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NEO4J, INC. and NEO4J SWEDEN AB

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

15 Plaintiffs,

16 || v.

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

Defendants.

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

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF PLAINTIFFS' MOTION TO
STRIKE**

Date: February 11, 2021
Time: 9:00 a.m.
Dept.: Courtroom 4, 5th Floor
Judge: Hon. Edward J. Davila

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

Plaintiffs Neo4j, Inc. (“Neo4j USA”) hereby submits this Request for Judicial Notice in Support of its Motion to Strike Defendants’ Answer to the Third Amended Complaint. The documents are attached as Exhibit 3 through Exhibit 6 to the Declaration of Jeffrey M. Ratinoff in support of Neo4j USA’s Motion for Judgment on the Pleadings (“Ratinoff Declaration”).

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.* In ruling on a motion to dismiss filed pursuant to Federal Rule of Civil Procedure 12(b)(6), the Court may consider documents that are attached to the challenged pleading or incorporated by reference when their authenticity is not contested, or are otherwise properly the subject to judicial notice. *See Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 US 308, 322, 127 S.Ct. 2499 (2007) (court ruling on motion to dismiss must consider entire complaint and other sources incorporated by reference as well as judicially noticeable matters).

Given the centrality of each exhibit to the allegations in the Answer to the Third Amended Complaint filed by Defendants John Mark Suhy, PureThink LLC, and iGov Inc. (collectively “Defendants”), and given that each exhibit’s authenticity is not subject to reasonable dispute, judicial notice is proper under applicable law. 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. Thus, each may be properly considered as part of Neo4j USA’s Motion to Strike, without converting that motion into one for summary judgment.

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

1. United State Patent and Trademark Office Registration Certificate for the "Neo4j" trademark, Registration No. 4,784,280, a true and correct copy of which is attached as **Exhibit 3** to the Ratinoff Declaration. Documents issued by a the United States Patent and Trademark

1 Office (USPTO) are in the public record and are not subject to reasonable dispute. *See Autodesk, Inc. v. Dassault Sys. SolidWorks Corp.*, No. 08-04397, 2008 WL 6742224, at *2 n.1 (N.D. Cal. Dec. 18, 2008) (taking judicial notice of trademark registrations and applications publicly available on USPTO website) (citing *Hoganas AB v. Dresser Indus., Inc.*, 9 F.3d 948, 954 (Fed. Cir. 1993)). Accordingly, this document is a public record created and issued by the United States Patent and Trademark office showing the application date of April 30, 2014, a fact which is not subject to reasonable dispute and capable of accurate and ready determination. As such, the Court may take judicial notice of such filings.

2. Neo4j's webpages from Wayback Machine archival website (<https://archive.org/>) dated August 23, 2011 and March 26, 2014 showing Neo4j USA's use of the NEO4J® mark in commerce, a true and correct copies of which are attached as **Exhibits 4-7** to the Ratinoff Declaration. *See Erickson v. Nebraska Mach. Co.*, 2015 WL 4089849, at *1 (N.D. Cal. July 6, 2015) ("[c]ourts have taken judicial notice of the contents of web pages available through the Wayback Machine as facts that can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned"); *see also U.S. ex. Rel. v. Newport Sensors, Inc.*, 2016 WL 8929246, at *3 (C.D. Cal. May 19, 2016) (recognizing that "district courts in this circuit have routinely taken judicial notice of content from the Internet Archive's Wayback Machine pursuant to this rule, as we do here." (citations omitted)). These webpages show use of the NEO4J® mark by Neo4j USA on August 23, 2011 and March 26, 2014, facts which are not subject to reasonable dispute and capable of accurate and ready determination. As such, the Court may take judicial notice of such filing and those dates.

22 Dated: October 30, 2020

HOPKINS & CARLEY
A Law Corporation

24 By: /s/ Jeffrey M. Ratinoff

25 Jeffrey M. Ratinoff
26 Attorneys for Plaintiff and Counter-
Defendants
NEO4J, INC. and NEO4J SWEDEN AB