

1 PENELOPE A. PREVOLOS (CA SBN 87607)
 (PPrevolos@mofo.com)
 2 ANDREW D. MUHLBACH (CA SBN 175694)
 (AMuhlbach@mofo.com)
 3 ALEXEI KLESTOFF (CA SBN 224016)
 (AKlestoff@mofo.com)

4 MORRISON & FOERSTER LLP
 5 425 Market Street
 San Francisco, California 94105-2482
 6 Telephone: 415.268.7000
 Facsimile: 415.268.7522

7 Attorneys for Defendant
 8 APPLE INC.

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 10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12 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 THIRD AMENDED
 COMPLAINT**

Date: September 24, 2010
 Time: 9:00 am
 Courtroom: 3

1 **REQUEST FOR JUDICIAL NOTICE**

2 Pursuant to Rule 201 of the Federal Rules of Evidence, Apple Inc. hereby requests that the
3 Court take judicial notice of an online message board thread titled “RAM upgrade causes FCPHD
4 crashes,” which is cited in Apple’s Motion to Dismiss the Third Amended Complaint. A true and
5 correct copy of the thread is attached as Exhibit A to the accompanying Declaration of Alexei
6 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).

19 The message board thread is a proper subject of judicial notice. The Third Amended
20 Complaint (“TAC”) refers to the thread and Plaintiffs base their allegations on it. Specifically,
21 Plaintiffs allege that the thread evidences Apple’s exclusive knowledge and active concealment of
22 the purported defect in PowerBook G4 computers. (TAC ¶¶ 29-31, 111.) Plaintiffs have thus
23 incorporated the thread by reference into the complaint, allowing the Court to judicially notice the
24 thread and consider it for purposes of Apple’s motion to dismiss. *Berenblat*, 2009 U.S. Dist.
25 LEXIS 80734, *2 n.3; *Branch*, 14 F.3d at 454; *Hoey*, 515 F. Supp. 2d at 1103.

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Dated: June 28, 2010

PENELOPE A. PREVOLOS
ANDREW D. MUHLBACH
ALEXEI KLESTOFF
MORRISON & FOERSTER LLP

By: /s/ Penelope A. Preovolos
Penelope A. Preovolos

Attorneys for Defendant
APPLE INC.