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NEO4J SWEDEN AB

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

V.

21 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

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

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

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

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

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

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

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 Dated: July 13, 2020

4 HOPKINS & CARLEY
A Law Corporation

5
6 By: /s/ Cary Chien

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

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