

1 KAREN JOHNSON-MCKEWAN (STATE BAR NO. 121570)
kjohnson-mckewan@orrick.com
2 NANCY E. HARRIS (STATE BAR NO. 197042)
nharris@orrick.com
3 NIKKA N. RAPKIN (STATE BAR NO. 244207)
nrarkin@orrick.com
4 ORRICK, HERRINGTON & SUTCLIFFE LLP
The Orrick Building
5 405 Howard Street
San Francisco, CA 94105-2669
6 Telephone: (415) 773-5700
Facsimile: (415) 773-5759

7 Attorneys for Defendant
8 GOOGLE INC.
9

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION
13

14 JENNA GODDARD, on her own behalf and
15 on behalf of all others similarly situated,

16 Plaintiff,

17 v.

18 GOOGLE INC., a Delaware corporation,

19 Defendant.
20
21
22
23
24
25
26
27
28

CASE NO. C 08-02738 (JF)

**REQUEST FOR JUDICIAL NOTICE
IN SUPPORT OF GOOGLE INC.'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
PLAINTIFF'S MOTION TO
REMAND**

Date: September 19, 2008

Time: 10:30 a.m.

Judge: The Honorable Jeremy Fogel

Date Action Filed: May 30, 2008

No Trial Date Set

1 Defendant Google Inc. ("Google") respectfully requests that this Court take judicial notice
2 of the following documents in support of Google's Memorandum of Points and Authorities in
3 Opposition to Plaintiff's Motion to Remand pursuant to Federal Rule of Evidence 201.

4 1. Plaintiff's Motion and Memorandum in Support of Preliminary Approval of Class
5 Action Settlement and exhibits thereto, filed in *Tracie McFerren v. AT&T Mobility, LLC*, Case
6 No. 2008-CV-151322, Superior Court of Fulton County, Georgia, dated May 28, 2008. A true
7 and correct copy of these documents are attached hereto as Exhibit A.

8 2. Amended Stipulation of Settlement and Order [approving same], filed in *Lisa*
9 *Gray v. Mobile Messenger Americas, Inc.*, Case No. 08-cv-61089, United States District Court,
10 Southern District of Florida, entered on August 4 and 5, 2008 respectively. A true and correct
11 copy of these documents are attached hereto as Exhibit B.

12 3. Plaintiff's Application for Attorneys' Fees Pursuant to Stipulated Entry of
13 Judgment of Dismissal, filed in *Lindsay Abrams v. Facebook, Inc.*, Case No. 07-05378 PVT,
14 United States District Court, Northern District of California – San Jose Division, filed on May 8,
15 2008. A true and correct copy of these documents are attached hereto as Exhibit C.

16 4. Declaration of Miles McGuire, filed in support of Plaintiff's Memorandum in
17 Support of Preliminary Approval of Class Action Settlement, filed in *Tracie McFerren v. AT&T*
18 *Mobility, LLC*, Case No. 2008-CV-151322, Superior Court of Fulton County, Georgia, dated May
19 28, 2008. A true and correct copy of these documents are attached hereto as Exhibit D.

20 5. Google, Inc., Form 10-K for the yearly period ending on December 31, 2007, filed
21 with the United States Securities and Exchange Commission, February 15, 2008,
22 <http://www.sec.gov/Archives/edgar/data/1288776/000119312508032690/d10k.htm>. A true and
23 correct copy of this document is attached hereto as Exhibit E.

24 6. Google, Inc., Form 10-Q for the quarterly period ending on March 31, 2008, filed
25 with the United States Securities and Exchange Commission, May 12, 2008,
26 <http://investor.google.com/order.html>. A true and correct copy of this document is attached
27 hereto as Exhibit F.

28 7. Docket Sheet, *Tracie McFerren v. AT&T Mobility, LLC*, Case No. 2008-CV-

1 151322, Superior Court of Fulton County, Georgia. A true and correct copy of this document is
2 attached hereto as Exhibit G.

3 8. Wireless Quick Facts, CTIA (International Association for the Wireless
4 Telecommunications Industry) webpage,
5 http://www.ctia.org/media/industry_info/Index.cfm?bPrint=1@showbox=0&AID=1-323. A true
6 and correct copy of this document is attached hereto as Exhibit H.

7 9. "U.S. Consumer Mobile Phone Unit-Sales Declined 13 Percent Year-over-Year in
8 Q2 2008," The NPD Group Press Release, August 19, 2008,
9 http://www.npd.com/press/releases/press_080819.html. A true and correct copy of this document
10 is attached hereto as Exhibit I.

11 10. "AT&T Eager to Wield its iWeapon", USA Today, May 23, 2007,
12 <http://www.usatoday.com/tech/wireless/2007-05-21-at&t-iphone>N.htm>. A true and correct copy
13 of this document is attached hereto as Exhibit J.

14 11. "Off-Portal Premium SMS Transactions Generated Nearly \$215 Million in
15 Download Purchases and \$35 Million in Voting/Sweepstakes Revenues During Q1 2007",
16 Nielsen Mobile Press Release, June 1, 2007,
17 <http://www.telephia.com/html/PremiumSMSJune2007revised.html>. A true and correct copy of
18 this document is attached hereto as Exhibit K.

19 **I. DISCUSSION**

20 The documents attached hereto are properly subject to judicial notice under Federal Rule
21 of Evidence 201 and related precedent. Google respectfully requests the court take notice of three
22 categories of documents in support of its opposition to Plaintiff's motion to remand: (1) public
23 disclosure documents filed with the United States Securities and Exchange Commission ("SEC");
24 (2) court documents filed in other jurisdictions; and (3) documents in the public domain. The
25 information contained in each of these documents is either generally known or capable of
26 accurate and ready determination. *See* Fed. R. Evid. 201(b).

27 **A. Documents Filed With the SEC Are Judicially Noticeable**

28 Courts routinely take judicial notice of public disclosure documents required to be filed

1 with the SEC. *Bryant v. Avado Brands, Inc.*, 187 F.3d 1271, 1276 (11th Cir. 1999) (taking
2 judicial notice of SEC filings since “the documents are required by law to be filed with the SEC
3 and no serious question as to their authenticity can exist”); *Kramer v. Time Warner, Inc.*, 937
4 F.2d 767, 774 (2d Cir. 1991) (holding same).

5 Applying these principles, the Court may take judicial notice of the following documents
6 filed with the SEC: (1) Exhibit E, Google, Form 10-K for the yearly period ending on December
7 31, 2007, filed February 15, 2008 and (2) Exhibit F, Form 10-Q for the quarterly period ending on
8 March 31, 2008, filed May 12, 2008.

9 **B. Court Filings Are Judicially Noticeable**

10 It is appropriate for the Court to take judicial notice of pleadings and other documents
11 filed before courts in other jurisdictions. *Beazley v. Fujii*, No. 04-56237, 2007 U.S. App. LEXIS
12 526, at *2 & n. 1 (9th Cir. Jan. 8, 2007) (taking judicial notice of complaint); *In re Silicon*
13 *Graphics Inc. Sec. Litig.*, 183 F.3d 970, 986 n.13 (9th Cir. 1999) (taking judicial notice of five
14 complaints). Because court proceedings are matters of public record, “courts routinely take
15 judicial notice of documents filed in other courts.” *Kramer*, 937 F.2d at 774; *Hunt v. Check*
16 *Recovery Systems, Inc.*, 478 F. Supp. 2d 1157, 1160 (N.D. Cal. 2007) (taking judicial notice of
17 motion for summary judgment and supporting exhibits, and documents from other pending
18 actions).

19 Consequently, the Court may take judicial notice of these court filings: (1) Exhibit A,
20 Plaintiff’s Motion for Preliminary Approval of Class Action Settlement and Memorandum in
21 Support of Preliminary Approval of Class Action Settlement and exhibits thereto, filed in *Tracie*
22 *McFerren v. AT&T Mobility, LLC*, Case No. 2008-CV-151322, Superior Court of Fulton County,
23 Georgia, dated May 28, 2008; (2) Exhibit B, Amended Stipulation of Settlement and Order
24 [approving same], filed in *Lisa Gray v. Mobile Messenger Americas, Inc.*, No. 08-cv-61089,
25 United States District Court, Southern District of Florida, entered on August 4 and 5, 2008
26 respectively; (3) Exhibit C, Plaintiff’s Application for Attorneys’ Fees Pursuant to Stipulated
27 Entry of Judgment of Dismissal, filed in *Lindsay Abrams v. Facebook, Inc.*, Case No. 07-05378
28 PVT, United States District Court, Northern District of California – San Jose Division, dated May

1 8, 2008; (4) Exhibit D, Declaration of Miles McGuire, filed in support of Plaintiff's
2 Memorandum in Support of Preliminary Approval of Class Action Settlement, filed in *Tracie*
3 *McFerren v. AT&T Mobility, LLC*, Case No. 2008-CV-151322, Superior Court of Fulton County,
4 Georgia, dated May 28, 2008, and (5) Exhibit G, Docket Sheet, *Tracie McFerren v. AT&T*
5 *Mobility, LLC*, Case No. 2008-CV-151322, Superior Court of Fulton County, Georgia.

6 **C. Information in the Public Domain Is Judicially Noticeable**

7 The Court may take judicial notice of news reports or articles and similar information
8 published in the public domain. *Ritter v. Hughes Aircraft Co.*, 58 F.3d 454, 458-59 (9th Cir.
9 1995) (taking judicial notice of information based on newspaper article). The Court may also
10 take judicial notice of information made available on a webpage when the information is
11 considered "public records and [is] capable of accurate and ready confirmation by sources that
12 cannot reasonably be questioned." *Wible v. Aetna Life Insurance Co.*, 375 F. Supp. 2d 956, 965
13 (C.D. Cal. 2005) (taking judicial notice of an opinion letter, webpages from Amazon.com, and a
14 webpage from the American Academy of Allergy Asthma & Immunology).

15 Because they were published in the public domain, the Court may take judicial notice of:
16 (1) Exhibit H, Wireless Quick Facts, CTIA (International Association for the Wireless
17 Telecommunications Industry) webpage, (2) Exhibit I, "U.S. Consumer Mobile Phone Unit-Sales
18 Declined 13 Percent Year-over-Year in Q2 2008, The NPD Group, August 19, 2008, (3) Exhibit
19 J, "AT&T Eager to Wield its iWeapon", USA Today, May 23, 2007 and (4) Exhibit K, Off-Portal
20 Premium SMS Transactions Generated Nearly \$215 Million in Download Purchases and \$35
21 Million in Voting/Sweepstakes Revenues During Q1 2007", Nielsen Mobile Press Release, June
22 1, 2007.

23 ///

24 ///

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

Dated: August 29, 2008

KAREN JOHNSON-MCKEWAN
NANCY E. HARRIS
NIKKA N. RAPKIN
ORRICK, HERRINGTON & SUTCLIFFE LLP

Nikka N. Rapkin
Attorneys for Defendant
GOOGLE INC.