and correct copy of a screenshot of the
17 Spanish-language StudiVZ Registration page.

18 19. Attached hereto as **Exhibit 10** is a true and correct copy of a screenshot of the
19 Spanish-language StudiVZ Registration page. The screenshot depicts a help page from the site.
20 Translated, the site states, "I wanted to register, but my university doesn't appear! Unfortunately
21 we do not have a complete list of all universities/jobs. But with your help, this will little by little
22 be a problem of the past. When you register, the best thing to do is for you to select another
23 university. You will be able to change this later but you will be able to begin now! Send us an
24 email with the complete name of your university, its acronym, the country, state, city and
25 webpage."

26 20. Attached hereto as **Exhibit 11** is a StudiVZ Power Point presentation entitled,
27 "Your Investor Pitch," and dated November 20, 2008. Although the document is stamped
28 "strictly confidential," it was found through a public Google search and may be located at

