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7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SANTA CRUZ
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11	TODD GLASSEY and MICHAEL)	CASE NO.: 16-CV-01577
	MCNEIL,)	
12)	(1) REQUEST FOR JUDICIAL NOTICE
	Plaintiffs,	)	AND MEMORANDUM OF POINTS
13		)	AND AUTHORITIES IN SUPPORT
	v.	)	THEREOF;
14)	
	MICROSEMI CORPORATION, ET AL.,	)	<u>Filed Under Separate Cover:</u>
15		)	(2) DECLARATION OF
	Defendants.	)	ANGELA COLT IN SUPPORT;
16)	
		)	(3) PROOF OF SERVICE; and
17)	
		)	<u>Lodged Under Separate Cover:</u>
18		)	(4) [PROPOSED] ORDER ON
		)	REQUEST FOR JUDICIAL NOTICE.
19)	
)	
20		)	Date: October 3, 2016
)	Time: 8:30 a.m.
21)	Judge: Hon. John Gallagher
)	Department: 4
22)	Action Filed: June 24, 2016
23)	
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1 **NOTICE OF REQUEST FOR JUDICIAL NOTICE**

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

3 **PLEASE TAKE NOTICE** that, pursuant to California Evidence Code sections 452
4 and 453, Defendant the Internet Society (“ISOC”) respectfully requests that, in considering
5 ISOC’s Demurrer to the Complaint, this Court take judicial notice of the following exhibits
6 attached to the Declaration of Angela Colt submitted concurrently herewith:

7 1. **Exhibit 1:** Amended Complaint and exhibits filed May 21, 2010 in
8 *Michael E. McNeil and Todd S. Glassey v. Book et al.*, No. CV-165643 (Santa Cruz Sup.
9 Ct.) (“*Glassey I*”);

10 2. **Exhibit 2:** Second Amended Complaint filed January 7, 2011 in *Glassey I*;

11 3. **Exhibit 3:** Amendment to Second Amended Complaint filed September 4,
12 2012 in *Glassey I*;

13 4. **Exhibit 4:** Complaint, ECF No. 1, filed October 7, 2013 in *Glassey, et al.*
14 *v. Symmetricom, Inc.*, No. 3:13-cv-04662-NC (N.D. Cal.) (“*Glassey II*”);

15 5. **Exhibit 5:** Settlement Agreement and Mutual Release, ECF No. 1-5,
16 Exhibit E to the Complaint filed October 7, 2013 in *Glassey II*;

17 6. **Exhibit 6:** Order Dismissing Case Without Prejudice, ECF No. 45, filed
18 May 6, 2014 in *Glassey II*;

19 7. **Exhibit 7:** Amended Complaint, ECF No. 6, filed August 27, 2014 in
20 *Glassey et al. v. Microsemi, Inc. et al.*, Case No. 14-cv-03629-WHA (N.D. Cal.) (“*Glassey*
21 *III*”);

22 8. **Exhibit 8:** Settlement Agreement and Mutual Release, ECF No. 31, filed
23 September 2, 2014 as an exhibit to the Amended Complaint filed August 27, 2014 in
24 *Glassey III*;

25 9. **Exhibit 9:** Settlement Agreement and Mutual Release, ECF No. 31-1, filed
26 September 2, 2014 as an exhibit to the Amended Complaint filed August 27, 2014 in
27 *Glassey III*; and

28

1 10. **Exhibit 10:** Second Amended Complaint, ECF No. 112, filed November 13,
2 2014 in *Glassey III*.

3 These documents are subject to judicial notice under (1) California Evidence Code
4 § 452(d) as records of a court of this State or any court of the United States; and (2)
5 California Evidence Code § 452(h) as “[f]acts and propositions that are not reasonably
6 subject to dispute and are capable of immediate and accurate determination by resort to
7 sources of reasonably indisputable accuracy.”

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Dated: August 29, 2016

Respectfully submitted,

By: /s/ Jason D. Russell
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Angela Colt

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Attorneys for Defendant The Internet Society

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Section 430.70 of the California Code of Civil Procedure provides that a demurrer
3 may rely on judicially noticed facts pursuant to section 452 or 453 of the Evidence Code.
4 Courts may judicially notice matters specified in California Evidence Code section 452.
5 Judicial notice of such matters must be taken if a party requests it, gives each adverse party
6 sufficient notice of the request, and furnishes the court with sufficient information to enable
7 it to take judicial notice of the matter. Cal. Evid. Code § 453. Evidence Code section 452
8 authorizes the Court to take judicial notice of “[r]ecords of ... any court of this state or ...
9 any court of record of the United States” and “[f]acts and propositions that are not
10 reasonably subject to dispute and are capable of immediate and accurate determination by
11 resort to sources of reasonably indisputable accuracy.” See Cal. Evid. Code § 452(d), (h).
12 Under these provisions, the Court should take judicial notice of Exhibits 1 through 10,
13 attached to the concurrently filed Declaration of Angela Colt (“Colt Declaration”) in
14 considering the Internet Society’s Demurrer to the Complaint.

15 **I. THE COURT SHOULD TAKE JUDICIAL NOTICE OF EXHIBITS 1-10**

16 **Exhibits 1-3**

17 The Court should take judicial notice of the following documents in *Michael E.*
18 *McNeil and Todd S. Glassey v. Book et al.*, No. CV-165643 (Santa Cruz Sup. Ct.)
19 (“*Glassey I*”): (1) Amended Complaint and exhibits, filed May 21, 2010; (2) Second
20 Amended Complaint filed January 7, 2011; and (3) Amendment to Second Amended
21 Complaint filed September 4, 2012, because they are copies of records of a proceeding in
22 the Superior Court of Santa Cruz County and are thus “[r]ecords of ... any court of this
23 state” and “not reasonably subject to dispute and ... capable of immediate and accurate
24 determination by resort to sources of reasonably indisputable accuracy.” Cal. Evid. Code
25 § 452(d), (h).

26 **Exhibits 4-6**

27 The Court should also take judicial notice of the following documents in *Glassey, et*
28 *al. v. Symmetricom, Inc.*, No. 3:13-cv-04662-NC (N.D. Cal.) (“*Glassey II*”): (1)

1 Complaint, ECF No. 1, filed October 7, 2013; (2) Settlement Agreement and Mutual
2 Release, ECF No. 1-5, Exhibit E to the Complaint filed October 7, 2013; and (3) Order
3 Dismissing Case Without Prejudice, ECF No. 45, filed May 6, 2014, because they are
4 copies of records of a proceeding in the United States District Court for the Northern
5 District of California and are thus “[r]ecords of . . . any court of record of the United
6 States” and “not reasonably subject to dispute and . . . capable of immediate and accurate
7 determination by resort to sources of reasonably indisputable accuracy.” Cal. Evid. Code
8 § 452(d), (h).

9 **Exhibits 7-10**

10 Similarly, the Court should take judicial notice of the following documents in
11 *Glassey et al. v. Microsemi, Inc. et al.*, Case No. 14-cv-03629-WHA (N.D. Cal.) (“*Glassey*
12 *III*”): (1) Amended Complaint, ECF No. 6, filed August 27, 2014; (2) Settlement
13 Agreement and Mutual Release, ECF No. 31, filed September 2, 2014 as an exhibit to the
14 Amended Complaint filed August 27, 2014; (3) Settlement Agreement and Mutual Release,
15 ECF No. 31-1, filed September 2, 2014 as an exhibit to the Amended Complaint filed
16 August 27, 2014; and (4) Second Amended Complaint, ECF No. 112, filed November 13,
17 2014, because they are copies of records of a proceeding in the United States District Court
18 for the Northern District of California and are thus “[r]ecords of . . . any court of record of
19 the United States” and “not reasonably subject to dispute and . . . capable of immediate and
20 accurate determination by resort to sources of reasonably indisputable accuracy.” Cal.
21 Evid. Code § 452(d), (h).

22 **CONCLUSION**

23 For the foregoing reasons, upon proper notice, the Court is required to take judicial
24 notice of the documents listed above. *See* Cal. Evid. Code § 453 (the trial court “shall take
25 judicial notice of any matter specified in Section 452 if a party requests it” and (i) gives
26 each adverse party sufficient notice of the request to enable the party to prepare to meet the
27 request, and (ii) furnishes the court with sufficient information to enable it to take judicial
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1 notice). Here, ISOC has requested judicial notice, provided notice of this request to
2 Plaintiffs, and furnished the Court with the requisite information under the rule.

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Dated: August 29, 2016

Respectfully submitted,

By: /s/ Jason D. Russell

Jason D. Russell
Angela Colt

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