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NEO4J SWEDEN AB

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

NEO4J, INC., a Delaware corporation,  
NEO4J SWEDEN AB, a Swedish  
corporation

Plaintiffs,

v.

PURETHINK LLC, a Delaware limited  
liability company, IGOV INC., a Virginia  
corporation, and JOHN MARK SUHY, an  
individual,

Defendants.

CASE NO. 5:18-cv-07182-EJD

**NEO4J INC.'S REPLY REQUEST FOR  
JUDICIAL NOTICE IN SUPPORT OF  
MOTION TO STRIKE AND MOTION TO  
DISMISS**

Date: August 13, 2020  
Time: 9:00 a.m.  
Dept.: Courtroom 4, 5th Floor  
Judge: Hon. Edward J. Davila

1           **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2           Plaintiff Neo4j, Inc. (“Neo4j USA”) hereby submits this Request for Judicial Notice in  
3           Support of its Reply in Support of its Motion to Strike and Motion to Dismiss for Failure to State  
4           a Claim. The documents are attached as Exhibits A and B to the Declaration of Cary Chien also  
5           filed in support of Neo4j USA’s reply brief.

6           Pursuant to Rule 201(b) of the Federal Rules of Evidence, courts may take judicial notice  
7           of adjudicative facts that are “not subject to reasonable dispute.” Fed. R. Evid. 201(b). Facts are  
8           indisputable only if they are either “generally known” or “capable of accurate and ready  
9           determination by resort to sources whose accuracy cannot be reasonably questioned.” *Id.*

10          Given the centrality of each exhibit to the allegations in Defendants’ Second Amended  
11          Counterclaim (Dkt. No. 72) and given that each exhibit’s authenticity is not subject to reasonable  
12          dispute, judicial notice is proper under applicable law. Thus, each may be properly considered as  
13          part of Plaintiffs’ Motion, without converting that motion into one for summary judgment. *Lee v.*  
14          *City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001) (“[a] court may consider “material which  
15          is properly submitted as part of the complaint” on a motion to dismiss without converting the  
16          motion to dismiss into a motion for summary judgment.”). Consideration of these exhibits fits  
17          squarely within the Ninth Circuit’s precedent for judicial notice, and it is consistent with the  
18          consideration given by many other courts to similar documents when evaluating such a motion.

19          Neo4j USA respectfully submits this Request for Judicial Notice for the following  
20          documents:

21               1.       Defendant PureThink LLC’s webpage from Wayback Machine archival website  
22               (URL: <https://archive.org/>) archived on November 1, 2017, a true and correct copy of which is  
23               attached as **Exhibit A** to the Chien Reply Declaration. Defendant PureThink LLC’s webpage  
24               contains public statements by PureThink that: (a) “PureThink, the company who created,  
25               managed and sold Neo4j Government Edition to all US Federal agencies has ceased their  
26               partnership with Neo Technology and Neo4j Government Edition has been retired” and (b) “The  
27               principle behind PureThink and the Government Package has created a new corporate entity  
28               called iGov Inc, which is not a Neo4j Solution Partner. Because iGov Inc is not a solution partner,

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1 it can offer packages at great cost savings to US Government Agencies as it has no restrictions on  
 2 working with Neo4j Enterprise open source licenses!” that undermine and contradict arguments  
 3 made by Defendants in their Opposition.

4 This webpage, downloaded from the WayBack Machine, contains facts which are not  
 5 subject to reasonable dispute and capable of accurate and ready determination. *See Erickson v.*  
 6 *Nebraska Mach. Co.*, 2015 WL 4089849, at \*1 (N.D. Cal. July 6, 2015) (“[c]ourts have taken  
 7 judicial notice of the contents of web pages available through the Wayback Machine as facts that  
 8 can be accurately and readily determined from sources whose accuracy cannot reasonably be  
 9 questioned”); *see also U.S. ex. Rel. v. Newport Sensors, Inc.*, 2016 WL 8929246, at \*3 (C.D. Cal.  
 10 May 19, 2016) (recognizing that “district courts in this circuit have routinely taken judicial notice  
 11 of content from the Internet Archive’s Wayback Machine pursuant to this rule, as we do here.”  
 12 (citations omitted)). As such, the Court may take judicial notice of such filing.

13 2. Dun & Bradstreet Comprehensive Report for Neo4j, Inc., showing Neo4j Sweden  
 14 AB is a subsidiary of Neo4j USA, a true and correct copy of which is attached as **Exhibit B** to the  
 15 Chien Reply Decl. This document is a publicly available report prepared by Dun & Bradstreet,  
 16 which is an independent public corporate reporting service, with the contents therein pertaining to  
 17 Neo4j Sweden AB being a subsidiary of Neo4j USA is not subject to reasonable dispute and is  
 18 capable of accurate and ready determination. *See Intri-Plex Techs., Inc. v. Crest Grp., Inc.*, 499  
 19 F.3d 1048, 1052 (9th Cir. 2007) (“[a] court may take judicial notice of matters of public record  
 20 without converting a motion to dismiss into a motion for summary judgment, as long as the facts  
 21 noticed are not subject to reasonable dispute) (internal citations and quotations omitted); *MGIC*  
 22 *Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986) (courts may take judicial notice of  
 23 matters of public record outside the pleadings); *see also* Fed. R. Evid. 201(b). As such, the Court

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1 may take judicial notice of this document and the fact that Neo4j Sweden AB is a wholly-owned  
2 subsidiary of Neo4j, Inc.

3  
4 Dated: July 13, 2020

HOPKINS & CARLEY  
A Law Corporation

5  
6 By: /s/ Cary Chien

7 Jeffrey M. Ratinoff  
8 Cary Chien  
9 Attorneys for Plaintiff and Counter-  
10 Defendants  
11 NEO4J, INC., NEO4J SWEDEN AB  
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