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

13 REUBEN BERENBLAT, ANDREW
 14 PERSONETTE, EARL C. SIMPSON, LAURA
 MILLER, On behalf of themselves and all others
 15 similarly situated,

16 Plaintiffs,

17 v.

18 APPLE INC.,

19 Defendant.

20 THOMAS WAGNER, SCOTT MEYERS, On
 21 behalf of themselves and all others similarly
 situated,

22 Plaintiffs,

23 v.

24 APPLE INC.,

25 Defendant.

Case No. C-08-04969 JF
 Case No. C-09-01649 JF

**REQUEST FOR JUDICIAL
 NOTICE IN SUPPORT OF APPLE
 INC.'S MOTION TO DISMISS
 THE SECOND AMENDED
 COMPLAINT**

Date: February 5, 2010
 Time: 9:00 am
 Courtroom: 3

REQUEST FOR JUDICIAL NOTICE

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2 Pursuant to Rule 201 of the Federal Rules of Evidence, Apple Inc. hereby requests that the
3 Court take judicial notice of Apple's one-year limited express warranty for its PowerBook G4
4 notebook computers and its AppleCare Protection Plan ("APP"), which are cited in Apple's
5 Motion to Dismiss the Second Amended Complaint. A true and correct copy of Apple's APP is
6 attached as Exhibit A to the accompanying Declaration of Alexei Klestoff.

7 Federal Rule of Evidence 201 allows a court to take judicial notice of adjudicative facts
8 "not subject to reasonable dispute in that [they are] . . . capable of accurate and ready
9 determination by resort to sources whose accuracy cannot reasonably be questioned." It is
10 axiomatic that under Rule 201, "documents whose contents are alleged in a complaint and whose
11 authenticity no party questions, but which are not physically attached to the pleading, may be
12 considered in ruling on a Rule 12(b)(6) motion to dismiss." *Branch v. Tunnell*, 14 F.3d 449, 454
13 (9th Cir. 1994), *overruled on other grounds*, *Galbraith v. County of Santa Clara*, 307 F.3d 1119
14 (9th Cir. 2002); *Berenblat v. Apple, Inc.*, Nos. 08-4969, 09-1649, 2009 U.S. Dist. LEXIS 80734,
15 at *2 n.3 (N.D. Cal. Aug. 21, 2009) (taking judicial notice of express warranty because it was
16 referenced in the complaint); *Hoey v. Sony Elecs. Inc.*, 515 F. Supp. 2d 1099, 1103 (N.D. Cal.
17 2007) (the court can take judicial notice of a document if the complaint refers extensively to it or
18 if it forms the basis of plaintiff's claim; taking judicial notice of express warranty).

19 Apple's APP is a proper subject of judicial notice. The complaint here refers to the APP,
20 and Plaintiffs base their allegations on the APP. Specifically, Plaintiffs allege that Andrew
21 Personette, Laura Miller, Thomas Wagner, and Scott Meyer purchased an APP to cover their
22 PowerBook G4, and that their computers malfunctioned after the APP expired. (Second Am.
23 Compl. ¶¶ 53, 63, 66, 72.) Plaintiffs have thus incorporated Apple's APP by reference into the
24 complaint, allowing the Court to judicially notice the APP and consider it for purposes of Apple's
25 motion to dismiss. *Berenblat*, 2009 U.S. Dist. LEXIS 80734, *2 n.3; *Branch*, 14 F.3d at 454;
26 *Hoey*, 515 F. Supp. 2d at 1103.

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Dated: November 5, 2009

PENELOPE A. PREVOLOS
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By: /s/ Penelope A. Prevolos
Penelope A. Prevolos

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APPLE INC.