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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

13 In re ESS TECHNOLOGY, INC.  
 14 SECURITIES LITIGATION

15 This Document Relates To:  
 16 ALL ACTIONS.

Master File No. C-02-4497-RMW

**CLASS ACTION**

**REQUEST FOR JUDICIAL NOTICE IN  
 SUPPORT OF DEFENDANTS' MOTION  
 TO DISMISS SECOND AMENDED  
 COMPLAINT AND MOTION TO  
 STRIKE PORTIONS THEREOF**

Hearing Date: March 19, 2004  
 Time: 9:00 a.m.  
 Place: Courtroom of  
 the Honorable  
 Ronald M. Whyte

1       **I. INTRODUCTION**

2           Pursuant to Federal Rule of Evidence 201, defendants ESS Technology, Inc. (“ESST”),  
3 Robert L. Blair, Patick Ang, Frederick S. L. Chan and James B. Boyd (collectively “defendants”),  
4 respectfully request that this Court take judicial notice of each of the following documents  
5 attached as exhibits hereto:

- 6           A.     ESST press release dated January 23, 2002;  
7           B.     ESST’s Final Prospectus dated February, 2002;  
8           C.     ESST press release dated February 28, 2002;  
9           D.     ESST press release dated March 27, 2002;  
10          E.     ESST’s filing on Form 10K dated March 27, 2002;  
11          F.     ESST press release dated April 24, 2002;  
12          G.     ESST earnings conference call transcript dated April 24, 2002;  
13          H.     ESST press release dated May 13, 2002;  
14          I.     ESST’s filing on Form 10Q dated May 14, 2002;  
15          J.     ESST press release dated June 18, 2002;  
16          K.     ESST press release dated June 24, 2002;  
17          L.     ESST press release dated July 24, 2002;  
18          M.     ESST earnings conference call transcript dated July 24, 2002;  
19          N.     Bloomberg News article dated August 5, 2002;  
20          O.     Barron’s News article dated August 5, 2002;  
21          P.     ESST press release dated September 12, 2002;  
22          Q.     ESST press release dated October 23, 2002;  
23          R.     ESST conference call transcript dated October 23, 2002;  
24          S.     ESST press release dated January 29, 2003;  
25          T.     ESST press release dated June 12, 2003;  
26          U.     Robert L. Blair’s filings on Forms 4 for the January 2002 and March 2002 time  
27                periods;  
28          V.     James B. Boyd’s filing on Form 4 for the March 2002 time period;

- 1 W. MediaTek second quarter report dated August 14, 2002 and MediaTek 2002 annual  
2 report;
- 3 X. ESST's Daily Stock price chart for the period January 1, 2002 through September  
4 12, 2002;
- 5 Y. Order Granting Motion to Dismiss dated October 3, 2003;
- 6 Z. Complaints filed in *ESST v. MediaTek* on September 27, 2002 and February 10,  
7 2003; and
- 8 AA. Stipulation and Request for Dismissal and Order dated June 19, 2003.

9 **II. ARGUMENT**

10 It is well-established that SEC filings, attached as Exhibits B, E, I and U through  
11 V, are proper subjects for judicial notice on a motion to dismiss.<sup>1</sup> *See, e.g., In re Silicon*  
12 *Graphics, Inc. Sec. Litig.*, 183 F.3d 970, 986 (9th Cir. 1999) (in ruling on a motion to dismiss, a  
13 court may consider documents referenced in the complaint which have filed with the SEC);  
14 *Ronconi v. Larkin*, No. C-097-1319-CAL, 1998 WL 230987, at \*1 (N.D. Cal. May 1, 1998),  
15 *aff'd*, 253 F.3d 423 (9th Cir. 2001) (court may take judicial notice of documents filed with the  
16 SEC); *In re Gupta Corp. Sec. Litig.*, 900 F. Supp. 1217, 1228 (N.D. Cal. 1994) (same); *Kramer v.*  
17 *Time Warner*, 937 F.2d 767, 774 (2d Cir. 1991) (documents filed with the SEC are proper  
18 subjects for judicial notice because, among other things, "the documents are required by law to be  
19 filed with the SEC, and no serious question as to their authenticity can exist"); *Bryant v. Avado*  
20 *Brands, Inc.*, 187 F.3d 1271, 1277-278 (11th Cir. 1999) (same).

21 Judicial notice is also proper for the press releases, news articles, and earnings  
22 conference call transcripts attached as Exhibits A, C, D, F, G, H, and J through T because these  
23 documents were referenced, quoted, and/or relied upon in the Lead Plaintiff Steve Bardack's  
24 Second Amended Complaint for Violations of the Federal Securities Laws ("SAC"). SAC ¶¶ 19,

25 \_\_\_\_\_  
26 <sup>1</sup> The same rationale that permits courts to take judicial notice of issuers' SEC filings applies to  
27 Exhibit W, which consists of two periodic reports required to be filed by MediaTek with the  
28 Taiwan Securities and Futures Exchange Commission, as a condition of its listing on the  
Taiwanese Stock Exchange. *See* Order No. 91, Taiwan-Finance-Securities VI-002924, Taiwan  
Securities and Futures Commission, Ministry of Finance (May 13, 2002) (describing breakdown  
of required information for Taiwanese public companies in periodic financial reports).

1 21-23, 25-30; *see Silicon Graphics*, 183 F.3d at 986; *see also Ronconi*, 1998 WL 230987, at \*1  
2 (court may take judicial notice of “the full text of documents cited by plaintiffs in their  
3 complaint”); *In re Stac Elecs. Sec. Litig.*, 89 F.3d 1399, 1405 n.4 (9th Cir. 1996) (documents  
4 whose contents are alleged in the complaint may be considered on a motion to dismiss); *Allison v.*  
5 *Brooktree Corp.*, 999 F. Supp. 1342, 1347 (S.D. Cal. 1998) (“court may consider[] documents to  
6 which the plaintiff refers in the complaint which are not attached to the complaint”); *In re*  
7 *Westinghouse Sec. Litig.*, 90 F.3d 696, 707 (3d Cir. 1996) (“[b]ecause plaintiffs’ claims are based  
8 upon these documents, they were properly considered as part of defendants’ motions to dismiss”)  
9 (citations omitted); *Pension Benefit Guar. Corp. v. White Consol. Ind., Inc.*, 998 F.2d 1192, 1196  
10 (3d Cir. 1993) (“a court may consider an undisputedly authentic document that a defendant  
11 attaches as an exhibit to a motion to dismiss if the plaintiff’s claims are based on the document”)  
12 (citations omitted); *Plevy v. Haggerty*, 38 F. Supp. 2d 816, 821 (C.D. Cal. 1998) (taking judicial  
13 notice of press releases and news articles); *In re Guess?, Inc. Sec. Litig.*, 174 F. Supp. 2d 1067,  
14 1068 n.1 (C.D. Cal. 2001) (“SEC filings, stock prices and news articles may be considered under  
15 a motion to dismiss”); *In re ATI Tech., Inc., Sec. Litig.*, 216 F. Supp. 2d 418, 431 (E.D. Penn.  
16 2002) (court considered transcripts of a conference call to glean the context of what defendants  
17 allegedly said); *In re Ashanti Goldfield Sec. Litig.*, 184 F. Supp. 2d 247, 263 n.15 (E.D.N.Y.  
18 2002); *In re Nike, Inc. Sec. Litig.*, 181 F. Supp. 2d 1160, 1168 (D. Ore. 2002) (taking judicial  
19 notice of a transcript when defendants claimed that plaintiffs’ complaint inaccurately depicted  
20 statements from conference call); *In re Milestone Sec. Litig.*, 103 F. Supp. 2d 425, 450 (D.N.J.  
21 2000) (considering a conference call transcript on a motion to dismiss). The PSLRA, moreover,  
22 requires the court to consider any cautionary statement that is no subject to material dispute to  
23 determine whether forward-looking statements are protected. 15 U.S.C. § 78u-5(e); *see Wenger*,  
24 2 F. Supp. 2d 1231, 1242 (N.D. Cal. 1998).

25 It is appropriate to take judicial notice of stock prices, attached as Exhibit X, on a  
26 motion to dismiss. *See, e.g., In re Foundry Networks, Inc. Sec. Litig.*, No. C 00-4823 MMC,  
27 2003 WL 22077729 (N.D. Cal. Aug. 29, 2003).

28 Finally, Exhibit Y, the Order Granting Defendants’ Motion to Dismiss First

1 Amended Complaint, Exhibit Z, the *MedaiTek* complaints and Exhibit AA, the Stipulated  
2 Request for Dismissal and Order entered in the *ESS Technology, Inc. v. MediaTek, Inc.* matter are  
3 appropriate for judicial notice as a public record. *See Rothman v. Gregor*, 220 F.3d 81, 92 (2d  
4 Cir. 2000) (taking judicial notice of complaint filed in another action as a public record); *5-Star*  
5 *Management, Inc. v. Rogers*, 940 F. Supp. 512, 518 (E.D.N.Y. 1996); *Silicon Graphics*, 183 F.3d  
6 at 984 n.13.

7 **III. CONCLUSION**

8 For the foregoing reasons, defendants respectfully request that the Court take judicial  
9 notice of the document attached hereto.

10 Dated: December 18, 2003

MEREDITH N. LANDY  
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14 By                   /s/Meredith N. Landy                    
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