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

14 GIORGIO GOMELSKY,
 15 on behalf of himself and
 all others similarly situated,
 16
 Plaintiff,
 17
 v.
 18 APPLE INC.,
 19
 Defendant.

Case No. C-08-04969 JF

**REQUEST FOR JUDICIAL
 NOTICE IN SUPPORT OF APPLE
 INC.'S MOTION TO DISMISS
 AND TO STRIKE**

Date: February 20, 2009
 Time: 9:00am
 Courtroom: 3

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REQUEST FOR JUDICIAL NOTICE

Pursuant to Rule 201 of the Federal Rules of Evidence, Apple Inc. hereby requests that the Court take judicial notice of Apple’s written warranty for its PowerBook G4 notebook computers, which is cited in Apple’s Motion to Dismiss and to Strike. A true and correct copy of Apple’s written warranty is attached as Exhibit A to the accompanying Declaration of Anne M. Hunter.

Federal Rule of Evidence 201 allows a court to take judicial notice of adjudicative facts “not subject to reasonable dispute in that [they are] . . . capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” It is axiomatic that under Rule 201, “documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading, may be considered in ruling on a Rule 12(b)(6) motion to dismiss.” *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994), *overruled on other grounds*, *Galbraith v. County of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002); *Hoey v. Sony Elecs. Inc.*, 515 F. Supp. 2d 1099, 1103 (N.D. Cal. 2007) (taking judicial notice of express warranty because allegations in complaint were based on that warranty).

1 Apple's written warranty for its PowerBook G4 laptop computers, as it appeared in the
2 packaging for those computers and as it appears on Apple's website, is a proper subject of judicial
3 notice. The complaint here refers to the written warranty several times, and plaintiff bases a
4 number of his allegations on that warranty. Specifically, plaintiff contends that Apple
5 intentionally withheld information about the alleged defect in its PowerBook G4 computers so
6 that computer owners would not uncover the defect until such time as Apple's written warranty
7 had expired. (Compl., ¶¶ 23, 50, 58.) Plaintiff also contends that Apple had a duty to disclose the
8 alleged defect so that computer owners could take measures to repair the defect while still
9 covered by Apple's written warranty. (*Id.* ¶¶ 77, 78.) Plaintiff has thus incorporated Apple's
10 written warranty by reference into the complaint, allowing the Court to judicially notice the
11 warranty and consider it for purposes of Apple's motion to dismiss and to strike. *Hoey*, 515
12 F. Supp. 2d at 1103.

13
14 Dated: December 22, 2008

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18 By: /s/ Penelope A. Prevolos
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19 Attorneys for Defendant
20 APPLE INC.