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

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

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

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

CLASS ACTION

**REPLY OF HARMIK KAZANCHIAN IN
SUPPORT OF MOTION FOR
APPOINTMENT OF LEAD PLAINTIFF
AND APPROVING HIS SELECTION 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**

1 **I. INTRODUCTION**

2 Movant Harmik Kazanchian respectfully submits this reply in support of his motion to be
 3 appointed lead plaintiff and for approval of his selection of lead counsel. Despite the claims of
 4 some of the various competing movants, movant Harmik Kazanchian¹ has the largest financial
 5 interest in the subject security as measured by the number of shares retained to the end of the Class
 6 Period, a favored method for calculating “greatest financial interest” in this jurisdiction (*See e.g.*
 7 *Eichenholtz v. Verifone Holdings, Inc.*, No. C 07-06140, 2008 U.S. Dist. LEXIS 64633 at *10-12
 8 (N.D. Cal. Aug. 22, 2008), except for² the Depies Group and the New Jersey Carpenters Pension
 9 and Annuity Funds (the “New Jersey Carpenters Union”). However, Movant Kazanchian should be
 10 appointed because, for both the Depies Group and the New Jersey Carpenters Union, the
 11 presumptive lead plaintiffs’ showing of typicality and adequacy has been rebutted. *In re*
 12 *Cavanaugh*, 306 F.3d 726, 730 (9th Cir. 2002) (*citing* 15 U.S.C. §78u-4(a)(3)(B)(iii)(II)).

13 Movant Kazanchian purchased 17,900 shares during the Class Period, sold none of these
 14 shares during the Class Period, and continued to hold all of these shares on and after July 2, 2008,
 15 the end of the Class Period. Thus, unlike each and every one of the other movants, its does not
 16 matter whether the FIFO method or the LIFO method is applied since his losses are the same under
 17 either method.

18 Some of the oppositions also suggest that Mr. Kazanchian has not demonstrated his
 19 adequacy since he did not provide a declaration describing his citizenship, understanding of the
 20 duties of lead plaintiff, or ability to control this litigation. Cohen Opp. at p. 23. One movant has
 21 gone so far as to suggest the Mr. Kazanchian in not adequate because he earns a livelihood in the
 22 entertainment field as a Tom Jones impersonator. *See* IBEW Opp. at p. 6. Certainly nothing in the
 23 Public Securities Litigation Reform Act of 1995 (the “PSLRA”) makes such a pronouncement. In
 24 both California and the United States of America, entertainers have been elected to high

25
 26 ¹ For instance, movant Roberto Cohen claims Harmik Kazanchian has the “smallest
 27 purported losses of any movant.” *See* Cohen Opp. at p. 4, 22-23.

28 ² The Franks Group has withdrawn its motion to be appointed lead plaintiff. (Dkt # 70).

1 government positions with responsibility and oversight. (*See, e.g.* Governor of the State of
2 California, Arnold Schwarzenegger, and former Governor of California and President of the United
3 States, Ronald Reagan). Thus, the mere fact that a person works in the entertainment field should
4 not prohibit that person from serving as lead plaintiff.

5 Although not required, Movant Kazanchian submits his declaration herewith describing his
6 citizenship, residency in nearby Las Vegas, Nevada, as well as demonstrating that he is motivated
7 and knowledgeable regarding the instant action to pursue this litigation since he believed based on
8 his own analysis and experience Nvidia had committed fraud before having seen any complaint
9 filed in this action or any press release announcing the action. *See* Declaration of Harmik
10 Kazanchian. Moreover, as an active and informed investor Mr. Kazanchian has the level of
11 sophistication necessary to oversee the efforts of his counsel in a securities case. *Id.*

12 **II. THE MOVANT WITH THE GREATEST FINANCIAL STAKE IN THE OUTCOME** 13 **OF THE CASE**

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

24 Movants Depies Group, New Jersey Carpenters Union, IBEW, and Kazanchian all agree
25 that the retained shares method or the net shares purchased during the class period should be used to
26 determine which movant has the largest financial stake in the litigation. *See* Depies Group Opp. at
27 p. 2; New Jersey Carpenters Union Opp. at p. 5-6; IBEW Opp. at p. 3-6; and Kazanchian Opp. at p.

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1 9-12. Under this calculation, for non-group movants, New Jersey Carpenters Union has the largest
2 financial stake in the litigation and Movant Kazanchian has the second largest. *See* Depies Group
3 Opp. at p. 3; New Jersey Carpenters Union Opp. at p. 7; IBEW Opp. at p. 6; and Kazanchian Opp.
4 at p. 11.

5 The following is now clear from the oppositions that have been filed:

- 6 ● Movant IBEW's losses and net shares purchased during the class period and retained
7 to the end of the class period are only 8,741, by IBEW's own calculation, and
8 therefore less than one half of the net class period shares retained by Movant
9 Kazanchian.
- 10
11 ● Movant Pontiac General Employee's Retirement System ("Pontiac") calculation of
12 their own of losses of \$309,430.91 (*See* Pontiac Opp. at p. 3) simply ignores the
13 reality that all but \$59,956.61 of this calculation results from inter Class Period
14 trading which Courts have discarded in determining "greatest loss." *See e.g.*,
15 *Eichenholtz v. Verifone Holdings, Inc.*, 2008 U.S. Dist. LEXIS 64633 at *10-12.
16 Pontiac has 4,951 net shares purchased during the Class Period which were retained
17 to the end of the period, far less than Movant Kazanchian.
- 18
19 ● Movant Roberto Cohen has only 15,480 net shares purchased in the Class Period
20 retained until the end of the Class Period -- approximately 2000 shares less than
21 Movant Kazanchian. In addition, if Mr. Cohen's two accounts are combined his
22 dollar losses are \$130,578.02 or less than Movant Kazanchian's approximately
23 \$162,000 loss.³ (*See* Depies Group's Opp. at p. 3, footnote 2.) Further there have
24 been significant questions raised as to the accuracy of Movant Cohen's certification
25 since he sold 8000 shares on December 21, 2007 before purchasing any Nvidia
26

27 ³ The chart on page 11 of Kazanchian's Opp. incorrectly reports this amount as
28 \$207,819.00.

1 shares in the specific account at issue (*See* Pontiac Opp. at 9-10). Under a LIFO
 2 calculation if he held shares at the beginning of the Class Period, his number of net
 3 retained shares would be reduced. Furthermore, under Movant Cohen's own criteria,
 4 Movant Cohen should be disqualified. According to Cohen's Opp., the Frank
 5 Group's calculation resulted in an error of \$11,500 because of a miscalculation of the
 6 90 day average. Cohen cites *In Re Vonnage IPO Securities Litig.*, Civil No. 07-177-
 7 FLW, 2007 U.S. Dist. LEXIS 66258, #27-28, *30 & n.8 (D.N.J. September 6, 2008)
 8 for the proposition that providing misleading "trading data and loss calculations" can
 9 be the basis for a court denying lead plaintiff status. *See* Cohen Opp. at p. 14-15.
 10 However, Movant Cohen makes similar mistakes in his favor in his own calculation
 11 of losses. For Cohen's sale on 7/10/08 of 10,700 shares, he applies a 90 day average
 12 sales price of \$11.80, instead of a higher price of \$12.046 which is the average
 13 closing price from 7/3/08, the first day of the 90-day average period, to 7/10/08, the
 14 date of sale, as required by the PSLRA⁴ resulting in a false increase in his losses of
 15 \$2,675.00. *See* Exhibit A to Declaration of Kim E. Miller in Support of Motion of
 16 Roberto Cohen to Be Appointed Lead Plaintiff and Approval of His Choice of Lead
 17 Counsel (Dkt. # 31). Thus, according to Movant Cohen's very own arguments, he is
 18 not an adequate lead plaintiff.

- 19
- 20 ● Concerning the unrelated group Movants, the Frank Group has withdrawn its
- 21 application to be appointed lead plaintiff. The Depies Group is fatally flawed since
- 22 there is no pre-existing relationship among its members even claimed to exist and it

23

24 ⁴ The PSLRA states in relevant part: "if the plaintiff sells or repurchases the subject
 25 security prior to the expiration of the 90-day period described in paragraph (1), the plaintiff's
 26 damages shall not exceed the difference between the purchase or sale price paid or received, as
 27 appropriate, by the plaintiff for the security and the mean trading price of the security during the
 28 period beginning immediately after dissemination of information correcting the misstatement or
 omission and ending on the date on which the plaintiff sells or repurchases the security. Public
 Securities Litigation Reform Act, Securities Act of 1933, Section 21D(e)(2) entitled "Exception"
 under "Limitations on Damages."

1 is exactly the type of impermissible group cobbled together by their attorneys for the
 2 sole purpose of being appointed lead plaintiff. *Miller v. Vento Corp.*, No. 01-CV-
 3 1287, 2001 WL 34497752, *7 (N.D. Cal. Nov. 28, 2001)(“ ... the Court adopts the
 4 approach that requires the plaintiffs to explain and justify to the court the creation
 5 and structure of the group.”)

- 6
- 7 ● Although Movant New Jersey Carpenters Union has the largest amount of net Nvidia
 8 shares purchased during the Class Period that were retained until the end of the
 9 period or 20,900 shares, they failed to disclose to the Court another action, yet a 12th
 10 action on their certification in which they sought to be appointed a representative
 11 party within the past three years, as required by the PSLRA.⁵ This omission was an
 12 action in which they filed a complaint in *New Jersey Carpenter’s Pension Fund v.*
 13 *Diebold*, No. 5:06-cv-0040 (N.D. Ohio Jan. 6, 2006) and a lead plaintiff motion in
 14 the same action the same day as this motion was filed. *See Pontiac Opp.* at p. 5 n.7.
 15 Furthermore, the fact that New Jersey Carpenters Union has sought to be a
 16 representative plaintiff in at least 12 cases within the last three years in securities
 17 class actions as well as participating as plaintiffs in at least two other stockholder
 18 actions (*See IBEW Opp.* at p. 11) suggests that the New Jersey Carpenter’s Union is
 19 devoting more of its time and resources to filing lawsuits at the behest of its counsel,
 20 presumably the firm Kroll Heineman, LLP which appears on their papers, than
 21 tending to the needs of the members of the union.

22 One of the movants also attacks Mr. Kazanchian without any supporting authority on the
 23 grounds that his seeking recovery from trading in options somehow disqualifies him. *See IBEW*
 24 *Opp.* at p 11. Mr. Kazanchian lost over \$5000 by purchasing 60 call option contracts to buy Nvidia

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26 ⁵ Section 21D(a)(2)(A)(v) of the PSRLA requires that certification must identif[y] “any
 27 other action under this title, filed during the 3-year period preceding the date on which the
 28 certification is signed by the plaintiff, in which the plaintiff has sought to serve as a representative
 party on behalf of a class....”

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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 8, 2008, I served the document(s) described as **REPLY OF HARMIK KAZANCHIAN IN SUPPORT OF MOTION FOR APPOINTMENT OF LEAD PLAINTIFF AND APPROVING HIS SELECTION OF LEAD COUNSEL PURSUANT TO SECTION 21D OF THE SECURITIES EXCHANGE ACT OF 1934; DECLARATION OF HARMIK KAZANCHIAN IN SUPPORT OF HIS MOTION TO BE APPOINTED LEAD PLAINTIFF AND APPROVE HIS CHOICE OF LEAD COUNSEL** 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 8, 2008, at Los Angeles, California 90024.

MELANIE JACOBS
Type or Print Name

/s/
Signature

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