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22 **UNITED STATES DISTRICT COURT**
23 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

24 **ANDREW OSTROWSKI, individually**
25 **and on behalf of all others similarly**
26 **situated,**

27 **Plaintiff,**

28 **v.**

NVIDIA CORPORATION and
GIGABYTE GLOBAL BUSINESS
CORPORATION D/B/A GIGA-BYTE
TECHNOLOGY CO. LTD.,

Defendants.

CASE NO.:

CLASS ACTION

COMPLAINT FOR:

- 1) **VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, ET SEQ. (UNFAIR BUSINESS PRACTICES);**
- 2) **VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, ET SEQ. (DECEPTIVE BUSINESS PRACTICES);**
- 3) **VIOLATION OF CAL. BUS & PROF. CODE §§ 17200, ET SEQ. (UNLAWFUL BUSINESS PRACTICES);**
- 4) **VIOLATION OF CAL. BUS. & PROF. CODE 17500, ET SEQ. (MISLEADING ADVERTISING)**

DEMAND FOR JURY TRIAL

1 COMES NOW the Plaintiff, Andrew Ostrowski (“Plaintiff”), on behalf of himself and all others
2 similarly situated, by and through his undersigned counsel, and hereby files this Class Action
3 Complaint against Defendants Nvidia Corporation and Gigabyte Global Business Corporation d/b/a
4 Giga-Byte Technology Co. Ltd. (collectively “the Defendants”), and alleges as follows on information
5 and belief except for information identified as being based on personal knowledge, which other
6 allegations are likely to have evidentiary support after a reasonable opportunity for further investigation
7 and discovery:

8 **JURISDICTION AND VENUE**

9 1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §
10 1332(d) because the amount in controversy exceeds \$5,000,000 exclusive of interest and costs, there
11 are more than one hundred Class members, and minimal diversity exists because Plaintiff and
12 numerous members of the Class are citizens of different states than Defendants. This Court also has
13 subject matter jurisdiction pursuant to 28 U.S.C. 1332(a) because the amount in controversy exceeds
14 \$75,000 and the lawsuit is between citizens of different states.

15 2. This Court has personal jurisdiction over Defendants because Defendants have sufficient
16 minimum contacts with California and/or Defendants have otherwise purposely availed themselves of
17 the markets in California through the promotion, marketing, and sale of their products and services in
18 California to render the exercise of jurisdiction by this Court permissible under traditional notions of
19 fair play and substantial justice.

20 3. Venue is proper under 28 U.S.C. § 1391(a) because (1) Defendants are subject to
21 personal jurisdiction in this District, and (2) a substantial part of the events or omissions giving rise to
22 these claims occurred in this District. Defendants engaged in the extensive promotion, marketing,
23 distribution, and sales of the products at issue in this District, and at least one Defendant has their
24 corporate headquarters in this District.

25 **NATURE OF THE ACTION**

26 4. This is a nationwide class action brought on behalf of all consumers who purchased
27 graphics or video card devices incorporating the Nvidia GeForce GTX 970 graphics processing units
28 (“GPU”) (hereinafter “GTX 970” or “GTX 970 devices”), which were sold based on the misleading

1 representation that the GTX 970 operates with a full 4GB of VRAM at GDDR5 (not a less performant
2 3.5 GB with a less performant and decoupled .5 GB spillover), 64 ROPs (as opposed to 56 ROPs), and
3 an L2 cache capacity of 2048KB (as opposed to 1792 KB), or omitted material facts to the contrary.

4 5. The Defendants engaged in a scheme to mislead consumers nationwide about the
5 characteristics, qualities and benefits of the GTX 970 by stating that the GTX 970 provides a true 4GB
6 of VRAM, 64 ROPs, and 2048 KB of L2 cache capacity, when in fact it does not. Defendants'
7 marketing of the GTX 970 was intended to and did create the perception among purchasers that the
8 product was, in fact, able to conform with the specifications as advertised. This deception has already
9 resulted in a petition of over 8,100 purchasers who have requested that the FTC take action against
10 Nvidia and asking for full refunds¹.

11 6. Each Defendant was involved in the creation and dissemination of the misleading
12 marketing regarding the GTX 970 and/or each Defendant was involved in or profited from the sales of
13 same, and were likely aware that their marketing representations regarding the GTX 970 specifications
14 were inaccurate. Further, each Defendant concealed material facts concerning the truth about the GTX
15 970's capabilities. Nvidia's own Senior VP of GPU Engineering, Jonah Alben, has admitted that the
16 GTX 970 does not possess the specifications as advertised or performs as advertised². Thus, consumers
17 were exposed to Defendants' marketing scheme and paid a price premium for GTX 970 devices.
18 Plaintiff and the Class he seeks to represent suffered injury as a result. This is an action for injunctive
19 and equitable relief, attorney's fees and costs and other relief pursuant to California Business and
20 Professions Code §§ 17200, *et seq.* and §§ 17500, *et seq.*

21 **PARTIES**

22 7. On personal knowledge, Plaintiff is a citizen of Michigan and resides in Cass County,
23 Michigan. Plaintiff purchased two Gigabyte GeForce GTX 970 video and graphics cards online³ for
24 approximately \$370.00 each during the below defined Class period.

25 _____
26 ¹ <https://www.change.org/p/nvidia-refund-for-gtx-970>

27 ² <http://www.pcper.com/reviews/Graphics-Cards/NVIDIA-Discloses-Full-Memory-Structure-and-Limitations-GTX-970>

28 ³ Plaintiff purchased one unit from www.amazon.com in late December of 2014, and one unit on
www.newegg.com in early January of 2015. Attached are versions of advertisements, similar to the

1 8. On personal knowledge, Plaintiff purchased these products for personal use, and to use
2 them for college classes in video editing and rendering, as well as video game design. Upon seeing the
3 Nvidia and Gigabyte website advertisements such as those attached hereto as Exhibits C and D,
4 respectively, and incorporated herein by reference, the third party reviews (such as Guru3d and OC3d,
5 *see*, e.g., [http://www.guru3d.com/articles_pages/nvidia_geforce_gtx_970_and_980_reference_](http://www.guru3d.com/articles_pages/nvidia_geforce_gtx_970_and_980_reference_review,1.html)
6 [review,1.html](http://www.guru3d.com/articles_pages/nvidia_geforce_gtx_970_and_980_reference_review,1.html)) repeating the specifications provided by Nvidia in the manufacturer generated
7 reviewer's guide, and retailer websites such as those included in Exhibits A and B, that similarly
8 repeated manufacturer specifications as detailed on the product's packaging during the period between
9 September 2014 to the present, and reaffirmed by the product packaging itself that this device operated
10 at 4GB GDDR5 (such as in Ex. E, which is incorporated by reference), Plaintiff purchased and installed
11 the devices in question. Soon after installing these devices in his personal computer, Plaintiff noticed
12 that when using a high resolution monitor, the devices caused applications to slow, sputter, and cease
13 working. He also noticed that video games requiring higher levels of performance would not work
14 properly. Subsequently, Plaintiff learned that this was due to the material misrepresented or
15 undisclosed fact that the alleged 4GB GDDR5 (Graphic Double Data Rate x 5 Memory) capability of
16 the GPU, in actuality, only uses 3.5GB at the GDDR5 operating speed, while the remaining 500MB
17 operates 80% slower, therefore not qualifying as actual GDDR5 memory capability device. Moreover,
18 the device had less ROPs and L2 cache than advertised, further lessening the capabilities, uses and
19 benefits of the GTX 970. In January of 2015, Plaintiff contacted both Nvidia and Gigabyte and spoke
20 with company representatives about the ability to return the devices, but was told by both companies
21 that there was no refund option. Plaintiff was told by Newegg (the retailer) that returns of the device
22 were only available if the item was damaged. Because Defendants refused to offer Plaintiff a full
23 refund when he made such a request, Plaintiff now owns two GTX 970 devices that he must either sell
24 at a loss or use for purposes other than that which he bought them for. He thus has suffered a loss of
25 money or property as a result of Defendants' illegal business acts and practices.

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27
28 ones he saw when purchasing the products, on both web pages as Exhibits A and B respectively, which
are incorporated herein by reference.

1 9. Defendant Nvidia Corporation (hereinafter “Nvidia”) is a corporation organized and
2 existing under the laws of the State of Delaware and whose principal place of business and
3 headquarters is in the State of California and in this District. Nvidia is engaged in the business of
4 designing, manufacturing, selling and distributing computer equipment and GPUs, including the GTX
5 970. Defendant ships its products, including the GTX 970, to purchasers, resellers and distributors in
6 and from California, maintains a direct sales force in California, sells its products in retail outlets in
7 California, and creates the specifications and advertisements for its products in and disseminates them
8 from California.

9 10. Defendant Gigabyte Global Business Corporation (hereinafter “Gigabyte”), doing
10 business as Giga-Byte Technology Co. Ltd. and/or Gigabyte, is a corporation organized and existing
11 under the laws of the State of California and whose principal place of business is located in California
12 is engaged in the business of designing, manufacturing, selling and distributing computer equipment,
13 including its Gigabyte graphics card that incorporates and promotes the inclusion of the GTX 970.
14 Defendant ships products, including the Gigabyte graphics card that incorporates the GTX 970, to
15 direct purchasers and distributors in and from California, maintains a direct sales force in California,
16 sells its products in retail outlets in California, and advertises its products in and from California.

17 **FACTS**

18 11. Defendant Nvidia designed, developed, manufactured, marketed, and sold the GTX 970.
19 Defendant Gigabyte incorporated the GTX 970 into the Gigabyte Graphics Card, and marketed and
20 sold it as well. These devices first hit the United States consumer market in September 2014.

21 12. Since September 2014 and continuing through February 2015, Defendants have
22 uniformly marketed, advertised, sold, and disseminated information that represents the GTX 970 to
23 have specific capabilities when it does not. Defendants directly through their direct sales force and
24 through their retailers utilize the following material representations, *inter alia*, to market devices with
25 the GTX 970:

- 26 a. Nvidia lists specifications on its website stating the GTX 970 the “Standard Memory
27 Config” is “4 GB” and the “Memory Interface” is “GDDR5”. An example is attached
28 hereto as Exhibit C and incorporated herein by reference.

1 b. Gigabyte states on its website that the GV-970IXOC-4GD is “integrated with industry’s
2 best 4GB GDDR5 memory 256-bit memory interface”. An example is attached hereto
3 as Exhibit D and incorporated herein by reference.

4 c. In the Nvidia GTX 970 Reviewer’s Guide, sent to all media intended to review, repeat
5 the specifications of, describe, and promote the GTX 970, Nvidia stated that the GTX
6 970 had 2MB L2 Cache, and 64 ROPs.⁴

7 d. The product packaging for the Gigabyte GTX 970 devices represents the product is a
8 “4GB GDDR5” device. An example is attached as Exhibit E and incorporated herein by
9 reference.

10 13. Despite Defendants’ uniform representations to the contrary, the GTX 970 does not
11 provide these advertised specifications in actual use.

12 14. Defendants failed to disclose the true specifications of the GTX 970, despite having
13 evidence to the contrary in their exclusive possession and control prior to sale. Coupled with their
14 affirmative statements to the contrary, Defendants’ material omission that the GTX 970 actually does
15 not perform as represented, would be likely to, and did, mislead reasonable consumers who would
16 purchase these products.

17 15. Because Defendants’ claims were included in advertisements, marketing, and sales
18 presentations, a reasonable consumer who would purchase these products would likely be misled into
19 believing the GTX 970 functioned using a full 4GB of VRAM, 64 ROPs, and 2048 KB of L2 cache,
20 when that is not in fact the case. Defendants’ misrepresentations and omissions alleged herein are the
21 type that would be material to typical product purchasers, *i.e.*, a reasonable person interested in these
22 types of devices would attach importance to them and would be induced to act on the information in
23 making purchase decisions.

24 16. In response to Defendants’ deceptive marketing scheme, the Class members were
25 exposed to Defendants’ misleading representations and purchased devices containing the GTX 970. As
26

27 ⁴ The Nvidia Reviewer’s Guide can be viewed in detail here:
28 [http://www.anandtech.com/show/8935/geforce-gtx-970-correcting-the-specs-exploring-memory-
allocation](http://www.anandtech.com/show/8935/geforce-gtx-970-correcting-the-specs-exploring-memory-allocation).

1 he purchased these devices in substantial part on the false belief that the device would function as
2 advertised, such claims were a substantial factor in the decision of Plaintiff and others to do so.

3 17. 2014 was a banner profit year for Nvidia, as according to published reports “revenue
4 grew 13 percent to \$4.68 billion”. In fact, “[r]evenue increased 9 percent year over year to a record
5 \$1.25 billion for the quarter”. Nvidia’s Chief Financial Officer noted that “[g]rowth was driven by the
6 full quarter availability of our Maxwell™ GeForce® GPUs for gaming and by strength in accelerated
7 computing GPUs” In other words, Nvidia’s record profits were driven in part by the sale of the
8 company’s flagship GTX 970 GPUs, which is likely why it did not want to disclose the material
9 limitations at issue herein until after it had made millions of dollars in sales of such products.

10 18. On January 25, 2015, Nvidia’s Senior VP of GPU Engineering, Jonah Alben, admitted
11 that while the GTX 970 technically features 4GB of VRAM, the final 512MB part runs at a far slower
12 rate than the first 3.5GB. This is not a technical glitch, as from a practical standpoint this means that
13 when a purchaser uses the GTX 970, when a true 4GB of VRAM is needed, once 3.5 GB is reached,
14 the program will slow down or sputter as the graphics card is not capable of operating as a true 4GB
15 card. The device does not function as if it has 4GB of VRAM, which was and is a key selling point for
16 the device.

17 19. Alben also admitted that the ROPs (Raster Operating Pipelines) are not the 64 ROPs as
18 advertised, but instead are 56 ROPs. And further, the L2 cache was not the 2048KB advertised, but
19 1792KB instead.

20 20. Despite this admission, Defendant Nvidia and Defendant Gigabyte both continue to
21 advertise and market the devices in this manner on their websites and through third party retailers and
22 repeat this misleading representation contained herein. *See* Exs. C and D.

23 21. Based on the above, Plaintiff and the Class were sold products that do not perform or
24 possess the capabilities advertised and represented. As such, they should be provided appropriate
25 relief, as all consumers who purchased a GTX 970 device have been injured by Defendants’ wrongful
26 conduct, as they did not receive the product they paid for in terms of possessing the characteristics set
27 forth above.

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CLASS ACTION ALLEGATIONS

22. Plaintiff brings this class action on behalf of himself and all others similarly situated as members of a proposed class defined as follows:

All persons residing in the United States who purchased a graphics or video card that contains a GTX 970 GPU (including the GV-n970G1 Gaming-4GD) at retail and not solely for purposes of resale or distribution since September 2014 (the “Class Period”).

The proposed subclass is as follows:

All persons residing in the United States who purchased a graphics or video card manufactured by Gigabyte that contains a GTX 970 GPU (including the GV-n970G1 Gaming-4GD) at retail and not solely for purposes of resale or distribution since September 2014.

The Class and Subclass are defined as the “Class”. Excluded from the Class are the following:

- a. All judicial officers in the United States and their families through the third degree of relationship;
- b. Defendants and any of their officers, directors, and employees, and any person or entities who has already settled or otherwise compromised similar claims against the defendant;
- c. Plaintiff’s counsel, anyone working at the direction of Plaintiff’s counsel, and/or any of their immediate family members; and
- d. Anyone who has pending against a named defendant on the date of the Court’s final certification order any individual action wherein the recovery sought is based in whole or in part on the type of claims asserted herein.

23. This action is brought and may properly be maintained as a class action pursuant to Federal Rules of Civil Procedure 23(b)(2), 23(b)(3) and (c)(4). This action satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of these rules.

24. The Class is so numerous that the individual joinder of all members is impracticable. While the exact number of Class members is currently unknown and can only be ascertained through appropriate discovery, Plaintiff believes that the Class includes tens of thousands of individuals.

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1 25. Common legal and factual questions exist and predominate over any questions affecting
2 only individual Class members. These common questions, which do not vary among Class members
3 and which may be determined without reference to any Class member's individual circumstances,
4 include, but are not limited to:

- 5 a. Whether Defendants' representations regarding the GTX 970 as set forth above were
6 false and misleading or reasonably likely to deceive customers targeted by such
7 statements;
- 8 b. Whether Defendants had adequate substantiation for their claims prior to making them;
- 9 c. Whether Defendants' failure to disclose that the GTX 970 did not perform as advertised
10 and represented was material and would be likely to mislead a reasonable consumer;
- 11 d. Whether the GTX 970 performs as advertised and represented;
- 12 e. Whether Defendants charged a price premium for the GTX 970 devices;
- 13 f. Whether Defendants engaged in unfair, unlawful, and/or deceptive business practices
14 regarding the GTX 970 in violation of Cal. Bus. & Prof. Code §§ 17200;
- 15 g. Whether Defendants represented, through their words or conduct, that the GTX 970
16 provided performance benefits that it did not actually have in violation of Cal. Bus. &
17 Prof. Code §§ 17200, *et seq.* and §§ 17500, *et seq.*;
- 18 h. Whether Defendants' conduct alleged herein violates public policy; and
- 19 i. Whether Plaintiff and the Class have been injured by the wrongs complained of herein,
20 and if so, whether Plaintiff and the Class are entitled to injunctive and/ or other equitable
21 relief, including restitution, disgorgement, and if so, the nature and amount of such
22 relief.

23 26. Plaintiff's claims are typical of the Class members' claims. Defendants' common course
24 of conduct caused Plaintiff and all Class members the same harm. Likewise, Plaintiff and other Class
25 members can prove the same facts in order to establish the same claims.

26 27. Plaintiff is an adequate Class representative because he is a member of the Class he
27 seeks to represent and his interests do not irreconcilably conflict with other Class members' interests.
28 Plaintiff has retained counsel competent and experienced in consumer protection class actions, and

1 Plaintiff and his counsel intend to prosecute this action vigorously for the Class’s benefit. Plaintiff and
2 his counsel will fairly and adequately protect the Class members’ interests.

3 28. The Class may be properly maintained under Rule 23(b)(2). Defendants have acted or
4 refused to act, with respect to some or all issues presented in this Complaint, on grounds generally
5 applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a
6 whole.

7 29. The Class can be properly maintained under Rule 23(b)(3) and (c)(4). A class action is
8 superior to other available methods for the fair and efficient adjudication of this litigation because
9 individual litigation of each Class member’s claim is impracticable. Even if each Class member could
10 afford to bring individual actions, the court system could not. It would be unduly burdensome for
11 thousands of individual cases to proceed. Individual litigation also presents the potential for
12 inconsistent or contradictory judgments, the prospect of a race to the courthouse, and the risk of an
13 inequitable allocation of recovery among those with equally meritorious claims. Individual litigation
14 would increase the expense and delay to all parties and the courts because it requires individual
15 resolution of common legal and factual questions. By contrast, the class action device presents far
16 fewer management difficulties and provides the benefit of a single adjudication, economies of scale,
17 and comprehensive supervision by a single court.

18 **FIRST CLAIM FOR RELIEF**

19 **(Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.* – “Unfair” Business Practices)**

20 30. Plaintiff, individually and on behalf of the Class, incorporates by reference all of the
21 allegations contained in the preceding paragraphs of this Complaint.

22 31. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact and has
23 lost money or property as a result of Defendants' actions as set forth above.

24 32. Defendants’ actions as alleged in this Complaint constitute "unfair" business practices
25 within the meaning of California Business and Professions Code §§ 17200, *et seq.*

26 33. Defendants’ business practices, as alleged herein, are “unfair” because they offend
27 established public policy and/or are immoral, unethical, oppressive, unscrupulous, and/or substantially
28 injurious to their customers. Additionally, Defendants' conduct is "unfair" because Defendants’

1 conduct violated the legislatively declared policies not to engage in misleading and deceptive conduct..
2 Defendants misled consumers into believing that the GTX 970 devices had greater capabilities when, in
3 fact, they did not. Defendants concealed this material fact from consumers by failing to include it on
4 their product packaging or related marketing materials.

5 34. As a result of Defendants' "unfair" business practice, Plaintiff and members of the Class
6 spent money on the GTX 970 devices that they would not otherwise have spent at the amount charged
7 by Defendants and did not receive the capabilities promised by Defendants.

8 35. Defendants' unfair business practices alleged herein constitute a continuing course of
9 unfair competition.

10 36. Plaintiff and the Class seek an order requiring Defendants to make full disgorgement and
11 restitution of all monies wrongfully obtained from Plaintiff and the Class, along with all other relief
12 permitted under Bus. & Prof. Code §§ 17200, *et seq.*

13 **SECOND CLAIM FOR RELIEF**

14 **(Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*—"Deceptive" Business Practices)**

15 37. Plaintiff, individually and on behalf of the Class, incorporates by reference all of the
16 allegations contained in the preceding paragraphs of this Complaint.

17 38. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact and has
18 lost money or property as a result of Defendants' actions as set forth above.

19 39. Defendants' actions as alleged in this complaint constitute "deceptive" business
20 practices within the meaning of California Business and Professions Code §§ 17200, *et seq.* Plaintiff
21 does not allege a claim of common law fraud nor any claim in this cause of action that requires proof of
22 intent.

23 40. Defendants' business practices, as alleged herein, are "deceptive" because they are likely
24 to deceive consumers, including Plaintiff and members of the Class, targeted with such statements and
25 omissions of material fact.

26 41. Defendants failed to disclose all material information to purchasers of GTX 970 devices
27 concerning the capabilities and performance of VRAM, ROPs, and L2 cache properties of the GTX 970

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1 GPU, and affirmatively concealed the fact that the GTX 970 actually provides materially less in
2 performance than advertised.

3 42. As a result of Defendants’ “deceptive” conduct, Plaintiff and members of the Class spent
4 money on GTX 970 devices that they would not otherwise have spent at the levels that they did and did
5 not obtain the capabilities promised by Defendants.

6 43. Defendants’ deceptive business practices alleged herein constituted a continuing course
7 of unfair competition.

8 44. Plaintiff and the Class seek an order requiring Defendants to make full disgorgement and
9 restitution of all monies that have been wrongfully obtained from Plaintiff and the Class, along with all
10 other relief permitted under Bus. & Prof. Code §§ 17200, *et seq.*

11 **THIRD CLAIM FOR RELIEF**

12 **(Violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*—“Unlawful” Business Practices)**

13 45. Plaintiff, individually and on behalf of the Class, incorporates by reference all of the
14 allegations contained in the preceding paragraphs of this Complaint.

15 46. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact and has
16 lost money or property as a result of Defendants’ actions as set forth above.

17 47. Defendants’ actions as alleged in this complaint constitute an “unlawful” business
18 practice within the meaning of Business and Professions Code §§ 17200, *et seq.*, because they violated
19 Business and Professions Code §§ 17500, *et seq.*, which proscribes false advertising.

20 48. As a result of Defendants’ “unlawful” business practices, Plaintiff and members of the
21 Class spent money on GTX 970 devices that they would not otherwise have spent at the levels that they
22 paid and did not receive the increased capabilities promised by Defendants.

23 49. Defendants’ business practices alleged herein constituted a continuing course of unfair
24 competition.

25 50. Plaintiff and the Class seek an order requiring Defendants to make full disgorgement and
26 restitution of all monies wrongfully obtained from Plaintiff and the Class, along with all other relief
27 permitted under Bus. & Prof. Code §§ 17200, *et seq.*

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FOURTH CLAIM FOR RELIEF

(Violation of Cal. Bus. & Prof. Code §§ 17500, et seq.—False Advertising)

51. Plaintiff, individually and on behalf of the Class, incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint.

52. Plaintiff has standing to pursue this claim as Plaintiff has suffered injury in fact and has lost money or property as a result of Defendants’ actions as set forth above.

53. Defendants engaged in the advertising and marketing alleged herein with the intent to directly or indirectly induce the sale of the GTX 970 devices to consumers like Plaintiff. Such advertisements originated in California and were disseminated nationwide.

54. Defendants’ advertising and marketing representations regarding the VRAM, ROPs, and L2 cache of the GTX 970 were false, misleading, and deceptive as set forth in detail above. Defendants also concealed material information from consumers about the true capabilities of the GTX 970.

55. Defendants’ material misrepresentations and omissions alleged herein deceive or have the tendency or likelihood to deceive the general public regarding the benefits of purchasing GTX 970 devices.

56. At the time they made the misrepresentations and omissions of material fact as alleged herein, Defendants reasonably should have known that they were untrue or misleading, in violation of Bus. & Prof. Code §§ 17500, et seq.

57. As a result, Plaintiff and the Class seek disgorgement, restitution, injunctive relief, and all other relief permitted under Bus. & Prof. Code §§ 17500, et seq.

PRAYER FOR RELIEF

Plaintiff, on behalf of himself and the Class, requests that the Court order the following relief and enter judgment against Defendants as follows as applicable for the particular cause of action:

- a. An Order certifying the proposed Class under Rule 23 of the Federal Rules of Civil Procedure and appointing Plaintiff and his counsel to represent the Class;
- b. An Order awarding declaratory and injunctive relief as permitted by law or equity, including enjoining Defendants from continuing their unlawful practices as set forth herein;

- c. A judgment awarding Plaintiff and the Class disgorgement and restitution in an amount according to proof under Cal. Bus. & Prof. Code §§ 17200, *et seq.* and §§ 17500, *et seq.*;
- d. An order that Defendants engage in a corrective advertising or full refund campaign;
- e. An order awarding attorneys’ fees and costs incurred in prosecuting this action;
- f. An order awarding pre-judgment and post-judgment interest; and
- g. All other relief that the Court deems necessary, just and proper.

JURY TRIAL DEMAND

Plaintiff demands a trial of this action by a jury on all claims so triable.

DATED: February 19, 2015

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EXHIBIT A

Shop by Department

Search All gv-n970g1 gaming-4gd Go

Hello, Dennis Your Account

Your Prime

Wish List

Cart

- Computers
 - Brands
 - Best Sellers
 - Laptops & Tablets
 - Desktops & Monitors
 - Hard Drives & Storage
 - Computer Accessories
 - Tablet Accessories
- Electronics > Computers & Accessories > Computer Components > Graphics Cards



Roll over image to zoom in

orce GTX 970 G1 R5 Pcie Video Card, 4GB

customer reviews

)

/ Amazon.com. Gift-wrap available. **b. 187** Order within 4 hrs 19 mins **Shipping** at checkout. Details

ng System, Flex Display 3auntlet, Sorting, Ultra Durable VGA BOOST: 1329 MHz, 1664 CUDA 5 memory, 256-Bit memory Bus, PCI-OpenGL 4.4 GeForce GTX 970 GPU, Integrated

- Memory Interface
- Features Dual-link DVI-I / DVI-D / HDMI / 3 Display Port, Digital Max Resolution 4096 x 2160, Analog Max Resolution 2048 x 1536
- System Power Supply Requirement: 550W (With One 6-Pin and One 8-pin External Power Connectors)

52 new from \$350.00 6 used from \$320.00

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Shipping Address

Dennis Pantazis- Birmingham

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Crossfade LP Noise-Isolating Headphones (2,572)

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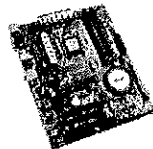
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Show availability and shipping details

- This Item:** Gigabyte GeForce GTX 970 G1 Gaming GDDR5 PCIe Video Graphics Card, 4GB \$354.99
- Intel Core i7-4790K Processor (8M Cache, up to 4.40 GHz) (BX80646I74790K) \$319.99
- ASUS Z97-A ATX DDR3 2600 LGA 1150 Motherboards Z97-A \$144.99

Customers Who Bought This Item Also Bought

Page 1 of 20







Intel Core i7-4790K Processor (8M Cache, up to 4.40 GHz) (BX80646I74790K)	ASUS Z97-A ATX DDR3 2600 LGA 1150 Motherboards Z97-A	WD Blue 1TB Everyday PC Desktop Hard Drive: 3.5 Inch, SATA 6 Gb/s, 7200 RPM, 64MB Cache...	Cooler Master Hyper 212 EVO - CPU Cooler with 120mm PWM Fan (RR-212E-20PK-R2)
423	169	2,602	1,705
\$319.99	\$144.99	\$54.99	\$40.26

Special Offers and Product Promotions

- **Buy Used and Save:** Buy a Used "Gigabyte GeForce GTX 970 G1 Gaming GDDR5 Pcie Vide..." and save 13% off the \$369.99 list price. Buy with confidence as the condition of this item and its timely delivery are guaranteed under the "Amazon A-to-z Guarantee". See all Used offers.
- Your cost could be **\$314.99 instead of \$354.99!** Get a **\$40.00 gift card instantly** upon approval for the **Amazon.com Store Card**. Apply now.

Compare to Similar Items

				
	This Item: Gigabyte GeForce GTX 970 G1 Gaming GDDR5 Pcie Video Graphics Card, 4GB	MSI GTX 970 GAMING 4G Graphics Cards GTX 970 GAMING 4G	ASUS STRIX-GTX970-DC20C-4GD5 Graphics Cards STRIX-GTX970-DC20C-4GD5	Gigabyte GeForce GTX 970 Overclocked GDDR5 Pcie Video Graphics Card, 4GB
Customer Rating	(275)	(117)	(200)	(93)
Price	\$ 354.99	\$ 374.88	\$ 339.99	\$ 339.95
Shipping		\$ 10.69		
Sold By	Amazon.com	SupplyTiger	Amazon.com	Amazon.com
Graphics Coprocessor	NVIDIA	NVIDIA	NVIDIA	NVIDIA
Graphics Ram Size	4 GB	4	4000	4 GB
Graphics Ram	gddr5	gddr5	gddr5	gddr5
Dimensions	9.3 inches x 12.23 inches x 3.5 inches	1.5 inches x 11 inches x 5.6 inches	5.5 inches x 11 inches x 1.57 inches	1.69 inches x 12.2 inches x 5.1 inches
	<input type="button" value="Add to Cart"/>	<input type="button" value="Add to Cart"/>	<input type="button" value="Add to Cart"/>	<input type="button" value="Add to Cart"/>

Please help us to improve this feature. Tell us what you think of this feature.

Product Details

- Product Dimensions:** 12.2 x 3.5 x 9.3 inches ; 2.4 pounds
- Shipping Weight:** 2.4 pounds (View shipping rates and policies)
- Shipping:** Currently, item can be shipped only within the U.S.
- ASIN:** B00NH5T1MS
- Item model number:** GV-N970G1 GAMING-4GD
- Average Customer Review:** (275 customer reviews)
- Amazon Best Sellers Rank:** #2 in Electronics > Computers & Accessories > Computer Components > **Graphics Cards**
- Date first available at Amazon.com:** September 19, 2014

Would you like to **update product info, give feedback on images, or tell us about a lower price?**

Product Description

Powered by NVIDIA GeForce GTX 970 GPU and integrated with 4GB GDDR5 memory, 256-bit memory interface

What Other Items Do Customers Buy After Viewing This Item?

Samsung 850 EVO 250GB 2.5-Inch SATA III Internal SSD (MZ-75E250B/AM)

EXHIBIT B

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GIGABYTE

GIGABYTE GV-N970G1 GAMING-4GD GeForce GTX 970 4GB 256-Bit GDDR5 PCI Express 3.0 SLI Support Video Card

PC Gamer Editor Choice Award

4 / 5 (316) | Write a Review

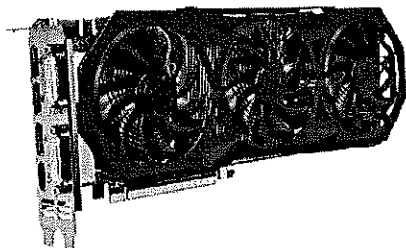
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- 1664 CUDA Cores
- 4GB 256-Bit GDDR5
- PCI Express 3.0



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\$354.99

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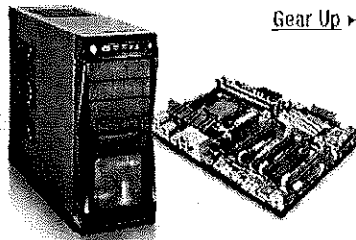
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Component deals for your ATX system.

Gear Up ▶



May We Suggest



GIGABYTE GV-N970G1 GAMING-4GD GeForce GTX

\$354.99

CREATE A BUNDLE



Rosewill PHOTON Series

\$109.99

\$89.99 w/ rebate



Intel Core i7-4790K Haswell

\$319.99



Cooler Master Hyper 212

\$34.99

\$29.99 w/ rebate

Total: **\$354.99**



Arctic Silver 5 High-Performance Thermal Compound
\$8.99

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Top Favorable Review

Rating: 4/5

-posted on 9/26/2014

VS

Top Critical Review

Rating: 4/5



GIGABYTE GV-N970G1 Gaming-4GD G Video Card

Main Features

- Powered by NVIDIA GeForce GTX 970, the Latest MAXWELL Architecture
- Proprietary Flex Display Technology
- Super over clocking by GPU Gauntlet Sorting Technology
- WINDFORCE 3X Cooling System
 - Unique blade fan design - Effectively enhance 23% air flow
 - 4 x 6mm Copper Heat-pipes - DHT (direct heat pipe touch) technology
- GIGABYTE Dual BIOS Technology
- Ultra Durable graphics card components
- OC GURU II with GPU Boost 2.0 Technology
- 4GB high capacity memory for best 4K Ultra HD gaming experience
- 6-Phase GPU power design
- Illuminated LED - Customizable brightness and animation
- Full Metal made fan cover and stylish back plate

Legend of G1 Gaming

The G1 Gaming gear embodies our endless passion in pursuit of the ultimate gaming performance - for those who are born to game.



The Trifecta

-posted on 1/7/2015

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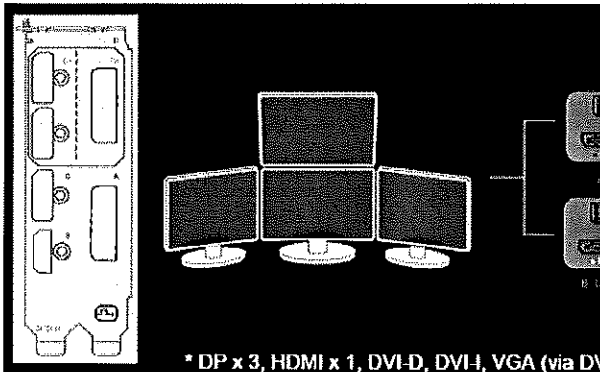
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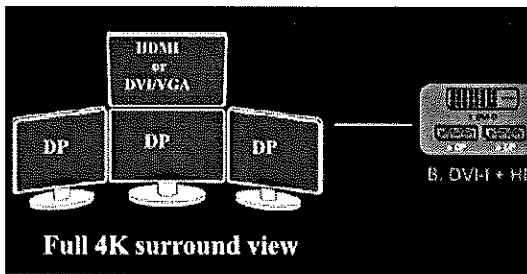


Patent-Pending Flex Display Technology

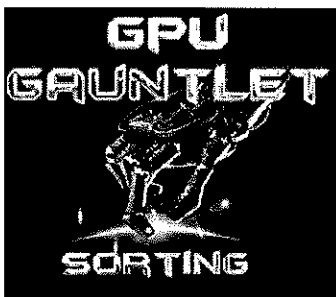
- Total of six outputs available with dual DVI support
- Auto detect connected monitors
- Flexible connectivity options for multi-display gaming up to four monitors



Set Up a Full 4K Surround View
 Perfect for gamers who are going all in for a fully immersive 4K gaming experience in ultra hi



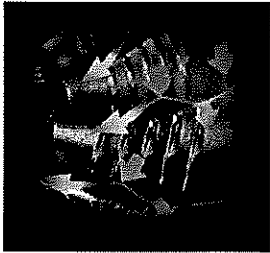
Super Overclock: GPU Gauntlet Sorting



Through stringent GPU Gauntlet™ Sorting, only strongest GPUs are qualified for the G1 Gaming cards for maximum overclocking capability.

WINDFORCE 3X Cooling

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PC Gamer Editor Choice
Award

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EXHIBIT C



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Product Info

GeForce GTX 970



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- MFAA [More >](#)
- DSR [More >](#)

Product Family

- GeForce GTX 980
- GeForce GTX 970
- GeForce GTX 960

Specifications

Note: The below specifications represent this GPU as incorporated into NVIDIA's reference graphics card design. Graphics card specifications may vary by Add-in-card manufacturer. Please refer to the Add-in-card manufacturer's website for actual shipping specifications.

GTX 970 Engine Specs:

CUDA Cores	1664
Base Clock (MHz)	1080
Boost Clock (MHz)	1178
Texture Fill Rate (GigaTexels/sec)	109

GTX 970 Memory Specs:

Memory Clock	7.0 Gbps
Standard Memory Config	4 GB
Memory Interface	GGDR5
Memory Interface Width	256-bit
Memory Bandwidth (GB/sec)	224

GTX 970 Technology Support:

NVIDIA SLI® Ready	Yes (3-way)
NVIDIA G-Sync™-Ready	Yes
NVIDIA GameStream™-Ready	Yes
GeForce ShadowPlay™	Yes
NVIDIA GPU Boost™	2.0
Dynamic Super Resolution	Yes
MFAA	Yes
NVIDIA GameWorks™	Yes
Microsoft DirectX	12 API
OpenGL	4.4
CUDA	Yes
Bus Support	PCI Express 3.0
OS Certification	Windows 8 & 8.1, Windows 7, Windows Vista, Linux, FreeBSD 6.0

Display Support:

Maximum Digital Resolution*	5120x3200
Maximum VGA Resolution	2048x1536
Standard Display Connectors	Dual Link DVI-I, HDMI 2.0, 3x DisplayPort 1.2
Multi Monitor	4 displays
HDCP	Yes
Audio Input for HDMI	Internal

GTX 970 Graphics Card Dimensions:

Height	4.376 inches
Length	10.5 inches
Width	Dual-width

Thermal and Power Specs:

Maximum GPU Temperature (in C)	28 C
Graphics Card Power (W)	145 W
Minimum System Power Requirement (W)	500 W

Supplementary Power Connectors 2x 6-pins

* 5120X3200 AT 60HZ WITH DUAL DISPLAYPORT CONNECTORS.

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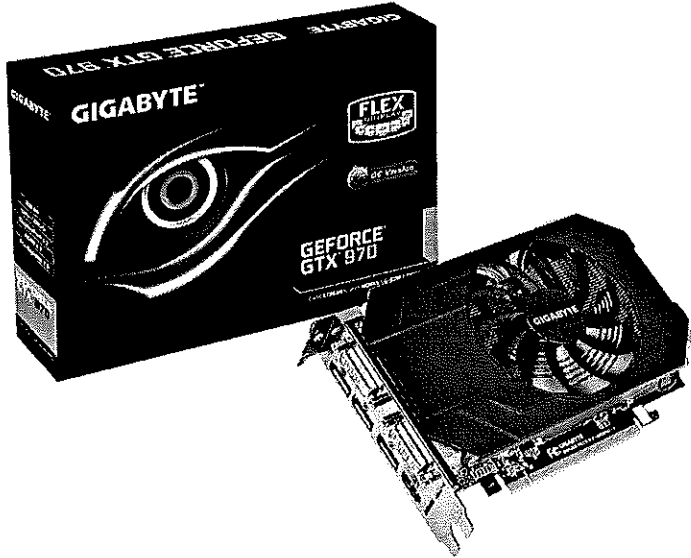
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EXHIBIT D



Microsite

- Powered by NVIDIA GeForce GTX 970 GPU
- Suitable for Mini-ITX/mATX Builds
- Integrated with industry's best 4GB GDDR5 memory 256-bit memory interface
- Features Dual-link DVI-I / DVI-D / HDMI / DisplayPort*3
- BASE: 1076 MHz / BOOST: 1216 MHz
- Flex Display Technology
- System power supply requirement: 400W(with one 8-pin external power connectors)

Mini outside, Powerful inside

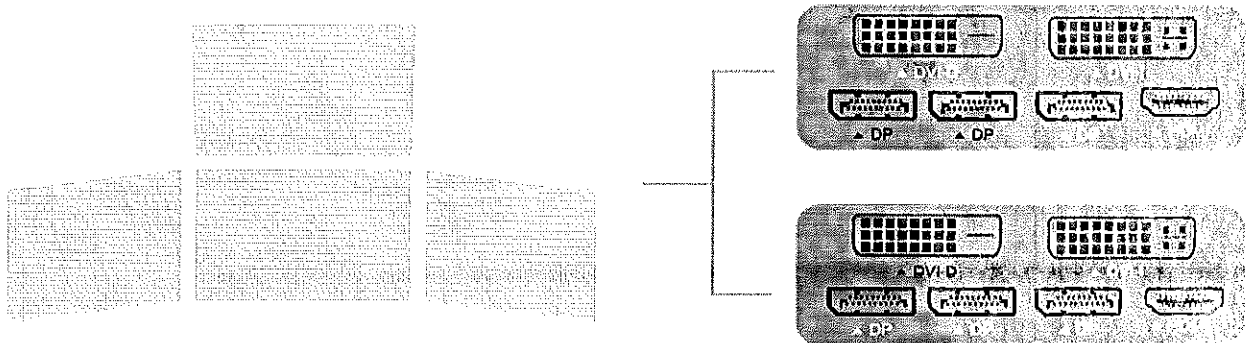


Measuring merely 17cm in length, the card, specially built for small form factor PCs based on mini-ITX motherboards. Packed with GIGABYTE's unique blade fan design, pure copper heat pipes and patented 'Triangle Cool' technology, delivering superior cooling capacity at an extremely low noise level given its compact size.

Flex Display technology



GIGABYTE Flex display technology(patent-pending) can automatically detect any connected monitors and achieve multi-display gaming up to 4 monitors at the same time by using various output groups. Users could enjoy the best gaming experience in ultra HD resolution with extended flexibility in arranging monitor configurations and making future system upgrade extremely easy.



Ultra Durable VGA™



Lower GPU Temperature
 Ultra Durable VGA board provides dramatic cooling effect on lowering both GPU and memory temperature by doubling the copper inner layer of PCB.

Better Overclocking Capability

Ultra Durable VGA board reduces voltage ripples in normal and transient state, thus effectively lowers noises and ensures higher overclocking capability.

Decrease Power Switching Loss

Ultra Durable VGA board allows more bandwidth for electron passage and reduces circuit impedance. The less circuit impedance, the more stable flow of current and can effectively improve power efficiency.



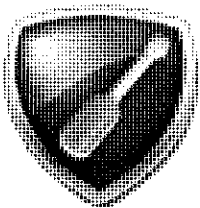
- * The entire materials provided herein are for reference only. GIGABYTE reserves the right to modify or revise the content at anytime without prior notice.
- * Advertised performance is based on maximum theoretical interface values from respective Chipset vendors or organization who defined the interface specification. Actual performance may vary by system configuration.
- * All trademarks and logos are the properties of their respective holders.
- * Due to standard PC architecture, a certain amount of memory is reserved for system usage and therefore the actual memory size is less than the stated amount.

FAQ



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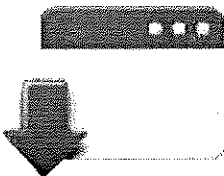
Warranty



To find the warranty information for your GIGABYTE product, choose your country from the drop down list or by clicking on the map below. You will then be directed to the corresponding page for your region. Here you will find the warranty terms for your region as well as the closest service or repair center.

Service center phone numbers are provided where available, so please feel free to call to receive timely support from your local GIGABYTE technician.

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EXHIBIT E



JS 44 (Rev. 12/12) cand rev (1/15/13)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS ANDREW OSTROWSKI</p> <p>(b) County of Residence of First Listed Plaintiff <u>Cass County Michigan</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys <i>(Firm Name, Address, and Telephone Number)</i> Alan M. Mansfield (SBN 125998) / WHATLEY KALLAS LLP, 1 Sansome Street, 35th Fl., PMB #131, San Francisco, CA 94104; Tel: (415) 860-2503; amansfield@whatleykallas.com</p>	<p>DEFENDANTS NVIDIA CORPORATION; GIGABYTE GLOBAL BUSINESS CORPORATION d/b/a GIGA-BYTE TECHNOLOGY CO. LTD</p> <p>County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i></p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input checked="" type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:10%;">PTF</td> <td style="width:10%;">DEF</td> <td style="width:33%;"></td> <td style="width:10%;">PTF</td> <td style="width:10%;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input checked="" type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4	Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
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Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
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<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amcr. w/Disabilities - Employment <input type="checkbox"/> 446 Amcr. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p>Habeas Corpus:</p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p>Other:</p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	
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			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	
				FEDERAL TAX SUITS	
				<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN *(Place an "X" in One Box Only)*

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District *(specify)* 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*
28 U.S.C. 1332(a); 28 U.S.C. 1391(a)

Brief description of cause:
Class Action for advertising and sale of misrepresented GPU devices

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ In excess of \$5 million CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY *(See instructions):* JUDGE _____ DOCKET NUMBER _____

DATE 02/17/2015 SIGNATURE OF ATTORNEY OF RECORD /s/ Alan M. Mansfield

IX. DIVISIONAL ASSIGNMENT *(Civil L.R. 3-2)*

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.