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11 Attorneys for Defendant
 12 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;
 20 CHERYL COOPER DRISCOLL, an
 Individual; FACEBOOK, INC., a foreign
 21 corporation,
 22 Defendants.

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

DECLARATION OF THERESA A. SUTTON IN SUPPORT OF FACEBOOK, INC.’S MOTION TO DISMISS AMENDED COMPLAINT PURSUANT TO FED. R. CIV. P. 12(B)(6) AND 12(B)(3)

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1 I, Theresa A. Sutton, declare as follows:

2 1. I am an associate with Orrick, Herrington & Sutcliffe LLP, counsel of record to
3 Facebook, Inc. I make this declaration in support of Facebook's Motion to Dismiss pursuant to
4 Federal Rules of Civil Procedure Sections 12(b)(6) and 12(b)(3). I have personal knowledge of
5 the facts stated herein, unless otherwise noted. If called as a witness, I could and would testify
6 competently to these facts.

7 2. I am informed and believe that Facebook's business records show that
8 Mr. Goldsmith was a Facebook member from January 2, 2005 until October 7, 2010.
9 Mr. Goldsmith, as a Facebook member, agreed to Facebook's Terms of Use, a true and correct
10 copy of which is attached hereto as **Exhibit A**.

11 3. Attached hereto as **Exhibit B** is a true and correct copy of the September 16, 2009
12 Order in *Finkel v. Facebook, Inc., et al*, No. 102578/09, Supreme Court of the State of New York
13 – New York County.

14 4. Attached hereto as **Exhibit C** is a true and correct copy of the January 15, 2009
15 Order in *Miller v. Facebook, Inc., et al*, Case No. 1:09-CV-2810-RLV, Docket No. 17, United
16 States District Court, Northern District of Georgia, Atlanta Division.

17 5. On October 15, 2010, I spoke to Mr. Goldsmith by telephone. At the time I spoke
18 with him, only the slander and libel claims had been asserted against Facebook. I asked
19 Mr. Goldsmith to consider dismissing Facebook from this action because it is immune from
20 liability under the Communications Decency Act ("CDA"). Mr. Goldsmith said he was "aware of
21 those cases" and "disagreed with them." I offered to send the cases to him for his consideration.
22 I sent several cases to him, including *Zeran v. AOL*, *Batzel v. Smith*, *Blumenthal v. Drudge*, and
23 *Carafano v. Metrosplash*. I also attached the New York Supreme Court ordered attached hereto
24 as Exhibit B. Within 30 minutes, Mr. Goldsmith responded to my email demanding a payment of
25 \$25,000. He offered no explanation as to why the CDA did not provide complete immunity to
26 Facebook for the state law claims. Attached hereto as **Exhibit D** is a true and correct copy of a
27 string of emails between Mr. Goldsmith and me, dated October 15 through October 18, 2010.
28 After defendants removed this action, Mr. Goldsmith amended his complaint and added Facebook

1 as a defendant to the already existing Wiretap Act claims.

2 I declare under penalty of perjury under the law of the State of Nevada that the foregoing
3 is true and correct. Executed this 15th day of November 2010, at Menlo Park, California.

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/s/ Theresa A. Sutton
THERESA A. SUTTON

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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