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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOEL BERNABEL, AUSTIN VERLINDEN,
PAOLO JIMENEZ, and PAOLO RODRIGUEZ,
on behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

NVIDIA CORPORATION, EVGA
CORPORATION, PNY TECHNOLOGIES,
INC., and MSI COMPUTER CORPORATION,

Defendants.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiffs Joel Bernabel, Austin Verlinden, Paolo Jimenez, and Paolo Rodriguez
2 (collectively, “Plaintiffs”) bring this action on behalf of themselves and all others similarly situated
3 against Defendants NVIDIA Corporation (“NVIDIA”), EVGA Corporation (“EVGA”), PNY
4 Technologies, Inc. (“PNY”) and MSI Computer Corporation (“MSI”) (collectively, “Defendants”).
5 Plaintiffs make the following allegations pursuant to the investigation of their counsel and based
6 upon information and belief, except as to the allegations specifically pertaining to themselves,
7 which are based on personal knowledge.

8 NATURE OF ACTION

9 1. This is a nationwide class action lawsuit on behalf of all consumers who purchased
10 graphics card devices incorporating the NVIDIA GeForce GTX 970 graphics processing units
11 (hereafter “GTX 970” or “GTX 970 devices”).

12 2. Defendants engaged in a scheme to mislead consumers nationwide about the
13 technical specifications and performance of the GTX 970, which were substantially lower than
14 represented on the packaging and in advertising and marketing materials.

15 3. Specifically, Defendants falsely and misleadingly represented that the GTX 970 had
16 2 MB (megabytes) of L2 cache, 64 parallel processing cores called render output units (“ROPs”),
17 and 4 GB (gigabytes) of video RAM (“VRAM”).

18 4. However, despite the representations proffered by Defendants, the GTX 970 does
19 not actually conform, nor perform to these specifications during actual use. In fact, the GTX 970
20 has only 1.75 MB of L2 cache, and 56 ROPs. Additionally, the purported “4 GB” of VRAM is
21 divided into two pools: a main pool of 3.5 GB, and a smaller pool of 0.5 GB that runs at
22 approximately one-seventh the speed of the 3.5 GB pool (192 GB per second, versus 28 GB per
23 second), which causes a bottleneck that reduces the GTX 970’s performance. Accordingly, the
24 GTX 970 cannot perform as advertised and is not sold as advertised.

25 5. In the PC gaming world, consumers of high end graphics cards like the GTX 970
26 make purchasing decisions based on a product’s hardware specifications for which consumers rely
27 heavily on a manufacturer’s own marketing, advertisements, and sales presentations.

28 6. Each Defendant was involved in the creation and dissemination of the misleading

1 marketing regarding the GTX 970 and/or each Defendant was involved in or profited from the
2 sales of same, and were likely aware that their marketing representations regarding the GTX 970
3 specifications were inaccurate.

4 7. Defendants' marketing of the GTX 970 was intended to and did create the
5 perception among purchasers that the product was, in fact, able to conform with the specifications
6 advertised. By selling the GTX 970 with false and misleading technical specifications, Defendants
7 trick consumers into purchasing a graphics card that is worth substantially less than represented.
8 Plaintiffs and class members thus paid a premium for a product that does not perform as advertised.

9 8. Plaintiffs assert claims on behalf of themselves and a nationwide class of purchasers
10 of the GTX 970 for violation of the Magnuson-Moss Warranty Act, breach of express warranty,
11 breach of the implied warranty of merchantability, violation of the California Unfair Competition
12 Law ("UCL"), violation of New York's Deceptive and Unfair Trade Practices Act, New York
13 General Business Law ("GBL"), violation of Florida's Deceptive and Unfair Trade Practices Act
14 ("FDUTPA"), violation of the Illinois Consumer Fraud And Deceptive Business Practices Act
15 ("ICFA"), unjust enrichment, negligent misrepresentation, and fraud.

16 **PARTIES**

17 9. Plaintiff Bernabel is a citizen of New York who resides in New York, New York.
18 On October 6, 2014, Plaintiff Bernabel purchased a PNY-made GTX 970 for \$378.89 from
19 Dell.com. Prior to his purchase of the GTX 970, Mr. Bernabel was familiar with the card's
20 purported technical specifications and performance characteristics, which represented that the card
21 had 2 MB of L2 cache and 64 ROPs. Additionally, Mr. Bernabel reviewed the product's labeling
22 and advertising prior to purchase, which represented that the card had 4 GB of VRAM. Plaintiff
23 Bernabel saw these representations prior to and at the time of purchase, and understood them as
24 representations and warranties that the GTX 970 did, in fact, meet these specifications.
25 Accordingly, these representations and warranties were part of the basis of the bargain, in that he
26 attributed value to these specifications and would not have purchased the GTX 970 had he known
27 that these specifications were false. However, the GTX 970 did not perform as represented. In
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1 reliance on these representations and warranties, Plaintiff Bernabel paid a tangible increased cost
2 for the GTX 970, which was worth less than represented.

3 10. Plaintiff Verlinden is a citizen of Illinois who resides in Bartlett, Illinois. On
4 February 7, 2015, Plaintiff Verlinden purchased an MSI-made GTX 970 for \$369.99 from
5 TigerDirect.com. Prior to his purchase of the GTX 970, Mr. Verlinden was familiar with the card's
6 purported technical specifications and performance characteristics, which represented that the card
7 had 2 MB of L2 cache and 64 ROPs. Additionally, Mr. Verlinden reviewed the product's labeling
8 and advertising prior to purchase, which represented that the card had 4 GB of VRAM. Plaintiff
9 Verlinden saw these representations prior to and at the time of purchase, and understood them as
10 representations and warranties that the GTX 970 did, in fact, meet these specifications.

11 Accordingly, these representations and warranties were part of the basis of the bargain, in that he
12 attributed value to these specifications and would not have purchased the GTX 970 had he known
13 that these specifications were false. However, the GTX 970 did not perform as represented. In
14 reliance on these representations and warranties, Plaintiff Verlinden paid a tangible increased cost
15 for the GTX 970, which was worth less than represented.

16 11. Plaintiff Jimenez is a citizen of California who resides in Elk Grove, California. On
17 January 15, 2015, Plaintiff Jimenez purchased an EVGA-made GTX 970 for \$349.99 from
18 Newegg.com. Prior to his purchase of the GTX 970, Mr. Jimenez was familiar with the card's
19 purported technical specifications and performance characteristics, which represented that the card
20 had 2 MB of L2 cache and 64 ROPs. Additionally, Mr. Jimenez reviewed the product's labeling
21 and advertising prior to purchase, which represented that the card had 4 GB of VRAM. Plaintiff
22 Jimenez saw these representations prior to and at the time of purchase, and understood them as
23 representations and warranties that the GTX 970 did, in fact, meet these specifications.

24 Accordingly, these representations and warranties were part of the basis of the bargain, in that he
25 attributed value to these specifications and would not have purchased the GTX 970 had he known
26 that these specifications were false. However, the GTX 970 did not perform as represented. In
27 reliance on these representations and warranties, Plaintiff Jimenez paid a tangible increased cost for
28 the GTX 970, which was worth less than represented.

1 12. Plaintiff Rodriguez is a citizen of Florida who resides in Deltona, Florida. On
2 February 14, 2015, Plaintiff Rodriguez purchased an EVGA-made GTX 970 for \$359.99 from
3 Amazon.com. Prior to his purchase of the GTX 970, Mr. Rodriguez was familiar with the card's
4 purported technical specifications and performance characteristics, which represented that the card
5 had 2 MB of L2 cache and 64 ROPs. Additionally, Mr. Rodriguez reviewed the product's labeling
6 and advertising prior to purchase, which represented that the card had 4 GB of VRAM. Plaintiff
7 Rodriguez saw these representations prior to and at the time of purchase, and understood them as
8 representations and warranties that the GTX 970 did, in fact, meet these specifications.
9 Accordingly, these representations and warranties were part of the basis of the bargain, in that he
10 attributed value to these specifications and would not have purchased the GTX 970 had he known
11 that these specifications were false. However, the GTX 970 did not perform as represented. In
12 reliance on these representations and warranties, Plaintiff Rodriguez paid a tangible increased cost
13 for the GTX 970, which was worth less than represented.

14 13. Defendant NVIDIA Corporation is a Delaware corporation with its principal place
15 of business in Santa Clara, California. Defendant NVIDIA researched, designed, and marketed the
16 GTX 970. NVIDIA is a publically-traded company with a market capitalization of over \$12 billion
17 and annual revenue of over \$4 billion.

18 14. Defendant PNY is a Delaware corporation with its principal place of business
19 located in Parsippany, New Jersey. Relevant to this action, PNY manufactured the particular GTX
20 970 Mr. Bernabel purchased.

21 15. Defendant MSI is a California corporation with its principal place of business
22 located in City of Industry, California. Relevant to this action, MSI manufactured the particular
23 GTX 970 Mr. Verlinden purchased.

24 16. Defendant EVGA is a California corporation with its principal place of business
25 located in Brea, California. Relevant to this action, EVGA manufactured the particular GTX 970
26 devices that Mr. Jimenez and Mr. Rodriguez purchased.

27 17. Whenever reference is made in this Complaint to any representation, act, omission,
28 or transaction of Defendants, that allegation shall mean that Defendants did the act, omission, or

1 transaction through its officers, directors, employees, agents, and/or representatives while they
2 were acting within the actual or ostensible scope of their authority.

3 18. Each of the Defendants acted jointly to perpetrate the acts described herein. At all
4 times relevant to the allegations in this matter, each Defendant acted in concert with, with the
5 knowledge and approval of, and/or as the agent of the other Defendants within the course and
6 scope of the agency, regarding the acts and omissions alleged.

7 **JURISDICTION AND VENUE**

8 19. This Court has subject matter jurisdiction over this civil action pursuant to 28
9 U.S.C. § 1331 (federal question). This Court has supplemental jurisdiction over state law claims
10 pursuant to 28 U.S.C. § 1367.

11 20. This Court also has subject matter jurisdiction over this action pursuant to 28 U.S.C.
12 § 1332(d) because there are more than 100 class members and the aggregate amount in controversy
13 exceeds \$5,000,000, exclusive of interest, fees, and costs, and at least one Class member is a
14 citizen of a state different from Defendants.

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

20 22. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendants do
21 substantial business in this District, a substantial part of the events giving rise to Plaintiffs' claims
22 took place within this District (*e.g.*, the research, development, design, and marketing of the GTX
23 970), and Defendant NVIDIA's principal places of business is in this District

24 **FACTUAL BACKGROUND**

25 **I. NVIDIA's "Authorized Board Partners"**

26 23. Graphics cards are a booming industry, which is dominated as a duopoly by
27 NVIDIA and its competitor Advanced Micro Devices, Inc. ("AMD"). These two companies'
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1 graphics processors are found in desktop computers, laptop computers, and console game systems
2 like the PlayStation 4, Xbox One, and Wii U.

3 24. In addition to marketing their own video cards, it is customary for designers like
4 NVIDIA and AMD to sell their graphics processing units (“GPUs”) to authorized suppliers, which
5 NVIDIA refers to as “partners,” who in turn press, package, and sell NVIDIA’s graphics cards. On
6 NVIDIA’s website, it states “The NVIDIA Authorized Board Partner Program ensures an
7 exceptional customer experience when purchasing graphics cards and motherboards manufactured
8 by partners that make use of NVIDIA’s latest technologies.”¹ NVIDIA further states that the
9 Authorized Board Partners 1) offer the latest technologies from NVIDIA; 2) maintain the highest
10 marks for service and support; and 3) guarantee quality, reliability, and stability.² Each graphics
11 card licensed to outside manufacturers must meet NVIDIA’s specifications.

12 25. In the United States, the following companies are NVIDIA Authorized Partners:
13 ASUS, EVGA, MSI, Gigabyte, PNY, and ZOTAC. Accordingly, the EVGA-made GTX 970 cards,
14 MSI-made GTX 970 cards, ASUS-made GTX 970 cards, Gigabyte-made GTX 970 cards, and
15 PNY-made GTX 970 cards, and ZOTAC-made GTX 970 cards come with virtually identical
16 specifications and performance.

17 **II. Graphics Cards in Modern Computers**

18 26. Modern computers are best understood as a collection of specialized components,
19 each of which has a defined task. The following components are typically included in modern
20 computers: a central processing unit (“CPU”) that processes instructions, memory for storage (*e.g.*,
21 random access memory (“RAM”) or a hard drive), input from the user (*e.g.*, a mouse or keyboard),
22 output for the user (*e.g.*, a monitor or speakers), and a control unit that coordinates the various
23 components.

24 27. When images are rendered for output on a display device like a computer monitor,
25 they are arranged in a series of tiny dots called pixels. Each time the display changes – for
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27 ¹ See http://www.nvidia.com/object/pf_boardpartners.html.

28 ² See *id.*

1 example, through moving a mouse, opening a program, watching a movie, or playing a computer
2 game, some or all of the pixels must be updated.

3 28. Historically, graphics were rendered with a computer's main CPU and RAM.
4 Stated otherwise, the CPU and RAM would update each pixel when necessary. Commingling
5 these tasks on the computer's main CPU and RAM can reduce the computer's performance system-
6 wide, and the quality of graphics that can be displayed at an acceptable frame rate is limited.

7 29. In or about 1995, several companies, including NVIDIA, began marketing discrete
8 graphics cards, which offload graphics rendering to a separate processor that is specifically
9 engineered for this task.

10 30. Discrete graphics cards are specialized pieces of computer hardware designed to
11 rapidly manipulate and alter memory to accelerate the creation of images in a frame buffer intended
12 for output to a display. Graphics cards are designed to interface with a computer's other
13 components to process graphics, which are then typically displayed on a monitor or other display
14 device. Because stand-alone graphics cards, or discrete graphics cards, like the GTX 970 are
15 specifically engineered to process graphics, they can render graphical output substantially faster
16 than a computer's general-purpose CPU and RAM. Thus, users can substantially increase system
17 performance by offloading these tasks to a discrete graphics card, rather than processing graphics
18 directly from their CPU and RAM. Over time, graphics cards have evolved into miniature
19 computers with their own processor, their own RAM, their own cooling system, and sometimes
20 separate power regulators

21 31. The advantage of using discrete graphics cards is that the computer's main CPU and
22 RAM are not occupied with rendering graphics, which improves performance system-wide.
23 Simply put, this means that games run at faster frame rates with more features.

24 **III. Defendants Misrepresented The Specifications And Performance Of The GTX 970**

25 32. Defendants sold and continue to sell the GTX 970 under a marketing scheme that
26 disseminates information about the GTX 970, which is false and misleading because the
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1 characteristics, qualities, and capabilities of the GTX 970 do not conform to Defendants'
2 representations.

3 33. Specifically, Defendants falsely and misleadingly represent that the GTX 970 has 2
4 MB of L2 cache, 64 ROPs, and 4 GB of VRAM.³

5 34. Prior to the sale of the GTX 970, Defendants distributed advance copies of the
6 graphics card to reviewers and trade publications, as is customary in the industry. Accompanying
7 the sample graphics card was a "GTX 970 Reviewer's Guide," which incorrectly states that the
8 GTX 970 has a 2 MB L2 cache (*i.e.*, 2,048 kilobytes of L2 cache) and 64 ROPs:

9 **GEFORCE GTX 970 SPECIFICATIONS** (*based on base*
10 *clock*)

Graphics Processing Clusters	4
Streaming Multiprocessors	13
CUDA Cores	1664
Texture Units	104
ROP Units	64
Base Clock	1050 MHz
Boost Clock	1178 MHz
Memory Clock (Data rate)	7000 MHz
L2 Cache Size	2048K
Total Video Memory	4096MB GDDR5
Memory Interface	256-bit
Total Memory Bandwidth	224 GB/s

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19 These precise specifications were widely reported in the press.

20 35. Furthermore, NVIDIA's website represents that the GTX 970 has "4 GB" of RAM,
21 which has a maximum "Memory Bandwidth" of "224 (GB/sec)."⁴

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³ L2 cache is a form of extremely high-speed memory, which is typically located on a processor
itself. It is much faster than RAM, so processors will attempt to pull data from the L2 cache first,
and will only access the RAM if the required data is unavailable in the L2 cache (a "cache miss").
Accordingly, the size of L2 cache is directly correlated with performance. If the L2 cache is larger,
a processor can access data much faster on average, because it will need to access the RAM less
frequently. Additionally, ROPs are parallel processing cores that assist in rendering pixels. The
"fillrate," or the maximum number of pixels that can be filled per second by the graphics card, is
calculated by multiplying the number of ROPs by the clock frequency of the GPU. Thus, a smaller
number of ROPs on a graphics card means that the card can generate fewer pixels per second.

⁴ See <http://www.geforce.com/hardware/desktop-gpus/geforce-gtx-970/specifications>.

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GTX 970 Memory Specs:	
Memory Clock	7.0 Gbps
Standard Memory Config	4 GB
Memory Interface	GDDR5
Memory Interface Width	256-bit
Memory Bandwidth (GB/sec)	224

36. Similarly, the GTX 970 is prominently advertised by retailers such as Amazon, TigerDirect, and Newegg, as having 4 GB of RAM. Specifically, Amazon boasts that the GTX 970 has: “Gigantic 4GB 7010 MHz GDDR5 memory.”⁵ Newegg lists the GTX 970 as having a “Memory Size” of “4GB.”⁶ And TigerDirect lists the GTX 970 as having “4GB GDDR5 memory to process large graphical data simultaneously and provide excellent output.”⁷

37. Additionally, retailer websites incorporate the purported 4 GB of RAM into the very name of the product. For example, on Dell.com, the PNY GTX 970 is referred to as PNY XLR8 GeForce GTX 970 graphics card - GF GTX 970 - **4 GB** (emphasis added).⁸

38. The label and packaging of the GTX 970 also prominently states that the product has “4 GB” in the form of high-speed GDDR5 RAM.

⁵ See <http://www.amazon.com/ASUS-STRIX-GTX970-DC20C-4GD5-Graphics-Cards/dp/B00NJ9BJ8G>.

⁶ See <http://www.newegg.com/Product/Product.aspx?Item=N82E16814121899>.

⁷ See <http://www.tigerdirect.com/applications/SearchTools/item-details.asp?EdpNo=9191508&CatId=7387>.

⁸ See <http://accessories.dell.com/sna/productdetail.aspx?c=us&l=en&s=bsd&cs=04&sku=A7962934>.



39. Each of these representations is false and misleading. The GTX 970 has only 1.75 MB of L2 cache, 56 ROPs and 3.5 GB of VRAM.

40. The purported "4 GB" of VRAM is actually divided into two pools: a main pool of 3.5 GB, and a smaller pool of 0.5 GB that runs at approximately *one-seventh* the speed of the 3.5 GB pool, which causes a bottleneck that reduces the GTX 970's performance.

1 41. Side-by-side benchmarks confirm that the 3.5 GB pool of RAM operates at 192 GB
2 per second, while the 0.5 GB pool only operates at 28 GB per second. Stated otherwise, the 0.5
3 GB pool is almost *seven times slower* than the 3.5 GB pool.

4 42. On February 24, 2015, NVIDIA’s CEO, Jen-Hsun Huang confirmed the facts
5 alleged in this Complaint. Specifically, he stated that that even though the GTX 970 is advertised
6 as “a 4GB card[,]” the “upper 512MB ... is segmented and has reduced bandwidth.”⁹

7 43. Nowhere in the sales and marketing materials (or on the product’s packaging) do
8 Defendants disclose that the GTX 970 actually has a separate pool of RAM that runs at
9 one-seventh the speed of the main pool. Instead, consumers are led to believe that the product has
10 one pool of 4 GB RAM with a maximum memory bandwidth of 224 GB / sec – which is only
11 possible to achieve when the slower pool of 0.5 GB is in use, thereby bottlenecking the rest of the
12 card. Consumers are also led to incorrectly believe that the GTX 970 has 2 MB of L2 cache and
13 64 ROPs.

14 44. As the designers and manufacturers of the GTX 970, Defendants are in a unique
15 position to know the exact specifications of their own product. Industry-leading designers and
16 manufacturers of graphics cards, like Defendants, do not accidentally mislabel the specifications
17 of their own products. These undisclosed limitations are not unintended technical glitches, but a
18 purposeful design decision NVIDIA made before releasing the GTX 970.

19 45. In sum, Plaintiffs and Class members were deceived by Defendants’ misleading
20 advertising and representations of the specifications, characteristics, qualities, and capabilities of
21 the GTX 970, and purchased a product that did not conform to the proffered representations, and
22 have been injured by Defendants’ unlawful conduct.

23 **CLASS REPRESENTATION ALLEGATIONS**

24 46. Plaintiffs seek to represent a class defined as all persons in the United States who
25 purchased a GTX 970 (the “Class”). Excluded from the Class are persons who made such
26 purchase for purpose of resale.

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28 ⁹ See <http://blogs.nvidia.com/blog/2015/02/24/gtx-970/>.

1 47. Plaintiff Jimenez also seeks to represent a subclass of all Class members who
2 purchased a GTX 970 in California (the “California Subclass”).

3 48. Plaintiff Bernabel also seeks to represent a subclass of all Class members who
4 purchased a GTX 970 in New York (the “New York Subclass”).

5 49. Plaintiff Rodriguez also seeks to represent a subclass of all Class members who
6 purchased a GTX 970 in Florida (the “Florida Subclass”).

7 50. Plaintiff Verlinden also seeks to represent a subclass of all Class members who
8 purchased a GTX 970 in Illinois (the “Illinois Subclass”).

9 51. Members of the Class and the California Subclass, the New York Subclass, the
10 Florida Subclass, and the Illinois Subclass (collectively, the “Subclasses”) are so numerous that
11 their individual joinder herein is impracticable. On information and belief, members of the Class
12 and Subclasses number in the tens of thousands. The precise number of Class members and their
13 identities are unknown to Plaintiffs at this time but may be determined through discovery. Class
14 members may be notified of the pendency of this action by mail and/or publication through the
15 distribution records of Defendants and third party retailers and vendors.

16 52. Common questions of law and fact exist as to all Class members and predominate
17 over questions affecting only individual Class members. Common legal and factual questions
18 include, but are not limited to:

- 19 a. whether Defendants warranted that the GTX 970 has 4 GB of
- 20 VRAM;
- 21 b. whether Defendants warranted that the GTX 970 has 2 MB of L2
- 22 cache;
- 23 c. whether Defendants warranted that the GTX 970 has 64 ROPs;
- 24 d. whether Defendants breached these warranties;
- 25 e. whether Defendants committed statutory and common law fraud by
- 26 doing so;
- 27 f. whether Defendants violated applicable consumer protection statutes;
- 28 and

1 g. whether Defendants were unjustly enriched at the expense of
2 Plaintiffs and the Class

3 53. The claims of the named Plaintiffs are typical of the claims of the Class and the
4 Subclasses in that the named Plaintiffs purchased a GTX 970 in reliance on the representations and
5 warranties described above, and suffered a loss as a result of that purchase.

6 54. Plaintiffs are adequate representatives of the Class because their interests do not
7 conflict with the interests of the Class members they seek to represent, they have retained
8 competent counsel experienced in prosecuting class actions, and they intend to prosecute this
9 action vigorously. The interests of Class members will be fairly and adequately protected by
10 Plaintiffs and their counsel.

11 55. The class mechanism is superior to other available means for the fair and efficient
12 adjudication of the claims of Class members. Each individual Class member may lack the
13 resources to undergo the burden and expense of individual prosecution of the complex and
14 extensive litigation necessary to establish Defendants' liability. Individualized litigation increases
15 the delay and expense to all parties and multiplies the burden on the judicial system presented by
16 the complex legal and factual issues of this case. Individualized litigation also presents a potential
17 for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer
18 management difficulties and provides the benefits of single adjudication, economy of scale, and
19 comprehensive supervision by a single court on the issue of Defendants' liability. Class treatment
20 of the liability issues will ensure that all claims and claimants are before this Court for consistent
21 adjudication of the liability issues.

22 **COUNT I**

23 **Violation Of The Magnuson-Moss Warranty Act,**

24 **15 U.S.C. §§ 2301, et seq.**

25 **(On Behalf of Plaintiffs, Individually and on Behalf of the Nationwide Class and Subclasses)**

26 56. Plaintiffs hereby incorporate by reference the allegations contained in all preceding
27 paragraphs of this complaint.
28

1 57. Plaintiffs bring this claim individually and on behalf of the members of the
2 proposed Class and Subclasses against all Defendants.

3 58. The GTX 970 is a consumer product as defined in 15 U.S.C. § 2301(1).

4 59. Plaintiffs and the Class and Subclass members are consumers as defined in 15
5 U.S.C. § 2301(3).

6 60. Defendants are suppliers and warrantors as defined in 15 U.S.C. § 2301(4) and (5).

7 61. In connection with the sale of the GTX 970, Defendants issued written warranties as
8 defined in 15 U.S.C. § 2301(6), by making express warranties that the GTX 970 had (i) 2 MB of
9 L2 cache, (ii) 64 ROPs, and (iii) 4 GB of VRAM.

10 62. The GTX 970 does not conform to the express warranties because each of the
11 express warranties is false and misleading. In fact, the GTX 970 has only 1.75 MB of L2 cache,
12 and 56 ROPs. Additionally, the purported “4 GB” of VRAM is actually divided into two pools: a
13 main pool of 3.5 GB, and a smaller pool of 0.5 GB that runs at approximately one-seventh the
14 speed of the 3.5 GB pool (192 GB per second, versus 28 GB per second), which causes a
15 bottleneck that reduces the GTX 970’s performance.

16 63. By reason of Defendants’ breach of warranties, Defendants violated the statutory
17 rights due Plaintiffs and the Class and Subclass members pursuant to the Magnuson-Moss
18 Warranty Act, 15 U.S.C. §§ 2301, *et seq.*, thereby damaging Plaintiffs and the Class and Subclass
19 members.

20 64. Plaintiffs and the Class and Subclass members were injured as a direct and
21 proximate result of Defendants’ breach because they would not have purchased the GTX 970 if
22 they knew the truth about the product, and the graphics card they received was worth substantially
23 less than the card they were promised and expected.

24 COUNT II

25 **Breach Of Express Warranty**

26 **(On Behalf of Plaintiffs, Individually and on Behalf of the Nationwide Class and Subclasses)**

27 65. Plaintiffs hereby incorporate by reference the allegations contained in all preceding
28 paragraphs of this complaint.

1 66. Plaintiffs bring this claim individually and on behalf of the members of the
2 proposed Class and Subclass against all Defendants.

3 67. Defendants, as the designer, manufacturer, marketer, distributor, and/or seller,
4 expressly warranted that the GTX 970 had (i) 2 MB of L2 cache, (ii) 64 ROPs, and (iii) 4 GB of
5 VRAM.

6 68. In fact, the GTX 970 has only 1.75 MB of L2 cache, and 56 ROPs. Additionally,
7 the purported “4 GB” of VRAM is actually divided into two pools: a main pool of 3.5 GB, and a
8 smaller pool of 0.5 GB that runs at approximately one-seventh the speed of the 3.5 GB pool (192
9 GB per second, versus 28 GB per second), which causes a bottleneck that reduces the GTX 970’s
10 performance.

11 69. As a direct and proximate cause of Defendants’ breach of express warranty,
12 Plaintiffs and Class members have been injured and harmed because they would not have
13 purchased the GTX 970 if they knew the truth about the product, and the graphics card they
14 received was worth substantially less than the card they were promised and expected.

COUNT III

Breach Of Implied Warranty Of Merchantability

(On Behalf of Plaintiffs, Individually and on Behalf of the Nationwide Class and Subclasses)

17 70. Plaintiffs hereby incorporate by reference the allegations contained in all preceding
18 paragraphs of this complaint.
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20 71. Plaintiffs brings this claim individually and on behalf of the members of the
21 proposed Class and Subclass against all Defendants.

22 72. Defendants, as the designer, manufacturer, marketer, distributor, and/or seller,
23 impliedly warranted that the GTX 970 had (i) 2 MB of L2 cache, (ii) 64 ROPs, and (iii) 4 GB of
24 VRAM.

25 73. In fact, the GTX 970 has only 1.75 MB of L2 cache, and 56 ROPs. Additionally,
26 the purported “4 GB” of VRAM is actually divided into two pools: a main pool of 3.5 GB, and a
27 smaller pool of 0.5 GB that runs at approximately one-seventh the speed of the 3.5 GB pool (192
28

1 GB per second, versus 28 GB per second), which causes a bottleneck that reduces the GTX 970's
2 performance.

3 74. Defendants breached the warranty implied in the contract for the sale of the GTX
4 970 because it could not "pass without objection in the trade under the contract description," the
5 goods were not "of fair average quality within the description," the goods were not "adequately
6 contained, packaged, and labeled as the agreement may require," and the goods did not "conform
7 to the promise or affirmations of fact made on the container or label." *See* U.C.C. § 2-314(2)
8 (listing requirements for merchantability). As a result, Plaintiffs and Class members did not
9 receive the goods as impliedly warranted by Defendants to be merchantable.

10 75. Plaintiffs and Class members purchased the GTX 970 in reliance upon Defendants'
11 skill and judgment in properly packaging and labeling the GTX 970.

12 76. The GTX 970 was not altered by Plaintiffs or Class members.

13 77. The GTX 970 was defective when it left the exclusive control of Defendants.

14 78. Defendants knew that the GTX 970 would be purchased and used without additional
15 testing by Plaintiffs and Class members.

16 79. The GTX 970 was defectively designed and unfit for its intended purpose, and
17 Plaintiffs and Class members did not receive the goods as warranted.

18 80. As a direct and proximate cause of Defendants' breach of the implied warranty,
19 Plaintiffs and Class members have been injured and harmed because they would not have
20 purchased the GTX 970 if they knew the truth about the product, and the graphics card they
21 received was worth substantially less than the card they were promised and expected.

22 **COUNT IV**

23 **Violation Of California's Unfair Competition Law,**

24 **California Business & Professions Code §§ 17200, et seq.**

25 **(On Behalf of Plaintiff Jimenez, Individually and on Behalf of the Nationwide Class and**
26 **Subclasses)**

27 81. Plaintiff Jimenez hereby incorporates by reference the allegations contained in all
28 preceding paragraphs of this Complaint.

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82. Plaintiff Jimenez brings this claim individually and on behalf of the members of the proposed Class and Subclasses against all Defendants.

83. Defendants are subject to California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* The UCL provides, in pertinent part: “Unfair competition shall mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising”

84. Defendants’ misrepresentations and other conduct, described herein, violated the “unlawful” prong of the UCL by violating the Magnuson-Moss Warranty Act, as described herein.

85. Defendants’ misrepresentations and other conduct, described herein, violated the “unfair” prong of the UCL in that their conduct is substantially injurious to consumers, offends public policy, and is immoral, unethical, oppressive, and unscrupulous, as the gravity of the conduct outweighs any alleged benefits.

86. Defendants violated the “fraudulent” prong of the UCL by making misrepresentations about the GTX 970, as described herein.

87. Plaintiff lost money or property as a result of Defendants’ UCL violations because he would not have purchased the GTX 970 if he knew the truth about the product, and the graphics card he received was worth substantially less than the card they were promised and expected.

COUNT V

**Violation of New York’s Deceptive and Unfair Trade Practices Act,
New York General Business Law § 349**

(On Behalf of Plaintiff Bernabel, Individually and on Behalf of the New York Subclass)

88. Plaintiff Bernabel hereby incorporates by reference the allegations contained in all preceding paragraphs of this complaint.

89. Plaintiff Bernabel brings this claim individually and on behalf of the members of the proposed New York Subclass against Defendants NVIDIA and PNY.

90. By the acts and conduct alleged herein, Defendants NVIDIA and PNY committed unfair or deceptive acts and practices by falsely advertising that the GTX 970 had (i) 2 MB of L2 cache, (ii) 64 ROPs, and (iii) 4 GB of VRAM.

1 91. The foregoing deceptive acts and practices were directed at consumers.

2 92. The foregoing deceptive acts and practices are misleading in a material way because
3 they fundamentally misrepresent the characteristics of the GTX 970 to induce consumers to
4 purchase same.

5 93. Plaintiff Bernabel and the other New York Subclass members suffered a loss as a
6 result of Defendants NVIDIA and PNY's deceptive and unfair trade acts. Specifically, as a result
7 of Defendant's deceptive and unfair trade acts and practices, Plaintiff Bernabel and the other New
8 York Subclass members suffered monetary losses associated with the purchase of the GTX 970,
9 because they would not have purchased the GTX 970 if they knew the truth about the product, and
10 the graphics card they received was worth substantially less than the card they were promised and
11 expected.

12 94. On behalf of himself and other members of the New York Subclass, Plaintiff
13 Bernabel seeks to enjoin the unlawful acts and practices described herein, to recover their actual
14 damages or fifty dollars, whichever is greater, three times actual damages, and reasonable
15 attorneys' fees.

16 **COUNT VI**

17 **Violation of Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201, *et seq.***

18 **(On Behalf of Plaintiff Rodriguez, Individually and on Behalf of the Florida Subclass)**

19 95. Plaintiff Rodriguez hereby incorporates by reference the allegations contained in all
20 preceding paragraphs of this complaint.

21 96. Plaintiff Rodriguez brings this claim individually and on behalf of the members of
22 the proposed Florida Subclass against Defendants NVIDIA and EVGA

23 97. This cause of action is brought pursuant to the Florida Deceptive and Unfair Trade
24 Practices Act, Fla. Stat. §§ 501.201, *et seq.* The express purpose of FDUTPA is to "protect the
25 consuming public...from those who engage in unfair methods of competition, or unconscionable,
26 deceptive, or unfair acts or practices in the conduct of any trade or commerce." Fla. Stat. §
27 501.202(2).
28

1 98. Plaintiff Rodriguez and Florida Subclass members are “consumers” within the
2 meaning of Fla. Stat. § 501.203(7).

3 99. Defendants NVIDIA and EVGA were engaged in “trade or commerce” as defined
4 by Fla. Stat. § 501.203(8).

5 100. The sale of GTX 970 constituted “consumer transactions” within the scope of the
6 Fla. Stat. §§ 501.201 to 501.213.

7 101. Fla. Stat. § 501.204(1) declares unlawful “unfair methods of competition,
8 unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any
9 trade or commerce.”

10 102. Defendants NVIDIA and EVGA have violated FDUTPA by engaging in the unfair
11 and deceptive practices as described herein by falsely advertising that the GTX 970 had (i) 2 MB
12 of L2 cache, (ii) 64 ROPs, and (iii) 4 GB of VRAM.

13 103. Plaintiff Rodriguez and the Florida Subclass have been aggrieved by the unfair and
14 deceptive practices because they would not have purchased the GTX 970 if they knew the truth
15 about the product, and the graphics card they received was worth substantially less than the card
16 they were promised and expected.

17 104. The damages suffered by Plaintiff Rodriguez and the Florida subclass were directly
18 and proximately caused by the deceptive, misleading, and unfair practices of Defendant NVIDIA
19 and EVGA.

20 105. Pursuant to Fla. Stat. § 501.211(1), Plaintiff Rodriguez and the Florida Subclass
21 seek a declaratory judgment and court order enjoining the above-described wrongful acts and
22 practices of Defendants NVIDIA and EVGA and for restitution and disgorgement.

23 106. Additionally, pursuant to Fla. Stat. §§ 501.211(2) and 501.2105, Plaintiff Rodriguez
24 and the Florida Subclass make claims for damages and attorneys’ fees and costs.

COUNT VII

For Violation of the Illinois Consumer Fraud And Deceptive Business Practices Act

815 ILCS 505/1, et seq.

(On Behalf of Plaintiff Verlinden, Individually and on Behalf of the Illinois Subclass)

107. Plaintiff Verlinden hereby incorporates by reference the allegations contained in all preceding paragraphs of this complaint.

108. Plaintiff Verlinden brings this claim individually and on behalf of the members of the proposed Illinois Subclass against Defendants NVIDIA and MSI.

109. Plaintiff Verlinden and the Illinois Subclass members are consumers who purchased the GTX 970 for personal, family or household purposes. Plaintiff Verlinden and the Illinois Class members are “consumers” as that term is defined by the ICFA, 815 ILC 505/1(e) as they purchased the GTX 970 for personal consumption or for a member of their household and not for resale.

110. The GTX 970 that Plaintiff Verlinden and the Illinois Subclass members purchased were “merchandise” within the meaning of the ICFA, 815 ILC 505/1(b).

111. Under Illinois law, 815 ILC 505/2, “[u]nfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact . . . in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby.”

112. By engaging in the conduct set forth herein, Defendants NVIDIA and MSI violated and continues to violate 505/2 of the ICFA, because Defendants’ conduct constitutes unfair methods of competition and unfair or deceptive acts or practices, in that they misrepresent that GTX 970 had (i) 2 MB of L2 cache, (ii) 64 ROPs, and (iii) 4 GB of VRAM when it does not.

113. In fact, the GTX 970 has only 1.75 MB of L2 cache, and 56 ROPs. Additionally, the purported “4 GB” of VRAM is actually divided into two pools: a main pool of 3.5 GB, and a smaller pool of 0.5 GB that runs at approximately one-seventh the speed of the 3.5 GB pool (192

1 GB per second, versus 28 GB per second), which causes a bottleneck that reduces the GTX 970's
2 performance.

3 114. Defendants NVIDIA and MSI intended that Plaintiff Verlinden and other members
4 of the Illinois Subclass rely on their deceptive act or practice.

5 115. Defendants NVIDIA and MSI's deceptive act or practice occurred in the course of
6 trade or commerce. "The terms 'trade' and 'commerce' mean the advertising, offering for sale,
7 sale, or distribution of any services and any property...." 815 ILC 505/1(f). Defendants' deceptive
8 act or practice occurred in the advertising, offering for sale, sale, or distribution of the GTX 970.

9 116. Plaintiff Verlinden and the Illinois Subclass suffered actual damage proximately
10 caused by Defendants NVIDIA and MSI because they would not have purchased the GTX 970 if
11 they knew the truth about the product, and the graphics card they received was worth substantially
12 less than the card they were promised and expected.

13 COUNT VIII

14 **Unjust Enrichment**

15 **(On Behalf of Plaintiffs, Individually and on Behalf of the Nationwide Class and Subclasses)**

16 117. Plaintiffs hereby incorporate by reference the allegations contained in all preceding
17 paragraphs of this complaint.

18 118. Plaintiffs brings this claim individually and on behalf of the members of the
19 proposed Class and Subclasses against all Defendants.

20 119. Plaintiffs and Class members conferred benefits on Defendants by purchasing the
21 GTX 970.

22 120. Defendants have been unjustly enriched in retaining the revenues derived from
23 Plaintiffs and Class members' purchases of the GTX 970. Retention of those moneys under these
24 circumstances is unjust and inequitable because Defendants misrepresented that the GTX 970 had
25 (i) 2 MB of L2 cache, (ii) 64 ROPs, and (iii) 4 GB of VRAM.

26 121. In fact, the GTX 970 has only 1.75 MB of L2 cache, and 56 ROPs. Additionally,
27 the purported "4 GB" of VRAM is actually divided into two pools: a main pool of 3.5 GB, and a
28 smaller pool of 0.5 GB that runs at approximately one-seventh the speed of the 3.5 GB pool (192

1 GB per second, versus 28 GB per second), which causes a bottleneck that reduces the GTX 970's
2 performance. These misrepresentations caused injuries to Plaintiffs and Class members because
3 they would not have purchased the GTX 970 if the true facts were known.

4 122. Because Defendants' retention of the non-gratuitous benefits conferred on them by
5 Plaintiffs and Class members is unjust and inequitable, Defendants must pay restitution to Plaintiffs
6 and Class members for its unjust enrichment, as ordered by the Court.

7 **COUNT IX**

8 **Fraud**

9 **(On Behalf of Plaintiffs, Individually and on Behalf of the Nationwide Class and Subclasses)**

10 123. Plaintiffs hereby incorporate by reference the allegations contained in all preceding
11 paragraphs of this complaint.

12 124. Plaintiffs bring this claim individually and on behalf of the members of the
13 proposed Class and Subclasses against all Defendants.

14 125. As discussed above, Defendants provided Plaintiffs and Class members with false or
15 misleading material information and failed to disclose material facts about the GTX 970, including
16 but not limited to the fact that it has only 1.75 MB of L2 cache, and 56 ROPs. Additionally, the
17 purported "4 GB" of VRAM is actually divided into two pools: a main pool of 3.5 GB, and a
18 smaller pool of 0.5 GB that runs at approximately one-seventh the speed of the 3.5 GB pool (192
19 GB per second, versus 28 GB per second), which causes a bottleneck that reduces the GTX 970's
20 performance.

21 126. The misrepresentations and omissions made by Defendants, upon which Plaintiffs
22 and Class members reasonably and justifiably relied, were intended to induce and actually induced
23 Plaintiffs and Class members to purchase the GTX 970.

24 127. The fraudulent actions of Defendants caused damage to Plaintiffs and Class
25 members, who are entitled to damages and other legal and equitable relief as a result.
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COUNT X

Negligent Misrepresentation

(On Behalf of Plaintiffs, Individually and on Behalf of the Nationwide Class and Subclasses)

128. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

129. Plaintiffs bring this claim individually and on behalf of the members of the proposed Class and Subclasses against all Defendants.

130. As discussed above, Defendants misrepresented that the GTX 970 had (i) 2 MB of L2 cache, (ii) 64 ROPs, and (iii) 4 GB of VRAM. In fact, the GTX 970 has only 1.75 MB of L2 cache, and 56 ROPs. Additionally, the purported “4 GB” of VRAM is actually divided into two pools: a main pool of 3.5 GB, and a smaller pool of 0.5 GB that runs at approximately one-seventh the speed of the 3.5 GB pool (192 GB per second, versus 28 GB per second), which causes a bottleneck that reduces the GTX 970’s performance.

131. At the time Defendants made these representations, Defendants knew or should have known that these representations were false or made them without knowledge of their truth or veracity.

132. At an absolute minimum, Defendants negligently misrepresented and/or negligently omitted material facts about the GTX 970.

133. The negligent misrepresentations and omissions made by Defendants, upon which Plaintiffs and Class members reasonably and justifiably relied, were intended to induce and actually induced Plaintiffs and Class members to purchase the GTX 970.

134. Plaintiffs and Class members would not have purchased the GTX 970 if the true facts had been known.

135. The negligent actions of Defendants caused damage to Plaintiffs and Class members, who are entitled to damages and other legal and equitable relief as a result.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, seek judgment against Defendants, as follows:

- a. For an order certifying the nationwide Class and the California, New York, Florida, and Illinois Subclasses under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiffs as representatives of the Class and Subclasses and Plaintiffs' attorneys as Class Counsel to represent the Class and Subclass members;
- b. For an order declaring the Defendants' conduct violates the statutes referenced herein;
- c. For an order finding in favor of Plaintiffs, the nationwide Class, and the Subclasses on all counts asserted herein;
- d. For compensatory and punitive damages in amounts to be determined by the Court and/or jury;
- e. For prejudgment interest on all amounts awarded;
- f. For an order of restitution and all other forms of equitable monetary relief;
- g. For injunctive relief as pleaded or as the Court may deem proper; and
- h. For an order awarding Plaintiffs and the Class and Subclasses their reasonable attorneys' fees and expenses and costs of suit.

DEMAND FOR TRIAL BY JURY

Plaintiffs demand a trial by jury of all issues so triable.

Dated: March 19, 2015

Respectfully submitted,

**BRAMSON, PLUTZIK, MAHLER &
BIRKHAUSER, LLP**

/s/ Alan R. Plutzik

Alan R. Plutzik

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Telephone: (212) 363-7500

Facsimile: (866) 367-6510

Attorneys for Plaintiffs

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.)

I. (a) PLAINTIFFS

JOEL BERNABEL, AUSTIN VERLINDEN, PAOLO JIMINEZ, and PAOLO RODRIGUEZ, on behalf of themselves and all others similarly situated

(b) County of Residence of First Listed Plaintiff New York County, NY
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Alan R. Plutzik (77785) / Michael S. Strimling (96135)
BRAMSON PLUTZIK MAHLER & BIRKHAUSER
2125 Oak Grove Rd., Suite 120
Walnut Creek, CA 94598
Ph: 925-945-0200 / Fax: 925-945/8792

DEFENDANTS

NVIDIA CORPORATION, EVGA CORPORATION, PNY TECHNOLOGIES, INC., and MSI COMPUTER CORPORATION

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | 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 type="checkbox"/> 4 |
| Citizen of Another State | <input 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 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <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 IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <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	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <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	CIVIL RIGHTS <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 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <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 Other: <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			

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. Section 1331
Brief description of cause:
Defendants made false representations regarding the GTX 970 video card

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions): Judge Breyer: 3:15-cv-00760; 3:15-cv-00789; 3:15-cv-01102; 3:15-cv-01204
JUDGE Judge Grewal DOCKET NUMBER 5:15-cv-01243

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

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

DATE SIGNATURE OF ATTORNEY OF RECORD

3/19/2015 /s/ Alan R. Plutzik

Case5:15-cv-01296 Document1-1 Filed03/19/15 Page2 of 2
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.