

SUPREME COURT OF NORTH CAROLINA

MICHAEL MUNGER, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 STATE OF NORTH CAROLINA, et al.)
)
 Defendants.)
)

From Wake County
 07 CVS 011756
 COA09-375

DEFENDANTS GOOGLE INC. AND MADRAS INTEGRATION, LLC'S
MOTION FOR JUDICIAL NOTICE

Defendants Google, Inc. and Madras Integration, LLC respectfully request that the Court take judicial notice of the contents of three public records from the Office of Governor Beverly Perdue. The three documents are attached to this motion as Exhibits A, B, & C.

Exhibit A is a document from the Governor's Office titled "Governor Perdue: Facebook 'Likes' North Carolina: Announces Social Networking Leader to Build Data Center in Rutherford County." This release is available from the North Carolina Department of Commerce's web site at <http://www.nccommerce.com/en/PressRoom/PressReleases/FacebookLikesNorthCarolina.htm>.

Exhibit B is a release from the Governor's Office titled "Gov. Perdue Announces 600 Jobs in RTP: IBM Grows in Durham County." This release is available from the North Carolina Department of Commerce's web site at <http://www.nccommerce.com/en/PressRoom/PressReleases/782010GovPerdueAnnounces600JobsinRTP.htm>.

Exhibit C is a release from the Governor's Office titled "Gov. Perdue Welcomes Apple to North Carolina." This release is available from the website for the North Carolina Department of Commerce's web site at <http://www.nccommerce.com/en/PressRoom/PressReleases/GovPerdueWelcomesAppletoNorthCarolina.htm>.

Upon the request of a party, a court is required to take judicial notice a fact that is "not subject to reasonable dispute in that it is ... capable of accurate and ready determination by resort to sources whose accuracy cannot reasonable be questioned." N.C. R. Evid. 201(b) & (d). The North Carolina Supreme Court has the ability to take judicial notice of these documents and the facts contained within them because "[t]he device of judicial notice is available to an appellate court as well as a trial court[.]" . Util. Comm'n v. Southern Bell Tel. Co., 289 N.C. 286, 288, 221 S.E.2d 322, 323 (1976)

This Court has previously recognized that it is appropriate to take judicial notice of public records where the accuracy of the records cannot be reasonably

questioned. Southern Bell Tel. Co., 289 N.C. at 288, 221 S.E.2d at 323; State v. Swing, 66 S.E. 448, 448 (N.C. 1909) (recognizing that it is appropriate to “take judicial notice of the proclamations of the executive.”); Staton v. Atlantic Cost Line R. Co., 56 S.E. 794, 797 (N.C. 1907) (holding that the Supreme Court “must take judicial notice” of public records). Here, there can be no reasonable dispute that the contents of Exhibits A-C are accurate. The reliability of these records is demonstrated by the fact that Plaintiffs relied on similar documents in support of their claims.¹ Compl. ¶¶ 47, R. p. 45; Pls.’ New Br. at 8-10.

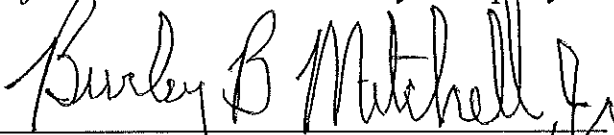
It is also appropriate to take judicial notice of the facts contained in Exhibits A-C because they pertain to important current events in the State of North Carolina that were widely reported to the general public. The Court may take judicial notice of the occurrence of “important current events,” 1 Kenneth S. Broun, Brandis & Broun on North Carolina Evidence §27 at 104-109 (5th Ed. 1998), because “justice does not require that courts profess to be more ignorant than the rest of mankind,” State v. Vick, 213 N.C. 235, 195 S.E. 779, 781 (1938). See State v. Williams, 263 N.C. 800, 804, 140 S.E.2d 529, 532 (1965) (holding that courts may take judicial notice of facts generally known from radio, television and press coverage).


¹ Exhibits A-C could not have been utilized at the lower court or included in the record on appeal because they did not exist at the time Plaintiffs commenced this action or at the time the record on appeal was compiled.

If the Court were to decline to take judicial notice of these documents, it would be turning a blind eye to the generally known fact that – contrary to Plaintiffs’ assertion that the incentives were created “for the direct and sole benefit of Google,” Pls.’ New Br. at 8 – incentives are widely used to attract business to North Carolina. Accordingly, Google requests that the Court take judicial notice of the three attachments.

This the 15th of December, 2010.

WOMBLE CARLYLE SANDRIDGE & RICE,
a Professional Limited Liability Company

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*Counsel for Defendants Google Inc. and
Madras Integration, LLC*

EXHIBIT A

Beverly Eaves Perdue
Governor



North Carolina
Office of the Governor

Release: IMMEDIATE
Date: November 11, 2010

Contact: Tim Crowley
Phone: 919-733-7977

Governor Perdue: Facebook 'Likes' North Carolina

Announces Social Networking Leader to Build Data Center in Rutherford County

Rutherford County – Gov. Bev Perdue announced today that Facebook, the world's leading social networking service connecting more than 500 million people, will locate a multi-million dollar data center near Forest City in Rutherford County.

The facility is expected to create more than 250 construction and mechanical jobs during its 18-month building phase. When construction is completed, the data center will employ around 35-45 full-time and contract workers. Facebook is expected to invest about \$450 million dollars in the new data center. Additional construction phases may be possible in the future, depending on business needs.

"We are proud that Facebook chose to make North Carolina a 'friend.' The feeling is certainly mutual," said Gov. Perdue. "You can't pick up a newspaper, read a magazine or flip on the television without hearing more great news about our state. The investment and jobs at the data center will be a boon to that region of the state, and will help confirm North Carolina's distinction as a global business destination."

Perdue said the state has been working with Facebook's representatives for about a year to help bring together the land, utilities and incentives to make the project a success. North Carolina has become a destination for data center projects including previous announcements by Apple, Google and IBM.

"After a rigorous review of sites across the East Coast, we are pleased to locate our new data center in Rutherford County. The team we will hire here will help us provide faster, more reliable and more robust service to people around the world who rely on Facebook to connect and share," said Tom Furlong, Director of Site Operations for Facebook. "We are very grateful to the officials in Rutherford County and the State of North Carolina whose time, effort and commitment were instrumental in making this happen."

In keeping with North Carolina's growing reputation for environmental leadership, the building will be designed to LEED gold standards. In addition, Facebook will employ innovative cooling and power management technologies to make the facility one of the most energy efficient data centers in the United States. Facebook is also a leading pioneer in efficient software and facility will use technologies developed by Facebook to rely on fewer than half the computing power (and related energy consumption) that a similar data center would have required only a few years ago.

"This is a shining example of the public and private sectors working together to create new opportunities for North Carolina communities," said Lt. Governor Walter Dalton, a native of Rutherford County. "As the national press has indicated, North Carolina is helping to lead the nation out of the Great Recession. When it comes to this growing field and so many others, North Carolina is open for business."

North Carolina continues to have a top-ranked business climate. Through Gov. Perdue's JobsNOW initiative, the state works aggressively to create jobs, train and retrain its workforce, and lay the foundation for a strong and sustainable economic future.

Other partners that helped with this project include: the N.C. Department of Commerce, N.C. Community Colleges, Rutherford County, the town of Forest City, and the N.C. Rural Economic Development Center.

More information about the project as well as ongoing updates will be available at: [Facebook.com/rutherforddatacenter](https://www.facebook.com/rutherforddatacenter).

For groundbreaking event photography and Rutherford County Data Center architectural renderings, please call Billy Warden, 919.412.0630 or Greg Behr, 919.272.5621.

Follow Gov. Perdue on [Facebook](#).

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Beverly Eaves Perdue
Governor



North Carolina
Office of the Governor

Release: IMMEDIATE
Date: July 8, 2010

Contact: Chris Mackey
Phone: 919-733-5612

Gov. Perdue Announces 600 Jobs in RTP IBM Grows in Durham County

RALEIGH – Gov. Bev Perdue announced today that IBM Lender Business Process Services Inc., a wholly owned subsidiary of International Business Machines Corp., will hire 600 workers during the next two years and invest \$3.7 million to open a managed business process service center in Research Triangle Park. A state Job Development Investment Grant helped make the project possible.

“IBM has been a major employer in North Carolina providing thousands of skilled jobs for more than 30 years. We value this company’s ongoing commitment to North Carolina and Research Triangle Park,” said Perdue.

IBM LBPS offers a broad range of lender-based technology and business process solutions for its clients. (For more information, visit www.lbps.com) Salaries for the 600 new jobs will vary according to responsibilities and function, but the overall average pay for the new positions will be \$50,000 a year not including benefits. The Durham County average is \$57,772.

“The new services operation furthers our commitment to the state of North Carolina and our ongoing presence in Research Triangle Park,” said Bob Greenberg, senior state executive, IBM North Carolina. “These skilled positions, coupled with our investment earlier this year in an energy efficient cloud-computing data center, demonstrate that as the marketplace demands new skills and technology, growth opportunities in North Carolina continue to be a hub of activity.”

The Economic Investment Committee voted today to award a Job Development Investment Grant to IBM LBPS to facilitate this project. For each year in which the company meets the required performance targets, the state will provide a grant equal to 65 percent of the state personal income withholding taxes derived from the creation of new jobs. Should the company create the jobs called for under the agreement and sustain them for 10 years, the agreement could yield as much as \$7.79 million in maximum benefits for IBM.

“These are exactly the sort of highly skilled jobs that North Carolina needs to be recruiting in the 21st century economy, and we’re especially pleased that IBM is expanding its presence in Research Triangle Park,” said Rep. Mickey Michaux, D-Durham.

“North Carolina has a built-in workforce for these kinds of jobs,” said Sen. Floyd McKissick, D-Durham. “We’re committed to making the right investments to create these kinds of opportunities in Durham and across North Carolina.”

Job Development Investment Grants are awarded only to new and expanding businesses and industrial projects whose benefits exceed the costs to the state and which would not be undertaken in North Carolina without the grant.

Other partners who assisted with this project include: the N.C. Department of Commerce, Research Triangle Regional Partnership and Durham County.

Through Gov. Perdue's JobsNOW initiative, the state continues to work aggressively to create well-paying jobs, train and retrain its workforce, and lay the foundation for a strong and sustainable economic future.

For more information about IBM, including employment opportunities, visit www.ibm.com.

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EXHIBIT C

Beverly Eaves Perdue
Governor



North Carolina
Office of the Governor

Release: IMMEDIATE
Date: June 3, 2009

Contact: David Kochman
Phone: 919 733-5612

Gov. Perdue Welcomes Apple to North Carolina

RALEIGH -- Gov. Bev Perdue today announced that Apple has selected North Carolina as the location for a new data center. The company is expected to invest more than \$1 billion in the project over nine years.

"North Carolina continues to be a prime location for growing and expanding global technology companies," said Perdue. "We welcome Apple to North Carolina and look forward to working with the company as it begins providing a significant economic boost to local communities and the state."

The announcement comes after Gov. Perdue this morning signed Senate Bill 575, which modifies the method by which capital-intensive businesses calculate corporate income tax liability in North Carolina.

The facility is expected to employ at least 50 full-time employees. The legislation requires that the average wage exceed the wage standard of the county in which it's located. A data center such as this will typically contract locally for services such as server maintenance and repair, building and HVAC maintenance, landscaping and security – expenditures that could range from \$5 million to \$6 million annually in the region and create up to 250 jobs. The North Carolina Department of Commerce projects that a data center investment of \$1 billion would create more than 3,000 jobs in the regional economy, including hundreds of jobs related to construction and others created as a result of economic growth.

"We are very pleased the General Assembly has recognized the role capital-intensive industries play in the state's economy and their relationship to small businesses in our communities. Technology-driven projects like this may bring fewer overall jobs than traditional industry, but they have a tremendous economic impact through locally purchased goods and services," Commerce Secretary Keith Crisco said.

As part of the legislation, a capital-intensive industry must meet investment and wage standards and provide its employees with health insurance in order to utilize the modified formula for calculating the state corporate income tax. It also must locate in one of the state's more economically distressed Tier 1 or Tier 2 areas.

"During these tough economic times, it's important to make the investments that create jobs in areas that need them the most," said Perdue.

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CERTIFICATE OF SERVICE

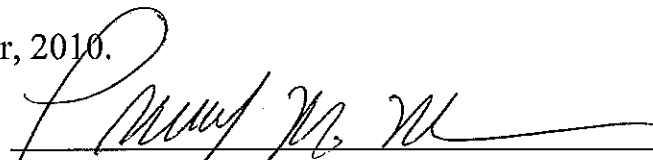
I hereby certify that I have this day served a copy of the foregoing **RESPONSE OF DEFENDANTS GOOGLE INC. AND MADRAS INTEGRATION, LLC IN OPPOSITION TO PLAINTIFFS' PETITION FOR DISCRETIONARY REVIEW** in the above-captioned action upon all parties by depositing a copy of same in the United States Mail, first-class postage prepaid as addressed below and via e-mail as follows:

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This the 15th day of December, 2010.


Pressly M. Millen

*Attorney for Defendants Google Inc. and
Madras Integration, LLC*