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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

ABDI NAZEMIAN, BRIAN KEENE,
STEWART O'NAN, ANDRE DUBUS III and
SUSAN ORLEAN, individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

NVIDIA CORPORATION,

Defendant.

Master File Case No. 4:24-cv-01454-JST (SK)

**DEFENDANT NVIDIA CORPORATION'S
ANSWER TO FIRST CONSOLIDATED
AMENDED COMPLAINT**

1 Pursuant to Federal Rule of Civil Procedure 8, Defendant NVIDIA Corporation hereby
2 answers Plaintiffs' First Consolidated Amended Complaint as follows. All allegations not
3 specifically admitted below are denied.

4 OVERVIEW

5 1. NVIDIA admits artificial intelligence is commonly abbreviated "AI." NVIDIA
6 admits the term "artificial intelligence" may include software as described in Paragraph 1, but denies
7 the term is limited to the alleged definition.

8 2. NVIDIA admits some large language models ("LLMs") may be designed to be used,
9 potentially in conjunction with additional software, to generate outputs that are similar to human-
10 generated text and/or to respond to user prompts, but denies that the term is limited to the alleged
11 definition.

12 3. To the extent Paragraph 3 states legal conclusions, no response is required. NVIDIA
13 admits LLMs may be trained on textual works. NVIDIA further admits training is a highly
14 transformative process that may include adjusting numerical parameters including "weights," and
15 that outputs of an LLM may be based, at least in part, on such "weights." NVIDIA denies the
16 remaining allegations contained in Paragraph 3.

17 4. To the extent Paragraph 4 states legal conclusions, no response is required. NVIDIA
18 admits it has developed AI language models. NVIDIA lacks sufficient information to form a belief
19 as to the truth of the remaining allegations contained in Paragraph 4, and on that basis denies them.

20 5. To the extent Paragraph 5 states legal conclusions, no response is required. NVIDIA
21 denies Plaintiffs' characterizations and lacks sufficient information regarding the referenced third-
22 party repositories to form a belief as to the truth of the allegations pertaining to such repositories,
23 and on that basis denies them. NVIDIA denies it has improperly acquired, used, or copied the alleged
24 works of Plaintiffs or of any of the putative Class members. NVIDIA further responds that the partial
25 image embedded in Paragraph 5 speaks for itself, and NVIDIA denies any implicit or explicit
26 characterization of it by Plaintiffs. NVIDIA denies the remaining allegations in Paragraph 5.

27 6. To the extent Paragraph 6 states legal conclusions, no response is required. To the
28 extent Paragraph 6 purports to quote from or characterize documents, those documents speak for

1 themselves, and NVIDIA denies Plaintiffs' characterization of them. NVIDIA denies the remaining
2 allegations in Paragraph 6.

3 7. To the extent Paragraph 7 states legal conclusions, no response is required. To the
4 extent any third parties downloaded The Pile, they did so independently and of their own initiative.
5 NVIDIA lacks sufficient information regarding the actions of third parties and the contents of the
6 referenced third-party repository to form a belief as to the truth of such allegations, and on that basis
7 denies them. NVIDIA denies the remaining allegations in Paragraph 7.

8 JURISDICTION AND VENUE

9 8. To the extent Paragraph 8 states legal conclusions, no response is required. To the
10 extent a response is required, NVIDIA admits the allegations contained in Paragraph 8.

11 9. To the extent Paragraph 9 states legal conclusions, no response is required. NVIDIA
12 admits it resides in this judicial district and that venue is proper for purposes of this action. NVIDIA
13 denies it has committed or is committing any act complained of in the Complaint, and denies the
14 remaining allegations contained in Paragraph 9.

15 10. To the extent Paragraph 10 states legal conclusions, no response is required. To the
16 extent a response is required, NVIDIA admits this case is an Intellectual Property Action under Civil
17 Local Rule 3-2(c) that is assigned to the Oakland Division.

18 PLAINTIFFS

19 11. NVIDIA lacks sufficient information to form a belief as to the truth of the allegations
20 contained in Paragraph 11, and on that basis denies them.

21 12. NVIDIA lacks sufficient information to form a belief as to the truth of the allegations
22 contained in Paragraph 12, and on that basis denies them.

23 13. NVIDIA lacks sufficient information to form a belief as to the truth of the allegations
24 contained in Paragraph 13, and on that basis denies them.

25 14. NVIDIA lacks sufficient information to form a belief as to the truth of the allegations
26 contained in Paragraph 14, and on that basis denies them.

27 15. NVIDIA lacks sufficient information to form a belief as to the truth of the allegations
28 contained in Paragraph 15, and on that basis denies them.

1 16. NVIDIA lacks sufficient information to form a belief as to the truth of the allegations
2 contained in Paragraph 16, and on that basis denies them.

3 **DEFENDANT**

4 17. NVIDIA admits the allegations contained in Paragraph 17.

5 **AGENTS AND CO-CONSPIRATORS**

6 18. To the extent Paragraph 18 states legal conclusions, no response is required. NVIDIA
7 denies it has committed or is committing any act complained of in the Complaint, and denies the
8 remaining allegations contained in Paragraph 18.

9 19. To the extent Paragraph 19 states legal conclusions, no response is required. NVIDIA
10 denies it has committed or is committing any act complained of in the Complaint, and denies the
11 remaining allegations contained in Paragraph 19.

12 **FACTUAL ALLEGATIONS**

13 20. NVIDIA admits it is a diversified technology company that was founded in 1993,
14 that it has developed computer-graphics hardware (including from its original founding), and that it
15 provides hardware, software, and systems for computationally intensive workloads. NVIDIA admits
16 its offerings include “Compute Unified Device Architecture,” or CUDA, and that this offering is
17 software. NVIDIA further admits its offerings include NVLink/NVLink Switch and that these
18 offerings can refer to hardware. NVIDIA further admits many entities, including companies,
19 governments, individuals, and non-profit entities use NVIDIA hardware and software, including
20 CUDA and NVLink, for a wide variety of applications. NVIDIA further admits, on certain dates,
21 the press has reported on NVIDIA’s market capitalization. NVIDIA lacks sufficient information to
22 form a belief as to the truth of the remaining allegations contained in the second sentence of
23 Paragraph 20, and on that basis denies them. NVIDIA denies the remaining allegations in Paragraph
24 20.

25 21. NVIDIA admits it has developed large language models. NVIDIA further admits
26 some large language models may be designed to generate outputs that are similar to human-
27 generated text and/or to respond to user prompts, but denies that the term is limited to the alleged
28

1 definition. NVIDIA admits that it sells certain products and offers other products for free. NVIDIA
2 denies the remaining allegations in Paragraph 21.

3 22. NVIDIA admits LLMs are software and that models may be trained at least in part
4 using a large and diverse corpus of textual material, and that the material used for training may be
5 referred to as a “training dataset,” although this term is not defined in Paragraph 22 and is subject
6 to multiple interpretations. NVIDIA further admits textual material may be segmented for training
7 purposes. NVIDIA denies the remaining allegations contained in Paragraph 22.

8 23. To the extent Paragraph 23 states legal conclusions, no response is required. NVIDIA
9 denies the remaining allegations contained in Paragraph 23.

10 24. To the extent Paragraph 24 states legal conclusions, no response is required. NVIDIA
11 admits large language models may include numerical parameters that may be referred to as
12 “weights,” and that during training, “weights” may be adjusted. NVIDIA further admits it released
13 the NeMo-Megatron-GPT 20B model in September 2022, and that the NeMo-Megatron-GPT 20B
14 model is so-named in part because the model includes 20 billion total trainable parameters. NVIDIA
15 denies the remaining allegations contained in Paragraph 24.

16 25. NVIDIA admits the development of a large language model may involve the use of
17 datasets, including for intermediate training “runs” or “checkpoints,” and that not all such
18 intermediate training “runs” or “checkpoints” are publicly released or assigned public names.
19 NVIDIA denies the remaining allegations contained in Paragraph 25.

20 26. To the extent Paragraph 26 states legal conclusions, no response is required. NVIDIA
21 admits some large language models may be designed to be used, potentially in conjunction with
22 additional software, to generate outputs. NVIDIA denies the remaining allegations contained in
23 Paragraph 26.

24 27. To the extent Paragraph 27 states legal conclusions, no response is required.
25 NVIDIA denies it has improperly acquired, used, or copied the alleged works of Plaintiffs or of any
26 of the putative Class members. NVIDIA denies that “[m]uch of the material in NVIDIA’s training
27 dataset ... comes from copyrighted works.” NVIDIA lacks sufficient information to form a belief
28 as to the truth of the remaining allegations contained in Paragraph 27, and on that basis denies them.

1 28. NVIDIA admits it announced the availability of the NeMo Megatron framework
2 referenced in Paragraph 28 in November 2021. To the extent the allegations in Paragraph 28 purport
3 to quote from portions of publicly available articles or videos, the full text of the articles or videos
4 speak for themselves. NVIDIA denies the remaining allegations contained in Paragraph 28.

5 29. NVIDIA admits it first announced the availability of the four NeMo Megatron LLMs
6 referenced in Paragraph 29 in September 2022 and that those four models were released in
7 September 2022. To the extent the allegations in Paragraph 29 purport to quote from portions of a
8 publicly available video, the full content of the video speaks for itself. NVIDIA denies the remaining
9 allegations contained in Paragraph 29.

10 30. NVIDIA admits NeMo Megatron-GPT 1.3B, NeMo Megatron-GPT 5B, NeMo
11 Megatron-GPT 20B, and NeMo Megatron-T5 3B are publicly available on Hugging Face. NVIDIA
12 admits that the Hugging Face website for each of those four LLMs includes a “Model card,” and
13 that each “Model card” states that, “The model was trained on ‘The Pile’ dataset prepared by
14 EleutherAI.” NVIDIA denies the remaining allegations contained in Paragraph 30.

15 31. NVIDIA lacks sufficient information to form a belief as to the truth of the allegations
16 contained in Paragraph 31, and on that basis denies them.

17 32. To the extent the allegations in Paragraph 32 purport to recount contents of a publicly
18 available document, the full text of the document speaks for itself. NVIDIA otherwise lacks
19 sufficient information to form a belief as to the truth of the allegations contained in Paragraph 32,
20 and on that basis denies them.

21 33. To the extent the allegations in Paragraph 33 purport to recount contents of a publicly
22 available document, the full text of the document speaks for itself. NVIDIA lacks sufficient
23 information to form a belief as to the truth of the allegations contained in Paragraph 33, and on that
24 basis denies them.

25 34. To the extent Paragraph 34 states legal conclusions, no response is required. NVIDIA
26 denies Plaintiffs’ characterizations and lacks sufficient information to form a belief as to the truth
27 of the allegations contained in Paragraph 34, and on that basis denies them.

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1 35. NVIDIA lacks sufficient information to form a belief as to the truth of the allegations
2 contained in Paragraph 35, and on that basis denies them.

3 36. NVIDIA lacks sufficient information to form a belief as to the truth of the allegations
4 contained in Paragraph 36, and on that basis denies them.

5 37. NVIDIA lacks sufficient information to form a belief as to the truth of the allegations
6 contained in Paragraph 37, and on that basis denies them.

7 38. NVIDIA admits the “Model cards” on Hugging Face for the NeMo Megatron-GPT
8 1.3B, NeMo Megatron-GPT 5B, NeMo Megatron-GPT 20B, and NeMo Megatron-T5 3B state that
9 the models were trained on “The Pile” and that it acquired data identified as “The Pile.” To the
10 extent Paragraph 38 states legal conclusions, no response is required. NVIDIA lacks sufficient
11 information to form a belief as to the truth of the allegations contained in the third sentence of
12 Paragraph 38, and on that basis denies them. NVIDIA denies it has improperly acquired, used or
13 copied the alleged works of Plaintiffs or of any of the putative Class members. NVIDIA denies the
14 remaining allegations contained in Paragraph 38.

15 39. NVIDIA admits the NeMo Megatron GPT 126M, NeMo Megatron GPT 40B, NeMo
16 Megatron GPT 175B, NeMo Megatron T5 220M, NeMo Megatron T5 11B, and NeMo Megatron
17 T5 23B large language models were trained on data from what is referred to as “The Pile.” NVIDIA
18 lacks sufficient information to form a belief as to the truth of the allegations contained in the first
19 sentence of Paragraph 39, and on that basis denies them. NVIDIA denies the remaining allegations
20 contained in Paragraph 39.

21 40. NVIDIA denies the allegations contained in Paragraph 40.

22 41. NVIDIA admits that it used certain subsets of data referred to as “The Pile” to
23 develop the Megatron 345M model, and that it was publicly released as the Megatron GPT2 345M
24 model. NVIDIA admits the NeMo GPT-3 10B model was trained on data from what is referred to
25 as “The Pile.” NVIDIA lacks sufficient information to form a belief as to the truth of the remaining
26 allegations contained in Paragraph 41, and on that basis denies them.

27 42. To the extent Paragraph 42 states legal conclusions, no response is required. To the
28 extent Paragraph 42 purports to quote from documents, those materials speak for themselves, and

1 NVIDIA denies Plaintiffs' characterization of them. NVIDIA admits it downloaded data for
2 research in AI and machine learning from [https://huggingface.co/datasets/cerebras/SlimPajama-](https://huggingface.co/datasets/cerebras/SlimPajama-627B)
3 [627B](https://huggingface.co/datasets/cerebras/SlimPajama-627B). NVIDIA lacks sufficient information to form a belief as to the truth of the allegations
4 contained in the third, fourth, fifth, and last sentences of Paragraph 42, and on that basis denies
5 them. NVIDIA denies the remaining allegations contained in Paragraph 42.

6 43. To the extent Paragraph 43 contains legal conclusions, no response is required.
7 NVIDIA denies the remaining allegations contained in Paragraph 43.

8 44. To the extent Paragraph 44 contains legal conclusions, no response is required.
9 NVIDIA denies the remaining allegations contained in Paragraph 44.

10 45. To the extent Paragraph 45 contains legal conclusions, no response is required.
11 NVIDIA denies the remaining allegations contained in Paragraph 45.

12 46. To the extent Paragraph 46 contains legal conclusions, no response is required.
13 NVIDIA denies Plaintiffs' characterizations and lacks sufficient information to form a belief as to
14 the truth of the remaining allegations contained in Paragraph 46, and on that basis denies them.

15 47. To the extent Paragraph 47 contains legal conclusions, no response is required.
16 NVIDIA denies Plaintiffs' characterizations and lacks sufficient information to form a belief as to
17 the truth of the remaining allegations contained in Paragraph 47, and on that basis denies them.

18 48. NVIDIA denies Plaintiffs' characterizations and lacks sufficient information to form
19 a belief as to the truth of the allegations contained in Paragraph 48, and on that basis denies them.

20 49. To the extent Paragraph 49 contains legal conclusions, no response is required.
21 NVIDIA denies Plaintiffs' characterizations and lacks sufficient information to form a belief as to
22 the truth of the remaining allegations contained in Paragraph 49, and on that basis denies them.

23 50. To the extent Paragraph 50 purports to quote the cited website, NVIDIA responds
24 that the cited website speaks for itself, and NVIDIA denies Plaintiffs' characterization of it. NVIDIA
25 further denies Plaintiffs' characterizations and lacks sufficient information to form a belief as to the
26 truth of the remaining allegations contained in Paragraph 50, and on that basis denies them.

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1 51. To the extent Paragraph 51 contains legal conclusions, no response is required.
2 NVIDIA denies Plaintiffs' characterizations, and further denies the allegations contained in the third
3 sentence of Paragraph 51.

4 52. To the extent Paragraph 52 purports to quote the cited website, NVIDIA responds
5 that the cited website speaks for itself. NVIDIA denies Plaintiffs' characterizations and lacks
6 sufficient information to form a belief as to the truth of the remaining allegations contained in
7 Paragraph 52, and on that basis denies them.

8 53. NVIDIA lacks sufficient information to form a belief as to the truth of the allegations
9 contained in the third sentence of Paragraph 53, and on that basis denies them. To the extent
10 Paragraph 53 purports to quote from or characterize documents, those documents speak for
11 themselves, and NVIDIA denies Plaintiffs' characterization of them. NVIDIA denies the remaining
12 allegations contained in Paragraph 53.

13 54. To the extent Paragraph 54 purports to quote from or characterize documents, those
14 documents speak for themselves, and NVIDIA denies Plaintiffs' characterization of them. NVIDIA
15 admits that it contacted certain entities about obtaining access to data on or about August 2023.
16 NVIDIA denies the remaining allegations contained in Paragraph 54.

17 55. To the extent Paragraph 55 purports to quote from or characterize documents, those
18 documents speak for themselves, and NVIDIA denies Plaintiffs' characterization of them. NVIDIA
19 denies the characterization of third-party repositories as "illegal pirate 'shadow libraries.'" NVIDIA
20 further responds that the cited website speaks for itself. NVIDIA denies the remaining allegations
21 contained in Paragraph 55.

22 56. To the extent Paragraph 56 purports to quote from or characterize documents, those
23 documents speak for themselves, and NVIDIA denies Plaintiffs' characterization of them. NVIDIA
24 denies the remaining allegations contained in Paragraph 56.

25 57. To the extent Paragraph 57 contains legal conclusions, no response is required. To
26 the extent Paragraph 57 purports to quote from or characterize documents, those documents speak
27 for themselves, and NVIDIA denies Plaintiffs' characterization of them. NVIDIA lacks sufficient
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1 information to form a belief as to the truth of the remaining allegations contained in Paragraph 57,
2 and on that basis denies them.

3 58. NVIDIA denies Plaintiffs' characterizations and lacks sufficient knowledge or
4 information to form a belief as to the truth of the allegations regarding "books hosted or sourced
5 from other shadow libraries" generally, and on that basis denies them. NVIDIA admits that it
6 downloaded data for research in AI and machine learning from libgen.rs. NVIDIA lacks sufficient
7 information to form a belief as to the truth of the remaining allegations contained in Paragraph 58,
8 and on that basis denies them.

9 59. To the extent Paragraph 59 purports to quote from or characterize documents, those
10 documents speak for themselves, and NVIDIA denies Plaintiffs' characterization of them. NVIDIA
11 admits it publicly announced a large language model identified as Nemotron-4 15B in February
12 2024. NVIDIA admits its Nemotron-4 15B Technical Report, published on February 26, 2024, states
13 that NVIDIA "train[ed] Nemotron-4 15B on a pre-training dataset . . . split into three different types
14 of data," including "English natural language data," which contained "web documents, news
15 articles, scientific papers, books, etc." NVIDIA admits Figure 2 in the Nemotron-4 15B Technical
16 Report indicates that the "[d]ata composition of the English tokens used for pre-training" included
17 4.6 percent books. NVIDIA denies the remaining allegations contained in Paragraph 59.

18 60. NVIDIA admits it publicly announced a large language model identified as
19 Nemotron-4 340B in June 2024. NVIDIA admits its Nemotron-4 340B Technical Report, published
20 on June 14, 2024, states that "Nemotron-4-340B-Base follows the same data blend as Nemotron-4-
21 15B Base." NVIDIA admits its Nemotron-4 340B Technical Report states that NVIDIA "train[ed]
22 for a total of 9T tokens on this data" and that its Nemotron-4 15B Technical Report states that
23 NVIDIA "train[ed] Nemotron-4 15B on a pre-training dataset consisting of 8 trillion tokens."
24 NVIDIA denies the remaining allegations contained in Paragraph 60.

25 61. To the extent Paragraph 61 states legal conclusions, no response is required. NVIDIA
26 denies the remaining allegations contained in Paragraph 61.

27 62. To the extent Paragraph 62 states legal conclusions, no response is required. NVIDIA
28 lacks sufficient information to form a belief as to the truth of the allegations regarding Plaintiffs'

1 and class members' asserted works, and on that basis denies them. NVIDIA denies the remaining
2 allegations contained in Paragraph 62.

3 63. NVIDIA lacks sufficient information to form a belief as to the truth of the allegations
4 contained in Paragraph 63, and on that basis denies them.

5 64. NVIDIA lacks sufficient information to form a belief as to the truth of the allegations
6 contained in Paragraph 64, and on that basis denies them.

7 65. NVIDIA lacks sufficient information to form a belief as to the truth of the allegations
8 contained in Paragraph 65, and on that basis denies them.

9 66. NVIDIA lacks sufficient information to form a belief as to the truth of the allegations
10 contained in Paragraph 66, and on that basis denies them.

11 67. NVIDIA lacks sufficient information to form a belief as to the truth of the allegations
12 contained in Paragraph 67, and on that basis denies them.

13 68. To the extent Paragraph 68 states legal conclusions, no response is required. NVIDIA
14 denies the remaining allegations contained in Paragraph 68.

15 69. To the extent Paragraph 69 states legal conclusions, no response is required. To the
16 extent Paragraph 69 purports to quote from or characterize public statements, those statements speak
17 for themselves, and NVIDIA denies Plaintiffs' characterization of them. NVIDIA admits it offers a
18 platform that has been identified as NeMo Megatron Framework and that it has publicly described
19 this platform as a "scalable and cloud-native generative AI framework built for researchers and
20 developers working on Large Language Models, Multimodal, and Speech AI (Automatic Speech
21 Recognition and Text-to-Speech)" at <https://docs.nvidia.com/nemo-framework/index.html>.
22 NVIDIA denies the remaining allegations contained in Paragraph 69.

23 70. To the extent Paragraph 70 states legal conclusions, no response is required. To the
24 extent Paragraph 70 purports to quote from or characterize documents, those documents speak for
25 themselves, and NVIDIA denies Plaintiffs' characterization of them. NVIDIA admits that it
26 provided assistance to Writer, Amazon, and Persimmon AI to develop large language models using
27 the NeMo Megatron Framework. NVIDIA denies the remaining allegations contained in Paragraph
28 70.

1 78. NVIDIA denies Plaintiffs' characterizations, but NVIDIA admits it downloaded data
2 for research in AI and machine learning from libgen.rs. NVIDIA lacks sufficient information to
3 form a belief as to the truth of the remaining allegations contained in Paragraph 78, and on that basis
4 denies them.

5 79. To the extent Paragraph 79 states legal conclusions, no response is required. To the
6 extent a response is required, NVIDIA denies it has improperly acquired, used or copied the alleged
7 works of Plaintiffs or of any of the putative Class members and denies that authorization was
8 required. NVIDIA denies the remaining allegations contained in Paragraph 79.

9 80. To the extent Paragraph 80 states legal conclusions, no response is required.
10 NVIDIA denies Plaintiffs' characterizations, and denies it has improperly acquired, used or copied
11 the alleged works of Plaintiffs or of any of the putative Class members. NVIDIA lacks sufficient
12 information to form a belief as to the truth of the allegations relating to Plaintiffs' and class
13 members' asserted works, and on that basis denies them. NVIDIA denies the remaining allegations
14 contained in Paragraph 80.

15 81. To the extent Paragraph 81 states legal conclusions, no response is required. To the
16 extent a response is required, NVIDIA denies the allegations contained in Paragraph 81.

17 82. To the extent Paragraph 82 states legal conclusions, no response is required. NVIDIA
18 denies it has improperly acquired, used or copied the alleged works of Plaintiffs or of any of the
19 putative Class members. NVIDIA denies the remaining allegations contained in Paragraph 82.

20 **COUNT II**
21 **Contributory Copyright Infringement**
 against NVIDIA

22 83. NVIDIA incorporates by reference its responses to Paragraphs 1 through 82.

23 84. To the extent Paragraph 84 states legal conclusions, no response is required. NVIDIA
24 lacks sufficient information regarding the actions of third parties to form a belief as to the truth of
25 such allegations, and on that basis denies them. NVIDIA denies the remaining allegations in
26 Paragraph 84.

27 85. To the extent Paragraph 85 states legal conclusions, no response is required. NVIDIA
28 denies the remaining allegations in Paragraph 85.

1 86. Paragraph 86 states conclusions of law as to which no response is required. To the
2 extent a response is required, NVIDIA denies the allegations contained in Paragraph 86.

3 **COUNT III**
4 **Vicarious Copyright Infringement**
5 **against NVIDIA**

6 87. NVIDIA incorporates by reference its responses to Paragraphs 1 through 86.

7 88. The allegations in this paragraph pertain to Plaintiffs' claim for vicarious copyright
8 infringement, which has been dismissed. Accordingly, no response is required.

9 89. The allegations in this paragraph pertain to Plaintiffs' claim for vicarious copyright
10 infringement, which has been dismissed. Accordingly, no response is required.

11 90. The allegations in this paragraph pertain to Plaintiffs' claim for vicarious copyright
12 infringement, which has been dismissed. Accordingly, no response is required.

13 **CLASS ALLEGATIONS**

14 91. Paragraph 91 states conclusions of law and Plaintiffs' characterization of their claims
15 as to which no response is required. To the extent a response is required, NVIDIA denies the
16 allegations contained in Paragraph 91.

17 92. Paragraph 92 states conclusions of law and Plaintiffs' characterization of their claims
18 as to which no response is required. To the extent a response is required, NVIDIA admits Plaintiffs
19 purport to bring this action as a class action under Federal Rules of Civil Procedure 23(a), 23(b)(2),
20 and 23(b)(3), but denies this action is suitable for class treatment under Rule 23 or any other rule or
21 statute, denies any class can or should be certified, and denies the remaining allegations contained
22 in Paragraph 92.

23 93. Paragraph 93 states conclusions of law and Plaintiffs' characterization of their claims
24 as to which no response is required. To the extent a response is required, NVIDIA denies this action
25 is suitable for class treatment under Rule 23 or any other rule or statute, denies any class can or
26 should be certified, and denies the remaining allegations contained in Paragraph 93.

27 94. Paragraph 94 states conclusions of law or arguments as to which no response is
28 required. To the extent a response is required, NVIDIA denies it possesses information concerning
the exact number of members of Plaintiffs' putative class. NVIDIA denies this action is suitable for

1 class treatment under Rule 23 or any other rule or statute and denies any class can or should be
2 certified. NVIDIA lacks sufficient information to form a belief as to the truth of the remaining
3 allegations contained in Paragraph 94, and on that basis denies them.

4 95. Paragraph 95 states conclusions of law and Plaintiffs' characterization of their claims
5 as to which no response is required. To the extent a response is required, NVIDIA denies this action
6 is suitable for class treatment under Rule 23 or any other rule or statute, denies any class can or
7 should be certified, and denies the remaining allegations contained in Paragraph 95.

8 96. Paragraph 96 states conclusions of law and Plaintiffs' characterization of their claims
9 as to which no response is required. NVIDIA denies this action is suitable for class treatment under
10 Rule 23 or any other rule or statute and denies any class can or should be certified. NVIDIA lacks
11 sufficient information to form a belief as to the truth of the allegations contained in Paragraph 96,
12 and on that basis denies them.

13 97. Paragraph 97 states legal conclusions as to which no response is required. To the
14 extent a response is required, NVIDIA denies there are significant questions of law or fact common
15 to the proposed class that would make class treatment appropriate, or that would predominate over
16 questions affecting individual class members, and denies that each of the common questions alleged
17 is common to the class. NVIDIA further responds Paragraph 97(d) contains allegations pertaining
18 to Plaintiffs' claim for vicarious copyright infringement, which has been dismissed. Accordingly,
19 no response is required as to that allegation. NVIDIA denies this action is suitable for class treatment
20 under Rule 23 or any other rule or statute, denies any class can or should be certified, and denies the
21 remaining allegations contained in Paragraph 97, including all subparts.

22 98. Paragraph 98 states conclusions of law and Plaintiffs' characterization of their claims
23 as to which no response is required. To the extent a response is required, NVIDIA denies this action
24 is suitable for class treatment under Rule 23 or any other rule or statute, denies any class can or
25 should be certified, and denies the remaining allegations contained in Paragraph 98.

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1 **DEMAND FOR JUDGMENT**

2 99. NVIDIA denies all allegations contained in the section entitled “Demand for
3 Judgment,” and further denies any relief should be granted to Plaintiffs or to any putative class
4 member.

5 **DEMAND FOR JURY TRIAL**

6 NVIDIA denies any claim Plaintiffs assert is sufficient to survive to trial or warrant relief.
7 NVIDIA demands a trial by jury on all issues so triable.

8 **AFFIRMATIVE DEFENSES**

9 NVIDIA asserts the following affirmative defenses to the claims alleged in the First
10 Amended Consolidated Complaint, without assuming the burden of proof on such defenses that
11 would otherwise fall on Plaintiffs. NVIDIA reserves the right to supplement and/or amend these
12 defenses, including to assert new defenses, as further discovery is conducted.

13 **FIRST AFFIRMATIVE DEFENSE**

14 **(Failure to State a Claim)**

15 Plaintiffs’ claims and the putative class members’ claims fail, in whole or in part, because
16 Plaintiffs have failed to state a claim upon which relief may be granted.

17 **SECOND AFFIRMATIVE DEFENSE**

18 **(Non-Infringement)**

19 Plaintiffs’ claims and the putative class members’ claims fail, in whole or in part, because
20 NVIDIA has not infringed any copyrighted works asserted in this action.

21 **THIRD AFFIRMATIVE DEFENSE**

22 **(Fair Use)**

23 Plaintiffs’ claims and the putative class members’ claims are barred, in whole or in part, by
24 fair use under Section 107 of the Copyright Act.

25 **FOURTH AFFIRMATIVE DEFENSE**

26 **(Lack of Copyrightability)**

27 Plaintiffs’ claims and the putative class members’ claims fail, in whole or in part, to the
28 extent they claim rights to elements of works or to works which are not protectable under copyright

1 law, such as under the doctrines of *scènes à faire*, merger, or under 17 U.S.C. § 102(b), or that are
2 in the public domain, are facts or ideas, lack requisite originality, are unregistered, are works to
3 which copyright protection has been abandoned, or are works to which Plaintiffs own no valid
4 copyright.

5 **FIFTH AFFIRMATIVE DEFENSE**

6 **(De Minimis Copying)**

7 Plaintiffs' claims and the putative class members' claims fail, in whole or in part, because
8 they are barred by the doctrine of de minimis copying.

9 **SIXTH AFFIRMATIVE DEFENSE**

10 **(Laches, Waiver, Estoppel)**

11 Plaintiffs' claims and the putative class members' claims are barred, in whole or in part, by
12 the doctrines of laches, waiver, and/or estoppel.

13 **SEVENTH AFFIRMATIVE DEFENSE**

14 **(Statute of Limitations)**

15 Plaintiffs' claims and the putative class members' claims are barred, in whole or in part, by
16 the applicable statutes of limitations.

17 **EIGHTH AFFIRMATIVE DEFENSE**

18 **(Injunctive Relief)**

19 Plaintiffs' claims and the putative class members' claims for injunctive relief are barred
20 because Plaintiffs have an adequate remedy at law.

21 **NINTH AFFIRMATIVE DEFENSE**

22 **(Implied/Express License)**

23 Plaintiffs' claims fail, in whole or in part, because the complained-of use was authorized by
24 express or implied license.

25 **NINTH AFFIRMATIVE DEFENSE**

26 **(Other Equitable Defenses)**

27 Plaintiffs' claims are barred, in whole or in part, by equitable defenses that may be
28 established during the course of discovery.

ADDITIONAL DEFENSES

NVIDIA reserves the right to assert additional defenses.

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By: /s/ Kevin P.B. Johnson

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