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13 *New Jersey Carpenters Pension and*  
14 *Annuity Funds and Roberto Cohen*

14 [Additional counsel listed on signature page]

15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17 SAN JOSE DIVISION

18 \_\_\_\_\_ )  
19 IN RE NVIDIA CORPORATION )  
20 SECURITIES LITIGATION )

21 This Document Relates To: All Actions )

) CIVIL ACTION NO. 08-cv-4260-JW  
) CONSOLIDATED AMENDED CLASS  
) ACTION COMPLAINT FOR VIOLATIONS  
) OF FEDERAL SECURITIES LAWS  
) **JURY TRIAL DEMANDED**

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1 Lead Plaintiffs Roberto Cohen and the New Jersey Carpenters Pension Fund and New  
2 Jersey Carpenters Annuity Fund (the “Funds”) (collectively, “Plaintiffs”), on behalf of  
3 themselves and the Class they seek to represent, make the allegations contained in this  
4 Complaint upon information and belief (except as to allegations specifically pertaining to  
5 Plaintiffs and their counsel, which are based on personal knowledge) against Defendants  
6 NVIDIA Corporation (“NVIDIA” or the “Company”), Jen-Hsun Huang (“Huang”), and Marvin  
7 Burkett (“Burkett”). Plaintiffs base their information and belief on the thorough investigation  
8 conducted by and under the supervision of Lead Counsel, which included, among other things:  
9 (1) reviewing and analyzing: (i) publicly available information concerning NVIDIA and the  
10 industries and markets in which NVIDIA operates, (ii) filings with the U.S. Securities and  
11 Exchange Commission (“SEC”), (iii) annual reports, (iv) press releases, (v) published interviews  
12 and conference calls (vi) news articles and other media reports (whether disseminated in print or  
13 by electronic media), and (vii) reports of securities analysts and investor advisory services; and  
14 (2) interviewing or consulting with numerous individuals, including, but not limited to, former  
15 NVIDIA employees who worked at the Company before and during the Class Period and who  
16 are knowledgeable about NVIDIA’s business and operations and/or about the industries and  
17 markets in which NVIDIA operates, as well as former and current employees of customers of  
18 NVIDIA.

### 19 SUMMARY OF THE ACTION

20 1. Plaintiffs bring this securities fraud action on behalf of themselves and all persons  
21 who purchased or otherwise acquired the common stock of NVIDIA between November 8, 2007  
22 and July 2, 2008, inclusive (the “Class Period”), against NVIDIA and certain of its officers  
23 and/or directors for violations of the Securities Exchange Act of 1934 (the “Exchange Act”).

24 2. NVIDIA is an international company headquartered in Santa Clara, California  
25 that provides “visual computing technologies.” The Company is the inventor of the graphic  
26 processing unit (“GPU”), which generates interactive graphics on workstations, personal  
27 computers, game consoles, and mobile devices. NVIDIA serves the entertainment and consumer  
28 market, the professional design and visualization market, and the high-performance computing

1 market. In light of its continued success in designing and marketing state-of-the-art products,  
2 NVIDIA dominated the market for GPUs and media and communications processors (“MCPs”),  
3 commonly known as integrated graphics or motherboard GPUs, throughout the Class Period.

4 3. Beginning at least as early as August 2007, NVIDIA knew that its graphics  
5 chipsets<sup>1</sup> were defective and caused notebook computers to overheat. Prior to the start of the  
6 Class Period, NVIDIA was in active discussions with its main customers, Hewlett-Packard  
7 (“HP”) and Dell Incorporated (“Dell”), about how to cure problems with its chips on both a short  
8 and long term basis. Nevertheless, NVIDIA failed to disclose to its shareholders and the public  
9 that its products were defective.

10 4. Instead, Defendants knowingly or with deliberate recklessness engaged in the  
11 alleged fraud that concealed defects in the Company’s primary products throughout the Class  
12 Period to avoid disclosure of these product failures, which would adversely affect NVIDIA’s  
13 financial condition and business prospects. This fraud enabled Defendants to continue to report  
14 strong results during the three fiscal quarters prior to the end of the Class Period and artificially  
15 inflated the price of NVIDIA stock.

16 5. By the close of the quarter ended October 28, 2007, NVIDIA’s knowledge of the  
17 problems associated with its malfunctioning graphics chipsets required that a reserve be  
18 established for a loss contingency under Generally Accepted Accounting Principles (“GAAP”).<sup>2</sup>  
19 However, Defendants refused to establish this reserve. As a result, Defendants artificially  
20 inflated NVIDIA’s net income by 83 percent in the quarter ended October 28, 2007; 24.6 percent  
21 for the fiscal year ended January 27, 2008; and 111 percent for the quarter ended April 27, 2008.

22 6. On July 2, 2008, the Company disclosed that flawed GPU and MCP  
23 manufacturing processes and materials caused notebook computers containing these products to  
24 fail at unusually high rates. Defendants further disclosed the belated establishment of a \$196  
25 million dollar reserve for a loss contingency related to defects in the Company’s GPU and MCP

26 \_\_\_\_\_  
27 <sup>1</sup> A chipset is a group of microchips designed to perform one or more related functions as a unit.  
Encarta World English Dictionary (2009).

28 <sup>2</sup> NVIDIA operates on a fifty-two (52) or fifty-three (53) week fiscal year that ends on the last  
Sunday before January 31.

1 products during the quarter ended on October 28, 2007. At that time, Defendant Huang stated  
2 “[t]his has been a challenging experience for us. However, the lessons we’ve learned will help us  
3 build far more robust products in the future, and become a more valuable system design partner  
4 to our customers.”

5 7. As a result of the Company’s July 2, 2008 announcement, investors learned  
6 Defendants’ prior Class Period statements regarding NVIDIA’s financial condition, results,  
7 products, and business prospects were materially false and misleading when made because  
8 Defendants failed to timely disclose the defects in the Company’s GPUs and MCP products and  
9 their impact on the Company. On this revelation, NVIDIA’s stock plummeted by 31% (thirty-  
10 one percent) from an intraday high of \$18.78 per share on July 2, 2008 to an opening of \$12.98  
11 per share on July 3, 2008 – a decline that cut NVIDIA’s market capitalization by over \$3 billion  
12 overnight, thereby damaging Plaintiffs and the Class. In the ninety days following this belated  
13 revelation, NVIDIA’s share price continued to decline without recovering, averaging \$11.82 per  
14 share.

#### 15 JURISDICTION AND VENUE

16 8. The claims asserted herein arise under Sections 10(b) and 20(a) of the Exchange  
17 Act, 15 U.S.C. §§ 78j(b) and 78t(a), and Rule 10b-5 promulgated under Section 10(b) by the  
18 SEC, 17 C.F.R. § 240.10b-5.

19 9. This Court has jurisdiction over the subject matter of this action pursuant to 28  
20 U.S.C. §§ 1331 and 1337, and Section 27 of the Exchange Act, 15 U.S.C. § 78aa.

21 10. Venue is proper in this District pursuant to Section 27 of the Exchange Act, 15  
22 U.S.C. § 78aa.

23 11. In furtherance of and in connection with the acts alleged herein, Defendants  
24 directly or indirectly used the means and instrumentalities of interstate commerce, including, but  
25 not limited to, the mails, interstate telephonic communications, the Internet, and the facilities of  
26 the NASDAQ (National Association of Securities Dealers Automated Quotations), a national  
27 securities exchange.

**THE PARTIES**

**Lead Plaintiffs**

12. Mr. Cohen purchased the Company’s common stock during the Class Period, as set forth in his previously filed Certification, at inflated prices and has been damaged by the disclosure of the true facts about NVIDIA, its financial results, and its business practices.

13. The Funds purchased the Company’s common stock during the Class Period, as set forth in their previously filed Certifications, at inflated prices and have been damaged by the disclosure of the true facts about NVIDIA, its financial results, and its business practices.

14. By Order of the Court dated December 23, 2008, Mr. Cohen and the Funds were appointed Lead Plaintiffs.

**Defendants**

*NVIDIA Corporation*

15. Defendant NVIDIA is a corporation originally organized under the laws of the State of California in 1993 and subsequently reorganized under the laws of the State of Delaware in 1998. NVIDIA maintains its principal place of business in this District at 2701 San Tomas Expressway, in Santa Clara, California. Its common stock trades on NASDAQ under the ticker symbol “NVDA.”

16. The Company’s operations are classified into four operating segments: (i) the GPU business; (ii) the professional solutions business (“PSB”); (iii) the MCP business; and (iv) the consumer products business (“CPB”). The GPU business segment is primarily composed of the Company’s “GeForce” products that support desktop and notebook personal computers, plus memory products. The GPU business is the most profitable segment of NVIDIA and without its success in capturing market share, NVIDIA would not be able to generate sufficient revenue to survive in the competitive semiconductor<sup>3</sup> industry. The MCP business segment comprises NVIDIA nForce core logic and motherboard GPU products, which include the Company’s

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<sup>3</sup> Semiconductors are found in electronic technology including computers. Commercial semiconductors are made of silicon. Semiconductor manufacturers include NVIDIA, Taiwan Semiconductor Manufacturing Co., Intel, and AMD, to name a few.

1 graphics chips.

2 *The Individual Defendants*

3 17. Defendant Jen-Hsun Huang co-founded NVIDIA in April 1993 and has served as  
4 its President and Chief Executive Officer (“CEO”), and as a member of the board of directors,  
5 since NVIDIA’s inception. As NVIDIA’s CEO, Defendant Huang is also NVIDIA’s chief  
6 operating decision maker, or CODM, who reviews financial information on an operating  
7 segment basis for purposes of making operating decisions and assessing financial performance.

8 18. Defendant Marvin Burkett has been NVIDIA’s Chief Financial Officer (“CFO”)  
9 since September 2002. On March 21, 2008, Defendant Burkett announced his resignation but  
10 stated he would remain with the Company until a replacement had been found. Defendant  
11 Burkett remained as CFO through the end of the Class Period.

12 19. Defendants Huang and Burkett are collectively referred to herein as the  
13 “Individual Defendants.”

14 **OVERVIEW**

15 20. According to the Company’s Form 10-K for the fiscal year ended January 27,  
16 2008, NVIDIA “is the worldwide leader in visual computing technologies and the inventor of the  
17 graphic processing unit, or the GPU.” The Company’s product portfolio includes graphics  
18 processors, wireless communications processors, and PC motherboard chipsets. Among  
19 consumers, NVIDIA is probably best known for its “GeForce” line of graphics processors.

20 21. Although NVIDIA has four business segments, prior to and throughout the Class  
21 Period, the Company’s GPU business and MCP business, composed of NVIDIA nForce core  
22 logic and motherboard GPU products, were NVIDIA’s main revenue generators. Both Defendant  
23 Huang and leading industry analysts stressed the importance of NVIDIA’s GPUs to NVIDIA’s  
24 financial health during the relevant period.

25 22. For example, during the Company’s fourth fiscal quarter 2007 Earnings  
26 Conference Call on February 13, 2007, Defendant Huang stated: “Today we are pleased to report  
27 record revenue of \$878.9 million for the fourth quarter. This is our fourth consecutive record  
28 quarter. . . [and] fourth quarter revenue grew 39%. For the year, we delivered record revenue of

1 \$3.07 billion, an increase of 29% over the previous year.” On the same call, Defendant Huang  
2 informed investors that the “nForce MCP product line achieved record revenue for its tenth  
3 consecutive quarter.”

4 23. On July 9, 2007, Bear Stearns Analysts Gurinder Kalra and Dinesh Moorjani  
5 raised NVIDIA’s second quarter revenue estimate from \$857 million to \$865 million and non-  
6 GAAP EPS (earnings per share) from \$0.43 to \$0.44. In addition, Bear Stearns raised its October  
7 and January quarter estimates “*due primarily to higher MCP and GPU revenues.*” (Emphasis  
8 added.) Bear Stearns Analysts raised NVIDIA’s full fiscal year (“FY”) 2008 EPS target from  
9 \$1.90 billion to \$1.95 billion, and Kalra and Moorjani raised FY09 EPS from \$2.17 to \$2.30  
10 billion. Kalra and Moorjani stated, “[t]hough [NVIDIA’s] shares have appreciated significantly  
11 recently, we do not view the stock as being fully valued at these levels. . . .” Furthermore, Kalra  
12 and Moorjani did “not see a pause in NVIDIA’s story and expect[ed] momentum in the  
13 company’s fundamentals to continue in upcoming quarters – in addition to an unchallenged GPU  
14 leadership position, [Kalra and Moorjani] expect[ed] a strong Fall [2007] for MCPs . . . and  
15 continued margin expansion.”

16 24. As a result of the importance of NVIDIA’s GPUs and MCPs to the Company’s  
17 financial condition, results, and business prospects, Defendants failed to disclose serious  
18 problems with these core products. Indeed, Defendants knew, at least as early as August 2007,  
19 that design problems caused NVIDIA GPUs to overheat and fail. This overheating led to  
20 excessive use of the cooling fan, which in turn caused the battery of the notebook computer to be  
21 depleted at an unacceptable rate, affecting, at a minimum, GPUs of two of the world’s largest  
22 notebook computer manufacturers, HP and Dell. In addition, as explained by Confidential  
23 Witness Number 1 (“CW #1”), who worked as an NVIDIA Software Engineer from 2000 to  
24 2008, the problem with NVIDIA’s GPU chips “was a heating/cooling problem; a hysteresis  
25 problem. If you heated up the thing *too much* and cooled it down, and then heated it up, it would  
26 crack.” (Emphasis added.) As further confirmed by Confidential Witness Number 2 (“CW #2”),  
27 a Senior New Product Introduction Planner (“NPI Planner”) who worked at NVIDIA from 2005  
28 to 2008, the problem was that NVIDIA’s final GPU specification was much hotter than what the

1 Company had promised to its original equipment manufacturers (“OEMs”) customers. CW #2  
2 recalled, “We always had a weird feeling that we are testing something this hot. We didn't care  
3 too much. We built units and we shipped them.”

4 25. In fact, Michael Hara, Vice President of Investor Relations and Communications  
5 for NVIDIA (“VP of IR and Communications” or “VP Hara”), admitted during a Citigroup  
6 Technology Conference on September 4, 2008 that NVIDIA had been working with its OEMs  
7 customers to resolve the overheating issues since as early as August 2007. During the same  
8 conference, VP Hara acknowledged that NVIDIA knew that its GPU chip failures were  
9 widespread and impacted an array of computer models built by a variety of OEMs. VP Hara’s  
10 statement is further confirmed by Confidential Witness Number 3 (“CW #3”), an NVIDIA  
11 Quality Engineer from 2004 until 2008, who verified that “before they went public [with their  
12 BIOS releases in November 2007], we [NVIDIA] were already talking with Dell and HP.”

13 26. In or around August 2007, HP, the world’s largest computer manufacturer,  
14 approached NVIDIA to inform the Company that its GPUs were to blame for thermal-stress  
15 failures on at least a dozen different HP notebook lines. According to Confidential Witness  
16 Number 4 (“CW #4”), a reporter covering NVIDIA’s chip defects who travelled to Taiwan to  
17 interview a former senior HP employee, by mid-2007, the problems with NVIDIA’s chips were  
18 so serious that they collectively caused a significant change in the average defect rate for all HP  
19 laptops.

20 27. At a minimum, NVIDIA’s defective GPUs were responsible for thermal-stress  
21 failures in the following HP hardware products: a) HP Pavilion notebook PC series (i) dv20xx,  
22 (ii) dv21xx, (iii) dv22xx, (iv) dv23xx, (v) dv24xx, (vi) dv60xx, (vii) dv61xx, (viii) dv62xx, (ix)  
23 dv63xx, (x) dv64xx, (xi) dv90xx, (xii) dv92xx, (xiii) dv93xx, and (xiv) dv94xx; and b) Compaq  
24 Presario notebook PC series (i) v30xx, (ii) v31xx, (iii) v32xx, (iv) v33xx, (v) v34xx, (vi) v60xx,  
25 (vii) v61xx, (viii) v62xx, (ix) v63xx, and (x) v64xx.

26 28. In response, HP attempted to address the overheating problems by issuing an  
27 update to the code embedded in the notebook computers (referred to as Basic Input/Output  
28

1 System or BIOS)<sup>4</sup> no later than November 2007.

2 29. At the time HP issued its BIOS updates, Defendants had sufficient knowledge  
3 regarding the nature and scope of the problems affecting the Company's GPU chips to create a  
4 contingent-loss reserve relating to the matter. Nevertheless, Defendants concealed from NVIDIA  
5 investors these defects and their impact on the Company's financial condition and future  
6 business prospects for at least the following eight months.

7 30. Consistent with VP Hara's belated revelations, by the late summer of 2007,  
8 around the same time HP was approaching NVIDIA about the GPU problems, e-mails were  
9 circulating internally at Dell, Inc., the world's second largest computer manufacturer, and  
10 between Dell and NVIDIA that discussed and emphasized the gravity of the defects in  
11 NVIDIA's GPU chips. These e-mails put NVIDIA on written notice that the defects in its GPUs  
12 were negatively affecting a wide range of Dell's notebook computer offerings.

13 31. At a minimum, NVIDIA's defective GPUs were responsible for thermal-stress  
14 failures in the following Dell hardware products: a) Inspiron 1420; b) Latitude D630; c) Latitude  
15 D630c; d) Dell Precision M2300; e) Vostro Notebook 1310; f) Vostro Notebook 1400; g) Vostro  
16 Notebook 1510; h) Vostro Notebook 1710; i) XPS M1330; and j) XPS M1530.

17 32. In response, Dell also began issuing BIOS updates in an attempt to alleviate the  
18 overheating resulting from the defective GPUs in November 2007. However, Defendants were  
19 already aware of the underlying problem before November 2007, by virtue of having addressed  
20 the very same problem with HP.

21 33. By November 2007, HP and Dell confronted NVIDIA with data and other  
22 information showing that dozens of computer model lines from several manufacturers were all  
23 suffering from the same problem: heat-related video failures of NVIDIA's graphics processors.  
24 The only explanation for these thermal-stress failures was a systemic defect in NVIDIA's GPUs.

25 34. As a result of receiving these reports in the period ending between August and  
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27 <sup>4</sup> BIOS assures that "all the other chips, hard drives, ports and central processing unit ['CPU']  
28 function together." *See* How BIOS Works at <http://computer.howstuffworks.com/bios.htm/printable>;  
*see also* BIOS at <http://en.wikipedia.org/wiki/BIOS>.

1 September, 2007, Defendants knew or were deliberately reckless in not knowing that a systemic  
2 defect in the Company's GPUs caused thermal-stress failures in customers' notebook computers.

3 35. Although all the major semiconductor manufacturers, including NVIDIA, obtain  
4 the materials for their chips from the same small group of die and packaging suppliers, only  
5 notebook computers equipped with NVIDIA's chips exhibited similar thermal-stress failures  
6 across full product spectrums during the relevant time period. Thus, these product failures  
7 resulted from defects in NVIDIA's GPU chips and not the materials NVIDIA obtained from its  
8 suppliers.

9 36. For the reasons set forth above (¶¶ 24-35), among others, Defendants understood,  
10 prior to the start of the Class Period, that the thermal-stress failures of the Company's GPUs  
11 could not be attributed to either: (i) overall notebook system design flaws owing to the OEMs; or  
12 (ii) defective die or packaging materials originating with the Company's supplier base.

13 37. Accordingly, by the inception of the Class Period, upon learning of the nature and  
14 scope of the defects in the Company's GPUs, NVIDIA sought to redesign an entire generation of  
15 graphics processors without disclosing these significant product defects to the market and  
16 NVIDIA investors.

17 38. During the same time period that NVIDIA was experiencing systemic product  
18 failure backlash, NVIDIA's competitors were putting increasing pressure on the Company in the  
19 form of rival products. In particular, in January 2008 Advanced Micro Devices Inc. ("AMD")  
20 announced that its new Radeon HD 3879 X2 card was outperforming NVIDIA's GeForce 880  
21 Ultra; AMD was also offering the Radeon card for significantly less than NVIDIA's products.  
22 As the competitive pressure on NVIDIA increased, the defect in its core products became an  
23 even more significant liability.

24 39. In addition to competitive pressures, NVIDIA was throughout the Class Period  
25 engaging in significant business transactions which would have brought its financial condition  
26 under scrutiny and required strong credit ratings. For instance, in late February 2008 NVIDIA  
27 acquired 25 acres of real estate in Santa Clara, California at a cost of \$149.5 million. NVIDIA  
28 also apparently had several significant corporate acquisitions during the Class Period, including

1 the acquisitions of: Mental Images, Inc. for a total consideration of approximately \$88.3 million;  
2 AGEIA Technologies, Inc. for a total consideration of approximately \$29.7 million; and  
3 RayScale.

4 40. In the midst of this, NVIDIA was faced with the decision to undertake a complete  
5 chip redesign to cope with the overheating problems it was seeing in its GPUs.

6 41. As explained in greater detail below (*see infra* ¶¶ 45-46), the redesigning,  
7 remanufacturing, and quality testing of a graphics chip is a complex, expensive, and time-  
8 intensive exercise. Assuming that every stage in the process is both expedited and successful (on  
9 the first attempt), under ideal circumstances it would have taken NVIDIA a minimum of six  
10 months to produce commercially available replacements for the defective GPUs. However,  
11 because circumstances are rarely ideal, as confirmed by CW #2, who worked as an NVIDIA  
12 Senior New Product Introduction Planner from 2005 to 2008, on average each new product  
13 usually takes approximately one year to roll out. Therefore, initial product planning meetings  
14 normally begin one year prior to the product's release.

15 42. Appreciating that it would take the better part of a year, or more, before the  
16 Company could release corrected versions of the defective graphics chips, NVIDIA quietly – and  
17 without any meaningful public disclosure – worked with various OEMs to release “flash  
18 updates” to the BIOS of the affected notebook computers. Flash updates are software patches  
19 generally regarded as temporary solutions, which are adopted until the problem's root cause can  
20 be fully and properly addressed.

21 43. However, NVIDIA knew that BIOS updates would not resolve its chips' defects.  
22 As aptly reported on July 29, 2008 by ZDNet, one of the Internet's leading technology portals,  
23 ***“If there's a problem with the [NVIDIA] GPUs in a range of Dell notebooks then a BIOS***  
24 ***update is little more than a band-aid and isn't going to fix the underlying problem.”*** (Emphasis  
25 added.)

26 44. Nevertheless, NVIDIA's OEMs issued BIOS updates throughout late 2007 and  
27 beyond, on the advice, and with the cooperation, of Defendants. While the Company never  
28 disclosed as much to its investors, the BIOS updates were intended as only a temporary, stop-gap

1 measure while NVIDIA worked behind the scenes to design, manufacture, and test a new breed  
2 of replacement chips.

3 45. As noted above, producing a semiconductor such as a video chip takes at least six  
4 months under ideal conditions. From start to finish the process involves, among other things: (a)  
5 one month or more at the design house, where engineers devise the schematics for the reworked  
6 chip; (b) taping out the schematics to one or more manufacturing facilities, where it takes at least  
7 two months (and usually three or more) to produce a prototype; (c) two to three months of  
8 thermal testing of the prototype and, assuming the first prototype is a success; (d) an additional  
9 month or more to manufacture and ship the first commercially available units. For the process to  
10 take only six months, the process would have to encounter no delays and meet with success at  
11 every step, which is highly unusual in the industry. Accordingly, this process generally takes  
12 closer to one full year to complete.

13 46. Aside from assuming that a new chip optimally progresses through each of the  
14 preceding steps, the prospective six-month turnaround further assumes that the chip maker is  
15 able to “hot job” the process, which involves paying a substantial premium to a silicon  
16 manufacturing house to place the chip maker’s new product at the head of the production line.  
17 Hot jobbing is not always an option, however, and, even when it is, the price is invariably steep  
18 and results in significant additional charges, costs, and expenses.

19 47. In March 2008, in the midst of the Class Period and during the chip failure crisis,  
20 the Company announced that its CFO, Defendant Burkett, intended to retire. While he was  
21 expected to remain in his position as CFO in the interim, the Company was then actively seeking  
22 a replacement so that he could step down. In June 2008, International Rectifier (“IR”) announced  
23 that NVIDIA’s former head internal auditor, Alex Garcia, had joined IR as Vice President,  
24 Compliance. Garcia went directly from NVIDIA to IR in the midst of a product crisis that would  
25 have significant financial implications for the Company and its investors.

26 48. In May of 2008, unbeknownst to investors, the Company made an initial batch of  
27 redesigned GPU chips available to OEMs that addressed the prior defects in NVIDIA’s GPUs.  
28 The Company’s Product Change Notifications (“PCNs”), which NVIDIA privately disseminated

1 to OEMs beginning in the spring of 2008, confirm the full nature and scope of the Company's  
2 redesign. These PCNs were designated by NVIDIA as "Type 1," a rating classification indicating  
3 a major overhaul of an existing chipset, and included a "ship date" of May 22, 2008.

4 49. Given the lengthy process of product development outlined above (¶¶ 45-46),  
5 Defendants began the redesign and manufacturing process at least six months prior to the May  
6 2008 release date, or no later than November 2007. Defendants' redesign efforts had actually  
7 commenced well before November 2007, however. As confirmed by CW #3, an NVIDIA  
8 Quality Engineer from 2004 until 2008, "before they went public, we [NVIDIA] were already  
9 talking with Dell and HP."

10 50. Thus, by November 2007 at the latest, NVIDIA understood that it needed to  
11 redesign and remanufacture an entire generation of its GPU chips. As Defendants knew or  
12 recklessly disregarded at the time, the estimated costs for the project exceeded \$10 million in  
13 design and prototype testing alone. NVIDIA was aware of the extent of the costs at the onset of  
14 the redesign and manufacturing process but failed to disclose these material developments to the  
15 investment community until more than half a year later.

16 51. The costs to the Company did not end there. Because the useful shelf life, or time  
17 before a product becomes obsolete by virtue of new generation products, of a typical GPU chip  
18 is approximately one year, NVIDIA knew at the onset of the redesign and manufacturing process  
19 that the six months or more it would take to develop replacement graphics processors would  
20 undercut at least half of the merchantable life span of a generation of its core silicon products. In  
21 other words, the chipset failure required an early redesign which rendered existing products  
22 obsolete sooner than they otherwise would have been, thereby costing the Company even more.  
23 On September 4, 2008, during the Citigroup Technology Conference, VP Hara confirmed that a  
24 GPU chip's shelf life is no more than a year by stating that "[t]wo of the three parts that are  
25 failing the most . . . have been end of lifed" since March 2008.

26 52. In addition to the huge expense tied directly to redesigning the defective graphics  
27 chips, NVIDIA's engineering staff – which otherwise would have focused its efforts on  
28 developing the next generation of NVIDIA GPU chips – was instead forced to search for a

1 solution to the thermal-stress failures plaguing the Company's existing line of graphics  
2 processors. As a result, redesigning the defective GPU chips placed NVIDIA at a competitive  
3 disadvantage, imperiling its ability to introduce new and innovative products and to maintain a  
4 lead market share in a highly competitive industry and adversely impacting its foreseeable future  
5 growth and profitability.

6 53. Despite the emergence of these factors in or around November 2007 – the  
7 multimillion-dollar expense associated with the silicon redesign and manufacture process; the  
8 degradation of at least half the merchantable shelf life of a generation of video chips; and the  
9 resultant impact on the Company's ability to compete for future market share – NVIDIA kept its  
10 investors in the dark until July 2008.

11 54. According to CW #3 who worked as a Quality Engineer from 2004 until 2008,  
12 and whose primary responsibility was to determine the root causes of customer failures and to  
13 improve product, NVIDIA had also spent months prior to November 2007 working with HP and  
14 Dell to resolve the overheating issues. NVIDIA had purchased hundreds of notebook computers  
15 and spent months determining the root causes of the problem.

16 55. Confidential Witness Number 5 ("CW #5") worked as an Environmental  
17 Compliance Engineer Board Operations from August 2007 through the end of the Class Period.  
18 CW #5 is familiar with numerous instances in which NVIDIA failed to take responsibility for  
19 Company problems. On more than one occasion, when CW #5 suggested notifying customers of  
20 product defects, CW #5 was told that that was not CW #5's responsibility, and no one addressed  
21 the problem. CW #5 stated that the Company policy was to let customers discover the problems  
22 on their own rather than to call the problems to the customers' attention. CW #5 is confident  
23 NVIDIA was aware of the scope of the problems with the defective chips long before the July 2,  
24 2008 announcement.

25 56. CW #5's statements are further corroborated by Confidential Witness Number 6  
26 ("CW #6") and Confidential Witness Number 7 ("CW #7"). CW #6 worked as a Software and  
27 Hardware Test Engineer at NVIDIA from February 2006 through July 2006 and confirmed  
28 NVIDIA's failure to notify customers of known product defects. Accordingly to CW #6, similar

1 problems arose at the Company with respect to NVIDIA's 6X and 7X groups of chips during  
2 his/her employment. Rather than notifying the customers of the problem, CW #6 stated that  
3 NVIDIA not only shipped the problematic chips to customers knowing that they were defective,  
4 but the Company then waited until receiving numerous customer complaints before taking  
5 remedial action.

6 57. Similarly, CW #7, a Senior Engineering Manager who worked at NVIDIA from  
7 2002 until March 2006, verified that NVIDIA "will not admit that there is going to be a  
8 problem." Far from an isolated occurrence, CW #7 indicated that this was NVIDIA's policy "all  
9 the time, on every product."

10 58. Confidential Witness Number 8 ("CW #8") was the Administrator for a  
11 technology website specializing in hardware graphics and software news and reviews from 2004  
12 through June 2008. CW #8 worked as a technical support employee for Dell from 2000-2004 and  
13 stated that NVIDIA had a history of problems with overheating causing the chip failures but had  
14 always been reluctant to acknowledge problems.

15 59. During the Citigroup Technology Conference on September 4, 2008, VP Hara  
16 confirmed many of the statements made by the confidential sources, as alleged above, by  
17 admitting that NVIDIA had been seeking to correct the overheating problems with its customers  
18 since August 2007. According to VP Hara, the problems with notebook computers equipped with  
19 NVIDIA's chips stemmed from what industry professionals have termed "heat cycling." When  
20 computers equipped with NVIDIA's graphics cards are switched on, the cards quickly reach high  
21 temperatures. As the cards cool down, however, the rapid change in temperature subjects them to  
22 extreme physical stress. As a result, solder joints weaken and ultimately crack, causing the video  
23 adapters to malfunction or stop working altogether.

24 60. Unable to conceal the true condition of the Company's core products any longer,  
25 NVIDIA announced on July 2, 2008, in a report on Form 8-K, that it would take a \$150 million  
26 to \$200 million charge against the cost of revenue to cover anticipated customer warranty, repair,  
27 return, replacement, and other consequential costs and expenses arising from defects in its  
28 graphics chips in certain versions of its previous generation MCP and GPU products used in

1 notebook systems. NVIDIA further reported that all newly manufactured products and all  
2 products currently shipping in volume had been substantially changed.

3 61. As a result of the July 2, 2008 announcement, investors learned that Defendants'  
4 prior Class Period statements regarding NVIDIA's financial condition, results, and business  
5 prospects were materially false and misleading when made because Defendants failed to timely  
6 disclose or had deliberately disregarded the defects in the Company's GPUs and MCPs and their  
7 impact on the Company. As a result of these revelations, NVIDIA's stock price plummeted.

8 **NVIDIA'S MATERIALLY FALSE AND MISLEADING STATEMENTS AND**  
9 **OMISSIONS DURING THE CLASS PERIOD**

10 62. The Class Period commences on November 8, 2007. On that date, Defendants  
11 issued a press release touting the Company's first billion dollar quarter, which according to  
12 Defendant Huang, NVIDIA's President and CEO, "was just the beginning." Defendant Huang  
13 further stated that NVIDIA's core businesses were continuing to grow "as the GPU becomes  
14 increasingly central to today's computing experience." In particular, the NVIDIA's GeForce®  
15 desktop and notebook GPU product lines each achieved record revenue, and the Company's  
16 notebook GPU product line grew 120 percent year-over-year.

17 63. Defendant Huang further emphasized that "net income and gross margin  
18 [likewise] reach[ed] record highs." More specifically, the November 8, 2007 press release  
19 provided:

20 *For the third quarter of fiscal 2008, revenue increased to a*  
21 *record \$1.12 billion compared to \$820.6 million for the third*  
22 *quarter of fiscal 2007, an increase of 36 percent.* Net income  
23 computed in accordance with U.S. Generally Accepted Accounting  
24 Principles (GAAP) for the third quarter of fiscal 2008 was a record  
25 \$235.7 million, or \$0.38 per diluted share, an increase of 121  
26 percent compared to the third quarter of fiscal 2007. GAAP gross  
27 margin improved by 550 basis points from a year ago to a record  
28 46.2 percent.

Non-GAAP net income for the third quarter of fiscal 2008, which  
excludes stock-based compensation charges and the associated tax  
impact, was \$264.2 million, or \$0.44 per diluted share, an increase  
of 77 percent compared to the third quarter of fiscal 2007. Non-  
GAAP gross margin improved to a record 46.4 percent, an increase  
of 350 basis points from a year ago.

1 For the nine months ended October 28, 2007, revenue increased to  
2 a record \$2.90 billion compared to \$2.19 billion for the nine  
3 months ended October 28, 2007 was \$540.7 million, or \$0.89 per  
diluted share, compared to \$285.3 million, or \$0.50 per diluted  
share, for the nine months ended October 29, 2006.

4 Non-GAAP net income for the nine months ended October 28,  
5 2007, which excludes stock-based compensation charges and the  
6 associated tax impact was \$626.7 million, or \$1.06 per diluted  
share, compared to \$372.3 million, or \$0.66 per diluted share, for  
the nine months ended October 29, 2006.

7 (Emphasis added.)

8 64. Also, in the November 8, 2007 press release, Defendant Huang commented:

9 We are very proud to have achieved our first billion dollar quarter.  
10 And, while it is a wonderful milestone to reach, *we believe this is*  
11 *just the beginning....Our core businesses are continuing to grow*  
12 *as the GPU becomes increasingly central to today's computing*  
*experience in both the consumer and professional market*  
*segments.*

13 (Emphasis added.)

14 65. On November 8, 2007, NVIDIA also filed with the SEC a current report on Form  
15 8-K, signed by Defendant Burkett, that included the November 8th press release as an exhibit.

16 66. Shortly thereafter, on November 21, 2007, NVIDIA filed with the SEC, on Form  
17 10-Q, its quarterly report for the period ended September 30, 2007. The 10-Q repeated the  
18 financial results announced in the November 8th press release. Pursuant to the certification  
19 requirements of the Sarbanes-Oxley Act of 2002, Defendants Huang and Burkett both attested  
20 that the 10-Q "does not contain any untrue statement of a material fact or omit to state a material  
21 fact necessary to make the statements made, in light of the circumstances under which such  
22 statements were made, not misleading..." Defendant Burkett further certified that "the financial  
23 statements, and other financial information included in this report, fairly present in all material  
24 respects the financial condition, results of operations and cash flows of the [Company]..."

25 67. The November 8th press release, the November 8th 8-K, and the November 21st  
26 10-Q were materially false and misleading because, among other things, they failed to disclose  
27 the defects in NVIDIA's GPUs and MCPs and their impact on the Company's financial  
28 condition and results, as well as on future business prospects. Additionally, by failing to adjust

1 the Company's projections and reported financial results for customer warranty, repair, return,  
2 replacement, and other consequential costs and expenses arising from the defects, the preceding  
3 statements were false and misleading because they understated NVIDIA's expenses and other  
4 obligations and overstated the Company's revenue, income, and margin by at least \$196 million.  
5 Had NVIDIA timely recorded the \$196 million charge during the quarter ended October 28,  
6 2007 as required by GAAP, the Company's stated gross profit would have been reduced by 38%.

7 68. On February 13, 2008, Defendants issued a press release titled "NVIDIA Reports  
8 Record Results for Fourth Quarter and Fiscal Year 2008." In the release, Defendants highlighted  
9 the fact that the Company had ostensibly "achieve[d] record quarterly revenue and record annual  
10 revenue." More specifically, after announcing that NVIDIA's "annual net income [had]  
11 increase[d] 78 percent year-over-year," the press release provided in pertinent part:

12 *For the fourth quarter of fiscal year 2008, revenue increased to a*  
13 *record \$1.20 billion, compared to \$878.9 million for the fourth*  
14 *quarter of fiscal 2007, an increase of 37 percent.* Net income  
15 computed in accordance with U.S. generally accepted accounting  
16 principles (GAAP) for the fourth quarter of fiscal 2008 was \$257.0  
17 million, or \$0.42 per diluted share, compared to net income of  
18 \$163.5 million, or \$0.27 per diluted share, for the fourth quarter of  
19 fiscal 2007, a net income increase of 57 percent.

20 Non-GAAP net income for the fourth quarter of fiscal 2008, which  
21 excludes stock-based compensation charges, a charge for in-  
22 process research and development related to an acquisition closed  
23 during the quarter, and the associated tax impact, was \$292.6  
24 million, or \$0.49 per diluted share.

25 *Annual revenue for the fiscal year ended January 27, 2008 was a*  
26 *record \$4.10 billion,* compared to revenue of \$3.07 billion for the  
27 fiscal year ended January 28, 2007, an increase of 34 percent.  
28 GAAP net income for the fiscal year ended January 27, 2008 was  
\$797.6 million, or \$1.31 per diluted share, compared to GAAP net  
income of \$448.8 million, or \$0.76 per diluted share, for the fiscal  
year ended January 28, 2007, a net income increase of 78 percent.

Non-GAAP net income for the fiscal year ended January 27, 2008,  
which excludes stock-based compensation charges, a charge for in-  
process research and development related to an acquisition closed  
during the year, and the associated tax impact, was \$919.3 million,  
or \$1.56 per diluted share.

1 (Emphasis added.)

2 69. Defendant Huang was quoted in the February 13th press release:

3 *Fiscal 2008 was another outstanding and record year for us.*  
4 *Strong demand for GPUs in all market segments drove our*  
5 *growth. Relative to Q4 one year ago, our discrete GPU business*  
6 *grew 80%. Our growth reflects the ever-increasing use of rich*  
7 *graphics in applications from Google Earth to Apple iTunes to*  
8 *online virtual worlds.*

9 \* \* \*

10 This is the era of visual computing. The richness of the graphics is  
11 increasingly central to our computing experience. And at the core  
12 of that experience is the GPU, the processor that defines the  
13 modern PC.

14 (Emphasis added.)

15 70. On February 13, 2008, NVIDIA filed with the SEC a current report on Form 8-K,  
16 signed by Defendant Burkett, that included the February 13th press release as an exhibit.

17 71. The next month, on March 21, 2008, NVIDIA filed with the SEC, on Form 10-K,  
18 its annual report for the period ended January 27, 2008. The 10-K repeated the financial results  
19 announced in the February 13th press release. Pursuant to the certification requirements of the  
20 Sarbanes-Oxley Act of 2002, Defendants Huang and Burkett both attested that the 10-K “does  
21 not contain any untrue statement of a material fact or omit to state a material fact necessary to  
22 make the statements made, in light of the circumstances under which such statements were made,  
23 not misleading...” Defendant Burkett further certified that “the financial statements, and other  
24 financial information included in this report, fairly present in all material respects the financial  
25 condition, results of operations and cash flows of the [Company]...”

26 72. The February 13th press release, the February 13th 8-K, and the March 21st 10-K  
27 were materially false and materially misleading because, among other things, they failed to  
28 disclose the defects in NVIDIA’s MCPs and GPUs and their impact on the Company’s financial  
condition and results and future business prospects. Additionally, by failing to adjust the  
Company’s projections and reported financial results for the defects, the preceding statements  
were false and misleading because they understated NVIDIA’s expenses and other obligations

1 and overstated the Company's revenue, income, and margin. For example, had NVIDIA timely  
2 recorded the \$196 million charge during the quarter ended October 28, 2007 as required, the  
3 Company's actual gross profit would have been 10.5% lower than the \$1,869,280 figure stated in  
4 the March 21st 10-K.

5 73. On May 8, 2008, Defendants issued a press release titled "NVIDIA Reports  
6 Results for First Quarter Fiscal 2009." In the release, Defendants announced that the Company  
7 had purportedly "achieve[d] 37 percent revenue growth and 34 percent net income growth year-  
8 over-year." More specifically, the press release provided:

9 *For the first quarter of fiscal 2009, revenue was \$1.15 billion,*  
10 *compared to \$844.3 million for the first quarter of fiscal 2008, an*  
11 *increase of 37 percent.* Net income computed in accordance with  
12 U.S. generally accepted accounting principles (GAAP) for the first  
13 quarter of fiscal 2009 increased by 34 percent year-over-year to  
14 \$176.8 million, or \$0.30 per diluted share.

15 Non-GAAP net income for the first quarter of fiscal 2009, which  
16 excludes stock-based compensation charges and the associated tax  
17 impact, was \$211.8 million, or \$0.36 per diluted share.

18 (Emphasis added.)

19 74. Again, Defendant Huang was quoted in the press release stating:

20 *The growth of GPUs continues to outpace the PC market. We*  
21 *shipped 42 percent more GPUs this quarter compared to the*  
22 *same period a year ago, resulting in our best first quarter ever.*  
23 This is the era of visual computing. With a few hundred million  
24 GeForce GPUs in the market, developers can now confidently  
25 create applications with dazzling graphics. Amazing applications  
26 with beautiful graphics are showing up on the Web constantly,  
27 driving even faster adoption of GPUs. *We expect this positive*  
28 *feedback loop to continue to drive our growth.*

(Emphasis added.)

75. On May 8, 2008, NVIDIA filed with the SEC a current report on Form 8-K,  
signed by Defendant Burkett, that included the May 8th press release as an exhibit.

76. Later that month, on May 22, 2008, NVIDIA filed with the SEC, on Form 10-Q,  
its quarterly report for the quarter ended April 27, 2008. The Form 10-Q repeated the financial  
results announced in the May 8th press release. The Form 10-Q also included a section titled

1 “Product Defect Contingencies” which stated:

2           During the first quarter fiscal year 2009, one of our customers  
3           asserted claims for incremental repair and replacement costs  
4           related to an alleged die/packaging material set defect in one of our  
5           notebook MCP products. This product was included in a  
6           significant number of the customer’s notebook products that have  
7           been sold to end users, and has also been shipped to other of our  
8           customers in significant quantities. We are evaluating the potential  
9           scope of this situation, including the nature and cause of the  
10           alleged defect and the merits of the customer’s claim, and to what  
11           extent the alleged defect might occur with other of our products.  
12           We are currently unable to estimate the amount of costs that may  
13           be incurred by us beyond the normal product warranty accrual that  
14           we have taken related to this claim and the alleged defect and,  
15           therefore, we have not recorded any additional related costs or a  
16           liability in our Condensed Consolidated Financial statements as of,  
17           and for the three months ended, April 27, 2008.

18 Pursuant to the certification requirements of the Sarbanes–Oxley Act (“SOX”), Defendants  
19 Huang and Burkett both attested that the 10-Q “does not contain any untrue statement of a  
20 material fact or omit to state a material fact necessary to make the statements made, in light of  
21 the circumstances under which such statements were made, not misleading...” Defendant  
22 Burkett further certified that “the financial statements, and other financial information included  
23 in this report, fairly present in all material respects the financial condition, results of operations  
24 and cash flows of the [Company]...”

25           77.     The May 8th press release, the May 8th Form 8-K, and the above-quoted  
26           statements in NVIDIA’s 10-Q were false and misleading because, among other things, they  
27           failed to disclose the defects in NVIDIA’s graphics cards and their impact on the Company’s  
28           financial condition and results and future business prospects. Additionally, by failing to adjust  
29           the Company’s projections and reported financial results for customer warranty, repair, return,  
30           replacement, and other consequential costs and expenses arising from the defects, the preceding  
31           statements were false and misleading because they understated NVIDIA’s expenses and other  
32           obligations and overstated the Company’s revenue, income, and margin. For instance, the  
33           Company’s stated gross profit would have decreased by 38% had NVIDIA timely recorded the  
34           \$196 million charge during the quarter ended October 28, 2007 as required by GAAP.

1 78. Further, the May 22nd Form 10-Q was materially false and misleading when  
2 made because, although Defendants disclosed the MCP material set problems, they failed to  
3 make any disclosure about the more serious problem with the GPU chips, of which they had  
4 been aware since before October 28, 2007.

5 79. The truth about the foregoing matters was not revealed until after the market  
6 closed on July 2, 2008. When NVIDIA stock resumed trading the next day, the Company's  
7 market capitalization promptly dwindled by over \$3 billion, and Plaintiffs and other NVIDIA  
8 investors were severely damaged as a result of Defendants' misconduct.

9 **NVIDIA'S CLASS PERIOD FINANCIAL STATEMENTS WERE MATERIALLY**  
10 **FALSE AND MISLEADING**

11 80. As set forth above, at all times during the Class Period, Defendants represented  
12 that NVIDIA's consolidated financial statements were prepared in accordance with GAAP.  
13 GAAP are those principles recognized by the accounting profession and the SEC as the uniform  
14 rules, conventions, and procedures necessary to define accepted accounting practices at a  
15 particular time. Throughout the Class Period, Defendants manipulated NVIDIA's financial  
16 statements by not accruing and disclosing loss contingencies associated with its MCP and GPU  
17 units in violation of GAAP and SEC reporting requirements. This manipulation artificially  
18 understated cost of revenue and overstated gross profit and net income by \$196 million  
19 throughout the Class Period.

20 81. As set forth in Financial Accounting Standards Board ("FASB") Statement of  
21 Concepts No. 1 ("CON1"), Objectives of Financial Reporting by Business Enterprises  
22 (November 1978), one of the fundamental objectives of financial reporting is to provide accurate  
23 and reliable information concerning an entity's financial performance during the period being  
24 presented. CON1, ¶ 42, states:

25 Financial reporting should provide information about an  
26 enterprise's financial performance during a period. Investors and  
27 creditors often use information about the past to help in assessing  
28 the prospects of an enterprise. Thus, although investment and  
credit decisions reflect investors' and creditors' expectations about  
future enterprise performance, those expectations are commonly  
based at least partly on evaluations of past enterprise performance.

1           82. SEC Regulation S-X requires that publicly traded companies present their annual  
2 financial statements in accordance with GAAP. *See* 17 C.F.R. § 210.4-01(a)(1). In addition,  
3 Regulation S-X requires that interim financial statements comply with GAAP. Financial  
4 statements filed with the SEC that are not prepared in compliance with GAAP are presumed to  
5 be misleading and inaccurate, and management is responsible for preparing financial statements  
6 that conform to GAAP. As noted by the American Institute of Certified Public Accountants  
7 (“AICPA”) professional standards:

8                     Financial statements are management’s responsibility...  
9                     [M]anagement is responsible for adopting sound accounting  
10                    policies and for establishing and maintaining internal control that  
11                    will, among other things, record, process, summarize and report  
12                    transactions (as well as events and conditions) consistent with  
13                    management’s assertions embodied in the financial statements. The  
14                    entity’s transactions...are within the direct knowledge and control  
15                    of management....Thus, the fair presentation of financial  
16                    statements in conformity with Generally Accepted Accounting  
17                    Principles is an implicit and integral part of management’s  
18                    responsibility.

15           83. Defendants’ representations concerning cost of revenue, gross profit, and net  
16 income were materially false and misleading when made because Defendants knowingly or with  
17 deliberate recklessness failed to timely accrue and disclose loss contingencies relating to issues  
18 with NVIDIA’s MCP and GPU units.

19           84. Specifically, Defendants caused the Company to violate GAAP and SEC  
20 requirements in the following key respects. First, Defendants caused NVIDIA not to accrue loss  
21 contingencies associated with abnormal failure rates of its MCP and GPU units used in notebook  
22 systems as soon as Defendants knew these costs were likely to occur. These contingencies  
23 should have been recorded during the quarter ended October 27, 2008 and would have resulted in  
24 a higher cost of revenue, and a lower gross profit and net income, of \$196 million. This  
25 adjustment would have also impacted NVIDIA’s results going forward and resulted in cost of  
26 revenue being understated and gross profit and net income being overstated for the year ended  
27 January 27, 2008 and the quarter ended April 27, 2008

28           85. Second, as discussed in greater detail below (¶¶ 95-103), Defendants caused

1 NVIDIA not to disclose certain information relating to the abnormal failure rates of NVIDIA's  
2 MCP and GPU units. This undisclosed adverse information concealed by Defendants during the  
3 Class Period is the very type of information required to be disclosed by GAAP as Defendants  
4 knew that it related to events that already occurred and were likely to result in loss contingencies.  
5 This omission resulted in material misstatements of NVIDIA's financial statements, for the  
6 quarter ended October 28, 2007, the year ended January 27, 2008 and the quarter ended April 27,  
7 2008. Defendant Burkett was directly responsible for preparation of NVIDIA's financial  
8 statements and Individual Defendants Huang and Burkett certified their accuracy under the  
9 Sarbanes-Oxley Act of 2002 ("SOX").

10 *A. Defendants Violated GAAP and SEC Reporting Requirements by Knowingly*  
11 *Failing to Timely Recognize a \$196 Million Loss Contingency*

12 86. GAAP generally provides that financial statements should accrue for loss  
13 contingencies if information prior to the issuance of the financial statements indicates that a  
14 liability has been incurred. Statement of Financial Accounting Standards ("SFAS") No. 5,  
15 Accounting for Contingencies (March 1975) ¶ 8. SFAS 5 defines a loss contingency as an  
16 "existing condition, situation or set of circumstances involving uncertainty as to possible loss to  
17 an enterprise that will ultimately be resolved if one or more future events occur or fail to occur."  
18 SFAS 5 ¶ 1. Specifically, SFAS 5 ¶ 8 states that an estimated loss contingency should be accrued  
19 by a charge to income "[i]f information available prior to the issuance of the financial statements  
20 indicates that it is probable that an asset has been impaired or a liability has been incurred at the  
21 date of the financial statements and the amount of the loss can be reasonably estimated." SFAS 5  
22 ¶ 4 includes "obligations related to product warranties and product defects" as an example of a  
23 loss contingency.

24 87. When a loss contingency exists, SFAS 5 ¶ 3 explains that the likelihood that the  
25 future event or events will confirm the loss can range from "probable" to "remote." As defined  
26 by SFAS 5 ¶ 3, "probable" means future events that are likely to occur; "reasonably possible"  
27 means the chance that a future event or events will occur is more than remote but less than likely  
28 to occur; and "remote" means the chance that a future event or events will occur is slight.

1 88. NVIDIA's 2008 Form 10-K filed with the SEC on March 21, 2008, included the  
2 following disclosure with respect to the Company's policy of accounting for product warranty  
3 costs: "We generally offer limited warranty to end users that ranges from one to three years for  
4 products in order to repair & replace products for any manufacturing defects or hardware  
5 component failures. Cost of revenue included the estimated cost of product warranties that are  
6 calculated at the point of revenue recognition." This disclosure was materially false and  
7 misleading because it failed to disclose and/or account for the problem with the Company's  
8 defective chips, which at that time represented a probable liability.

9 89. On May 22, 2008, NVIDIA filed a Form 10-Q with the SEC and included the  
10 following disclosure regarding product defect contingencies:

11 During the first quarter fiscal year 2009, one of our customers  
12 asserted claims for incremental repair and replacement costs  
13 related to an alleged die/packaging material set defect in one of our  
14 notebook MCP products. This product was included in a  
15 significant number of the customer's notebook products that have  
16 been sold to end users, and has also been shipped to other of our  
17 customers in significant quantities. We are evaluating the potential  
18 scope of this situation, including the nature and cause of the  
19 alleged defect and the merits of the customer's claim, and to what  
20 extent the alleged defect might occur with other of our products.  
21 We are currently unable to estimate the amount of costs that may  
22 be incurred by us beyond the normal product warranty accrual that  
23 we have taken related to this claim and the alleged defect and,  
24 therefore, we have not recorded any additional related costs or a  
25 liability in our Condensed Consolidated Financial statements as of,  
26 and for the three months ended, April 27, 2008.

27 (Emphasis added.) This disclosure was materially false and misleading because of the failure to  
28 disclose and/or create a reserve for the much larger problem with the GPUs, and because  
NVIDIA failed to reserve for a probable loss relating to the MCPs.

90. In the weeks leading up to July, 2008, NVIDIA stock showed strong performance.  
Its stock received buy ratings and analysts foresaw positive trends and strong market positions in  
its near-term business. For instance, on June 5, 2008 Goldman Sachs Analyst James Schneider  
increased his NVIDIA rating to buy from neutral, saying "trends in its near-term business are  
likely to be better than we had expected." In the months leading up to the end of the Class

1 Period, several analysts considered NVIDIA likely to continue to outperform its competitors and  
2 face down any threat from new market entrants such as Intel.

3 91. On July 2, 2008, NVIDIA finally acknowledged the scope of its problem to the  
4 market by announcing the following in a press release:

5 *NVIDIA Corporation stated that it would take a \$150 million to*  
6 *\$200 million charge against cost of revenue to cover anticipated*  
7 *customer warranty, repair, return, replacement and other*  
8 *consequential costs and expenses arising from a weak*  
9 *die/package material set in certain versions of our previous*  
10 *generation MCP and GPU products used in notebook systems.*

11 *The previous generation MCP and GPU products that are*  
12 *impacted were included in a number of notebooks that were*  
13 *shipped and sold in significant quantities. Certain notebook*  
14 *configurations of these MCP and GPU products are failing in*  
15 *the field at higher than normal rates. While we have not been*  
16 *able to determine a root cause for these failures, testing suggests a*  
17 *weak material set of die/package combinations, system thermal*  
18 *management designs, and customer use patterns are contributing*  
19 *factors.*

20 (Emphasis added.) This disclosure reveals the materially false and misleading statements made  
21 in NVIDIA's prior disclosure on May 22, 2008. Specifically, the May 22, 2008 disclosure was  
22 materially false and misleading because of the failure to disclose and/or account for the much  
23 larger problem with the GPUs.

24 92. In addition, NVIDIA made a similar disclosure in its Form 10-Q for the quarter  
25 ended July 27, 2008 filed with the SEC on August 21, 2008:

26 *During our fiscal quarter ended July 27, 2008, we recorded a*  
27 *\$196 million charge against cost of revenue to cover anticipated*  
28 *customer warranty, repair, return, replacement and other*  
*associated costs arising from a weak die/package material set*  
*in certain versions of our previous generations MCP and GPU*  
*products used in notebook systems.*

(Emphasis added.)

93. Although these announcements were made by NVIDIA in July 2008, NVIDIA  
had been aware of the abnormal failure rates of its MCPs and GPUs and had been working on the  
issue for over a year. As Michael Hara, NVIDIA's Vice President of Investor Relations

1 announced on September 4, 2008, “We’ve been working on this problem with the customers for  
2 well over a year, going all the way back to August of last year....We’ve been hearing about this  
3 and working on [the problem] for over a year....”

4 94. VP Hara’s comments are an admission that the problems with the MCP and GPU  
5 units had been known to NVIDIA’s executives, including the Individual Defendants, prior to the  
6 start of the Class Period. When NVIDIA filed its October 28, 2007 Form 10-Q, Defendants were  
7 aware that a loss contingency was required for the chip problems because they were NOT  
8 “reasonably possible” or “remote” but, in fact, “probable” as defined by GAAP. SFAS 5 ¶ 3. As  
9 a result, Defendants were required to disclose and establish a reserve for these problems but  
10 failed to do so. Rather, Defendants knowingly concealed the issues relating to NVIDIA’s MCPs  
11 and GPUs and their associated loss contingencies in direct contravention of GAAP, SEC  
12 requirements and NVIDIA’s own accounting policies. Consequently, NVIDIA’s cost of revenue  
13 was materially understated by \$196 million and gross profit and net income materially overstated  
14 by \$196 million for the quarter ended October 28, 2007, the year ended January 27, 2008 and the  
15 quarter ended April 27, 2008.

16 ***B. Defendants Omitted to Disclose Material Information Concerning MCP and***  
17 ***GPU Abnormal Failure Rates***

18 95. In addition to failing to accrue probable costs associated with the MCP and GPU  
19 unit failures, Defendants violated GAAP and SEC reporting requirements by failing to disclose  
20 any qualitative information concerning the product failures in NVIDIA’s financial statements  
21 during the Class Period, in conformity with SFAS No. 5, thereby misleading investors.

22 96. SFAS No. 5 ¶ 10 requires that financial statements disclose contingencies when it  
23 is at least “reasonably possible” (i.e., a greater than slight chance) that a loss may have been  
24 incurred. The disclosure shall indicate the nature of the contingency and shall give an estimate of  
25 the possible loss, a range of loss, or state that such an estimate cannot be made.

26 97. Additionally FASB Interpretation (“FIN”) No. 45, Guarantor’s Accounting and  
27 Disclosure Requirements for Guarantees, Including Indirect Guarantees if Indebtedness of  
28 Others (November 2002), requires that guarantors disclose certain information regarding product

1 warranties, including:

2 (a) The guarantor's accounting policy and methodology used in  
3 determining its liability for product warranties.

4 (b) A tabular reconciliation of the changes in the aggregate product  
5 warranty liability for the reporting period. That reconciliation  
6 should present in the beginning balance of the aggregate reductions  
7 in that liability for payments made (in cash or in kind) under the  
8 warranty, the aggregate changes in the liability for accruals related  
9 to product warranties issued during the reporting period, the  
10 aggregate changes in the liability for accruals related to preexisting  
11 warranties (including adjustments related to changes in estimates),  
12 and the ending balance of the aggregate product warranty liability.

13 98. The SEC considers the disclosure of loss contingencies to be so important to an  
14 informed investment decision that it issued Article 10-01 of Regulation S-X, 17 C.F.R. § 210.10-  
15 01, which provides that disclosures in interim period financial statements may be abbreviated  
16 and need not duplicate the disclosure contained in the most recent audited financial statements,  
17 except that "where material contingencies exist, disclosure of such matters shall be provided  
18 even though a significant change since year end may not have occurred."

19 99. In addition, GAAP requires that financial statements disclose significant risks and  
20 uncertainties associated with an entity's business. AICPA Statement of Position No. 94-6  
21 Disclosure of Certain Significant Risks and Uncertainties (December 1994).

22 100. Thus, Defendants had an affirmative duty to disclose the product quality issues  
23 associated with its MCP and GPU products in its interim financial statements in accordance with  
24 GAAP even if the financial impact had not been readily quantifiable, which it was (¶¶ 86-94). As  
25 indicated by APB Opinion No. 28, ¶ 22, Interim Financial Reporting (December 1973),  
26 "Contingencies and other uncertainties that could be expected to affect the fairness of  
27 presentation of financial data at an interim date should be disclosed in interim reports in the same  
28 manner required for annual reports."

101. Item 7 of Form 10-K and Item 2 of Form 10-Q, Management Discussion and  
Analysis of Financial Condition and Results of Operations ("MD&A"), require the issuer to  
furnish information required by Item 303 of Regulation S-K, 17.C.F.R. § 229.303. In discussing  
results of operations, Item 303 of Regulation S-K requires the registrant to "[d]escribe any

1 known trends or uncertainties that have had or that the registrant reasonably expects will have a  
2 materially favorable or unfavorable impact on net sales or revenues or income from continuing  
3 operations.”

4 102. In addition, the SEC, in its May 1989 Interpretive Release No. 34-26831,  
5 indicated that registrants should employ a two-step analysis in determining when a known trend  
6 or uncertainty is required to be included in the MD&A disclosure pursuant to Item 303 of  
7 Regulation S-K: “A disclosure duty exists where a trend, demand, event or uncertainty is both  
8 presently known to management and is reasonably likely to have a material effect on the  
9 registrant’s financial condition or results of operations.”

10 103. In violation of the foregoing GAAP and SEC Regulations, NVIDIA’s financial  
11 statements for the Class Period failed to disclose material information regarding the abnormal  
12 failure rates and product issues with its MCP and GPU units of which it had been aware for over  
13 a year.

14 ***C. NVIDIA’s GAAP & SEC Violations Were Material***

15 104. The foregoing statements and omissions in violation of GAAP and SEC  
16 Regulations were unquestionably material. For example, if NVIDIA had recorded the \$196  
17 million charge during the quarter ended October 28, 2007, as required by GAAP, NVIDIA’s  
18 gross profit would have been 38% lower and its net income would have been reduced by a  
19 staggering 83%. Additionally, the Company’s net income of \$176,805,000 reported for the  
20 quarter ended April 27, 2008 would have become a loss of \$19,195,000. The table below  
21 summarizes the effects of not timely recording the accrual for the MCP and GPU loss  
22 contingencies in the quarter ended October 28, 2007 on gross profit and net income for  
23 subsequent reporting periods during the Class Period:

	Quarter Ended October 28, 2007	Year Ended January 27, 2008	Quarter Ended April 27, 2008
Gross Profit (“GP”)	\$515,553,000	\$1,869,280,000	\$514,843,000
GP after \$196m contingency	\$319,553,000	\$1,673,280,000	\$318,843,000
% reduction in GP	38%	10.5%	38%
Net Income (“NI”)	\$235,661,000	\$797,645,000	\$176,805,000

NI after \$196m contingency	\$39,661,000	\$601,645,000	\$(19,195,000)
% reduction in NI	83%	24.6%	111%

105. FASB Concepts Statement No. 2, Qualitative Characteristics of Accounting Information ¶ 132 (May 1980), indicates that materiality determinations are based on whether “it is probable that the judgment of a reasonable person relying upon the report would have been changed or influenced by the inclusion or correction of the item.”

106. Staff Accounting Bulletin No. 99, Materiality, (August 1999) emphasizes the need to assess and take into account the qualitative aspects of materiality, including, but not limited to:

- Whether the misstatement arises from an item capable of precise measurement or whether it arises from an estimate and, if so, the degree of imprecision inherent in the estimate;
- Whether the misstatement masks a change in earnings or other trends;
- Whether the misstatement hides a failure to meet analysts’ consensus expectations for the enterprise;
- Whether the misstatement changes a loss into income or vice versa;
- Whether the misstatement concerns a segment or other portion of the registrant’s business that has been identified as playing a significant role in the registrant’s operations or profitability; and
- Whether the misstatement has the effect of increasing management’s compensation - for example, by satisfying requirements for the award of bonuses or other forms of incentive compensation.

107. Based on the foregoing, Defendants knowing or deliberately reckless misstatements of cost of revenue, gross profit, and net income, rendered NVIDIA’s Class Period financial statements false and misleading to a material degree at the time they were issued.

***D. Additional GAAP Violations***

108. In addition to the foregoing accounting improprieties, NVIDIA presented its financial statements during the Class Period in a manner that also violated, at a minimum, the following additional GAAP provisions:

1           A.     The concept that financial reporting should provide information that is  
2 useful to present and potential investors and creditors and other users in making rational  
3 investment, credit, and similar decisions (CON1 ¶ 34);

4           B.     The concept that financial reporting should provide information about the  
5 economic resources of an enterprise, the claims to those resources, and the effects of  
6 transactions, events, and circumstances that change resources and claims to those resources  
7 (CON1 ¶ 40);

8           C.     The concept that financial reporting should provide information about how  
9 management of an enterprise has discharged its stewardship responsibility to owners  
10 (stockholders) for the use of enterprise resources entrusted to it. To the extent that management  
11 offers securities of the enterprise to the public, it voluntarily accepts wider responsibilities for  
12 accountability to prospective investors and to the public in general (CON1 ¶ 50);

13           D.     The concept that financial reporting should provide information about an  
14 enterprise's financial performance during a period. Investors and creditors often use information  
15 about the past to help in assessing the prospects of an enterprise. Thus, although investment and  
16 credit decisions reflect investors' expectations about future enterprise performance, those  
17 expectations are commonly based at least partly on evaluations of past enterprise performance  
18 (CON1 ¶ 42);

19           E.     The concept that financial reporting should be reliable in that it represents  
20 what it purports to represent. That information should be reliable as well as relevant is a notion  
21 that is central to accounting (CON2 ¶¶ 58-59);

22           F.     The concept of completeness, which means that nothing is left out of the  
23 information that may be necessary to ensure that it validly represents underlying events and  
24 conditions (CON2 ¶ 79); and

25           G.     The concept that conservatism be used as a prudent reaction to uncertainty  
26 to try to ensure that uncertainties and risks inherent in business situations are adequately  
27 considered. The best way to avoid injury to investors is to try to ensure that what is reported  
28 represents what it purports to represent (CON2 ¶¶ 95, 97).



1 announcement, NVIDIA's stock price averaged \$11.82 per share.

2 112. In addition, several analysts cut their ratings on NVIDIA stock while others  
3 revised their earnings projections and stock price targets. Recognizing the immediate effect of  
4 Defendants' belated revelation of the Company's business prospects, Suji De Silva, an analyst  
5 for Kaufman Bros. Equity Research, downgraded NVIDIA from a buy to hold stating that GPU  
6 and MCP notebook issues "will dampen notebook GPU/chipset shipments in the heavily back-  
7 end loaded July quarter."

8 113. Similarly, Shawn Webster, an analyst with JPMorgan, also downgraded NVIDIA  
9 from Overweight to Neutral stating that the "\$150-\$200 million charge for flaws in shipped  
10 products [is] . . . *overwhelming evidence of broken execution.*" (Emphasis added). Webster  
11 rejected NVIDIA's excuses that a weaker global end market had contributed to NVIDIA's weak  
12 results. According to Webster, the personal computer global end market was stable and  
13 *NVIDIA's weak results were NVIDIA-specific as a result of the chip failures that resulted in*  
14 *the \$150-\$200 million charge.*

15 114. The injury to the Class members was directly and proximately caused by the fraud  
16 alleged herein. When NVIDIA disclosed that it was taking a \$196 million charge for an  
17 undisclosed contingency that had existed for at least three quarters, revealing that Defendants'  
18 prior Class Period statements regarding the Company's financial condition, results, and business  
19 prospects were materially false and misleading when made, the market price of NVIDIA  
20 common stock fell 31% the following day on heavy volume.

21 **ADDITIONAL ALLEGATIONS SUPPORTING**  
22 **THE INDIVIDUAL DEFENDANTS' SCIENTER**

23 115. Among other reasons, Defendants engaged in the alleged fraud to inflate the price  
24 of NVIDIA securities in order to: (a) protect and enhance their executive positions and the  
25 substantial compensation and prestige they obtained thereby; and (b) enhance the value of their  
26 personal holdings of NVIDIA securities. To this end, the Individual Defendants' scienter is  
27 further evidenced by their compensation arrangements, including stock option and incentive  
28 payment programs, which furnished a direct and personal financial motive to make the

1 misrepresentations and omissions alleged.

2 116. The Company's 2007 proxy statement, filed with the SEC on May 9, 2007,  
3 demonstrates that the Individual Defendants had compelling personal financial motives to  
4 artificially inflate the income of NVIDIA (and thus the price of the public traded stock) during  
5 the Class Period.

6 117. The proxy statement states that NVIDIA believed equity-based compensation is  
7 critical to its overall pay program for executives.

8 118. As reported in the Company's 2008 proxy statement, filed with the SEC on May  
9 15, 2008, the Individual Defendants reaped substantial benefits from stock option and other  
10 incentive plans during the Class Period, when they concealed and misrepresented: (i) the scope  
11 and gravity of the defects in NVIDIA's video chips; and, thus, (ii) the true state of NVIDIA's  
12 operations and its financial condition and results.

13 119. Among other things, the proxy statement disclosed that Defendant Huang's base  
14 salary was "increased from \$500,000 in fiscal 2007 to \$600,000 in fiscal 2008." Defendant  
15 Burkett's base salary was \$425,000 for both fiscal years 2007 and 2008. In addition to their base  
16 salaries, Individual Defendants Huang and Burkett received compensation of \$1,250,000 and  
17 \$425,000 respectively, if they achieved their individual targets.

18 120. Because of NVIDIA's inflated financial results, "each executive officer received  
19 200 percent of his or her corporate performance payout, which is the maximum amount payable  
20 for the corporate performance target under our variable compensation plan." The Individual  
21 Defendants also received payouts ranging from 90 percent to 120 percent of their individual  
22 performance based variable compensation. "Mr. Burkett received 100 percent of his target  
23 individual performance based variable compensation for fiscal 2008 and Mr. Huang received 120  
24 percent of his individual performance based variable compensation for the fiscal year." Had the  
25 Individual Defendants timely disclosed the problems with Company's GPUs, their compensation  
26 for fiscal 2008 would have been substantially lower.

27 121. Furthermore, Defendants and other high-level Company employees at NVIDIA  
28 profited handsomely as Company stock continued to perform well throughout the Class Period.

1 Brooke Seawell, a director in the audit committee, netted \$2 million in December 2007 alone  
2 when he exercised options to buy 60,000 shares of the Company's stock at \$1.36 each and then  
3 promptly sold them at prices ranging from \$35 to \$35.14. Directors received stock options  
4 instead of cash for their service. And directors who sat on its audit committee were given an  
5 extra helping to compensate for the extra time demands.

6 122. Under a 10b5-1 trading plan adopted prior to the beginning of the Class Period  
7 but subsequently amended, Defendant CFO Huang exercised options for and sold shares of  
8 common stock. Under the original plan, Huang's last 10b5-1 trade would have occurred in  
9 December 2007. Under the amended plan, Huang was able to purchase and sell 186,000 shares in  
10 May 2008, netting \$3 million. Huang also made significant trades in March, April, and June of  
11 2008.

12 123. Furthermore, during the Class Period, the Individual Defendants, as senior  
13 executive officers and/or directors of NVIDIA, were privy to confidential and proprietary  
14 information concerning NVIDIA, its operations, finances, financial condition, and present and  
15 future business prospects. As a result of their positions with NVIDIA, the Individual Defendants  
16 had access to materially adverse non-public information about the Company's business, finances,  
17 products, markets, and present and future business prospects *via* access to internal corporate  
18 documents, conversations and connections with other corporate officers and employees,  
19 attendance at management and board of directors meetings and committees, and *via* reports and  
20 other information provided to them in connection therewith. Because of their possession of this  
21 information, the Individual Defendants knew of or were deliberately reckless in disregarding the  
22 adverse facts specified herein that were not disclosed to, and were being concealed from, the  
23 investing public during the Class Period.

24 124. The Individual Defendants are liable as direct participants in the wrongs  
25 complained of herein. In addition, the Individual Defendants, by reason of their status as senior  
26 executive officers and/or directors were "controlling persons" within the meaning of Section 20  
27 of the Exchange Act and had the power and influence to cause the Company to engage in the  
28 unlawful conduct complained of herein. Because of their positions of control, the Individual

1 Defendants were able to and did, directly or indirectly, control the conduct of NVIDIA's  
2 business.

3 125. In addition, as a result of their positions with the Company, the Individual  
4 Defendants controlled and/or possessed the authority to control the contents of NVIDIA's  
5 reports, press releases, and presentations to securities analysts and, through them, to the investing  
6 public. The Individual Defendants were provided with copies of the Company's reports and press  
7 releases alleged by Plaintiffs to be misleading prior to or shortly after their issuance, and had the  
8 ability and opportunity to prevent their issuance or cause them to be corrected. Thus, the  
9 Individual Defendants had the opportunity to commit the fraudulent acts alleged herein.

10 126. As senior executive officers and/or directors and as controlling persons of a  
11 publicly-traded company whose common stock was, and is, registered with the SEC pursuant to  
12 the Securities Act of 1933 and traded on the NASDAQ, the Individual Defendants had a duty to  
13 promptly disseminate accurate and truthful information regarding NVIDIA's financial condition  
14 and performance, growth, operations, financial statements, business, products, markets,  
15 management, and earnings, as well as present and future business prospects, and to correct any  
16 previously issued statements that had become materially misleading or untrue so that the market  
17 price of NVIDIA's common stock would reflect truthful and accurate information. The  
18 Individual Defendants' misrepresentations and omissions during the Class Period violated these  
19 specific requirements and obligations.

20 127. The Individual Defendants are liable as active participants in a fraudulent scheme  
21 and course of conduct that operated as a fraud or deceit on purchasers of NVIDIA common stock  
22 by disseminating materially false and misleading statements and/or concealing material adverse  
23 facts. The scheme (a) deceived the investing public regarding NVIDIA's business, operations,  
24 and management and the intrinsic value of NVIDIA common stock, and (b) caused Plaintiffs and  
25 members of the Class to purchase NVIDIA common stock at artificially inflated prices. This case  
26 does not involve allegations of false forward-looking statements or projections but instead  
27 involves false statements concerning the Company's core business, finances, and operations. The  
28 ongoing fraudulent scheme described in this Complaint could not have been perpetrated over a

1 substantial period of time, as has occurred, without the knowledge and complicity of the  
2 personnel at the highest level of the Company, including Defendants.

3 128. Given the magnitude of the defects in NVIDIA's video chips – which adversely  
4 affected millions of units from the world's largest computer manufacturers – and the substantial  
5 expense associated with redesigning a full generation of graphics processors thereby halving the  
6 saleable life of the Company's core product offerings, NVIDIA and the Individual Defendants  
7 knew, or were deliberately reckless in not knowing, that the defects identified herein: (i) were  
8 highly material to NVIDIA's financial results and operations; and, therefore (ii) required  
9 meaningful public disclosure and appropriate accounting adjustments to reserve against the  
10 rising tide of warranty repair and replacement costs.

11 **APPLICABILITY OF PRESUMPTION OF RELIANCE:**  
12 **FRAUD-ON-THE MARKET DOCTRINE**

13 129. At all relevant times, the market for NVIDIA's securities was an efficient market  
14 for the following reasons, among others:

- 15 • NVIDIA's stock met the requirements for listing, and was listed and actively  
16 traded, on the NASDAQ, a highly efficient and automated market;
- 17 • As a regulated issuer, the Company filed periodic public reports with the SEC;
- 18 • NVIDIA was followed by securities analysts employed by major brokerage firms  
19 who wrote reports which were distributed to the sales force and certain customers  
20 of their respective brokerage firms. Each of these reports was publicly available  
21 and entered the public marketplace; and
- 22 • NVIDIA regularly issued press releases which were carried by national news  
23 wires. Each of these releases was publicly available and entered the public  
24 marketplace.

25 130. As a result, the market for NVIDIA securities promptly digested current  
26 information with respect to the Company from all publicly available sources and reflected such  
27 information in the Company's stock price. Under these circumstances, all purchasers of NVIDIA  
28 common stock during the Class Period suffered similar injury through their purchase of stock at

1 artificially inflated prices and a presumption of reliance applies.

2 **NO SAFE HARBOR**

3 131. The federal statutory safe harbor for certain forward-looking statements does not  
4 apply to any of the allegedly false statements pleaded in this Complaint. Many of the specific  
5 statements pleaded herein were not identified as “forward-looking statements” when made. To  
6 the extent that Plaintiffs plead any purportedly forward-looking statements as actionable, those  
7 statements lacked meaningful cautionary language identifying important factors that could cause  
8 actual results to differ materially from those in the purportedly forward-looking statements.  
9 Alternatively, to the extent that the statutory safe harbor does apply to any purportedly forward-  
10 looking statements pleaded herein, Defendants are liable for those false forward-looking  
11 statements because, at the time each of those forward-looking statements was made, the  
12 particular speaker knew that the particular forward-looking statement was false, and/or the  
13 forward-looking statement was authorized and/or approved by an executive officer of NVIDIA  
14 who knew that those statements were false when made. Moreover, to the extent that Defendants  
15 issued any disclosures designed to “warn” or “caution” investors of certain “risks,” those  
16 disclosures were also false and misleading because they did not disclose that Defendants were  
17 actually engaging in the very actions about which they purportedly warned and/or had actual  
18 knowledge of material adverse facts undermining such disclosures.

19 **CLASS ACTION ALLEGATIONS**

20 132. Plaintiffs bring this action as a class action pursuant to Rules 23(a) and (b)(3) of  
21 the Federal Rules of Civil Procedure on behalf of a Class consisting of all those who purchased  
22 or otherwise acquired NVIDIA common stock between November 8, 2007 and July 2, 2008,  
23 inclusive, and who were damaged thereby. Excluded from the Class are Defendants, the officers  
24 and directors of the Company at all relevant times, members of their immediate families and  
25 their legal representatives, heirs, successors, and assigns and any entity in which Defendants  
26 have or had a controlling interest.

27 133. The members of the Class are so numerous that joinder of all members is  
28 impracticable. Throughout the Class Period, more than 554,733,685 shares of common stock

1 were outstanding and actively traded in an efficient market on NASDAQ. While the exact  
2 number of Class members is unknown to Lead Plaintiffs at this time, and can only be ascertained  
3 through appropriate discovery, Lead Plaintiffs believe there are thousands of members in the  
4 proposed Class. Record owners and other members of the Class may be identified from records  
5 maintained by NVIDIA or its transfer agent and may be notified of the pendency of this action  
6 by mail, using a form of notice similar to that customarily used in securities class actions.

7 134. Plaintiffs' claims are typical of those of the members of the Class as all members  
8 of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law.

9 135. Plaintiffs will fairly and adequately protect the interests of the members of the  
10 Class. The Court has appointed Lead Counsel who are competent and experienced in class and  
11 securities litigation.

12 136. Common questions of law and fact exist as to all members of the Class and  
13 predominate over any questions solely affecting individual members of the Class. Among the  
14 questions of law and fact common to the Class are: (a) whether the federal securities laws were  
15 violated by Defendants' acts as alleged herein; (b) whether statements and/or omissions made by  
16 Defendants to the investing public during the Class Period misrepresented or omitted to disclose  
17 material facts about the business operations, and financial statements or condition of NVIDIA;  
18 (c) whether Defendants knew or were deliberately reckless in disregarding that their statements  
19 and omissions were materially false and misleading; (d) whether the price of NVIDIA common  
20 stock was artificially inflated; and (e) the extent to which members of the Class have sustained  
21 damages as a result of the conduct alleged and the proper measure of damages.

22 137. A class action is superior to all other available methods for the fair and efficient  
23 adjudication of this controversy because joinder of all members is impracticable. Furthermore, as  
24 the damages suffered by individual Class members may be relatively small, the expense and  
25 burden of individual litigation make it impossible for members of the Class to redress their  
26 wrongs on an individual basis. There will be no difficulty in the management of this action as a  
27 class action.

28 **COUNT I: FOR VIOLATIONS OF SECTION 10(b) OF THE EXCHANGE ACT AND**

**RULE 10b-5 PROMULGATED THEREUNDER AGAINST ALL DEFENDANTS**

1 138. Lead Plaintiffs repeat and re-allege each and every allegation referenced above as  
2 if fully set forth herein.

3 139. During the Class Period, Defendants, with actual knowledge or deliberate  
4 recklessness, disseminated or approved the materially false and misleading statements specified  
5 above, which failed to disclose material facts necessary to make the statements made therein, in  
6 light of the circumstances under which they were made, not misleading.

7 140. During the Class Period, Defendants carried out a plan, scheme, and course of  
8 conduct which was intended to and, throughout the Class Period, did: (a) deceive the investing  
9 public, including Lead Plaintiffs and other Class members, as alleged herein; (b) artificially  
10 inflate and maintain the market price of NVIDIA's securities; and (c) cause Lead Plaintiffs and  
11 other Class members to purchase NVIDIA's securities at artificially inflated prices. In  
12 furtherance of this unlawful scheme, plan, and course of conduct, Defendants, and each of them,  
13 took the actions set forth herein.

14 141. Defendants (a) employed devices, schemes, and artifices to defraud; (b) made  
15 untrue statements of material fact and/or omitted to state material facts necessary to make the  
16 alleged statements not misleading; and (c) engaged in acts, practices, and a course of business  
17 which operated as a fraud and deceit upon the purchasers of the Company's securities in an effort  
18 to maintain artificially high market prices for NVIDIA's securities in violation of Section 10(b)  
19 of the Exchange Act and Rule 10b-5.

20 142. NVIDIA and the Individual Defendants, individually and in concert, directly and  
21 indirectly, by the use, means, or instrumentalities of interstate commerce and/or of the mails,  
22 engaged and participated in a continuous course of conduct to conceal adverse material  
23 information about the business, operations, and future prospects of NVIDIA as specified herein.

24 143. Each Individual Defendants' primary and control person liability arises from the  
25 following facts: (a) each Individual Defendant was a high-level executive and/or director at  
26 NVIDIA during the Class Period; (b) by virtue of their responsibilities and activities as an  
27 NVIDIA senior officer and/or director, each Individual Defendant was privy to and participated  
28

1 in the creation, development, and reporting of the Company's internal budgets, plans,  
2 projections, and/or reports; and (c) each Individual Defendant was aware of the Company's  
3 dissemination of information to the investing public, information that each Individual Defendant  
4 knew, or was deliberately reckless in disregarding, was materially false and misleading.

5 144. The Defendants had actual knowledge of the misrepresentations and omissions of  
6 material facts set forth herein, or acted with deliberate recklessness for the truth in that they  
7 failed to ascertain and to disclose such facts, even though available to them. Defendants made  
8 these material misrepresentations and/or omissions for the purpose and effect of concealing  
9 NVIDIA's operating condition and future business prospects from the investing public and  
10 supporting the artificially inflated price of its securities. As demonstrated by Defendants'  
11 overstatements and misstatements of the Company's business, operations and earnings  
12 throughout the Class Period, to the extent that the Defendants did not have actual knowledge of  
13 the representations alleged, each was deliberately reckless in purposely refraining from taking  
14 steps necessary to discover whether those statements were false or misleading.

15 145. As a result of the dissemination of the materially false and misleading information  
16 and failure to disclose material facts, as set forth above, the market price of NVIDIA's securities  
17 was artificially inflated during the Class Period. In ignorance of this fact, and relying directly or  
18 indirectly on Defendants' false and misleading statements or upon the integrity of the market in  
19 which the securities trade, and/or upon the absence of material adverse information known to or  
20 disregarded with deliberate recklessness by Defendants, but not disclosed in public statements by  
21 Defendants during the Class Period, Plaintiffs and the other members of the Class acquired  
22 NVIDIA securities during the Class Period at artificially high prices and were damaged thereby.

23 146. At the time of Defendants' alleged misrepresentations and omissions, Plaintiffs  
24 and other members of the Class were ignorant of their falsity and believed them to be true. Had  
25 Plaintiffs and the other members of the Class and the marketplace known of the true undisclosed  
26 financial condition and business prospects of NVIDIA, Plaintiffs and other members of the Class  
27 would not have purchased or otherwise acquired their NVIDIA securities, or, if they had  
28 acquired such securities during the Class Period, would not have done so at the artificially

1 inflated prices paid.

2 147. By virtue of the foregoing, Defendants have violated Section 10(b) of the  
3 Exchange Act, and Rule 10b-5 promulgated thereunder.

4 **COUNT II: VIOLATIONS OF SECTION 20(a)**  
5 **OF THE EXCHANGE ACT AGAINST THE INDIVIDUAL DEFENDANTS**

6 148. Plaintiffs repeat and re-allege each and every allegation contained above as if  
7 fully set forth herein.

8 149. The Individual Defendants acted as controlling persons of NVIDIA within the  
9 meaning of Section 20(a) of the Exchange Act. By virtue of their high-level positions, ownership  
10 and contractual rights, participation in and awareness of the Company's operations, and intimate  
11 knowledge of the Company's Class Period disclosures, the Individual Defendants had the power  
12 to influence and control and did influence and control, directly or indirectly, the decision-making  
13 of the Company, including the content and dissemination of the various statements which Lead  
14 Plaintiffs contend are false and misleading.

15 150. In particular, each Individual Defendant had direct and supervisory involvement  
16 in the day-to-day operations of the Company and, therefore, is presumed to have had the power  
17 to control or influence the particular transactions giving rise to the securities violations as alleged  
18 herein, and exercised the same.

19 151. The Individual Defendants were provided with or had unlimited access to copies  
20 of the Company's reports, press releases, public filings, and other statements alleged by Lead  
21 Plaintiffs to be materially false and/or misleading prior to and/or shortly after their issuance and  
22 had the ability to prevent the issuance of the statements or cause the statements to be corrected.

23 152. NVIDIA and the Individual Defendants each violated Section 10(b) and Rule  
24 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their positions as  
25 controlling persons of NVIDIA, each Individual Defendants is liable pursuant to Section 20(a) of  
26 the Exchange Act.

27 153. As a direct and proximate result of Defendants' wrongful conduct, Lead Plaintiffs  
28 and the other members of the Class suffered damages in connection with their respective

1 purchases and sales of the Company's common stock during the Class Period.

2 **PRAYER FOR RELIEF**

3 154. WHEREFORE, Lead Plaintiffs pray for relief and judgment, as follows:

4 A. Determining that this action is a proper class action, certifying Lead Plaintiffs as  
5 class representatives under Rule 23 of the Federal Rules of Civil Procedure and Lead Plaintiffs'  
6 Counsel as Class Counsel;

7 B. Awarding compensatory damages in favor of Plaintiffs and other Class members  
8 against all Defendants, jointly and severally, for all damages sustained as a result of Defendants'  
9 wrongdoing, in an amount to be proven at trial, including interest thereon;

10 C. Awarding Plaintiffs and the Class their reasonable costs and expenses incurred in  
11 this action, including counsel fees and expert fees; and

12 D. Such other and further relief as the Court may deem just and proper.

13 **JURY TRIAL DEMANDED**

14 155. Plaintiffs hereby demand a trial by jury.

15 Dated: January 22, 2010

16 /s/ Kim E. Miller

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