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 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.

CASE NO. C 08-05788 JF

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

Date: July 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 Eric A. Long and contains the language that Plaintiff received with his iMac at the  
7 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.*, 2007 U.S. Dist. LEXIS 79262, at \*16-18 n.3 (N.D. Cal. July 27, 2007) (taking  
18 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 Amended Class Action Complaint (“Amended Complaint”) specifically refers to  
21 Apple’s written warranty, and Plaintiff bases his allegations on this warranty. For example,  
22 Plaintiff’s prayer for relief states that “Plaintiff seeks a declaration that the Apple iMac screen  
23 display warranties regarding the one year time limitation on manufacturing defects in material or  
24 workmanship are void, invalid and not enforceable.” (Cmplt. at ¶ 100.) Plaintiff also maintains  
25 that “[t]here is an actual controversy between Apple and the Class concerning the validity of the  
26 time limitations in the warranty on iMac screen displays showing vertical lines.” (Cmplt. at ¶ 97;  
27 *see also id.* at ¶ 10 (“consumers have made warranty claims arising from vertical lines which  
28 have been denied as out of warranty”); *id.* at ¶ 28 (“ . . . the vertical line problem will manifest,

