

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: 650-614-7400
 5 Facsimile: 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
 NETWORKS GmbH, HOLTZBRINCK
 20 VENTURES GmbH AND DOES 1-25,

21 Defendants.

Case No. 5:08-cv-03468 JF

**DECLARATION OF THOMAS J.
 GRAY IN SUPPORT OF
 FACEBOOK'S MOTION TO
 COMPEL STUDIVZ LTD.,
 HOLTZBRINCK VENTURES GMBH
 AND HOLTZBRINCK NETWORKS
 GMBH TO FULLY RESPOND TO
 INTERROGATORIES AND TO
 PRODUCE DOCUMENTS AND
 THINGS PURSUANT TO CIVIL L.R.
 7-1 AND 37-2**

Date: March 3, 2009
 Time: 10:00 a.m.
 Room: Courtroom 2, 5th Floor
 Judge: Honorable Magistrate Judge
 Howard R. Lloyd,
 for Discovery Purposes

22
 23
 24
 25
 26
 27
 28

1 I, Thomas J. Gray, 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 Motion to Compel
4 StudiVZ Ltd., Holtzbrinck Ventures GmbH and Holtzbrinck Networks GmbH to Permit
5 Inspection of Documents and Things Pursuant to Civil L.R. 7-1 and 37-2. I am an active member
6 in good standing of the California State Bar. Except as set forth herein, I have personal
7 knowledge of the facts stated herein and if called as a witness, could and would competently
8 testify thereto.

9 2. During a January 6, 2009 meet and confer session, I discussed with Defendants’
10 counsel, Steven Smith, the upcoming depositions of two “personal jurisdiction” witnesses that
11 StudiVZ and the Holtzbrinck Defendants had agreed to produce, Messrs. Brehm and Weber. I
12 expressed concern that, given that the parties were at a significant impasse with respect to the
13 scope of personal jurisdiction discovery, the depositions would be an unnecessary waste of time,
14 money and resources. During the call, Mr. Smith stated that he would allow his witnesses to
15 discuss StudiVZ’s accessing of Facebook for “commercial purposes.” I believed we had reached
16 an agreement as to the scope of deposition testimony. The next day, I wrote Mr. Smith an email
17 to confirm our agreement. At that point, Mr. Smith stated that it was his opinion that no
18 agreement was reached during the prior day’s meet and confer session. With an obvious
19 disagreement as to the issue, I do not understand why Mr. Smith boarded the plane to Germany.

20 3. I have reviewed the Declaration of Julio C. Avalos filed in support of Facebook’s
21 motion to compel. Mr. Avalos’s descriptions of the meet and confer sessions in which I
22 participated seem accurate based on my recollection and contemporaneous notes.

23 I declare, under penalty of perjury, that the foregoing is true and correct to the best of my
24 knowledge.

25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Executed this 27th day of January, at Irvine, California.

/s/ Thomas J. Gray
Thomas J. Gray

