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16 Attorneys for Defendant  
 17 APPLE INC.

18 UNITED STATES DISTRICT COURT  
 19 NORTHERN DISTRICT OF CALIFORNIA  
 20 SAN JOSE DIVISION

21 ARAM HOVSEPIAN, individually and on  
 22 behalf of all others similarly situated,

23 Plaintiff,

24 vs.

25 APPLE INC.,

26 Defendant.

27 CASE NO. C 08-05788 JF

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

Date: April 24, 2009  
 Time: 9:00 a.m.  
 Dept.: Courtroom 3, 5th Floor

Complaint Filed: December 31, 2008

1 Pursuant to Rule 201 of the Federal Rules of Evidence, Defendant Apple Inc.  
2 (“Apple”) hereby requests that the Court take judicial notice of Apple’s One (1) Year Limited  
3 Warranty – Worldwide for Apple-branded hardware, including the iMac, which is cited in  
4 Apple’s Motion to Dismiss and Motion to Strike, filed concurrently herewith. A true and correct  
5 copy of an exemplar of Apple’s written warranty is attached as Exhibit A to the accompanying  
6 Declaration of T. Lee Kissman and contains the language that Plaintiff received with his iMac at  
7 the time of purchase.

8 Federal Rule of Evidence 201(b) provides that a court may take judicial notice of  
9 adjudicative facts “not subject to reasonable dispute in that [they are] . . . capable of accurate and  
10 ready determination by resort to sources whose accuracy cannot reasonably be questioned.”  
11 Under this rule, “documents whose contents are alleged in a complaint and whose authenticity no  
12 party questions, but which are not physically attached to the pleading, may be considered in  
13 ruling on a Rule 12(b)(6) motion to dismiss.” *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir.  
14 1994), *overruled on other grounds*, *Galbraith v. County of Santa Clara*, 307 F.3d 1119 (9th Cir.  
15 2002); *Hoey v. Sony Elecs. Inc.*, 515 F. Supp. 2d 1099, 1103 (N.D. Cal. 2007) (taking judicial  
16 notice of express warranty because complaint was based on that warranty); *Long v. Hewlett-*  
17 *Packard Co.*, No. C-06-02816 JW, 2007 U.S. Dist. LEXIS 79262, at \*16-18 n.3 (N.D. Cal. July  
18 27, 2007) (taking judicial notice of warranty because it was referenced in the complaint).

19 Apple’s written warranty for the iMac is a proper subject of judicial notice.  
20 Plaintiff’s Class Action Complaint (“Complaint”) specifically refers to Apple’s written warranty,  
21 and Plaintiff bases his allegations on this warranty. For example, Plaintiff’s prayer for relief  
22 states that “Plaintiff seeks a declaration that the Apple iMac screen display warranties regarding  
23 the one year time limitation on manufacturing defects in material or workmanship are void,  
24 invalid and not enforceable.” (Cmplt. at ¶ 52.) Plaintiff also maintains that “[t]here is an actual  
25 controversy between Apple and the Class concerning the validity of the time limitations in the  
26 warranty on iMac screen displays showing vertical lines.” (Cmplt. at ¶ 49; *see also id.* at ¶ 4  
27 (“consumers have made warranty claims arising from vertical lines which have been denied as  
28 out of warranty”); *id.* at ¶ 12 (“ . . . consumers purchased iMacs, made warranty claims arising

1 from the vertical lines on the display screens, and made out of warranty repairs related to the  
2 vertical line problem”).)

3 Since Plaintiff has incorporated Apple’s written warranty by reference into the  
4 Complaint, the Court may take judicial notice of this warranty and consider it for purposes of  
5 Apple’s Motion to Dismiss, and for Apple’s Motion to Strike.

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7 DATED: February 27, 2009

PAUL, HASTINGS, JANOFSKY & WALKER LLP

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By:   /s/ Thomas A. Counts  
  THOMAS A. COUNTS

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Attorneys for Defendant  
APPLE INC.

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