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26 UNITED STATES DISTRICT COURT  
 27 NORTHERN DISTRICT OF CALIFORNIA

28 THE NVIDIA GPU LITIGATION ) CLASS ACTION  
 )  
 ) Case No. C 08-4312 JW  
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 )  
 ) AMENDED CONSOLIDATED  
 ) COMPLAINT  
 )  
 ) This Document Relates To: ) DEMAND FOR JURY TRIAL  
 ) C 08-4332; C 08-4596; C 08-5081; C 08-  
 ) 5082; C 08-5179; C 08-5217; C 08-5520; C  
 ) 09-0260; C 09-0328  
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AMENDED CONSOLIDATED COMPLAINT		
Case No. C 08-4312 JW		

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1 Plaintiffs Todd Feinstein, Brian Robinson, Inicom Networks, Inc., Steven Nakash, and  
2 Lance Waidzunas, individually and on behalf of all others similarly situated, by their  
3 undersigned counsel, allege the following upon personal knowledge as to their own acts and  
4 upon information and belief as to all other matters, which is likely to have evidentiary support  
5 after the opportunity for further investigation and discovery.

6 **NATURE OF THE ACTION**

7 1. Plaintiffs bring this action against defendant NVIDIA Corporation (“NVIDIA” or  
8 the “Company”) on behalf of those who purchased at retail a computer equipped with a defective  
9 NVIDIA graphics processing unit (“GPU”) and/or media communications chip (“MCP”)  
10 (collectively the “NVIDIA GPUs” and “Class Computers”).

11 2. Defendant has admitted its NVIDIA GPUs are defective. Defendant knew or  
12 should have known of the defect prior to selling or placing the NVIDIA GPUs into the stream of  
13 commerce.

14 3. NVIDIA’s defective GPUs cause consumers’ computers to underperform, to  
15 display corrupted images (including distorted images, lines, garbled characters, and artifacts), to  
16 overheat, and even to suffer complete monitor/display and system failure.

17 4. NVIDIA is aware of hundreds (if not thousands) of consumer reports and  
18 complaints about the graphics, video, heat and performance problems plaguing the Class  
19 Computers.

20 5. The NVIDIA GPU defect manifests itself in all Class Computers to varying  
21 degrees. For example, under normal use the defect causes the Class Computers to generate  
22 excessive heat, which forces the system fan to run more often, increasing ambient noise and  
23 reducing battery life. Excessive heat also affects other internal components like the CPU, which  
24 will “throttle down,” decreasing overall system performance. The defect results in the inability  
25 of Plaintiffs and Class members to use their Class Computers for their intended purposes.

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**THE PARTIES**

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12. Plaintiff Todd Feinstein (“Feinstein”) is a citizen of Louisiana. In April of 2008, Plaintiff Feinstein purchased a MacBook Pro computer containing an NVIDIA GPU. Plaintiff Feinstein’s notebook has and continues to show signs of the NVIDIA GPU defect, including that the notebook operates at excessively hot temperatures, has a screen which is fuzzy and displays only grey or black at certain times, and periodically shuts down entirely without warning. At the time of purchase, Plaintiff Feinstein was not aware of the defect complained of herein, and as a result, Plaintiff Feinstein has suffered injuries and damages in a manner similar to other Class members.

13. On September 26, 2008, Plaintiff Feinstein’s counsel sent a letter to NVIDIA on behalf of Plaintiff Feinstein and all those similarly situated by certified mail, return receipt requested, demanding that NVIDIA immediately correct, repair, replace, or otherwise rectify the problems alleged herein, or that it remunerate consumers for these problems. NVIDIA has failed to respond.

14. Plaintiff Brian Robinson (“Robinson”) is a citizen of California. During the Class Period, Plaintiff Robinson purchased a Hewlett-Packard (“HP”) notebook computer containing an NVIDIA GPU. Plaintiff Robinson’s notebook has and continues to show signs of the NVIDIA GPU defect, including abnormal heat and display and system failure. At the time of purchase, Plaintiff Robinson was not aware of the defect complained of herein, and as a result, Plaintiff Robinson has suffered injuries and damages in a manner similar to other Class members.

15. Plaintiff Inicom Networks, Inc. (“Inicom”) is a citizen of New Mexico. During the Class Period, Plaintiff Inicom purchased a Dell Latitude D630 notebook computer containing an NVIDIA GPU. Plaintiff Inicom’s notebook has and continues to show signs of the NVIDIA GPU defect, including abnormal heat and temperatures, a loud high speed fan noise after installing the BIOS upgrade and a complete failure of the video display. At the time of purchase,

1 Plaintiff Inicom was not aware of the defect complained of herein, and as a result, Plaintiff  
2 Inicom has suffered injuries and damages in a manner similar to other Class members.

3 16. Plaintiff Steven Nakash is a citizen of New Jersey. During the Class Period,  
4 Plaintiff Nakash purchased a Dell-manufactured Vostro 1700 Notebook Computer equipped with  
5 an NVIDIA GPU. Plaintiff Nakash's notebook has and continues to show signs of the NVIDIA  
6 GPU defect, including intermittently shutting down and a screen that displays only pink or grey  
7 at certain times. At the time of purchase, Plaintiff Nakash was not aware of the defect  
8 complained of herein, and as a result, Plaintiff Nakash has suffered injuries and damages in a  
9 manner similar to other Class members.

10 17. Plaintiff Lance Waidzunas is a resident of Illinois. During the Class Period,  
11 Plaintiff Waidzunas purchased a HP Pavilion Notebook Computer equipped with an NVIDIA  
12 GPU. Plaintiff Waidzunas' notebook has and continues to show signs of the NVIDIA GPU  
13 defect, including abnormal heat and temperatures and video display problems. At the time of  
14 purchase, Plaintiff Waidzunas was not aware of the defect complained of herein, and as a result,  
15 Plaintiff Waidzunas has suffered injuries and damages in a manner similar to other Class  
16 members.

17 18. Defendant NVIDIA is a Delaware corporation with its headquarters and principal  
18 place of business at 2701 San Tomas Expressway, Santa Clara, California, and offices  
19 throughout Asia, Europe and the Americas. NVIDIA designs, develops and markets three  
20 dimensional (3D) graphics processors and related software. The Company's products provide  
21 interactive 3D graphics to the mainstream personal computer market. NVIDIA is the second  
22 leading producer of GPUs worldwide (as of the second quarter of fiscal 2008), controlling 31.4  
23 percent of the market.

24 **FACTUAL ALLEGATIONS**

25 19. Defendant NVIDIA manufactures and sells graphics processing units and media  
26 communications chips. NVIDIA's GPUs and MCPs are used in computers manufactured and  
27 sold by computer companies, like HP, Dell and Apple.

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**FIGURE 2**



**GPU and Heat Control**

24. The GPU produces a large amount of heat during normal operation and is therefore usually located next to a heat sink or system fan. A heat sink is an object placed on or near the graphics processor that absorbs and dissipates the heat emanating from the GPU. The system fan operates in the same way a domestic cooling fan does and cools down the immediate environment surrounding the GPU. See Figure 3 below.

**FIGURE 3**



25. Typically, microchips are produced in large batches on a single wafer of electronic-grade silicon. The wafer is then cut into many pieces, each containing one copy of the circuit. Each of these pieces is called a “die.” As explained more fully below, the die component of the NVIDIA GPUs is not robust enough to withstand normal operation.

**HP Confirmed the NVIDIA GPU Defect in an Internal Investigation**

26. HP conducted an investigation into suspected defects in its laptops containing the NVIDIA GPUs. HP’s investigation identified 24 models affected by the defect and pinpointed

1 some of the symptoms manifested by the defective NVIDIA GPUs. NVIDIA subsequently  
 2 admitted to a defect in its NVIDIA GPUs in its July 2, 2008 Form 8-K, filed with the SEC.

3 27. When NVIDIA first designs and manufactures a GPU, it tests that GPU for  
 4 operating reliability. NVIDIA should have been aware of the defects from the routine tests  
 5 before the GPUs were shipped to OEM manufacturers.

6 **Consumer Complaints Concerning the Defective NVIDIA GPUs**

7 28. Because of the defect, consumers who purchased Class Computers containing  
 8 these NVIDIA GPUs experienced display problems and system crashes as evidenced by the  
 9 hundreds (if not thousands) of consumer complaints on the Internet.

10 29. Excerpts from some of these consumer complaints are set forth below:<sup>1</sup>

Model Number and Source	Comments
Dell Vostro 1510 <i>Bit-tech.net</i> May 2008	Here I have a <b>brand new</b> Dell Vostro 1510 laptop. It has 2.0GHz CPU and Geforce 8400M GS 256MB graphics card. I am worried about the graphics card and CPU temperatures. While browsing the internet GPU temperature is about 62-63C and CPU temp is about 52-55C. These temperatures were about 15-20C less on my Inspiron 6400.
Apple <i>Apple.com</i> July 2008	My GPU is always way hotter than my CPU even when I'm running very basic applications.... Now, I know that Nvidia has reported problems with some of their mobile GPU, but no details as of which GPUs are affected. Did anyone else notice the same problem?
ECS <i>Theinquirer.net</i> July 2008	<b><i>We have two Nvidia products here that have failed too. Namely, an ECS laptop that uses an Nvidia GPU</i></b> (can't remember which though ... 7300, 8300 or 8400. I'm not the one using the laptop and can't check it now because the thing's not displaying anything). <b><i>Service personnel say the graphics chip went AWOL.</i></b> Also, I have an Nvidia based mobo (MSI K9N Neo-F, Nvidia MCP 550) that has also gone the way of the dodo. <b><i>Service says it must be the chipset. Mobo goes nuts when it's been on for a while and heat has built up, so maybe</i></b>

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27 <sup>1</sup> Emphasis added. Edited for readability purposes.

	<i>the Nvidia chip packaging is the culprit</i> there too.
Dell <i>Theinquirer.net</i> July 2008	FINALLY! <i>Someone has written about how I'm NOT crazy, and it IS Nvidia's fault that my laptop died.</i> If anyone cares, it was a Dell, not an HP. Too bad I sold the parts because no one believed me (even though it was the absolute truth). <i>There needs to be a criminal investigation on this ... Nvidia is screwing people over.</i>
Dell XPS M1330 <i>Theinquirer.net</i> July 2008	Well this explains why both of my m1330's dell laptops have both had their GPU's die and required motherboard replacements within the first 4 months (8400gs integrated on motherboard). <i>And why there are a million threads on the m1330 dying the same way, graphics go corrupt/vertical lines on screen.</i>
Dell Vostro 1400 <i>Notebookreview.com</i> July 2008	I believe I have a defective graphics card and was wondering if you guys could give me some help in finding out for sure and some possible solutions ... the display is split in to six parts all showing the desktop. This happens even when I start the computer, it will show the same display on the BIOS loading screen, even also in safe mode. I have installed and uninstalled my graphics card drivers for the 8400gs which didn't work, I have reset all my services and settings to their factory settings which didn't work either. All other hardware on my laptop seems to be working. <i>Problems with the graphics first started a month when I noticed that the graphics card would now idle at about 60 degrees C instead of its normal 45-50 degrees C range.</i> It really got messed up when I was playing a game of America's army and the display just completely froze and then everything got a weird pinkish hue then it just crashed. It doesn't even show the bsod when it crashes it just simply freezes and then restarts. I have heard claims about defective graphics cards but was under the impression that Dell Vostros weren't affected.
MacBook Pro <i>Macrumors.com</i> August 2008	<p><i>Starting yesterday, it seems that my GPU is dying. Every now and then my screen will either freeze or have particles all over.</i> I just tried booting up to WoW and it froze with particles.... I'm really disappointed that I've only had this laptop for a little over a year putting extremely limited stress to it. I have not purchased AppleCare for it either.</p> <p>What's should I do? I would really appreciate any help with this. <i>It's crazy that I've been reading these stories about GPUs dying in Macbook Pros last week and BAM! Mine has to bite the dust as well.</i></p>

<p>1 Dell Vostro 1400 2 <i>Notebookreview.com</i> 3 August 2008</p>	<p><i>Is my graphics card dying?</i> I own a Dell Vostro 1400 (8400M Version). Just lately it's gone a little crazy. I push the power button, the <i>blue Dell logo comes up and loads, but instead of filling the whole screen, the screen is split up into six parts!</i> I have six of the Dell logos on my screen! This continues onto the Windows loading screen, which after it restarts and does exactly the same thing. <i>It does run abnormally hot (has done ever since I brought it)</i>, so I don't know if that has anything to do with it? Any ideas? Is my graphics card dead?</p>
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7 **NVIDIA Admits Its GPUs Are Defective, But Fails to Institute a Recall**

8 30. In its July 2, 2008 Form 8-K NVIDIA admitted to a defect in the NVIDIA GPUs:

9  
10 On July 2, 2008, NVIDIA Corporation stated that it would take a \$150 million to \$200 million charge against cost of revenue to cover anticipated customer warranty, repair, return, replacement and other consequential costs and expenses *arising from a weak die/packaging material set in certain versions of our previous generation MCP and GPU products used in notebook systems*. All newly manufactured products and all products currently shipping in volume have a different and more robust material set.

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14 *The previous generation MCP and GPU products that are impacted were included in a number of notebook products that were shipped and sold in significant quantities.* Certain notebook configurations of these MCP and GPU products are failing in the field at higher than normal rates. While we have not been able to determine a root cause for these failures, testing suggests a weak material set of die/package combination, system thermal management designs, and customer use patterns are contributing factors. *We have developed and have made available for download a software driver to cause the system fan to begin operation at the powering up of the system and reduce the thermal stress on these chips. We have also recommended to our customers that they consider changing the thermal management of the MCP and GPU products in their notebook system designs.* We intend to fully support our customers in their repair and replacement of these impacted MCP and GPU products that fail.

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22 (Emphasis added).

23 31. On the same day, NVIDIA issued a press release and provided a "Second Quarter  
24 Fiscal 2009 Business Update" wherein the Company again admitted to the defect and stated the  
25 following:

26 Company Lowers Financial Outlook for Second Quarter and Plans to Take  
27 One-Time Charge for Certain Notebook Field Failures

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Separately, NVIDIA plans to take a *one-time charge from \$150 million to \$200 million* against cost of revenue for the second quarter to cover anticipated warranty, repair, return, replacement and other costs and expenses, arising from a weak die/package material set in certain versions of its previous generation GPU and MCP products used in notebook systems. Certain notebook configurations with GPUs and MCPs manufactured with a certain die/package material set are failing in the field at higher than normal rates. To date, abnormal failure rates with systems other than certain notebook systems have not been seen. NVIDIA has initiated discussions with its supply chain regarding this material set issue and the Company will also seek to access insurance coverage for this matter.

Regarding the notebook field failures, NVIDIA president and CEO Jen-Hsun Huang stated: Although the failure appears related to the combination of the interaction between the chip material set and system design, we have a responsibility to our customers and will take our part in resolving this problem....”

\* \* \*

Huang added, This has been a challenging experience for us. However, the lessons we’ve learned will help us build far more robust products in the future, and become a more valuable system design partner to our customers. *As for the present, we have switched production to a more robust die/package material set and are working proactively with our OEM partners to develop system management software that will provide better thermal management to the GPU.*

(Emphasis added).

32. NVIDIA’s announcements failed to specify which GPU and MCP products or computers were defective.

33. Although Defendant admits the NVIDIA GPUs are defective, remarkably, NVIDIA has failed to take any steps to make Plaintiffs and Class members whole. Defendant has failed to recall the defective NVIDIA GPUs and send Plaintiffs and Class members non-defective NVIDIA GPUs with a “more robust material set” at NVIDIA’s expense.

34. EE|Times, a well-respected electronics industry newspaper, reported on July 2, 2008 that according to an email from an NVIDIA spokesman, Defendant NVIDIA denied the need for a recall:

“We didn’t recall any chips.... We’ve replaced the products. We’ve changed our packaging and *we’ve developed and distributed a software driver to help avoid the failures.*”

1 35. Although NVIDIA changed its manufacturing and design techniques to remedy its  
2 products on a going-forward basis, it failed to take proper corrective measures with respect to the  
3 NVIDIA GPUs that were previously purchased by consumers.

4 36. NVIDIA also consistently attempted to shift the blame away from itself and onto  
5 its suppliers, laptop manufacturers and, preposterously, consumers. Indeed, in the July 2, 2008  
6 Form 8-K, NVIDIA stated, “testing suggests a weak material set of die/package combination [*i.e.*  
7 its suppliers], system thermal management designs [*i.e.* the laptop manufacturers], and customer  
8 use patterns [*i.e.* consumers] are contributing factors.”

9 37. Similarly, EE|Times reported on July 2, 2008 that “NVIDIA ... pointed the finger  
10 at one of its foundry partners: Taiwan Semiconductor Manufacturing Co. Ltd.” in an e-mail first  
11 explaining the defect problem. NVIDIA states in the e-mail that the “packaging was supplied by  
12 TSMC.”

13 38. The July 2, 2008, article by EE|Times reported that NVIDIA then later retracted  
14 its position:

15  
16 Then, in another e-mail, Nvidia did an about-face. “Bottom line: We take  
17 responsibility for this,” the Nvidia spokesman said. “We worked closely  
18 with TSMC on packaging and the material.”

19 \* \* \*

20 “With regards to TSMC, we are not ‘blaming’ TSMC,” the Nvidia  
21 spokesman said in the second e-mail. “Also, to be clear, the material set  
22 was co-qualified between [Nvidia] and TSMC.”

23 39. A July 9, 2008, article posted on TheInquirer.com, a website focusing on  
24 technological processes and current events in the electronics field, states:

25 The short story is that ***all the G84 and G86 parts are bad. Period. No  
26 exceptions. All of them, mobile and desktop, use the exact same ASIC,***  
27 ***so expect them to go south in inordinate numbers as well. There are  
28 caveats however, and we will detail those in a bit.***

\* \* \*

Basically, ***NV [NVIDIA] seems to have told each analyst a highly  
personaliz[ed] version of the story, and stonewalls everyone else who  
asks. Why? The magnitude of the problem is huge.*** If Dell and HP hold  
their feet to the fire, anyone want to bet that \$200 million won’t cover it?

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This has all the hallmarks of things the SEC used to investigate in a time before government was purchasable.

The other problem is the long tail. Failures occur due to heat cycling, cold -> hot -> cold for the non-engineers out there. If you remember, we said all G84s and G86s are affected, and all are the same ASIC, so why aren't the desktop parts dying? They are, you are just low enough on the bell curve that you don't see it in number that set off alarm bells publicly yet.

Laptops get turned on and off many times in a day, and due to the power management, throttle down much more than desktops. This has them going through the heat cycle multiple times in a day, whereas desktops typically get turned on and off once a day, sometimes left on for weeks at a time. Failures like this are typically on a bell curve, so they start out slow, build up, then tail off.

Since laptops and desktops have a different "customer use patterns", they are at different points on the bell curve. Laptops have got to the, "we can't bury this anymore" point, desktops haven't, but they will - guaranteed. ***The biggest question is whether or not they will be under warranty at that point, not whether or not they are defective. They are.***

(Emphasis added).

40. NVIDIA issued another press release on August 12, 2008 reporting results for the second quarter of Fiscal 2009, and stating:

During the second quarter of fiscal 2009, NVIDIA recorded a \$196 million charge against cost of revenue to cover anticipated customer warranty, repair, return, replacement and associated costs arising from a weak die/packaging material set in certain versions of our previous generation MCP and GPU products used in notebook systems.

41. This press release further confirms the existence and widespread nature of the defect.

42. On or about August 25, 2008, NVIDIA held its yearly NVISION convention at the San Jose Centre for Performing Arts. According to news reports, angry consumers protested outside the NVISION show to highlight NVIDIA's failure to address known problems with its defective GPUs. An NVIDIA spokesman said to reporters:

"The truth is ... our obligations to our partners limit what we can say. We need to leave announcements to our partners like Dell and HP.... I know there's frustration, and it would make my job easier if I could give out the facts that I know, but we have obligations to our partners. We discuss it constantly, and ***the company would like to be more upfront about this - but we can't be.***"

1 43. On or about October 9, 2008, another computer manufacturer, Apple, admitted  
2 certain of its notebook computers contained the defective NVIDIA GPUs.

3 44. Had Plaintiffs and Class members known about the defect, they would not have  
4 purchased Class Computers with defective NVIDIA GPUs.

5 **NVIDIA Fails to Recall the Defective GPUs and Provides OEMs with “Fixes” to Hide and**  
6 **Delay the Defect**

7 45. Instead of recalling the defective NVIDIA GPUs, NVIDIA has provided its  
8 OEMs such as Dell, Acer and HP, inadequate remedies and other purported “fixes,” which hide,  
9 delay and in some instances, exacerbate the problems caused by the defect.

10 46. For example, on July 25, 2008, Dell announced on its Direct2Dell.com website  
11 that it was providing a “software update” for some, but not all, Dell notebooks containing the  
12 defective NVIDIA GPUs. This purported “solution” consisted of a BIOS update, which would  
13 force the computer’s fan to run more frequently (or continuously) in an effort to control the  
14 excessive heat caused by the defect:<sup>2</sup>

15 Earlier this month, sites like Ars Technica and ZDNet blogged about  
16 NVIDIA’s statement regarding a potential issue with some of NVIDIA’s  
17 Graphics Processing Units (GPUs) used in notebooks. According to  
18 NVIDIA, these affected GPUs are experiencing higher than expected  
19 failure rates causing video problems. Though this issue is not unique to  
20 Dell, some of these affected GPUs are used in certain Dell laptops....

21 *The issue is a weak die/packaging material set, which may fail with GPU*  
22 *temperature fluctuations.* If your GPU fails, you may see intermittent  
23 symptoms during *early stages of failure* that include:

- 24 • Multiple images
- 25 • Random characters on the screen
- 26 • Lines on the screen
- 27 • No video

28 Dell recommends that you flash your system BIOS (see links in the table  
below). *Each of these BIOS updates listed in the table below modifies*  
*the fan profile to help regulate GPU temperature fluctuations.*

(Emphasis added.)

26 <sup>2</sup> “BIOS” stands for Basic Input Output System. The BIOS is computer instruction code  
27 that assists in identifying and initializing the computer’s component hardware.

1 47. Similarly, HP offered consumers through its website a “BIOS update”. The  
2 update fails to repair or replace the defective components and shifts repair responsibilities to  
3 Plaintiffs and Class members.

4 48. Many Class members are likely unaware of the BIOS update or are unable (or  
5 unwilling) to perform a BIOS update. Experts consider BIOS updates extremely dangerous,  
6 because any problems experienced during a BIOS update typically result in an unusable  
7 computer.

8 49. These BIOS updates are also fraught with complications, cause new or additional  
9 problems and are merely temporary band-aids meant to forestall the manifestation of major  
10 problems. As HP admits:

11 The new BIOS release for your notebook PC is preventative in nature to  
12 **reduce the likelihood of future system issues**. The BIOS updates the fan  
13 control algorithm of the system, and **turns the fan on at low volume while  
your notebook PC is operational**.

14 50. The BIOS updates cause the computer’s fan to run continuously. Although the  
15 BIOS update may lower the thermal stress on the defective NVIDIA components by running the  
16 system fan constantly, consumers experience a decrease in notebook battery life, increase in  
17 system noise, and decrease in computer life – manifesting further defects in the already defective  
18 computers.

19 51. NVIDIA’s purported BIOS “fix” is no fix at all. The BIOS fix does nothing to  
20 repair or replace the defective NVIDIA GPUs. Instead, the BIOS “fix” further degrades the  
21 functionality of the defective Class Computers in an attempt to postpone complete system failure  
22 until after the OEM’s warranty expires.

23 52. On August 19, 2008, *The Wall Street Journal* reported that consumers are not  
24 satisfied with the BIOS updates:

25 Nvidia Corp. often gets good reviews for its technology. But the way the  
26 chip maker and two computer manufacturers are handling a product defect  
hasn’t pleased some critics, adding to a series of headaches for the Silicon  
Valley company.

27 The problem affects an undisclosed number of laptop computers, stopping  
28 them from booting up, causing display screens to go dark and other

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problems. Nvidia has traced it to packaging materials used on some chips that manage graphics and other functions, which can fail if they get too hot. The company disclosed the problem last month and is taking a \$196 million reserve to cover computer makers' costs in addressing it.

*Nvidia hasn't recalled the affected chips or identified which models have problems. Dell Inc. and Hewlett-Packard Co., the two customers that have so far announced plans for coping with the problem, said they won't repair affected laptops until they fail.*

The PC makers instead recommend updating internal software -- known as BIOS, for basic input-output system -- to adjust the speed of a laptop's cooling fan. *That change doesn't guarantee the systems won't fail but is expected to reduce the likelihood of failure....*

But some consumers who posted complaints on Web message boards don't seem satisfied with the BIOS fix, knowing they own computers that could stop working. "I hope Dell realizes that people will not be happy until their graphics cards are replaced," wrote one customer on the computer maker's site. Added another: "I did not pay for a high-end logic bomb."

(Emphasis added.)

53. On August 13, 2008, TechSpot.com stated that NVIDIA's response to the defect is wholly inadequate:

*Yesterday, it was speculated that there were manufacturing defects in the G92 and G94 chipsets, on top of the already known bad parts in the G84 and G86 series. Nvidia may have tried to avoid blame here and there, but ultimately it is coming down on them and they have been stuck with warranty replacements galore. Even if the newer chipsets are fine, it doesn't do anything to remedy the mass amounts of defective ones already sold.*

(Emphasis added.)

54. The NVIDIA GPU defect manifests itself in all Class Computers to varying degrees. For example, under normal use the defect causes the Class Computers to generate excessive heat, which forces the system fan to run more often, increasing ambient noise and reducing battery life. Excessive heat also affects other internal components like the CPU, which will "throttle down," decreasing overall system performance. The defect results in the inability of Plaintiffs and Class members to use their Class Computers for their intended purposes.

55. Thus, NVIDIA caused substantial harm and injury to Plaintiffs and to Class members. NVIDIA refuses to remedy the harm consumers suffered by replacing the defective

1 NVIDIA GPUs and MCPs in consumers' computers with properly engineered, manufactured and  
2 functioning graphics chips.

3 **CLASS ACTION ALLEGATIONS**

4 56. Plaintiffs bring this class action pursuant to Rule 23 of the Federal Rules of Civil  
5 Procedure on their own behalf and on behalf of all others who purchased at retail a Class  
6 Computer equipped with an NVIDIA GPU within the last four years. Excluded from the Class is  
7 Defendant, any entity that has a controlling interest in Defendant and Defendant's current or  
8 former directors, officers and counsel. Any claims for personal injury are expressly excluded  
9 from this class action.

10 57. Plaintiffs meet the prerequisites to bring this action on behalf of the Class  
11 because:

12 (a) Numerosity: The Class is so numerous that joinder of all members as  
13 individual plaintiffs is impracticable. While the exact number of Class members is unknown and  
14 can only be ascertained via discovery, Plaintiffs believe that there are hundreds of thousands of  
15 Class members.

16 (b) Commonality: There are questions of law and fact common to the Class,  
17 including:

18 (i) Whether Defendant has violated Cal. Bus. & Prof. Code §§ 17200  
19 *et seq.*

20 (ii) Whether Defendant has violated the Song-Beverly Consumer  
21 Warranty Act, Cal. Civ. Code §§ 1792 *et seq.*

22 (iii) Whether Defendant has breached the implied warranty of  
23 merchantability to the Class;

24 (iv) Whether Defendant has violated the Magnuson-Moss Warranty  
25 Act, 15 U.S.C. §§ 2301 *et seq.*

26 (v) Whether Defendant has violated the New Jersey Consumer Fraud  
27 Act, N.J. Stat. Ann. §§ 56:8-1 *et seq.*

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1 (vi) Whether Defendant was unjustly enriched by the retention of the  
2 benefits conferred by Plaintiffs and members of the Class;

3 (vii) Whether Defendant is strictly liable for the damages caused by the  
4 defective NVIDIA GPUs;

5 (viii) Whether Defendant has violated California's Consumer Legal  
6 Remedies Act ("CLRA"); and

7 (ix) Whether, because of Defendant's misconduct, Plaintiffs and the  
8 Class are entitled to damages, restitution, equitable relief or other relief, and the amount and  
9 nature of such relief.

10 (c) Typicality: Plaintiffs' claims are typical of the claims of the Class because  
11 Plaintiffs and members of the Class each sustained damages arising out of Defendant's wrongful  
12 conduct as complained of herein; and

13 (d) Adequacy: Plaintiffs will fairly and adequately protect the interests of the  
14 Class. Plaintiffs have no interests that are antagonistic to, or in conflict with, the interests of the  
15 Class as a whole, and have engaged competent counsel, highly experienced in class actions and  
16 complex litigation.

17 58. A class action is superior to all other available methods for this controversy  
18 because: (a) the prosecution of separate actions by the members of the Class would create a risk  
19 of adjudications with respect to individual members of the Class that would, as a practical  
20 matter, be dispositive of the interests of the other members not parties to the adjudications, or  
21 substantially impair or impede their ability to protect their interests; (b) the prosecution of  
22 separate actions by the members of the Class would create a risk of inconsistent or varying  
23 adjudications with respect to the individual members of the Class, which would establish  
24 incompatible standards of conduct for Defendant; (c) Defendant acted or refused to act on  
25 grounds generally applicable to the Class; and (d) questions of law and fact common to members  
26 of the Class predominate over any questions affecting only individual members, and a class

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1 action is manageable and superior to other available methods for the fair and efficient  
2 adjudication of the controversy.

3 **COUNT I**  
4 **(By Plaintiffs, Individually and on Behalf of All Class Members for Violations of California**  
5 **Bus. & Prof. Code §§ 17200 et seq.)**

6 59. Plaintiffs hereby incorporate all the above allegations by reference as if fully set  
7 forth herein.

8 60. NVIDIA’s practices as alleged in this Complaint constitute unlawful and unfair  
9 business acts and practices under California’s Unfair Competition Law (“UCL”), Bus. & Prof.  
10 Code §§ 17200 et seq.

11 61. The circumstances giving rise to Plaintiffs’ and Class members’ allegations,  
12 including the design, development and marketing of the defective NVIDIA GPUs, occurred in  
13 the State of California. Additionally, NVIDIA maintains its corporate headquarters in Santa  
14 Clara, California. Accordingly, application of California law is appropriate.

15 62. By engaging in the above-described acts and practices, Defendant has committed  
16 one or more acts of unfair competition within the meaning of Bus. & Prof. Code §§ 17200 et seq.

- 17 63. Defendant committed “unlawful” business acts and practices by:
  - 18 (a) engaging in conduct that violates California’s Consumer Legal Remedies  
19 Act, Civil Code §§ 1770(a)(5) and (a)(7);
  - 20 (b) engaging in conduct that violates California’s Song-Beverly Consumer  
21 Warranty Act, Civil Code §§ 1792 et seq.;
  - 22 (c) engaging in conduct that violates the Magnuson-Moss Warranty Act, 15  
23 U.S.C. §§ 2301 et seq.;
  - 24 (d) engaging in negligent conduct; and
  - 25 (e) engaging in conduct that breached implied warranties.

26 64. NVIDIA committed “unfair” business acts and practices by:

1 (a) engaging in conduct where the utility of such conduct, if any, is  
2 outweighed by the gravity of the consequences to Plaintiffs and to other Class members;

3 (b) engaging in conduct that is immoral, unethical, oppressive, unscrupulous,  
4 or substantially injurious to Plaintiffs and to other Class members; and

5 (c) engaging in conduct that undermines or violates the spirit or intent of the  
6 Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301 *et seq.* and the other consumer protection  
7 laws detailed herein.

8 65. Specifically, NVIDIA engaged in “unfair” business acts and practices by selling  
9 defective NVIDIA GPUs that, during normal operation, experienced overheating, causing  
10 decreased battery life, degradation in performance of other internal components, excessive  
11 ambient noise, and video display problems, including without limitation the display of random  
12 characters, multiple or fuzzy images, horizontal or vertical lines, or grey or black screens.  
13 Thereafter, NVIDIA distributed a “fix” that did not fix the defect at all, was dangerous to install,  
14 or was designed primarily to forestall more significant failures until after the OEM’s warranty  
15 expiration period.

16 66. Plaintiffs and Class members have suffered injury in fact and have lost money and  
17 property as a result of Defendant’s unlawful and unfair practices, in that, among other things:

18 (a) Plaintiffs and Class members would not have bought or leased the Class  
19 Computers at the price that they did;

20 (b) Plaintiffs and Class members’ computers have a lower market value than  
21 they otherwise would have if not for the defective NVIDIA GPUs;

22 (c) Plaintiffs and Class members have paid for repairs and replacement parts  
23 that they would not and should not have paid for; and

24 (d) Plaintiffs and Class members were denied their right to receive property  
25 free from defect.

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1 67. Plaintiffs and Class members seek declaratory and injunctive relief, restitution  
2 and disgorgement of all profits obtained by Defendant from the unfair competition alleged herein  
3 and other relief as appropriate.

4 **COUNT II**  
5 **(By Plaintiff Robinson, Individually and on Behalf of All Class Members Who Purchased a**  
6 **Class Computer for Breach Of Implied Warranty Under the Song-Beverly Consumer**  
7 **Warranty Act, Cal. Civ. Code §§ 1792 et seq.)**

8 68. Plaintiff Robinson hereby incorporates all the above allegations by reference as if  
9 fully set forth herein.

10 69. Under California’s Song-Beverly Consumer Warranty Act, Civ. Code §§ 1792 *et*  
11 *seq.*, every sale of consumer goods is accompanied by both a manufacturer’s and retail seller’s  
12 implied warranty that the goods are merchantable.

13 70. The defective NVIDIA GPUs at issue are “consumer goods” within the meaning  
14 of Cal. Civ. Code §1791(a).

15 71. Defendant NVIDIA is a “manufacturer” within the meaning of Cal. Civ. Code  
16 §1791(j).

17 72. Plaintiff Robinson bought a Class Computer equipped with an NVIDIA GPU in  
18 the State of California.

19 73. At the time of sale, Defendant was in the business of manufacturing and selling  
20 the NVIDIA GPUs.

21 74. By operation of law, Defendant impliedly warranted to Plaintiffs and Class  
22 members that the NVIDIA GPUs were of merchantable quality and fit for the ordinary purposes  
23 for which the GPUs are used.

24 75. NVIDIA had reason to know at the time of sale that the NVIDIA GPUs were  
25 required for a particular purpose and that Plaintiff Robinson and Class members were relying on  
26 NVIDIA’s skill or judgment to select or furnish such goods.

1 76. Defendant refuses to recognize or honor its implied warranties. Defendant  
2 breached its implied warranties as the defective NVIDIA GPUs were not of merchantable quality  
3 and failed to perform in the ordinary purposes for which they were used.

4 77. As a proximate result of Defendant’s breach of implied warranties, Plaintiffs and  
5 Class members have sustained damages and other losses in an amount to be determined at trial.  
6 Plaintiffs and Class members are entitled to recover damages as provided by statute, costs,  
7 attorneys’ fees, rescission and other relief as is deemed appropriate.

8 **COUNT III**

9 **(By Plaintiffs Feinstein, Inicom, and Nakash, Individually and on Behalf of All Class**  
10 **Members, In the Following States: Alaska, Arkansas, Colorado, Delaware, Hawaii, Iowa,**  
11 **Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska,**  
12 **Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Oklahoma,**  
13 **Pennsylvania, South Carolina, South Dakota, Texas, Virginia, West Virginia or Wyoming,**  
14 **for Breach of Implied Warranty of Merchantability)**

15 78. Plaintiffs hereby incorporate all the above allegations by reference as if fully set  
16 forth herein.

17 79. At all relevant times, the following statutes were in effect governing the implied  
18 warranties of merchantability in the various states listed in this Count: Alaska Stat. § 45.02.314;  
19 Ark. Code Ann. § 4-2-314; C.R.S. § 4-2-314; 6 Del. C. § 2-314; Haw. Rev. Stat. § 490:2-314;  
20 Iowa Code § 554.2314; 11 M.R.S.A. § 2-314; Md. Code Ann. Art. 95B § 2-314; Mass. Gen.  
21 Laws ch. 106 § 2-314; Mich. CLS § 440.2314; Minn. Stat. § 336.2-314; Miss. Code Ann. § 75-2-  
22 314; Mont. Code Ann. § 30-2-314; Neb. U.C.C. § 2-314; Nev. Rev. Stat. § 104.2314; N.H. Rev.  
23 Stat. Ann. § 382-A:2-314; N.J. Stat. Ann. § 12A:2-314; N.M Stat. Ann. § 55-2-314; N.D.C.C. §  
24 2-314; Okla. Stat. 1991 § 2-314; Pa. Cons. Stat. § 2-314; S.C. Code Ann. § 36-2-314; S.D.  
25 Codified Laws § 57A- 2-314; Tex. Bus. & Com. Code Ann. § 2-314; Va. Code § 8.2-314; W.  
26 Va. Code § 46-2-314; and Wyo. Stat. § 34.1-2-314.

27 80. As a seller and manufacturer of the NVIDIA GPUs, Defendant is a “merchant,”  
28 within the meaning of the various states’ commercial codes governing the implied warranty of  
merchantability.

1 81. The NVIDIA GPUs are “goods,” as defined in the various states’ commercial  
2 codes governing the implied warranty of merchantability.

3 82. Defendants impliedly warranted to Plaintiffs and Class Members the NVIDIA  
4 GPUs were of merchantable quality, would pass without objection in the trade and were fit for  
5 the ordinary purposes for which the GPUs are used.

6 83. Plaintiffs and Class members relied on the skill and judgment of Defendant in the  
7 selection, purchase and use of the NVIDIA GPUs in the Class Computers.

8 84. Defendant has admitted the NVIDIA GPUs are defective. As such, the NVIDIA  
9 GPUs were not of merchantable quality at the time they were sold and were not able to function  
10 in their ordinary capacities, as impliedly warranted by Defendant.

11 85. The cost of the NVIDIA GPUs was reflected in the price that Plaintiffs other  
12 Class members paid for their computers.

13 86. Defendant knew or should have known about the defective NVIDIA GPUs prior  
14 to selling or placing the NVIDIA GPUs into the stream of commerce.

15 87. Defendant was further put on notice of the defect by the numerous complaints that  
16 Defendant received concerning the defect and by the filing of this lawsuit.

17 88. As a proximate result of Defendant’s breach of implied warranties, Plaintiffs and  
18 Class members have sustained damages and other losses in an amount to be determined at trial.  
19 Plaintiffs and Class members are entitled to recover damages, costs, attorneys’ fees, rescission,  
20 and other relief as is deemed appropriate.

21 **COUNT IV**  
22 **(By Plaintiffs, Individually and on Behalf of All Class Members for Breach Of Warranty**  
23 **Under Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301 et seq.)**

24 89. Plaintiffs hereby incorporate all the above allegations by reference as if fully set  
25 forth herein.

26 90. The defective Class Computers at issue are “consumer products” within the  
27 meaning of the Magnuson-Moss Act, 15 U.S.C. § 2301(1).  
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1 91. Plaintiffs and Class members are “consumers” within the meaning of the  
2 Magnuson-Moss Act, 15 U.S.C. § 2301(3).

3 92. Defendant NVIDIA is a “supplier” and “warrantor” within the meaning of the  
4 Magnuson-Moss Act, 15 U.S.C. § 2301(4)-(5).

5 93. Defendant impliedly warranted to Plaintiffs and Class members that the NVIDIA  
6 GPUs were of merchantable quality and fit for the ordinary purposes for which the GPUs are  
7 used.

8 94. Defendant refuses to recognize or honor its implied warranties. Defendant  
9 breached its implied warranties as the defective NVIDIA GPUs were not of merchantable quality  
10 and failed to perform in the ordinary purposes for which they were used.

11 95. The amount in controversy of each Plaintiff and Class member’s individual claim  
12 meets or exceeds the sum or value of \$25. In addition, the amount in controversy meets or  
13 exceeds the sum or value of \$75,000 (exclusive of interest and costs) computed on the basis of  
14 all claims to be determined in this suit.

15 96. Resorting to any further informal dispute settlement procedure or affording  
16 Defendant another opportunity to cure its breach of implied warranties is unnecessary or futile.  
17 Defendant knew, reasonably should have known, or was reckless in not knowing of the defective  
18 NVIDIA GPUs and MCPs and their inability to perform as warranted, but nevertheless failed to  
19 rectify the situation. Further, Plaintiffs have provided Defendant with a written request to cure  
20 such breaches, which has been ignored. Any remedies available through informal dispute  
21 settlement procedures would be inadequate under the circumstances based on what Defendant  
22 has said it would do. Accordingly, any requirement under the Magnuson-Moss Act or otherwise  
23 that Plaintiffs resort to informal dispute settlement procedures or afford Defendant a reasonable  
24 opportunity to cure its breach of implied warranties is excused or has been satisfied.

25 97. As a proximate result of Defendant’s breach of implied warranties, Plaintiffs and  
26 Class members have sustained damages and other losses in an amount to be determined at trial.

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1 Plaintiffs and Class members are entitled to recover damages, costs, attorneys' fees, rescission  
2 and other relief as is deemed appropriate.

3 **COUNT V**  
4 **(By Plaintiffs, Individually and on Behalf Of All Class Members, for Unjust Enrichment**  
5 **and Money Had and Received)**

6 98. Plaintiffs hereby incorporate all the above allegations by reference as if fully set  
7 forth herein.

8 99. This Count is brought against Defendant pursuant to the common law doctrine of  
9 unjust enrichment and money had and received.

10 100. The circumstances giving rise to Plaintiffs' and Class members' allegations,  
11 including the design, development and marketing of the defective NVIDIA GPUs, occurred in  
12 the State of California. Additionally, NVIDIA maintains its corporate headquarters in Santa  
13 Clara, California. Accordingly, application of California law is appropriate.

14 101. Defendant manufactured and sold the NVIDIA GPUs, which it admits were  
15 defective at the time of sale.

16 102. Defendant knew or should have known about the defective NVIDIA GPUs prior  
17 to selling or placing the NVIDIA GPUs into the stream of commerce.

18 103. Defendant was further put on notice of the defect by the numerous complaints that  
19 Defendant received concerning the defect and by the filing of this lawsuit.

20 104. Plaintiffs and Class members were not aware of the defective NVIDIA GPUs at  
21 the time of sale.

22 105. Had Plaintiffs and Class members known of the defective NVIDIA GPUs, they  
23 would not have purchased the Class Computers.

24 106. Without knowledge of the defect, Plaintiffs and Class members conferred upon  
25 Defendant benefits, which were non-gratuitous and constitute profits and money improperly had  
26 and received.

27 107. Defendant accepted or retained the benefits conferred by Plaintiffs and Class  
28 members despite Defendant's knowledge or prior notice of the defect in the NVIDIA GPUs.

1 108. These circumstances make Defendant’s retention of the benefits conferred upon it  
2 by Plaintiffs and Class members unjust and inequitable.

3 109. Because Defendant’s retention of the benefits conferred by Plaintiffs and Class  
4 members is unjust and inequitable, Defendant must pay restitution in a manner established by the  
5 Court.

6 **COUNT VI**  
7 **(By Plaintiff Nakash, Individually and on Behalf of All Class Members Who Purchased a**  
8 **Class Computer in the State Of New Jersey for Violations of the New Jersey Consumer**  
9 **Fraud Act, N.J. Stat. Ann. §§ 56:8-1 et seq.)**

10 110. Plaintiff Nakash hereby incorporates all the above allegations by reference as if  
11 fully set forth herein. Plaintiff Nakash purchased his Class Computer in New Jersey.

12 111. At all relevant times herein, New Jersey’s Consumer Fraud Act codified under  
13 N.J. Stat. Ann. §§ 56:8-1 et seq., was in effect. The Act prohibits any “[f]raud, etc., in  
14 connection with sale or advertisement of merchandise or real estate as unlawful practice.”

15 112. Further, the Act prohibits any “unconscionable practice” or any “knowing,  
16 concealment, suppression, or omission of any material fact with the intent that others rely upon  
17 such concealment, suppression or omission in connection with the sale ... of any merchandise.”  
18 N.J. Stat. Ann. § 56:8-2.

19 113. Defendant manufactured and sold the NVIDIA GPUs, which it admits were  
20 defective at the time of sale.

21 114. Defendant knew or should have known about the defective NVIDIA GPUs prior  
22 to selling or placing the NVIDIA GPUs into the stream of commerce.

23 115. Defendant was further put on notice of the defect by the numerous complaints that  
24 Defendant received concerning the defect and by the filing of this lawsuit.

25 116. Plaintiffs and Class members were not aware of the defective NVIDIA GPUs at  
26 the time of sale.

27 117. Despite Defendant’s knowledge or prior notice of the defect, it omitted this  
28 material fact with the intent that Plaintiff Nakash and Class Members act upon this material

1 omission. Further, Defendant continued to place defective NVIDIA GPUs into the stream of  
2 commerce.

3 118. Had Plaintiffs and Class members known of the defective NVIDIA GPUs, they  
4 would not have purchased the Class Computers, because the existence of the defect was a  
5 material fact to the transaction. Defendant, at all relevant times, knew or should have known that  
6 Plaintiff Nakash and members of the Class did not know or could not have reasonably  
7 discovered the defect prior to their purchases.

8 119. Defendant's conduct constitutes a violation of New Jersey's Consumer Fraud Act  
9 codified under N.J. Stat. Ann. § 56:8-1 *et seq.*, and entitles Plaintiff Nakash and members of the  
10 Class entitled to relief under this statute to statutory and actual damages, injunctive relief and  
11 attorney fees and costs.

12 **COUNT VII**  
13 **(By Plaintiffs, Individually and on Behalf of All Class Members,**  
14 **for Strict Liability and Negligence)**

15 120. Plaintiffs hereby incorporate all the above allegations by reference as if fully set  
16 forth herein.

17 121. NVIDIA manufactured, designed, assembled, compounded, tested or failed to  
18 test, inspected or failed to inspect, packaged, fabricated, distributed, marketed and sold, contrary  
19 to its legal obligations, the defective NVIDIA GPUs and their component parts, which were  
20 intended by NVIDIA to be used in the Class Computers.

21 122. Defendant placed a defective product, the NVIDIA GPUs, on the market,  
22 knowing the product was to be purchased and used without inspection for defects by Plaintiffs  
23 and Class members.

24 123. NVIDIA took no steps to warn consumers of the manufacturing or design defect  
25 inherent in the NVIDIA GPUs.

26 124. Plaintiffs and the Class in fact used the NVIDIA GPUs without inspection for  
27 defect.  
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1 125. Plaintiffs and the Class were not aware of the defect at any time prior to the  
2 damages caused by the defect.

3 126. As a proximate result of the manufacturing or design defect inherent in the  
4 NVIDIA GPUs, Plaintiffs and the Class have been damaged, by damage other than to the GPU  
5 itself, in the course of using the NVIDIA GPUs in the ordinary manner in which they were  
6 intended.

7 127. Plaintiffs and the Class expressly exclude any claims relating to personal injury or  
8 other bodily harm arising from NVIDIA's conduct.

9  
10 **COUNT VIII**  
**(By Plaintiffs, Individually and on Behalf of All Class Members, for Violation of**  
**California's Consumers Legal Remedies Act)**

11 128. Plaintiffs hereby incorporate all the above allegations by reference as if fully set  
12 forth herein.

13 129. The CLRA was enacted to protect consumers against unfair and deceptive  
14 business practices. The CLRA applies to Defendant's acts and practices described herein  
15 because it extends to transactions that are intended to result, or which have resulted, in the sale or  
16 lease of goods or services to consumers.

17 130. The circumstances giving rise to Plaintiffs' and Class members' allegations,  
18 including the design, development and sale of the NVIDIA GPUs, occurred in the State of  
19 California. Additionally, NVIDIA maintains its corporate headquarters in Santa Clara,  
20 California. Accordingly, application of California law is appropriate.

21 131. The NVIDIA GPUs are "goods" within the meaning of Cal. Civ. Code § 1761(a).

22 132. Plaintiffs and each member of the Class are "consumers" within the meaning of  
23 Cal. Civ. Code § 1761(d).

24 133. NVIDIA's deceptive acts and practices occurred in the course of selling a  
25 defective consumer product.

26 134. NVIDIA has admitted its NVIDIA GPUs failed to perform in accordance with  
27 their specifications, contained a common defect and, as result were not of merchantable quality.  
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1 135. NVIDIA had exclusive knowledge of undisclosed material facts, *i.e.* that the  
2 NVIDIA GPUs were defective, which was not known to Plaintiffs or the Class.

3 136. NVIDIA engaged in unfair acts and practices by withholding these material facts  
4 from Plaintiffs and the Class.

5 137. Plaintiffs and the Class were not aware of the defective NVIDIA GPUs at the time  
6 of sale.

7 138. Had Plaintiffs and Class members known of the defective NVIDIA GPUs, they  
8 would not have purchased the Class Computers.

9 139. Defendant has violated the CLRA by engaging in the above unfair acts and  
10 practices, which results in the following violations:

11 (a) In violation of § 1770(a)(5), Defendant has represented that the NVIDIA  
12 GPUs have characteristics, uses and benefits that they do not have; and

13 (b) In violation of § 1770(a)(7), Defendant has represented that the NVIDIA  
14 GPUs are of a particular standard, quality or grade when they are not.

15 140. As a proximate result of NVIDIA’s unfair acts and practices, Plaintiffs and Class  
16 members suffered damages in purchasing Class Computers containing the defective NVIDIA  
17 GPUs. As alleged above, notice was sent to Defendant prior to asserting a claim for damages  
18 under the CLRA, which notice was ignored. Thus, Class members are entitled to all remedies  
19 available under Cal. Civ. Code §1780.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs and all Class members pray that this Court:

22 A. Certify this action as a Class Action under Rule 23;

23 B. Order Defendant to pay Plaintiffs and Class members an amount of actual, direct,  
24 incidental, consequential, statutory and exemplary damages to be determined at trial;

25 C. Issue an injunction preventing Defendant from selling the defective NVIDIA  
26 GPUs;

27 D. Award pre- and post-judgment interest;

1 E. Award attorney's fees and costs of suit pursuant to, *inter alia*, Cal. Code of Civ.  
2 Pro. § 1021.5 and 15 U.S.C. §§ 2301 *et seq.*;

3 F. For such other and further relief this Court may deem just and proper

4 **DEMAND FOR JURY TRIAL**

5 Plaintiffs demand a trial by jury on all issues so triable.

6 DATED: May 6, 2009

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CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2009, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury that the foregoing is true and correct. Executed on May 6, 2009.

  
\_\_\_\_\_  
CECILLE CHAFFINS

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