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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO

OPEN SOURCE SECURITY, INC., and
BRADLEY SPENGLER,

Plaintiffs,

v.

BRUCE PERENS, and Does 1-50,

Defendants.

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

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF DEFENDANT BRUCE
PERENS'S NOTICE OF MOTION AND
SPECIAL MOTION TO STRIKE THE
FIRST AMENDED COMPLAINT
PURSUANT TO THE CALIFORNIA
ANTI-SLAPP STATUTE, CODE OF
CIV. PROC. SEC. 425.16, AND
MOTION TO DISMISS THE FIRST
AMENDED COMPLAINT WITH
PREJUDICE PURSUANT TO FED. R.
CIV. P. 12(b)(6)**

Hearing Date: December 14, 2017
Time: 9:30 a.m.
Location: Courtroom C, 15th Floor
Judge: Hon. Laurel Beeler

REQUEST FOR JUDICIAL NOTICE
ISO DEFT'S 2ND ANTI-SLAPP MTN
& MTN TO DISMISS FAC
CASE NO. 3:17-CV-04002-LB

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 Plaintiffs First Amended 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, 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

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

III. CONCLUSION

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

Dated: October 31, 2017

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