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7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION
11

12 IN RE WAGeworks, INC., SECURITIES
13 LITIGATION

Case No.: 4:18-CV-01523-JSW

**DEFENDANT JOSEPH L. JACKSON'S
REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF MOTION TO DISMISS
PLAINTIFFS' CONSOLIDATED
AMENDED CLASS ACTION
COMPLAINT**

Hearing

Date: November 22, 2019
Time: 9:00 a.m.
Courtroom: Courtroom 5, 2nd Floor
Judge: The Honorable Jeffrey S. White

FENWICK & WEST LLP
ATTORNEYS AT LAW

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1 Pursuant to Rule 201 of the Federal Rules of Evidence, defendant Joseph L. Jackson (“Mr.
2 Jackson”) hereby requests that the Court take judicial notice of Exhibits A through E to the
3 Declaration of Kevin P. Muck (“Muck Declaration”) in connection with his motion to dismiss the
4 Consolidated Amended Class Action Complaint (“the CAC”).

5 1. **Exhibit A** to the Muck Declaration consists of true and correct copies of Form 4
6 filings for Mr. Jackson, filed with the United States Securities and Exchange Commission
7 (“SEC”) from August 4, 2011 to June 23, 2017.

8 2. **Exhibit B** to the Muck Declaration consists of true and correct copies of relevant
9 excerpts of WageWorks, Inc.’s Definitive Proxy Statements on Schedule 14A, filed with the SEC
10 from on or about March 1, 2013 to on or about March 17, 2017.

11 3. **Exhibit C** to the Muck Declaration consists of true and correct copies of relevant
12 excerpts of WageWorks’ Quarterly Report on Form 10-Q/A for the quarterly period ending June
13 30, 2016, filed with the SEC on March 18, 2019.

14 4. **Exhibit D** to the Muck Declaration consists of true and correct copies of relevant
15 excerpts of WageWorks’ Quarterly Report on Form 10-Q/A for the quarterly period ending
16 September 30, 2016, filed with the SEC on March 18, 2019.

17 5. **Exhibit E** to the Muck Declaration is a true and correct copy of WageWorks’
18 September 12, 2018 filing on Form 8-K, filed with the SEC on September 12, 2018.

19 Exhibits A through E are properly the subject of judicial notice because courts routinely
20 take judicial notice of such SEC filings. *See, e.g., Metzler Inv. GMBH v. Corinthian Colls., Inc.*,
21 540 F.3d 1049, 1064 n.7 (9th Cir. 2008); *Rok v. Identiv, Inc.*, 2017 WL 35496, at *2 n.4 (N.D.
22 Cal. Jan. 4, 2017), *aff’d*, 716 F. App’x 663 (9th Cir. 2018); Fed. R. Evid. 201(b) (the court may
23 take judicial notice of facts “not subject to reasonable dispute”).

24 Exhibits A through E may also be considered by the Court because they are incorporated by
25 reference in the CAC. *See United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003) (holding
26 that incorporation by reference is appropriate “if the plaintiff refers extensively to the document
27 or the document forms the basis of the plaintiff’s claim”); *Khoja v. Orexigen Therapeutics, Inc.*,
28 899 F.3d 988, 1002 (9th Cir. 2018) (incorporation by reference doctrine prevents plaintiff from

1 omitting “documents that weaken—or doom—their claims” in favor of only those that support
2 them); *Cement Masons & Plasterers Joint Pension Tr. v. Equinix, Inc.*, 2012 WL 685344, at *5
3 n.4 (N.D. Cal. Mar. 2, 2012) (“Where a plaintiff fails to attach to the complaint the documents
4 upon which the complaint is premised, a defendant may attach such documents in order to show
5 that they do not support the plaintiff’s claim.”).

6 Dated: July 26, 2019

FENWICK & WEST LLP

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8 By /s/ Kevin P. Muck
Kevin P. Muck

9 Attorneys for Defendant Joseph L. Jackson
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