

1 MELODY DRUMMOND HANSEN (S.B. #278786)  
mdrummondhansen@omm.com  
2 HEATHER J. MEEKER (S.B. #172148)  
hmeeker@omm.com  
3 O'MELVENY & MYERS LLP  
2765 Sand Hill Road  
4 Menlo Park, California 94025-7019  
Telephone: +1 650 473 2600  
5 Facsimile: +1 650 473 2601

6 CARA L. GAGLIANO (S.B. #308639)  
cgagliano@omm.com  
7 Two Embarcadero Center  
28th Floor  
8 San Francisco, California 94111-3823  
Telephone: +1 415 984 8700  
9 Facsimile: +1 415 984 8701

10 Attorneys for Defendant  
Bruce Perens

11  
12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO

15  
16 OPEN SOURCE SECURITY, INC.,  
17 Plaintiff,  
18 v.  
19 BRUCE PERENS, and Does 1-50,  
20 Defendants.

Case No. 3:17-cv-04002-LB

**REQUEST FOR JUDICIAL NOTICE  
IN SUPPORT OF DEFENDANT'S  
MOTION TO DISMISS WITH  
PREJUDICE PURSUANT TO FED. R.  
CIV. P. 12(b)(6) AND SPECIAL  
MOTION TO STRIKE PURSUANT TO  
THE CALIFORNIA ANTI-SLAPP  
STATUTE, CODE OF CIVIL  
PROCEDURE SECTION 425.16**

Hearing Date: October 26, 2017  
Time: 9:30 a.m.  
Location: Courtroom C, 15th Floor  
Judge: Hon. Laurel Beeler

**REQUEST FOR JUDICIAL NOTICE**

**I. INTRODUCTION**

Pursuant to Rule 201 of the Federal Rules of Evidence, Defendant Bruce Perens respectfully requests that the Court take judicial notice of the following documents submitted in support of Mr. Perens’s Motion to Dismiss and Special Motion to Strike Plaintiff Open Source Security’s Complaint:

1. An August 8, 2016 memorandum issued by the Executive Office of the President, Office of Management and Budget titled “Federal Source Code Policy: Achieving Efficiency, Transparency, and Innovation through Reusable and Open Source Software.” A true and correct copy of the memorandum, downloaded from [https://obamawhitehouse.archives.gov/sites/default/files/omb/memoranda/2016/m\\_16\\_21.pdf](https://obamawhitehouse.archives.gov/sites/default/files/omb/memoranda/2016/m_16_21.pdf), is attached hereto as **Exhibit 1**.

2. An October 16, 2009 memorandum issued by the United States Department of Defense Chief Information Officer titled “Clarifying Guidance Regarding Open Source Software (OSS).” A true and correct copy of the memorandum, downloaded from <http://dodcio.defense.gov/Portals/0/Documents/OSSFAQ/2009OSS.pdf>, is attached hereto as **Exhibit 2**.

3. A webpage published and maintained by the United States Department of Defense Chief Information Officer titled “DoD Open Source Software (OSS) FAQ,” available at <http://dodcio.defense.gov/Open-Source-Software-FAQ/>. A true and correct copy of a printout of the webpage is attached hereto as **Exhibit 3**.

**II. ARGUMENT**

In ruling on a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), a court may consider matters outside the pleadings if they are properly subject to judicial notice. *See MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986). Here, the Court should take judicial notice of the U.S. government publications attached as Exhibits 1 through 3, which provide useful background information about open source software and the Linux Operating

1 System. Federal courts are entitled to take judicial notice of facts outside the record—like those  
2 in Exhibits 1 through 3—that “can be accurately and readily determined from sources whose  
3 accuracy cannot reasonably be questioned.” *See* Fed. R. Evid. 201(b). Official government  
4 documents, including materials on official government websites, fall within this category. *See*  
5 *Paralyzed Veterans of Am. v. McPherson*, No. C064670SBA, 2008 WL 4183981, at \*5–\*6 (N.D.  
6 Cal. Sept. 9, 2008); *Hansen Beverage Co. v. Innovation Ventures, LLC*, No. 08-CV-1166-IEG  
7 POR, 2009 WL 6597891, at \*2 (S.D. Cal. Dec. 23, 2009); *Vaquero Energy, Inc. v. Herda*, No.  
8 1:15-CV-0967-JLT, 2015 WL 5173535, at \*4–\*5 (E.D. Cal. Sept. 3, 2015).

9 **III. CONCLUSION**

10 Based on the foregoing, Defendant respectfully requests that the Court take judicial notice  
11 of Exhibits 1-3.

12 Dated: September 18, 2017

13 MELODY DRUMMOND HANSEN  
14 HEATHER J. MEEKER  
15 CARA L. GAGLIANO  
16 O’MELVENY & MYERS LLP

17 By: /s/ Melody Drummond Hansen  
18 Melody Drummond Hansen  
19 Attorneys for Defendant  
20 Bruce Perens