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14 **[Proposed] Co-Lead Counsel for Plaintiffs**

15  
16 **UNITED STATES DISTRICT COURT**  
17 **NORTHERN DISTRICT OF CALIFORNIA**

18  
19 In re NVIDIA CORPORATION SECURITIES )  
20 LITIGATION, )

21 This Document Relates To: )

22 All Actions. )  
23 \_\_\_\_\_ )

Master File No. 5:08-cv-04260 JW (HRL)

**CLASS ACTION**

**NOTICE OF MOTION AND MOTION  
BY HARMIK KAZANCHIAN FOR  
APPOINTMENT OF LEAD PLAINTIFF  
AND APPROVING HIS SELECTION OF  
LEAD COUNSEL PURSUANT TO  
SECTION 21D OF THE SECURITIES  
EXCHANGE ACT OF 1934;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF**

**DATE: December 15, 2008**  
**TIME: 9:00 a.m.**  
**CTRM: 8, 4th Floor**

1 TO THE COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on December 15, 2008, at 9:00 a.m., before the Honorable  
3 James Ware in Courtroom 8, 4th Floor, located at 280 South 1st Street. San Jose, CA 95113,  
4 Harmik Kazanchian (hereinafter “Movant”) will, and hereby does, move this Court for an order  
5 granting his Motion for Appointment of Lead Plaintiff and Lead Counsel pursuant to Section 27 of  
6 the Securities Act of 1933 (the “Motion”). This Motion is based on this Notice of Motion and  
7 Motion, the accompanying Memorandum of Points and Authorities in support thereof, the  
8 Declaration of Timothy J. Burke filed herewith, the pleadings and other filings herein, and on such  
9 other written or oral argument as may be permitted by the Court.

10 Movant seeks to be appointed Lead Plaintiff and have his counsel Stull, Stull & Brody and  
11 Kantrowitz, Goldhamer & Graifman, P.C. be appointed Co-Lead Plaintiff’s Counsel.

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **I. ISSUES TO BE DECIDED**

14 Is Movant the most adequate plaintiff seeking to be appointed Lead Plaintiff and should his  
15 counsel be appointed as Lead Counsel for the Class?

16 **II. INTRODUCTION**

17 Movant respectfully submits this memorandum in support of his Motion for appointment as  
18 Lead Plaintiff and approval of his counsel of choice of Stull, Stull & Brody and Kantrowitz,  
19 Goldhamer & Graifman, P.C. as Co-Lead Counsel. Movant acquired NVIDIA Corporation  
20 (“NVIDIA” or the “Company”) securities, and seeks to represent all persons who acquired such  
21 securities from November 8, 2007 through July 2, 2008, inclusive (the “Class Period”) and suffered  
22 damages as a result of defendants’ violations of the federal securities laws.<sup>1</sup>

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24  
25 <sup>1</sup> The PSLRA specifically authorizes class members who have not filed a complaint to  
26 move for appointment of Lead Plaintiff. *See* 15 U.S.C. §78u-4 (a)(3)(B). Movant has completed a  
27 sworn certification listing his purchases of NVIDIA stock and requesting that he be appointed Lead  
28 Plaintiff. *See* Exhibit B to the Declaration of Timothy J. Burke in Support of Motion by Harmik  
Kazanchian for Appointment of Lead Plaintiff and Lead Counsel Pursuant to Section 21D of the  
Securities Exchange Act of 1934 (hereinafter “Burke Decl. Ex. \_\_\_”).

1 In class actions filed under the federal securities laws, the PSLRA requires that courts  
2 appoint as lead plaintiffs those members of the Class that have satisfied certain procedural  
3 prerequisites and also constitute the “most adequate” representative of the purported Class. Movant  
4 satisfies the criteria for selection as lead plaintiff for the investors he seeks to represent. Therefore,  
5 he should be appointed as lead plaintiff and his choice of counsel should be approved by the Court  
6 in accordance with the PSLRA.

### 7 **III. FACTUAL AND PROCEDURAL BACKGROUND**

8 This case is a securities fraud class action against NVIDIA and certain of its officers and  
9 directors, alleging a common scheme and course of conduct by defendants to defraud investors in  
10 violation of §10(b) and Rule 10b-5 promulgated thereunder, and §20(a) of the Securities Exchange  
11 Act of 1934 (the “Exchange Act”). The Company’s CEO, Jen-Hsun Huang, co-founded NVIDIA in  
12 1993 with venture capital firm Sequoia Capital. According to the investor relations section of the  
13 Company’s website, NVIDIA is “the world leader in visual computing technologies and the  
14 inventor of the GPU,<sup>2</sup> a high-performance processor which generates breathtaking, interactive  
15 graphics on workstations, personal computers, game consoles, and mobile devices.” The  
16 Company’s product portfolio includes graphic processors, wireless communications processors, and  
17 PC motherboard chipset. Among consumers, NVIDIA is known for its “GeForce” line of graphics  
18 processors.

19 The complaint charges that NVIDIA and certain of its officers violated Sections 10(b) and  
20 20(a) of the Securities Exchange Act of 1934 by making false and misleading statements and  
21 omissions concerning the material negative impact the Company’s distribution of defective graphic  
22 cards would have on the Company’s financial condition, financial statements and future business  
23 prospects.

24 Moreover, by failing to make the required adjustments to the Company’s reported financial  
25 results, defendants underestimated NVIDIA’s expenses and overstated the Company’s revenue and  
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27  
28 <sup>2</sup> “GPU” stands for “Graphics Processing Unit.”

1 income. Thus, the Company's financial statements, including its Form 10-K filings, for the period  
2 from November 8, 2007 to July 2, 2008 were materially false and misleading.

3 **IV. ARGUMENT**

4 **A. Movant Is the Most Adequate Plaintiff under the Pslra and Should Be**  
5 **Appointed Lead Plaintiff**

6 Section 21D of the Exchange Act, as amended by the PSLRA, sets forth the procedure for  
7 the selection of lead plaintiff to oversee class actions brought under the federal securities laws. In  
8 *In re Cavanaugh*, 306 F.3d 726 (9th Cir. 2002), the Ninth Circuit outlined the procedure district  
9 courts are to follow when deciding who will be appointed lead plaintiff. As the Ninth Circuit noted,  
10 the PSLRA instructs district courts to select as lead plaintiff the plaintiff "most capable of  
11 adequately representing the interests of class members." *Id.* at 729, *citing* 15 U.S.C. § 78u-  
12 4(a)(3)(B)(i). The "most capable" plaintiff - and hence the lead plaintiff - is the one who has the  
13 greatest financial stake in the outcome of the case, so long as he or she meets the requirements of  
14 Rule 23. *Id.*

15 The PSLRA provides a simple three-step process for identifying the lead plaintiff. *Id.* The  
16 first step consists of publicizing the pendency of the action, the claims made and the purported class  
17 period. 15 U.S.C. §78u-4(a)(3)(A). *Id.* The first plaintiff to file an action covered by the Reform  
18 Act must post this notice "in a widely circulated national business-oriented publication or wire  
19 service." 15 U.S.C. §78u-4(a)(3)(A)(i). The notice must also state that "any member of the  
20 purported class may move the court to serve as lead plaintiff." 15 U.S.C. §78u-4(a)(3)(A)(i)(II).

21 In step two, the district court must consider the losses allegedly suffered by the various  
22 plaintiffs before determining which plaintiff has the largest financial interest in the relief sought by  
23 the class and otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil  
24 Procedure. *Id.*, *citing* 15 U.S.C. §78u-4(a)(3)(B)(iii)(I). To make this comparison, the district court  
25 must calculate each potential lead plaintiff's financial interest in the litigation. *Id.* at 730, n.4. In  
26 other words, the district court must compare the financial stakes of the various plaintiffs and  
27 determine which one has the most to gain from the lawsuit. *Id.* at 729-730.

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1 The district court must then focus its attention on that plaintiff and determine, based on the  
2 information provided in the plaintiff's pleading and declaration, whether the plaintiff satisfies all of  
3 the requirements of Rule 23(a), particularly those of *typicality* and *adequacy*. *Id.* at 730 (emphasis  
4 added). If the plaintiff with the largest financial stake in the controversy provides information that  
5 satisfies these requirements, he presumptively becomes the most adequate plaintiff. *Id.*

6 The third step of the process is to give other plaintiffs an opportunity to rebut the  
7 presumptive lead plaintiff's showing of typicality and adequacy. *Id.*, citing 15 U.S.C. §78u-  
8 4(a)(3)(B)(iii)(II). At the third stage, the process turns adversarial and other plaintiffs may present  
9 evidence that disputes the lead plaintiff's prima facie showing of typicality and adequacy. *Id.* The  
10 district court may need to hold an evidentiary hearing, and make a renewed determination of  
11 typicality and adequacy. *Id.*, citing *In re Cendant Corp. Litig.*, 264 F.3d 201, 268. n.6 (3d Cir.  
12 2001), *cert. denied*, 152 L. Ed. 2d 212, 122 S. Ct. 1300 (2002).

13 If the plaintiff with the greatest financial stake does not satisfy the Rule 23(a) criteria, the  
14 court must repeat the inquiry, this time considering the plaintiff with the next-largest financial  
15 stake, until it finds a plaintiff who is willing to serve and satisfies the requirements of Rule 23. *Id.*

16 In the present case, Mr. Kazanchian satisfies all the prerequisites for appointment as lead  
17 plaintiff with respect to the Class he seeks to represent and there is no infirmity in his ability to  
18 properly fulfill his obligations. Thus, he should be appointed Lead Plaintiff.

19 **B. Movant Made His Motion Within 60 Days of Publication of Notice**

20 The first requirement to being appointed a lead plaintiff is to have "either filed a complaint  
21 or made a motion in response to a notice . . . ." 15 U.S.C. §78u-4(a)(3)(B)(iii)(I). Here, a notice  
22 was issued on September 9, 2008, announcing that a class action had been commenced against  
23 NVIDIA and that any potential class member may be entitled to appointment as lead plaintiff in the  
24 action by filing a motion with the Court no later than November 10, 2008. *See* Burke Decl., Ex. A.  
25 By timely filing this motion, Mr. Kazanchian satisfies this requirement.

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1           **C.     Movant Has the Largest Financial Interest in the Relief Sought**

2           The second requirement to being appointed a lead plaintiff is that “in the determination of  
3 the court, [the plaintiff] has the largest financial interest in the relief sought by the class” of those  
4 persons moving to be appointed lead plaintiffs. *See* 15 U.S.C. §78u-4(a)(3)(B)(iii)(I)(bb). It is  
5 believed the presumptive lead plaintiff has the largest financial interest in the relief sought by the  
6 class.

7           During the Class Period, Movant purchased his NVIDIA stock at prices artificially inflated  
8 by defendants’ false and misleading statements and omissions and has suffered substantial losses.  
9 *See* Burke Decl. Ex. C. Indeed, as the result of his purchases during the Class Period, Mr.  
10 Kazanchian incurred at least \$162,104 in damages. *Id.* To the best of his knowledge, Movant has  
11 the largest financial interest in the relief sought by the Class and otherwise satisfies the Rule 23  
12 requirements. Movant is, therefore, presumptively the most adequate Lead Plaintiff pursuant to the  
13 PSLRA. *See* 15 U.S.C. §78u-4(a)(3)(B)(iii)(I)(bb).

14           **D.     The Proposed Lead Plaintiff is Qualified under Rule 23**

15           In addition to possessing the largest financial interest in the outcome of the litigation, the  
16 PSLRA provides that the Lead Plaintiff must also “otherwise satisfy the requirements of Rule 23 of  
17 the Federal Rules of Civil Procedure.” 15 U.S.C. §78u-4(a)(3)(B)(iii)(I)(cc). With respect to the  
18 qualifications of the class representative, Rule 23(a) requires that the claims be typical of the claims  
19 of the Class and that the representative will fairly and adequately protect the interests of the Class.

20           Here, Movant satisfies the typicality and adequacy requirements of Rule 23(a) because, as  
21 shown below, his claims are typical of the claims of the Class, he will fairly and adequately  
22 represent the interests of the Class because his interests are aligned with the members of the Class  
23 and he has retained experienced class counsel to represent the Class.

24           **1.     The Claims of the Proposed Lead Plaintiff Are Typical of the Claims of**  
25           **the Class**

26           The typicality requirement of Rule 23(a)(3) is satisfied when a named plaintiff has: (a)  
27 suffered the same or similar injuries as the absent class members; (b) as a result of the same course  
28 of conduct by defendants; and (c) the claims are based on the same legal issues. “The purpose of

1 the typicality requirement is to assure that the interest of the named representative aligns with the  
2 interests of the class.” *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992)(citation  
3 omitted). “Typicality refers to the nature of the claim ... and not to specific facts.... Accordingly,  
4 differences in the amount of damage, the size or manner of [stock] purchase, [and] the nature of the  
5 purchaser ... will not render a claim atypical in most securities cases.” *Weinberger v. Jackson*, 102  
6 F.R.D. 839, 844 (N.D. Cal. 1984) (citation omitted).

7 Here, the questions of law and fact common to the Class members which predominate over  
8 questions that may affect individual claims include:

- 9 (a) whether the federal securities laws were violated by defendants’ acts;  
10 (b) whether defendants’ statements during the Class Period omitted and/or  
11 misrepresented material facts;  
12 (c) whether defendants pursued the fraudulent scheme and course of conduct  
13 complained of;  
14 (d) whether the defendants acted intentionally or recklessly;  
15 (e) whether the market price of NVIDIA’s stock was artificially inflated due to the  
16 activities complained of; and  
17 (f) the extent of damages Class members sustained and the appropriate  
18 measure of those damages.

19 Movant’s claims are typical of the claims of the members of the proposed Class. Movant,  
20 the same as the other proposed Class members, alleges that NVIDIA and certain of its directors and  
21 high ranking officers, violated the Exchange Act by publicly disseminating false and misleading  
22 statements, and by failing to disclose material adverse facts about NVIDIA during the Class Period.  
23 Further, Movant, as did all of the proposed Class members, acquired NVIDIA securities at prices  
24 inflated by defendants’ misrepresentations and omissions and was damaged thereby. The typicality  
25 requirement is satisfied here because the claims asserted by Movant are based on the same legal  
26 theory and arise from the “same event or course of conduct” giving rise to the claims of other class  
27 members. *See Guenther v. Pacific Telecom, Inc.*, 123 F.R.D. 333, 336 (D. Or. 1988). *Accord*,

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1 *Blackie v. Barrack*, 524 F.2d 891, 902-03 & n.19 (9th Cir. 1975), *cert. denied*, 429 U.S. 816 (1976);  
2 *Freedman v. Louisiana-Pacific Corp.*, 922 F. Supp. 377, 399 (D. Or. 1996).

3 **2. The Proposed Lead Plaintiff Will Fairly and Adequately Represent the**  
4 **Interests of the Class**

5 Under Rule 23(a)(4), the representative party must “fairly and adequately protect the  
6 interests of the class.” Adequacy depends on two questions: “(1) whether the named Plaintiffs and  
7 their counsel have any conflicts of interest with other class members and (2) whether the named  
8 plaintiffs and their counsel will prosecute the action vigorously on behalf of the class.” *In re THQ*  
9 *Inc. Sec. Litig.*, 2002 U.S. Dist. LEXIS 7753 at \*20 (C.D. Cal. Mar. 22, 2002)(citation omitted).

10 Movant’s interests are clearly aligned with the members of the proposed Class. There is no  
11 evidence of any antagonism between Movant’s interests and those of the proposed Class members.  
12 As detailed above, he is the victim of the same conduct as the other members of the Class and his  
13 claims raise similar questions of law and fact as those of other members and he has taken significant  
14 steps to advance this litigation. To further his own interests, he will necessarily have to advance the  
15 interests of all such Class members. Mr. Kazanchian does not have any conflict with the interests  
16 of the other members of the Class. He wants to obtain the maximum recovery for the Class so as to  
17 maximize the recovery for himself and all similarly situated members. In addition, Movant has  
18 amply demonstrated his adequacy to serve as class representative by signing a certification  
19 affirming his willingness to serve as, and assume the responsibilities of, a class representative.  
20 Finally, Movant has selected and retained counsel highly experienced in prosecuting securities class  
21 actions such as this action to represent him. For these reasons, Movant should be appointed Lead  
22 Plaintiff in this action.

23 **V. THIS COURT SHOULD APPROVE THE PROPOSED LEAD PLAINTIFF’S**  
24 **CHOICE OF LEAD COUNSEL**

25 The PSLRA vests authority in the Lead Plaintiff to select and retain Lead Counsel, subject  
26 to court approval. *See* §21D(a)(3)(B)(v). Movant has selected the law firms of Stull, Stull & Brody  
27 and Kantrowitz, Goldhamer & Graifman, P.C. to serve as Co-Lead Counsel for the Class. Both  
28 firms possess extensive experience in the area of securities litigation and have successfully



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**PROOF OF SERVICE**

STATE OF CALIFORNIA )  
 )ss.:  
COUNTY OF LOS ANGELES )

I am employed in the county of Los Angeles, State of California, I am over the age of 18 and not a party to the within action; my business address is 10940 Wilshire Boulevard, Suite 2300, Los Angeles, CA 90024.

On November 10, 2008, I served the document(s) described as **NOTICE OF MOTION AND MOTION BY HARMIK KAZANCHIAN FOR APPOINTMENT OF LEAD PLAINTIFF AND APPROVING HIS SELECTION OF LEAD COUNSEL PURSUANT TO SECTION 21D OF THE SECURITIES EXCHANGE ACT OF 1934; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy(ies) thereof enclosed in a sealed envelope(s) addressed as follows:

**SEE ATTACHED SERVICE LIST**

I served the above document(s) as follows:

**By U.S. Mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses below and place the envelope for collection and mail, following our ordinary business practices. I am readily familiar with this business’s practice for collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I further declare, pursuant to Civil L.R. 23-2, that on the date hereof I served a copy of the above-listed document(s) on the Securities Class Action Clearinghouse by electronic mail through the following electronic mail address provided by the Securities Class Action Clearinghouse:

**scac@law.stanford.edu**

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on November 10, 2008, at Los Angeles, California 90024.

MELANIE JACOBS  
Type or Print Name

/s/  
Signature

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