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Attorneys for Defendants Power
Ventures, Inc. and Steve Vachani

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FACEBOOK, INC.,

Plaintiff,

-against-

POWER VENTURES, INC. d/b/a POWER.COM, a
California corporation; POWER VENTURES, INC.
a Cayman Island Corporation, STEVE VACHANI,
an individual; DOE 1, d/b/a POWER.COM, an
individual and/or business entity of unknown nature;
DOES 2 through 25, inclusive, individuals and/or
business entities of unknown nature,

Defendants.

Case No. 5:08-cv-05780

**NOTICE OF MOTION, MOTION
AND MEMORANDUM OF LAW IN
SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT**

Date: February 26, 2010
Time: 9:00 a.m.
Judge: Hon. Jeremy D. Fogel
Courtroom: 3

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD

PLEASE TAKE NOTICE that on February 26, 2010 at 9:00 am or as soon thereafter as the matter may be heard, in the courtroom of the Honorable Jeremy D. Fogel, United States District Court, 280 S. First Street, San Jose, CA 95113, Power Ventures Inc. and Steven Vachani (collectively, “Defendants”), will move the court for summary judgment on Count 3 of the complaint, pursuant to Federal Rule of Civil Procedure 56. This motion is based on the Notice of Motion and Motion, the supporting Memorandum Of Law, the Declaration of Steven Vachani, all pleadings on file in this action, oral argument of counsel, and any other matter that may be submitted at the hearing.

STATEMENT OF ISSUES

Defendants bring this motion for summary judgment on Count 3 of the complaint, for violation of California Penal Code § 502. Facebook has not alleged, and cannot prove, any “damage,” “injury” or “victim expenditure” as defined in Penal Cod §§ 502(b)(8)-(9) and 502(e). Facebook therefore lacks standing to assert any claim under § 502.

MEMORANDUM OF LAW

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2 Defendants adopt and incorporate by reference the arguments set forth in the Memorandum
3 Of Law In Opposition To Facebook Inc.'s Motion For Judgment On The Pleadings Pursuant To
4 Fed. R. Civ. P. 12(c) Or, In The Alternative, Partial Summary Judgment Of Liability Under
5 California Penal Code § 502(c). Defendants' arguments set forth therein demonstrate that
6 Facebook lacks standing to assert any claim under Penal Code § 502, that there is no genuine issue
7 of material fact concerning Facebook's lack of standing, and that Defendants are entitled to
8 judgment as a matter of law dismissing Facebook's claim.

9
10 Dated: January 15, 2010

Respectfully submitted,
BRAMSON, PLUTZIK, MAHLER &
BIRKHAUSER, LLP

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13 By _____ /s/
L. Timothy Fisher

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