

1 JOSEPH R. GANLEY (5643)
 jganley@hutchlegal.com
 2 CHRISTIAN M. ORME (10175)
 corme@hutchlegal.com
 3 HUTCHISON & STEFFEN, LLC
 10080 West Alta, Suite 200
 4 Las Vegas, NV 89145
 Telephone: (702) 385-2500
 5 Fax: (702) 385-2086

6 I. NEEL CHATTERJEE (admitted *Pro Hac Vice*)
 nchatterjee@orrick.com
 7 THERESA A. SUTTON (admitted *Pro Hac Vice*)
 tsutton@orrick.com
 8 ORRICK, HERRINGTON & SUTCLIFFE LLP
 1000 Marsh Road
 9 Menlo Park, CA 94025
 Telephone: 650-614-7400
 10 Facsimile: 650-614-7401

11 Attorneys for Defendant
 FACEBOOK, INC.

13 UNITED STATES DISTRICT COURT
 14 DISTRICT OF NEVADA

16 JONATHAN B. GOLDSMITH,

17 Plaintiff,

18 v.

19 JORDAN R. COOPER, an Individual;
 CHERYL COOPER DRISCOLL, an
 20 Individual; FACEBOOK, INC., a foreign
 corporation,

21 Defendants.
 22

Case No. 2:10-cv-01845-RLH-PAL

**FACEBOOK, INC.'S MOTION TO
 DISMISS AMENDED COMPLAINT
 PURSUANT TO FED. R. CIV. P.
 12(B)(6) AND 12(B)(3)**

ORAL ARGUMENT REQUESTED

1 Comes now Defendant Facebook, Inc., and, before the filing of any other plea, pleading or
2 motion, files this its Motion to Dismiss Pursuant to Fed.R.Civ.P. 12(b)(6) and 12(b)(3), and
3 would respectfully show the Court as follows:

4 **Motion to Dismiss Under Rule 12(b)(6)**

5 Facebook moves this Court to dismiss this case against it as Goldsmith has failed to state a
6 claim upon which relief can be granted. Specifically, Facebook is immune from liability for
7 Goldsmith's State tort claims (slander and libel). In addition, Goldsmith failed to plead the
8 requisite facts to state a Wiretap Claim pursuant to Sections 2511(a) and (c). As such,
9 Goldsmith's Amended Complaint must be dismissed.

10 **Motion to Dismiss Under Rule 12(b)(3)**

11 Facebook further moves this Court to dismiss this case on the ground that it is an improper
12 forum. Goldsmith was a Facebook member for six years and agreed to resolve all claims against
13 Facebook in the County of Santa Clara, California. The parties' forum selection clause is
14 presumptively valid and should be enforced.

15 **Evidence in Support of this Motion**

16 Facebook attaches as evidence in support of this Motion the Declaration of Theresa A.
17 Sutton, as well as Exhibits A through D, filed concurrently herewith.

18 Dated: November 15, 2010

ORRICK, HERRINGTON & SUTCLIFFE LLP

19
20 */s/ Theresa A. Sutton*

21 _____
THERESA A. SUTTON
22 Attorneys for Defendant
FACEBOOK, INC.

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

CERTIFICATE OF SERVICE

On the 15th day of November 2010, I electronically submitted the foregoing document with the Clerk of the Court for the U.S. District Court, District of Nevada, using the electronic case filing system of the Court. I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Theresa A. Sutton

THERESA A. SUTTON