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

19
20 In re NVIDIA CORPORATION SECURITIES)
LITIGATION,)
21)
This Document Relates To:)
22)
23 All Actions.)
24 _____)

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

CLASS ACTION

**HARMIK KAZANCHIAN'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
COMPETING MOTIONS FOR
APPOINTMENT OF LEAD PLAINTIFF
AND APPROVAL OF LEAD COUNSEL
PURSUANT TO SECTION 21D OF THE
SECURITIES EXCHANGE ACT OF
1934**

**DATE: December 22, 2008
TIME: 9:00 a.m.
CTRM: 8, 4th Floor**

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TABLE OF CONTENTS

PAGE NO.

Table of Authorities ii

I. INTRODUCTION 1

II. ARGUMENT 3

 A. Neither the Depies Group Nor the Frank Group Are Actual Groups Within The
Meaning of the PSLRA 3

 1. The Depies Group Consists of Totally Unrelated Individuals
Who Should Not Be Appointed Lead Plaintiff 3

 2. The Unrelated Individuals Making up the Frank Group
Are Not Eligible for Appointment as Lead Plaintiff 5

 a. The Individuals Making up the Frank Group Do Not
Satisfy Rule 23's Requirements and Cannot Serve
as Lead Plaintiffs 5

 b. Day-Traders Are Inappropriate Class Representatives 6

 c. The Frank Group, Consisting Exclusively of
Canadian Residents, Have Not Alleged Purchasing Nvidia
on the U.S. Nasdaq Market 7

 d. The Members of the Frank Group, Consisting Exclusively of
Canadian Residents, Are Subject to Unique Defenses 8

 B. The Correct Method to Determine the "Greatest Stake in the Litigation"
Is by Using the Number of Retained-Shares 8

III. CONCLUSION 13

TABLE OF AUTHORITIES

PAGE NO.

FEDERAL CASES

1
2
3
4 *Arenson v. Broadcom Corp.*,
2004 U.S. Dist. LEXIS 27522 (C.D. Cal. Dec. 6, 2004) 12
5
6 *Aronson v. McKesson HBOC, Inc.*,
79 F. Supp. 2d 1146 (N.D. Cal. 1999) 4, 5, 9
7 *In re Bank One Shareholders Class Actions*,
96 F. Supp. 2d 780 (N.D. Ill. 2000) 6
8
9 *Bowman v. Legato Systems, Inc.*,
195 F.R.D. 655 (N.D. Cal. 2000) 4
10 *In re Cavanaugh*,
306 F.3d 726 (9th Cir. 2002) 5, 8, 9
11
12 *In re CornerStone Propane Partners, L.P. Sec. Litig.*,
2006 U.S. Dist. LEXIS 25819 (N.D. Cal. May 3, 2006) 9
13 *Dura Pharms., Inc. v. Broudo*,
544 U.S. 336, 125 S. Ct. 1627, 161 L. Ed. 2d 577 (2005) 9, 10
14
15 *Eichenholtz v. Verifone Holdings, Inc.*,
2008 U.S. Dist. LEXIS 64633 (N.D. Cal. Aug. 22, 2008) 9, 10
16 *Gemstar-TV Guide*,
209 F.R.D.447 (C.D. Cal. 2002) 4
17
18 *In re Comverse Tech., Inc. Sec. Litig.*,
2007 U.S. Dist. LEXIS 14878 (E.D.N.Y. Mar. 2, 2007) 9, 10
19 *In Schriver v. IMPAC Mortg. Holdings, Inc.*,
2006 U.S. Dist. LEXIS 40607 (C.D. Cal. May 1, 2006) 4
20
21 *Krangel v. Golden Rule Resources, Ltd.*,
194 F.R.D. 501 (E.D. Pa. 2000) 8
22 *In re Laidlaw Securities Litigation*,
91-C 1992 WL. 68341 (E.D. Pa. 1992) 7
23
24 *Lax v. First Merchants Acceptance Corp.*,
1997 U.S. Dist. LEXIS 11866 (N.D. Ill. Aug. 11, 1997) 9
25 *In re MicroStrategy Inc. Securities Litigation*,
110 F. Supp. 2d 427 (E.D. Va. 2000) 6
26
27 *Miller v. Vento Corp.*,
2001 WL. 34497752 (N.D. Cal. Nov. 28, 2001) 3
28

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TABLE OF AUTHORITIES

PAGE NO.

FEDERAL CASES

In re Network Associates, Inc., Securities Litigation,
76 F. Supp. 2d 1017 (N.D. Cal. 1999) 3, 4

In re Olsten Corp. Sec. Litig.,
3 F. Supp. 2d 286 (E.D.N.Y. 1998) 9

In re Razorfish, Inc. Sec. Litig.,
143 F. Supp. 2d 304 (S.D.N.Y. 2001) 3

Ruland v. Infosonics Corp.,
2006 WL 3746716 (S.D. Cal. 2006) 4

In re Safeguard Scientifics,
216 F.R.D. 577 (E.D. Va 2003) 6

Serafimov v. Netopia, Inc.,
2004 U.S. Dist. LEXIS 25184 (N.D. Cal. Dec. 3, 2004) 6

Sparling v. Daou (In re Daou Sys., Inc. Sec. Litig.),
411 F.3d 1006 (9th Cir. 2005) 10

In re Telxon Corp. Sec. Litig.,
67 F. Supp. 2d 803 (N.D. Ohio 1999) 4

Tri-Star Farms Ltd. v. Marconi PLC,
225 F. Supp. 2d 567 (W.D. Pa. 2002) 8

Vanamringe v. Royal Group Technologies, Ltd.,
237 F.R.D. 55 (S.D.N.Y. 2006) 8

In re Vaxgen Sec. Litig., C 03-1129 JSW,
2004 U.S. Dist. LEXIS 29812 (N.D. Cal. April 14, 2004) 4

1 **I. INTRODUCTION**

2 Proposed Lead Plaintiff Harmik Kazanchian respectfully submits this memorandum in
3 opposition to the motions of the other movants in this consolidated action seeking to be appointed
4 lead plaintiff and approval of their choices of lead counsel.

5 Movant Kazanchian is the ideal lead plaintiff for this litigation. He purchased a total of
6 17,900 Nvidia common shares during the Class Period of November 8, 2007 through July 2, 2008,¹
7 all on June 17, 2008 and June 26, 2008, only one to two weeks before the end of the Class Period.
8 He retained all of these shares until after the end of the Class Period on July 2, 2008. In addition,
9 Movant Kazanchian purchased 60 call options for Nvidia shares which resulted in his holding calls
10 to purchase 600 shares of Nvidia which expired worthless after the disclosures of the true facts on
11 July 2, 2008. As discussed more fully below, using the amount-of-retained-shares method will
12 most accurately reflect the “largest financial interest in the relief sought by the class.” This method
13 has been adopted in this and other districts around the country. Applying this method, Movant
14 Kazanchian has greater losses than any other applicant, with the exception of the New Jersey
15 Carpenter’s Pension and Annuity Fund (“NJ Carpenters Union” or NJCU), the “Frank Group”, and
16 another group of wholly unrelated movants, the (“Depies Group”).² The adequacy of the Frank
17 Group and Depies Group is rebuttable having failed to establish that they are true “groups” within
18 the meaning of the Public Securities Litigation Reform Act of 1995 (the “PSLRA”) and for other
19 reasons described below. The losses of another movant, the IBEW LOCAL 640/Arizona Chapter
20 Neca Pension Trust Fund (“IBEW”), are essentially undecipherable. The trades reflected on the
21 loss calculation which accompanies IBEW’s motion do not even resemble the trades listed on the
22 PSLRA-required certification attached to IBEW’s counsel’s declaration. As such, their application
23

24
25 ¹ This Class Period is set forth in the complaints filed in this consolidated action: *Miller v.*
26 *Nvidia Corp.*, CV 08-04260, filed Sept. 9, 2008; *Jermyn v. Nvidia Corp.*, CV 08-04344, filed Sept.
16, 2008, and *Politz v. Nvidia Corp.*, CV 08-04432, filed Sept. 23, 2008.

27 ² This group, styled “Movants” consists of Douglas Depies, Jerrold Engbar, Geoffrey
28 James, Chester Chow and Kumaraswamy Krishnamurthy who have no relationship to each other
than that they claims losses in Nvidia shares and have the same attorney.

1 should be denied on its face. (Compare Exhibits A & D of Declaration of Reed R. Kathrein In
2 Support of Motion to Appoint IBEW as Lead Plaintiff and To Appoint Lead Counsel)(Dkt No. 21).

3 As addressed below, some answered questions remain regarding the NJ Carpenters Union as
4 to pre-class period purchases of Nvidia shares, if any, which need to be addressed before their
5 losses attributable to purchases of shares of Nvidia stock during the Class Period, as defined more
6 fully below, can be properly calculated. It is respectfully submitted if the NJ Carpenters Union's
7 adequacy to be lead plaintiff for any reason is found to be lacking, then Movant Kazanchian is the
8 appropriate choice for Lead Plaintiff as the movant with the greatest financial interest who also
9 meets the requirements of Fed. Rule Civ. Pro. 23.

10 If Mr. Kazanchian, a resident of Las Vegas, Nevada, were chosen to be lead plaintiff he
11 would bring an additional benefit. He purchased his Nvidia shares after all the public statements
12 alleged to be false and misleading in this case were published by defendants, including statements
13 made by defendants in a June 16, 2008 conference call alleged to be misleading in the complaint
14 entitled *Patrick D. Jermyn v. Nvidia Corporation, et al.*, 08 CV 04344 RMW (PVT) filed in this
15 District. (See DKT No. 1 in action 08 CV 04344). On June 16, 2008, the day before Movant
16 Kazanchian made his first purchase of Nvidia shares, Nvidia conducted a conference call discussing
17 its GPU products at length (See *Jermyn* complaint, ¶ 42) while utterly failing to mention significant
18 problems Nvidia was experiencing with one of these products--its graphics card adapters--problems
19 which it then disclosed slightly more than two short weeks later on July 2, 2008. Because this case
20 is brought pursuant to Rule 10(b)(5) of the Securities Exchange Act of 1934, it requires the pleading
21 and, ultimately, proving of scienter, demonstrating that statements made at the beginning of the
22 Class Period on November 8, 2007 were knowingly false and misleading. Adequately
23 demonstrating under applicable legal standards that defendants knew about the product problems
24 that Nvidia was having nine months earlier could prove difficult. Thus, the closer to the date of the
25 corrective statement the purchases are, the stronger the case for scienter is, and the less danger there
26 is that the lead plaintiff may eventually lack standing to pursue claims on behalf of the class. Thus,
27 if the class period were shortened on a class motion, motion to dismiss, or subsequent motion,

28

1 Movant Kazanchian, whose purchases are approximately two weeks or less before the disclosure of
2 the truth, would still have standing to pursue these claims, unlike many of the other movants.

3 **II. ARGUMENT**

4 **A. Neither the Depies Group Nor the Frank Group Are Actual Groups Within The 5 Meaning of the PSLRA**

6 **1. The Depies Group Consists of Totally Unrelated Individuals Who 7 Should Not Be Appointed Lead Plaintiff**

8 As a collection of five individuals with no demonstrated connection or prior relationship,
9 proposed lead plaintiffs Depies, Engber, James, Chow & Krishnamurthy (collectively the “Depies
10 Group”) do not fall within the PSLRA’s definition of “group” and are not eligible for appointment
11 as lead plaintiff. The Depies Group of unrelated individuals cobbled together by counsel for the
12 sole purpose of moving for Lead Plaintiffs is the very type of “lawyer-driven litigation” the PSLRA
13 was intended to prevent. *In re Razorfish, Inc. Sec. Litig.*, 143 F. Supp. 2d 304, 308-09 (S.D.N.Y.
14 2001 (citations omitted) (“One of the principal legislative purposes of the [PSLRA] was to prevent
15 lawyer-driven litigation” and that “[t]o allow lawyers to designate unrelated plaintiffs as a ‘group’
16 and aggregate their financial stakes would allow and encourage lawyers to direct the litigation.”).

17 The Depies Group’s joint declaration, signed in counter-part, provides no justification or
18 explanation for the creation or structure of the group. The joint declaration merely provides that
19 they “met telephonically with our attorneys” (Depies Joint Dec., ¶ 5), “are aware of, and will fulfill,
20 all of our responsibilities” (Depies Joint Dec., ¶ 6), “intend to coordinate and speak with one
21 another and our attorneys regularly” (Depies Joint Dec., ¶ 7), and “supervise the activities and
22 conduct of counsel”. *Id.* The joint declaration does not address whether a pre-existing relationship
23 existed, an explanation of how the group was formed or how the group would function.

24 The Northern District of California requires that groups seeking to be appointed lead
25 plaintiff explain and justify to the court the creation and structure of the group. *Miller v. Vento*
26 *Corp.*, No. 01-CV-1287, 2001 WL 34497752, *7 (N.D. Cal. Nov. 28, 2001)(“Therefore, the Court
27 adopts the approach that requires the plaintiffs to explain and justify to the court the creation and
28 structure of the group.”). In *In re Network Associates, Inc., Securities Litigation*, 76 F. Supp. 2d
1017, 1026 (N.D. Cal. 1999), the Court stated:

1 To enable the court to assess whether the proposed group is capable of performing
2 the lead plaintiff function, it should provide appropriate information about its
3 members, structure, and intended functioning. Such information should include
4 descriptions of its members, including any pre-existing relationships among them; an
5 explanation of how it was formed and how its members would function collectively;
and a description of the mechanism that its members and the proposed lead counsel
have established to communicate with one another about the litigation. If the
proposed group fails to explain and justify its composition and structure to the
court's satisfaction, its motion should be denied or modified as the court sees fit.

6 *See also, Aronson v. McKesson HBOC, Inc.*, 79 F. Supp. 2d 1146, 1154 (N.D. Cal. 1999)(adopting
7 a “per se” rule against aggregation of unrelated plaintiffs); *In re Telxon Corp. Sec. Litig.*, 67 F.
8 Supp. 2d 803, 823 (N.D. Ohio 1999) (allowing two brothers to be considered a “group” but striking
9 from the group a third individual unrelated to the brothers); *Bowman v. Legato Systems, Inc.*, 195
10 F.R.D. 655 (N.D. Cal. 2000) (“The six members of the Legato Group had no pre-existing
11 relationship. To the contrary, it appears that the members of the Legato Group were hand-picked by
12 the Milberg firm for the sole purpose of obtaining lead plaintiff status, thus conferring lead
13 plaintiff’s counsel status on the Milberg firm”).

14 One of the ways that courts ensure that the PSLRA’s legislative purpose is carried out is to
15 ensure that individuals seeking to be appointed lead plaintiff as part of a group demonstrate that
16 they can “effectively manage the litigation and the lawyers.” *Network Associates*, 76 F. Supp. 2d at
17 10026; *In Schriver v. IMPAC Mortg. Holdings, Inc.*, 2006 U.S. Dist. Lexis 40607, *25-27 (C.D. Cal.
18 May 1, 2006)(“. . . the absence of any evidence of a relation among the [proposed members],
19 suggests that the purpose of the combination was to secure lead plaintiff status for the group and
20 appointment of lead counsel status for their attorneys. This lack of relation, combined with the
21 absence of any explanation of how the group intends to conduct discovery or coordinate litigation
22 efforts or strategy, poses a danger that the group will not be cohesive.”); *Gemstar-TV Guide*, 209
23 F.R.D.447, 447-50 (C.D. Cal. 2002).

24 The Depies Group have left little doubt that they were “created by the efforts of lawyers
25 hoping to ensure their eventual appointment as lead counsel” and, as such, are “groups” of the sort
26 district courts in this circuit and throughout the country look upon with disfavor. *Ruland v.*
27 *Infosonics Corp.*, 2006 WL 3746716, *4 (S.D. Cal. 2006); *In re Vaxgen Sec. Litig.*, C 03-1129 JSW,
28 2004 U.S. Dist. LEXIS 29812 at *16 (N.D. Cal. April 14, 2004) (Whyte, J.).

1 Since the Depies Group has no demonstrated connection or prior relationship, it does not fall
2 within the PSLRA’s definition of “group” and is not eligible for appointment as lead plaintiff.

3 **2. The Unrelated Individuals Making up the Frank Group Are Not Eligible**
4 **for Appointment as Lead Plaintiff**

5 Like the Depies Group, the individuals making up the Frank Group do not fall within the
6 PSLRA’s definition of “group” and are not eligible for appointment as lead plaintiff.

7 Regarding their prior relationship, the Frank Group merely avers that:

8 All of our respective friendships with one another precede our respective
9 investments in Nvidia common stock and retention of counsel in this matter. Indeed,
10 certain members of the Frank Group have known one another in a personal capacity
for as many as thirty years. (Frank Joint Dec., 7).

11 This supposed explanation fails because it does not “include descriptions of its members,
12 including any pre-existing relationships among them; an explanation of how it was formed”.
13 *McKesson*, 79 F. Supp. 2d at 1154. It does not explain which individuals are “friends” with other
14 members of the group, how they might know each other, how they came to learn each purchased
15 stocks in Nvidia or whether they were friends with counsel. There is no indication that every
16 member of the Frank group is “friends” with all the other members of the group. The fact that
17 “certain members” of the group have known each other in a personal capacity for 30 years does not
18 mean that each member “knows” or is even friends with each other member. Since the Frank
19 Group “fails to explain and justify its composition and structure to the court’s satisfaction, its
20 motion should be denied . . .” *Id.*

21 **a. The Individuals Making up the Frank Group Do Not Satisfy Rule**
22 **23's Requirements and Cannot Serve as Lead Plaintiffs**

23 Even if this Court was to rule that the Frank Group is a group within the meaning of the
24 PSLRA, they would still be ineligible to serve as lead plaintiffs. The PSLRA gives other plaintiffs
25 an opportunity to rebut the presumptive lead plaintiff’s showing that it satisfies Rule 23's typicality
26 and adequacy requirements by demonstrating that the presumptive lead plaintiff is “subject to
27 unique defenses that render such plaintiff incapable of adequately representing the class.” *In re*
28 *Cavanaugh*, 306 F.3d 726, 730 (9th Cir. 2002) (citing 15 USCS § 78u-4(a)(3)(B)(iii)(II)).

1 One way to demonstrate that a proposed lead plaintiff does not meet the requirements of
2 Rule 23 is to show “it is subject to a unique defense that threatens to become the focus of a
3 litigation.” *Serafimov v. Netopia, Inc.*, 2004 U.S. Dist. LEXIS 25184, at *16 (N.D. Cal. Dec. 3,
4 2004). Here, members of the supposed Frank Group engaged in “day-trading” during the class
5 period. Thus, they are not typical because they did not invest in Nvidia stock in any true sense of
6 the word. Additionally, if the Frank Group, comprised of exclusively Canadian residents,
7 purchased Nvidia on a Canadian Exchange, as is likely (and which they fail to reveal if they did), it
8 would have no interest in showing the effect that the misrepresentation may have had on the price
9 of the stock on the Nasdaq market compared with the Canadian Exchanges. Furthermore, the
10 Frank Group would have the added burden of needing to show individual reliance because the
11 Canadian Exchanges are not, per se, efficient markets for application of the fraud on the market
12 theory. Lastly, since the Frank Group consists exclusively of Canadian residents, it is subject to
13 jurisdictional related defenses that make them atypical and inadequate lead plaintiffs subject to
14 unique defenses. All of these defenses threaten to become the focus of the litigation, to the
15 detriment of the class.

16 **b. Day-Traders Are Inappropriate Class Representatives**

17 Based on the trade information provided by the individual Frank Group members, it appears
18 that they were engaged in day trading of Nvidia stock. As individuals that engaged in “day-trading”
19 during the class period, proposed lead plaintiffs are not typical because they did not invest in Nvidia
20 stock in any true sense of the word. According to the Securities and Exchange Commission,
21 day-traders do not invest, but instead

22 [t]hrough the use of sophisticated computer software, day-traders sit in front of
23 computer screens and look for nothing more than real time price movements. What
is it they are buying or selling is of no concern to them.

24 <http://www.sec.gov/news/testimony/testarchive/1999/tsty2099.htm> See *In re Bank One*

25 *Shareholders Class Actions*, 96 F. Supp. 2d 780, 784 (N.D. Ill. 2000) (refusing to appoint as lead
26 plaintiff an entity that “engaged in extensive day-trading”); *In re MicroStrategy Inc. Securities*
27 *Litigation*, 110 F. Supp. 2d 427, 436-37 (E.D. Va. 2000); *In re Safeguard Scientifics*, 216 F.R.D.

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1 577, 582-83 (E.D. Va 2003)(finding day-traders “atypical and not an adequate representative
2 because he is subject to unique defenses regarding reliance and materiality”).

3 **c. The Frank Group, Consisting Exclusively of Canadian Residents,
4 Have Not Alleged Purchasing Nvidia on the U.S. Nasdaq Market**

5 The Frank Group has not established, or even alleged, purchasing Nvidia stock on the U.S.
6 Nasdaq market. As all members of the Frank Group are Canadian residents, that they may have
7 purchased Nvidia on the Montreal or Toronto Stock Exchanges (collectively the “Canadian
8 Exchanges”) is highly plausible and would, if accurate, create interests antagonistic to the Class.
9 For example, the Frank Group would have no interest in showing the effect the misrepresentation
10 had on the price of the stock on the Nasdaq compared with the Canadian Exchanges. Further, the
11 Frank Group will need to show individual reliance because the Canadian Exchanges are not *per se*
12 efficient markets for application of the fraud on the market theory. Because of these antagonistic
13 interests the Frank Group is not an adequate representative under Rule 23 because of this
14 antagonistic interest.

15 In *In re Laidlaw Securities Litigation*, 91-CV-1829, 1992 WL 68341, *6 (E.D. Pa. 1992)
16 Judge Bechtle, found:

17 [T]he court finds that Singleton, an American investor, has interests in the litigation
18 which are antagonistic to the interests of those members of the proposed class who
19 purchased Laidlaw securities on the Canadian exchanges. While Singleton would
20 have an interest in showing what effect, if any, the alleged misrepresentations may
21 have had on the price of Laidlaw stock on the New York Stock Exchange, he has no
22 interest in demonstrating how the alleged fraud may have affected prices on the
23 Montreal or Toronto exchanges. As an American investor, Singleton would
24 naturally focus on the price changes on the New York Stock Exchange; price
25 fluctuations on the Toronto and Montreal exchanges would be of little to no
26 importance to him.

27 Moreover, while the efficiency of the market for Laidlaw securities on the New York
28 Stock Exchange is uncontested, the defendants argue that Canadian investors would
29 need to show individual reliance because the Toronto and Montreal exchanges are
30 not efficient markets for application of the fraud on the market theory. Singleton
31 would have no interest in demonstrating the efficiency of those markets. For these
32 reasons, Singleton cannot adequately represent those persons or entities who
33 purchased Laidlaw securities on the Canadian exchanges, and those purchasers will
34 not be included in the class.

35 Likewise, in this matter, the Frank Group will have an interest in showing what effect the
36 alleged misrepresentations may have had on the price of Nvidia on the Canadian Exchanges, but no

1 interest in demonstrating how the alleged fraud may have affected the price of Nvidia securities on
2 the Nasdaq. Moreover, the Frank Group being susceptible to the additional defense of the need to
3 establish that the Canadian Exchanges are efficient markets for application of the fraud on the
4 market theory, makes the Group inappropriate as a prospective lead plaintiff.

5 **d. The Members of the Frank Group, Consisting Exclusively of**
6 **Canadian Residents, Are Subject to Unique Defenses**

7 As the Frank Group consists exclusively of Canadian residents, it is subject to jurisdictional
8 defenses that make it atypical and an inadequate lead plaintiff.

9 Courts have found that asserting claims of foreign class members, such as Canadian class
10 members, may, if viable, require separate representation, and, may raise questions and defenses
11 such as forum non conveniens (*Vanamringe v. Royal Group Technologies, Ltd.*, 237 F.R.D. 55
12 (S.D.N.Y. 2006)), subject matter jurisdiction (*Tri-Star Farms Ltd. v. Marconi PLC*, 225 F. Supp. 2d
13 567 (W.D. Pa. 2002)) and the ability to represent foreign class members (*Krangel v. Golden Rule*
14 *Resources, Ltd.*, 194 F.R.D. 501 (E.D. Pa. 2000).

15 The Frank Group's susceptibility to unique defenses as to their standing or typicality to
16 represent U.S. purchasers of Nvidia stock on U.S. Securities fraud claims makes them inappropriate
17 lead plaintiffs.

18 In addition, the Frank Group poses potential logistical issues in that they are all Canadian
19 residents. Clearly, the ability to coordinate depositions would mean either flying them all into the
20 United States for depositions or having counsel travel to British Columbia, posing an additional cost
21 burden on the class which would otherwise be unnecessary.

22 **B. The Correct Method to Determine the "Greatest Stake in the Litigation" Is by**
23 **Using the Number of Retained-Shares**

24 "The 'most capable' plaintiff -- and hence the lead plaintiff -- is the one who has the greatest
25 stake in the outcome of the case, so long as he meets the requirements of Rule 23." *In re*
26 *Cavanaugh*, 306 F.3d 726, 729 (9th Cir. 2002.) Pursuant to *Cavanaugh*, the plaintiff who has the
27 "largest financial interest in the relief sought by the class" and who meets the Rule 23 requirements
28 is the presumptive lead plaintiff.

1 To determine which movant has the largest financial interest, the court “must compare the
2 financial stakes of the various plaintiffs and determine which one has the most to gain from the
3 lawsuit” through “accounting methods that are both rationally and consistently applied.”
4 *Cavanaugh*, 306 F.3d at 730. Courts have typically considered the “Olsten-Lax” factors to
5 determine who has the largest financial interest: “(1) the number of shares purchased during the
6 class period; (2) the number of net shares purchased during the class period; (3) the total net funds
7 expended during the class period; and (4) the approximate losses suffered.” *In re Olsten Corp. Sec.*
8 *Litig.*, 3 F. Supp. 2d 286, 295 (E.D.N.Y. 1998) (citing *Lax v. First Merchants Acceptance Corp.*,
9 1997 U.S. Dist. LEXIS 11866, 1997 WL 461036, *5 (N.D. Ill. Aug. 11, 1997). These factors are
10 useful, because they look to relatively objective indicators, such as number of shares purchased or
11 sold, rather than to the ultimate question of damages. *Aronson v. McKesson HBOC, Inc.*, 79 F.
12 Supp. 2d 1146, 1157-1158 (N.D. Cal. 1999).

13 Recently, Courts have also begun to apply the loss causation rule from *Dura Pharms., Inc. v.*
14 *Broudo*, 544 U.S. 336, 342, 125 S. Ct. 1627, 161 L. Ed. 2d 577 (2005) to determine which movant
15 has the largest financial stake in the litigation. *See e.g. Eichenholtz v. Verifone Holdings, Inc.*, No.
16 C 07-06140, 2008 U.S. Dist. LEXIS 64633 at *10-12 (N.D. Cal. Aug. 22, 2008). Under *Dura*,
17 where an investor sells his shares “before the relevant truth begins to leak out, the misrepresentation
18 will not have led to any loss.” *Dura Pharms., Inc. v. Broudo*, 544 U.S. at 342; *see also In re*
19 *CornerStone Propane Partners, L.P. Sec. Litig.*, No. C 03-2522 MHP, 2006 U.S. Dist. LEXIS
20 25819, at *27-28 (N.D. Cal. May 3, 2006) (plaintiffs who bought and sold stock before corrective
21 disclosure cannot prove loss causation and therefore are not entitled to recover). Thus, calculation
22 of “Dura damages” may be required to demonstrate the Lead Plaintiff Movant with the greatest
23 financial interest.

24 Accordingly, before calculating a movant’s financial interest, the court must first determine
25 what portion, if any, of a movant’s losses constitute potential recoverable losses for purposes of the
26 necessary PSLRA/*Olsten-Lax* analysis. *In re Comverse Tech., Inc. Sec. Litig.*, 06-CV-1825, 2007
27 U.S. Dist. LEXIS 14878 at *16 n.6 (E.D.N.Y. Mar. 2, 2007). Under *Dura*, the failure to
28

1 demonstrate loss causation constitutes a fatal flaw that necessitates removing those losses from the
2 financial interest calculation. *Id.*

3 Here, each of the complaints allege that Nvidia Corporation's financial difficulties did not
4 become apparent until the July 2, 2008, corrective disclosure. *See* ¶¶ 16, 17, 42, and 49 in the
5 Complaint filed in *Miller v. Nvidia Corp.*, CV 08-04260, filed Sept. 9, 2008; ¶¶ 16, 17, 43, and 50
6 in the Complaint filed in *Jermyn v. Nvidia Corp.*, CV 08-04344, filed Sept. 16, 2008; and ¶¶ 10, 28
7 and 62 in the Complaint filed in *Politz v. Nvidia Corp.*, CV 08-04432, filed Sept. 23, 2008. Thus,
8 no movant can claim that they incurred losses from any change in Nvidia's stock price which
9 occurred prior to July 2, 2008. *Sparling v. Daou (In re Daou Sys., Inc. Sec. Litig.)*, 411 F.3d 1006,
10 1026-27 (9th Cir. 2005), *cert. denied*, 546 U.S. 1172, 126 S. Ct. 1335, 164 L. Ed. 2d 51
11 (2006)(decline in stock price cannot be causally related to fraudulent accounting practices where
12 price dropped before alleged revelation of fraud); *Eichenholtz v. Verifone Holdings, Inc.*, 2008 U.S.
13 Dist. LEXIS 64633 at *12.

14 Under *Dura*, the most accurate method for determining which movant has the largest
15 financial interest in the litigation is the "retained shares" method. *Id.* at *14. When determining
16 what purchase price to use when calculating the losses suffered due to the retained shares, the
17 purchase price of the retained shares is calculated according to the shares purchased most recently,
18 but within the class period. *Id.* at *12-13. In sum, the court should calculate damages by
19 determining the shares bought during the class period that were retained as of July 2, 2008. If
20 shares were held by the movant prior to the start of the class period, under the Last In First Out or
21 LIFO those shares will be subtracted from the number of shares purchased during the class period.
22 The losses on the retained shares are calculated according to the following formula: if a share was
23 not sold within 90 days subsequent to July 2, 2008, the loss is to be measured using an average of
24 the daily closing price of stock during the 90-day period beginning July 2, 2008. If a share was sold
25 within 90 days subsequent to July 2, 2008, the loss is to be measured using the higher of the actual
26 sale price or an average of the daily closing price from July 2, 2008 to the date of sale. *Id.* at * 14.

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Utilizing this accepted method, NCJU, Hazanchian, Cohen & IBEW's "Dura damages" are as follows:³

Non-Group Movants	Class Period Purchases Held After 7/2/08	Last Purchase Date During Class Period	Price Per Share on Last Purchase Date	Total Shares Sold Within the 90-Day Hold Period	Date Sold	Price	Damages
New Jersey Carpenters Pension and Annuity Funds	20,900	6/6/08	\$24.21	2,600	7/3/08	\$13.29	\$34,554.00
				1,600	8/1/08	\$11.56	\$18,496.00
				1,700	8/1/08	\$11.56	\$19,652.00
				14,600	8/12/08	\$11.45	\$167,170.00
				400	9/23/08	\$11.68	\$4,672.00
				20,900			\$244,544.00
Harmik Kazanchian	17,900	6/26/08	\$19.53	0		\$11.61	\$207,819.00
Roberto Cohen	15,480	5/13/08	\$21.35	10,700	7/10/08	\$11.80	\$126,260.00
				4,700	7/3/08	\$12.80	\$60,160.00
				15,400			\$186,420.00
IBEW Local 640/Arizona Chapter NECA Pension Trust Fund	8,741	5/21/08	\$24.15	Unknown		\$11.61	\$101,483.01
The City of Pontiac General Employees' Retirement System	4,951	5/9/08	\$22.98	4,951	7/9/08	\$12.11	\$59,956.61

³ Shares sold within the 90-day hold period were valued at the higher of the two: (1) actual sales price or (2) the average daily hold price up to the date of the sale.

1 For instance, under this method, although Mr. Kazanchian suffered monetary damages of
2 \$162,104, which is less than the claimed monetary damages claimed by movant Roberto Cohen of
3 \$324,811.40, Movant Cohen retained a total of only 15,480 Nvidia shares as of July 2, 2008 -- over
4 2,000 shares less than Movant Kazanchian. As discussed below, the monetary losses of Roberto
5 Cohen are inflated because he purchased his largest block of Nvidia shares on November 12, 2008,
6 at over \$31.00 per share, three days after the start of the Class period and Nvidia shares declined,
7 for reasons unrelated to the alleged fraud, during the Class Period. (*See* Exhibit B to Declaration of
8 Kim E. Miller In Support of Motion of Roberto Cohen To Appoint Lead Plaintiff and Lead
9 Counsel). In contrast, Movant Harmik Kazanchian purchased his Nvidia shares near the end of the
10 Class Period for prices between \$19.00 and \$21.00 per share. See Exhibits C and D to Declaration
11 of Timothy J. Burke in Support of Motion by Harmik Kazanchian for Appointment of Lead Plaintiff
12 and Approving His Selection of Lead Counsel Pursuant to Section 21d of the Securities Exchange
13 Act of 1934).

14 Applying this method to movant NCJU, it has 20,900 Nvidia shares retained after July 2,
15 2008 and, on the face of its application, a greater financial interest than Movant Kazanchian.
16 However, there is nothing in the plaintiff certification of the NJ Carpenters Union or in its attached
17 loss calculation (*See* Exhibits A and B to the Declaration of Sabrina S. Kim in Support of Motion of
18 New Jersey Carpenter's Pension and Annuity Fund For Lead Plaintiff and Appointment of Lead
19 Counsel) indicating whether it did or did not hold Nvidia shares at the start of the Class Period. If it
20 did have shares at the start of the Class Period, under the LIFO method of calculating damages, the
21 method which is favored in this District, (*Arenson v. Broadcom Corp.*, 2004 U.S. Dist. LEXIS
22 27522 at *7-8 (C.D. Cal. Dec. 6, 2004) the number of 20,900 Nvidia shares retained by the NJCU
23 could be reduced below the 17,900 shares retained by Movant Kazanchian. Assuming that the
24 NJCU establishes satisfactorily that they did not own shares at the beginning of the Class Period
25 then it appears to be the Movant with the greatest financial loss. In the event that NJCU is found to
26 be inadequate or unsuitable by this Court to serve as Lead Plaintiff then Movant Kazanchian
27 respectfully requests that he be appointed as the Movant with the second largest number of retained
28 shares and who also meets the requirements of Rule 23.

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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 December 1, 2008, I served the document(s) described as **HARMIK KAZANCHIAN’S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO COMPETING MOTIONS FOR APPOINTMENT OF LEAD PLAINTIFF AND APPROVAL OF LEAD COUNSEL PURSUANT TO SECTION 21D OF THE SECURITIES EXCHANGE ACT OF 1934** 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 December 1, 2008, at Los Angeles, California 90024.

MELANIE JACOBS
Type or Print Name

/s/
Signature

SERVICE LIST

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