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10
11 **UNITED STATES DISTRICT COURT**
12
13 **NORTHERN DISTRICT OF CALIFORNIA**
14
15 **SAN JOSE DIVISION**

16 JORELL DYE, individually and on behalf of all
17 others similarly situated,

18 **Plaintiff,**

19 **v.**

20 NVIDIA CORPORATION,

21 **Defendant.**

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 §§ 17200, *ET SEQ.* (FALSE ADVERTISING); AND
- 5) VIOLATION OF CAL. CIV. CODE §§ 1750, *ET SEQ.* (CONSUMER LEGAL REMEDIES ACT).

JURY TRIAL DEMANDED

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1 Plaintiff, on behalf of himself and all others similarly situated, by and through his
2 undersigned counsel, hereby files this Class Action Complaint against Defendant NVIDIA
3 Corporation (“NVIDIA”), and alleges as follows on information and belief except for information
4 identified as being based on personal knowledge, which other allegations are likely to have
5 evidentiary support after a reasonable opportunity for further investigation and discovery:

6 **SUMMARY OF THE ACTION**

7 1. This is a class action brought on behalf of all consumers who purchased graphics or
8 video card devices incorporating the NVIDIA GeForce GTX graphics processing units (hereinafter
9 “GTX 970” or “GTX 970 devices”) based on the misleading representations by NVIDIA that the
10 GTX 970 operates with a full 4 GB of VRAM, 64 ROPs, and an L2 cache capacity of 2,048 KB, or
11 omitted material facts to the contrary.

12 2. Defendants engaged in a scheme to mislead consumers about the characteristics,
13 qualities, and performance of the GTX 970 by stating that GTX 970 provides a true 4 GB of
14 GDDR5 VRAM, 64 ROPs, and 2,048 KB of L2 cache capacity, when in fact it does not.
15 Defendant’s marketing of the GTX 970 was intended to and did create the perception among
16 purchasers that the product was, in fact, able to conform with the specifications as advertised. This
17 deception has already resulted in a petition of over 11,000 purchasers who have requested that the
18 FTC take action against NVIDIA and have asked for full refunds.¹

19 3. Defendant was involved in the creation and dissemination of the misleading
20 marketing regarding the GTX 970 and was involved in or profited from the sales of the same.
21 Further, Defendant concealed material facts concerning the truth of the GTX 970’s specifications.
22 Consumers were exposed to Defendant’s marketing scheme and paid a price premium for GTX
23 970 devices. Plaintiff and the Class he seeks to represent suffered injury in fact and a loss of
24 money or property as a result of Defendant’s false and misleading representations and omissions.

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

PARTIES

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2 4. Plaintiff Jorell Dye is a citizen and resident of the State of California. During the
3 Class Period, as defined *infra*, Mr. Dye purchased two NVIDIA GeForce GTX 970 graphics cards,
4 each for personal purposes and not for resale. Mr. Dye decided to purchase the GTX 970 graphics
5 cards because he wanted high VRAM for use on his high-resolution display. Prior to making this
6 purchase, Mr. Dye was exposed to and saw NVIDIA's claims regarding the technical
7 specifications and performance characteristics of the GTX 970, as set forth below. Mr. Dye based
8 his purchase decision in substantial part on the accuracy of such representations, and such
9 representations were a substantial factor in influencing his purchase decision. The GTX 970 was
10 worth less than represented by Defendant based on the material fact that it did not possess nor
11 operate consistent with the technical specifications represented by Defendant.

12 5. Defendant NVIDIA Corporation is a Delaware corporation with its principal place
13 of business and headquarters at 2701 San Tomas Expressway, Santa Clara, California 95050.
14 Defendant NVIDIA researched, designed, developed, and marketed the GTX 970. NVIDIA is a
15 publicly traded company (NASDAQ: NVDA) with a market capitalization of \$12.13 billion,
16 annual revenue of \$4.13 billion, and an annual EBITDA of \$735 million. The market for discrete
17 graphics cards, such as the GTX 970, is a duopoly dominated by Defendant NVIDIA. As of Q3
18 2013, NVIDIA captured 64.5% of the market, while its competitor, Advanced Micro Devices, Inc.
19 ("AMD") captured only 35.5%. Defendant NVIDIA ships its products, including the GTX 970, to
20 manufacturers, purchasers, resellers, and distributors in and from California, and creates the
21 specifications and advertisements for its products, including its website where it details the
22 specifications of the GTX 970, in and disseminates them from California.

JURISDICTION AND VENUE

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24 6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d) because
25 the amount in controversy exceeds \$5,000,000 exclusive of interests and costs, there are more than
26 one hundred Class members, and minimal diversity exists because Plaintiff and numerous
27 members of the Class are citizens of different states than Defendant. This court has supplemental
28 jurisdiction over state law claims pursuant to 28 U.S.C. § 1367.

1 7. This Court has personal jurisdiction over Defendant because Defendant has
2 sufficient minimum contacts with California and/or Defendant otherwise purposely availed itself
3 of the markets in California through the promotion, marketing, and sale of its products and services
4 in California to render the exercise of jurisdiction by this Court permissible under traditional
5 notions of fair play and substantial justice.

6 8. Venue is property under 28 U.S.C. § 1391(b) because (1) Defendant is subject to
7 personal jurisdiction in this District, and (2) a substantial part of the events or omission giving rise
8 to Plaintiff's claims occurred in this District. Defendant engaged in the extensive promotion,
9 marketing, distribution, and sales of the products at issue in this District.

INTRADISTRICT ASSIGNMENT

10 9. A substantial portion of the acts and transactions giving rise to the violations of law
11 alleged herein occurred in the County of Santa Clara, and as such, this action may be properly
12 assigned to the San Jose division of this Court. Plaintiff intends to file an Administrative Motion to
13 Consider Whether Cases Should be Related, relating this action to *In Re NVIDIA GTX 970*
14 *Graphics Card Litigation*, No. 15-cv-00760-CRB (N.D. Cal. filed Feb. 19, 2015), pursuant to Civil
15 L.R. 7-11.

FACTS

16 10. A computer can be characterized as a collection of specialized components, each of
17 which has a defined task. A computer typically contains the following components: (1) a central
18 processing unit (CPU) that processes instructions, (2) memory for storage (e.g., RAM or a hard
19 drive), (3) input from the user (e.g., a mouse or keypad), (4) output for the user (e.g., monitor or
20 speakers), and (5) a control unit that coordinates the various components.

21 11. Building off this framework, when images are rendered for output for the user on a
22 display device or monitor, they are arranged in a series of tiny dots called pixels. Each time the
23 display changes – through moving a mouse, opening a program, watching a movie, playing a
24 game, etc. – some or all of the pixels must be updated or refreshed.

25 12. Rendering graphics is computationally expensive. Historically, graphics were
26 rendered with a computer's main CPU and RAM, which would update each pixel when necessary.
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1 However, the disadvantage of this method is that rendering graphics taxes these components,
2 which must simultaneously execute the operating system code and numerous software
3 applications. Accordingly, performing these tasks on the computer's CPU and main memory may
4 reduce the computer's system wide performance, limiting the quality of graphics that can be
5 displayed at an acceptable frame rate.

6 13. In or about 1995, several companies (including NVIDIA) began marketing discrete
7 graphics cards, which offload graphics rendering to a separate processor specifically engineered
8 for this task. Since then, graphics cards have evolved into miniature computers; a modern graphics
9 card has its own processor (a graphics processing unit or "GPU"), its own RAM, its own cooling
10 systems, and sometimes a separate power regulator. A modern graphics card is plugged directly
11 into the computer's motherboard. Many graphics cards, including the GTX 970, allow users to use
12 multiple cards at once for increased graphical performance.

13 14. The key advantage of using a discrete graphics card is that the computer's CPU and
14 main memory are not taxed with rendering graphics, which improves system wide performance.
15 Additionally, discrete graphics cards like the GTX 970 can render graphical output substantially
16 faster than a computer's CPU and main memory alone. Modern graphics cards like the GTX 970
17 support a host of advanced graphical features for 3D applications that would not otherwise be
18 feasible at acceptable frame rates using the CPU and main memory alone. As a result, games can
19 run at faster frame rates with more features. Animation and 3D applications can also run at faster
20 rates, and, overall, system performance is enhanced. In addition to animation and 3D applications,
21 discrete graphics cards like the GTX 970 can also be used for a wide variety of purposes including
22 Bitcoin mining and high-speed parallel processing using the OpenCL and CUDA frameworks.

23 15. Discrete graphics cards are typically marketed to consumers who may install
24 graphics cards directly onto a computer motherboard. As a result, these consumers tend to have
25 specific questions, understandings, and concerns about the technical specifications of the GPU
26 devices. Consequently, technical specifications are material to consumers of discrete graphics
27 cards.

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1 16. The production and sale of graphics cards is a booming industry, which is totally
2 dominated by NVIDIA and AMD. Because of this duopoly, the speed of the GPU and included
3 video RAM is a key feature companies focus on in differentiating their products and charging a
4 price premium. For example, GDDR5 RAM, or “double data rate type five synchronous graphics
5 random access memory,” is a common form of RAM used in graphics cards. In theory, the more
6 RAM, the faster the graphics card will be able to render to the computer’s display, and thus
7 companies can justify selling cards with more RAM at higher prices.

8 17. Since at least August 2014, Defendant misrepresented or omitted material facts
9 regarding the technical specifications and performance of the GTX 970 in its sales and marketing
10 materials, including the GTX Reviewer’s Guide referenced herein, NVIDIA’s website,
11 manufacturer and retailer websites, and the product’s packaging. Specifically, Defendant falsely
12 and misleadingly represented that the GTX 970 has:

- 13 a. **2 MB** of L2 cache;
- 14 b. **64 ROPs**; and
- 15 c. **4 GB** of GDDR5 RAM.

16 18. In actuality, the GTX 970 only has:

- 17 a. **1.75 MB** of L2 cache;
- 18 b. **56 ROPs**; and
- 19 c. **3.5 GB** of GDDR5 RAM, with a separate pool of 0.5 GB RAM that can only be

20 accessed at **one-seventh** the speed of the rest of the 3.5 GB of RAM, which causes a bottleneck
21 that inhibits the performance of the GTX 970. Moreover, since GTX 970 operates differently using
22 memory above 3.5 GB VRAM load, data from the 0.5 GB pool is processed through a portion of
23 the same access path as data from 3.5 GB pool, drastically slowing down not only the data coming
24 from the 0.5 GB pool but also data from the 3.5 GB pool, thereby impacting overall performance
25 of the GTX 970 for its intended applications.

26 19. L2 cache is a form of extremely high-speed memory, which is typically located on a
27 processor itself (as opposed to a RAM module). Since it is much faster than RAM, processors will
28 attempt to pull data from the L2 cache first and will only access the RAM if the required data is

1 unavailable in the L2 cache (a “cache miss”). Thus, the size of the L2 cache is directly correlated
 2 with performance. If the L2 cache is larger, a processor can access data much faster on average
 3 because it will need to access the RAM less frequently.

4 20. ROPs are parallel processing cores that assist in rendering pixels. The “fillrate,” or
 5 the maximum number of pixels that can be filled per second by the graphics card, is calculated by
 6 multiplying the number of ROPs by the clock frequency of the GPU. Thus, a smaller number of
 7 ROPs on a graphics card means that the card can generate fewer pixels per second.

8 21. Prior to the sale of the GTX 970, beginning at least in the summer of 2014, if not
 9 earlier, Defendant distributed advanced copies of the GTX 970 card to reviewers and trade
 10 publications, as is customary in the industry. Accompanying the sample graphics cards was a
 11 “GTX 970 Reviewer’s Guide,” which contained specifications that incorrectly represented that the
 12 GTX 970 has 2 MB of L2 cache (i.e., 2,048 kilobytes of L2 cache), 64 ROPS, and 4 GB GDDR5
 13 video memory:

14 **GEFORCE GTX 970 SPECIFICATIONS** *(based on base*
 15 *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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 27 22. In turn, these specifications were widely repeated in the press, as NVIDIA intended.
 28 Additionally, these specifications were provided to third-party product reviewers from NVIDIA’s

1 corporate offices in Santa Clara, California, whose reviews were also included on NVIDIA's
2 website.

3 23. Moreover, since at least September 2014 and continuing to-date, NVIDIA has
4 represented on its website that the GTX 970 has "4 GB" of GDDR5 RAM, which has a memory
5 bandwidth of "224 GB/sec":

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

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12 24. NVIDIA's website also contains the following material statements, which for the
13 reasons stated herein are untrue and misleading:

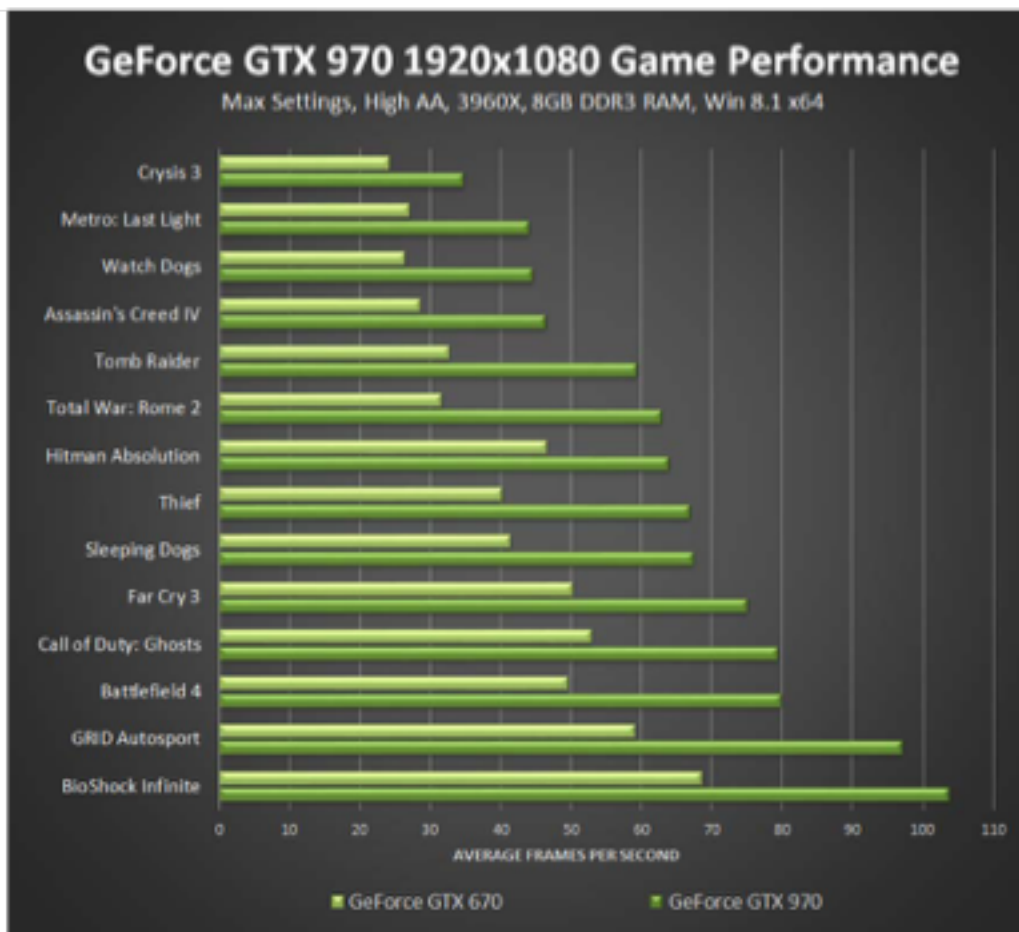
14
15 The GeForce® GTX™ 970 is a high performance graphics card designed
16 for serious gaming.

17 To enhance games further we've developed Dynamic Super Resolution
18 (DSR), which gives games 4k quality graphics on a 1080p or higher
19 monitor.

20 Compared to traditional downsampling, which requires compatible
21 monitors, luck, and high degree of technical knowledge, DSR produces a
22 higher-quality image that can be instantly enabled with a single click in
23 GeForce Experience, or by changing the resolution in-game.

24 For games, 4k combined with NVIDIA's G-SYNC technology is the Holy
25 Grail, delivering Ultra HD tear-free, super-smooth gameplay. The
26 computing demands of 4k are high, however, requiring top-tier multi-GPU
27 systems, until now that is. With Maxwell and GeForce GTX 980, 4K G-
28 SYNC is a reality thanks to Maxwell's technological innovations, its
speed, and its 4 GB of VRAM...

The new GeForce GTX 970 is no slouch either, powering the latest and
the greatest games at ultra detail levels and with maximum levels of anti-
aliasing enabled:



If you want the best experience, the fastest speeds, DirectX 12 support, and image quality-enhancing features that just work, the new GeForce GTX 980 and GeForce GTX 970 are your best options.

25. In addition, for each description of the GTX 970 at the link for consumers to buy such devices (<http://www.geforce.com/hardware/desktop-gpus/geforce-gtx-970/buy-gpu>), the descriptive title of the GTX 970 device either uses the specification “4 GB” or “4 GB GDDR5.”

26. Similarly, the GTX 970 is prominently advertised on retailer sites such as Amazon and Newegg based on materials provided by Defendant, and has been advertised since at least September 2014, as having 4 GB of GDDR5 RAM such as “Gigantic 4 GB 7010 MHz GDDR5 memory,”¹ or listing the GTX 970 as having a “Memory Size” of “4 GB.”¹ Moreover, retailers

¹ See <http://www.amazon.com/ASUS-STRIX-GTX970-DC20C-4GD5-Graphics-Cards/dp/B00NJ9BJ8G>.

1 incorporate the purported 4 GB of RAM into the very name of the product, such as the title used
 2 by Newegg linked from NVIDIA's own website: "ASUS STRIX-GTX970-DC2OC-4GD5
 3 GeForce GTX 970 **4 GB** 256-Bit GDDR5 PCI Express 3.0 SLI Support G-SYNC Support Video
 4 Card" (emphasis added).

5 27. Since September 2014, the labeling and packaging of the GTX 970 has prominently
 6 stated that the product has "4 GB" of memory in the form of high-speed GDDR5 RAM.

7 28. Despite Defendant's representations set forth above, the GTX 970 does not provide
 8 the advertised specifications in actual use. In fact, the GTX 970 has only **1.75 MB** of L2 cache,
 9 and **56 ROPs**. Additionally, the purported "4 GB" of VRAM is actually divided into two pools: a
 10 main pool of 3.5 GB and a smaller pool of 0.5 GB that runs at approximately one-seventh the
 11 speed of the 3.5 GB pool.

12 29. These facts first began to come to light on or about January 25, 2015, when
 13 NVIDIA's Senior VP of GPU Engineering, Jonah Alben, admitted that, while the GTX 970 might
 14 (according to NVIDIA) technically feature 4 GB of VRAM, the final 512 MB runs at a far slower
 15 rate than the first 3.5 GB. As Mr. Alben conceded, the device does not function as if it has 4 GB of
 16 GDDR5 VRAM, which was and is a key selling point for the device:²

17 [V]arious GTX 970 owners had observed that the GTX 970 was prone
 18 to topping out its reported VRAM allocation at 3.5 GB rather than 4
 19 GB, and that meanwhile the [more expensive] GTX 980 was reaching
 20 4 GB allocated in similar circumstances. This unusual outcome was at
 21 odds with what we know about the cards and the underlying GM204
 22 GPU, as NVIDIA's specifications state that the GTX 980 and GTX
 23 970 have identical memory configurations: 4 GB of 7GHz GDDR5 on
 a 256-bit bus, split amongst 4 ROP/memory controller partitions. In
 other words, there was no known reason that the GTX 970 and GTX
 980 should be behaving differently when it comes to memory
 allocation.

24 Since then there has been some further investigation into the matter
 25 using various tools written in CUDA in order to try to systematically
 26 confirm this phenomena and to pinpoint what is going on. Those tests

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 28 ¹ See <http://www.newegg.com/Product/Product.aspx?Item=N82E16814121899>.

² <http://www.anandtech.com/show/8931/nvidia-publishes-statement-on-geforce-gtx-970-memory-allocation>

1 seemingly confirm the issue – the GTX 970 has something unusual
going on after 3.5 GB VRAM allocation....

2 Despite the outward appearance of identical memory subsystems, there
3 is an important difference here that makes a 512 MB partition of
4 VRAM less performant or otherwise decoupled from the other 3.5 GB.

5 30. In fact, side-by-side benchmarks confirm that the 3.5 GB pool of RAM operates at
6 192 GB per second, while the 0.5 GB pool operates only at 28 GB per second. Stated otherwise,
7 the 0.5 GB pool is 6.86 times slower than the 3.5 GB pool.

8 31. Alben also admitted that the GTX 970 does not have 64 ROPs as advertised, but
9 rather 56 ROPs. Alben further admitted that the L2 cache was not the 2,048 KB as advertised, but
10 rather 1,792 KB.

11 32. On February 24, 2015, Mr. Jen Hsun Huang, the CEO of NVIDIA, admitted the
12 serious flaws in the marketing and promotion of the GTX 970. In his release Mr. Huang admitted:

13 Some of you are disappointed that we didn't clearly describe the
14 segmented memory of GeForce GTX 970 when we launched it. **I can**
15 **see why**, so let me address it... GTX 970 is a 4 GB card. However, the
16 upper 512 MB of the additional 1 GB is segmented and has reduced
17 bandwidth. This is a good design because we were able to add an
18 additional 1 GB for GTX 970 and our software engineers can keep less
19 frequently used data in the 512 MB segment. **Unfortunately, we**
20 **failed to communicate this internally to our marketing team, and**
21 **externally to reviewers at launch....** Instead of being excited that we
22 invented a way to increase memory of the GTX 970 from 3 GB to 4
23 GB, **some were disappointed that we didn't better describe the**
24 **segmented nature of the architecture for that last 1 GB of**
25 **memory. This is understandable.** But let me be clear: Our only
26 intention was to create the best GPU for you. We wanted GTX 970 to
27 have 4 GB of memory, as games are using more memory than ever.
28 **This new feature of Maxwell should have been clearly detailed**
from the beginning. We won't let this happen again. We'll do a
better job next time. (Emphasis added.)

33. In his release Mr. Huang concedes both the materiality of Defendant's
representations and that such representations were untrue. While Mr. Huang said that NVIDIA will
"do a better job next time," the issue is what Defendant will do about this issue now. Consumers
purchased GTX 970 devices hoping that they would not be obsolete in the near term since, as Mr.

1 Huang stated, “games are using more memory than ever.” Yet consumers have not received what
2 Defendant represented it would provide.

3 34. Despite these admissions, Defendant continues to advertise and market the GTX
4 970 with the misrepresentations discussed above on its website and through third-party retailers.
5 Additionally, the packaging for the GTX 970 still promotes the product as providing “4 GB
6 GDDR5” memory without disclosing the admitted limitations of that memory. Nowhere in these
7 sales and marketing materials (or on the product’s packaging) does Defendant disclose that the
8 GTX 970 actually has a separate pool of RAM that runs at one-seventh the speed of the main pool.
9 Instead, consumers are led to believe that the GTX 970 has a single pool of 4 GB RAM, and
10 furthermore that the GTX 970 has 2 MB of L2 cache and 64 ROPs.

11 35. Defendant failed to disclose the true specifications of the GTX 970, despite having
12 evidence to the contrary in its exclusive possession and control prior to sale. Coupled with its
13 affirmative statements to the contrary, Defendant’s material omissions would be likely to, and
14 have, misled consumers. Additionally, Defendant was obligated to disclose such omitted material
15 facts because the material omissions about the technical specifications of the GTX 970 were
16 contrary to the representations actually made by Defendant. Defendant was bound to disclose these
17 material facts because Defendant had exclusive knowledge of such facts, which were actively
18 concealed, and because Defendant made partial representations about the technical specifications
19 but suppressed material facts about the limitations of how the GTX 970 cards actually operated.

20 36. Because Defendant’s misrepresentations were included in advertisements,
21 marketing, and sales presentations, a reasonable consumer targeted by Defendant would likely be
22 exposed to and misled into believing that the GTX 970 functioned using a full 4 GB of GDDR5
23 VRAM, 64 ROPs, and 2,048 KB of L2 cache, when that is not in fact the case. Defendant’s
24 misrepresentations and omissions alleged herein are the type that would be material to typical
25 product purchasers targeted by Defendant, i.e., a reasonable person interested in these types of
26 devices would attach importance to them and would be induced to act on such information in
27 making purchase decisions.

1 37. As a result of Defendant’s deceptive marketing scheme, the Class members were
2 exposed to Defendant’s misleading representations and purchased GTX 970 devices. Because the
3 Class members purchased these devices in substantial part on the false belief that the GTX 970
4 would function as advertised, such claims were a substantial factor in the decision of Plaintiff and
5 other Class members do to so.

6 38. Defendant was in a unique position to know the exact specifications of its own
7 product and reasonably should have known about the accuracy (or inaccuracy) of such statements.
8 Industry-leading designers and manufacturers of graphics cards, like Defendant, do not unwittingly
9 mislabel the specifications of their own products.

10 39. Based on the above, Plaintiff and the Class were sold products that do not perform
11 or possess the capability advertised and represented. As such, they should be provided appropriate
12 relief, as all consumers who purchased a GTX 970 device have been injured by Defendant’s
13 wrongful conduct because they did not receive the product they paid for in terms of possessing the
14 characteristics set forth above yet paid a price premium therefor.

CLASS ACTION ALLEGATIONS

15
16 40. Plaintiff seeks to represent a class defined as all persons in the United States
17 (including its states, districts, or territories) who purchased a GTX 970 graphics card (the “Class”)
18 since September 2014 (the “Class Period”). Within the Class, there is one subclass for purposes of
19 Plaintiff’s claim under the Consumer Legal Remedies Act (the “Subclass”), defined as all Class
20 members who purchased a GTX 970 graphics card for personal, family, or household purposes
21 during the Class Period. Excluded from the Class and Subclass are governmental entities,
22 Defendant, any entity in which Defendant has a controlling interest, and Defendant’s officers,
23 directors, affiliates, legal representatives, employees, coconspirators, successors, subsidiaries, and
24 assigns. Also excluded from the Class and Subclass are any judges, justices, or judicial officers
25 presiding over this matter and the members of their immediate families and judicial staff. This
26 action is brought and may be properly maintained as a class action pursuant to the Federal Rules of
27 Civil Procedure 23(b)(2) and 23(b)(3). This action satisfies the numerosity, commonality,
28 typicality, adequacy, predominance, and superiority requirements of these rules.

1 41. ***Numerosity Under Rule 23(a)(1).*** The Class is so numerous that the individual
2 joinder of all members is impracticable. While the Class's exact number and the identity of the
3 Class members are currently unknown and can only be ascertained through appropriate discovery,
4 Plaintiff, on information and belief, alleges that the Class includes tens of thousands of individuals.

5 42. ***Commonality Under Rule 23(a)(2).*** Common legal and factual questions exist that
6 predominate over any questions affecting only individual Class or Subclass members. These
7 common questions, which do not vary among Class members and which may be determined
8 without reference to any Class member's individual circumstances, include, but are not limited to:

- 9 a. Whether Defendant's representations regarding the GTX 970 as set forth above
10 were false and misleading or reasonably likely to deceive consumers targeted by
11 such statements;
- 12 b. Whether Defendant had adequate substantiation for its claims prior to making
13 them;
- 14 c. Whether Defendant's failure to disclose that the GTX 970 did not perform as
15 advertised and represented was material and would be likely to mislead a
16 reasonable consumer;
- 17 d. Whether the GTX 970 performs as advertised and represented;
- 18 e. Whether Defendant charged a price premium for the GTX 970 devices;
- 19 f. Whether Defendant engaged in unfair, unlawful, and/or deceptive business
20 practices regarding the GTX 970 in violation of Cal. Bus. & Prof. Code §§
21 17200, *et seq.*;
- 22 g. Whether Defendant represented, through its words or conduct, that the GTX 970
23 provided performance benefits that it did not actually have in violation of Cal.
24 Bus. & Prof. Code §§ 172000, *et seq.* and §§ 17500, *et seq.*, and Cal. Civ. Code
25 §§ 1750, *et seq.*;
- 26 h. Whether Plaintiff and the Class have been injured by the wrongs complained of
27 herein, and if so, whether Plaintiff and the Class are entitled to damages,
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1 injunctive and/or other equitable relief, including restitution or disgorgement,
2 and if so, the nature and amount of such relief.

3 43. **Typicality Under Rule 23(a)(3).** Plaintiff's claims are typical of the Class and
4 Subclass members' claims. Defendant's course of conduct caused Plaintiff and all Class members
5 the same harm. In particular, Defendant's conduct caused each Class member's economic losses.
6 Likewise, Plaintiff and other Class members must prove the same facts in order to establish the
7 same claims.

8 44. **Adequacy of Representation Under Rule 23(a)(4).** Plaintiff is an adequate Class
9 and Subclass representative because he is a Class member and his interests do not conflict with the
10 Class or Subclass interests. Plaintiff retained counsel competent and experienced in consumer
11 protection class actions, and Plaintiff and his counsel intend to prosecute this action vigorously for
12 the Class's benefit.

13 45. The Class and Subclass can be properly maintained under Rule 23(b)(2). Defendant
14 has acted or refused to act, with respect to some or all issues presented in this Complaint, on
15 grounds generally applicable to the Class, thereby making appropriate final injunctive relive with
16 respect to the Class as whole.

17 46. The Class can be properly maintained under Rule 23(b)(3). A class action is
18 superior to other available methods for the fair and efficient adjudication of this litigation because
19 individual litigation of each Class member's claim is impracticable. Even if each Class member
20 could afford individual litigation, the court system could not. It would be unduly burdensome if
21 thousands of individual cases proceed. Individual litigation also presents the potential for
22 inconsistent or contradictory judgments, the prospect of a race to the courthouse, and the risk of an
23 inequitable allocation of recovery among those with equally meritorious claims. Individual
24 litigation would increase the expense and delay to all parties and the courts because it requires
25 individual resolution of common legal and factual questions. By contrast, the class action device
26 presents far fewer management difficulties and provides the benefit of a single adjudication,
27 economies of scale, and comprehensive supervision by a single court.

28 **FIRST CLAIM FOR RELIEF**

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

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

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

49. Defendant’s actions as alleged in this Complaint constitute “unfair” conduct within the meaning of California Business Professions Code §§ 17200, et seq.

50. Defendant’s business practices, as alleged herein are “unfair” because they offend established public policy and/or are immoral, unethical, oppressive, unscrupulous, and/or substantially injurious to their customers. Additionally, Defendant’s conduct is “unfair” because Defendant’s conduct violated the legislatively declared policies in California’s False Advertising law (Bus. & Prof. Code §§ 17500, et seq.) and the Consumer Legal Remedies Act (Civ. Code §§ 1750, et seq.). Defendant misled consumers into believing that the GTX 970 had (a) 2 MB of L2 cache, (b) 64 ROPs, and (c) 4 GB of GDDR5 VRAM, when, in fact, the GTX 970 only had (a) 1.75 MB of L2 cache, (b) 56 ROPs, and (c) two pools of VRAM – a main 3.5 GB pool, and a smaller pool of 0.5 GB that runs at approximately one-seventh the speed of the main pool, and which causes a bottleneck reducing the performance of the GTX 970.

51. As a result of Defendant’s “unfair” conduct, Plaintiff and members of the Class paid premium prices for GTX 970 graphics cards, which were worth substantially less than the products promised by Defendant.

52. Defendant’s wrongful business practices alleged herein constitute a continuing course of unfair competition because Defendant marketed and sold its products in a manner that offends public policy and/or in a fashion that is immoral, unethical, oppressive, unscrupulous, and/or substantially injurious to its customers.

53. Plaintiff and the Class seek an order requiring Defendant to make full restitution of all moneys it has wrongfully obtained from Plaintiff and the Class, along with all other relief permitted under Bus. & Prof. Code §§ 17200, et seq.

SECOND CLAIM FOR RELIEF

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

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

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

56. Defendant’s actions as alleged in this complaint constitute “deceptive” business practices within the meaning of California Business and Professions Code §§ 17200, et seq.

Plaintiff does not allege a claim of common law fraud nor any claim in this cause of action that requires proof of intent.

57. Defendant’s business practices, as alleged herein, are “deceptive” because they are likely to deceive consumers, including Plaintiff and members of the Class, targeted with such statements and omission of material fact.

58. Defendant failed to disclose all material information to purchasers of GTX 970 devices concerning the capabilities and performance of VRAM, ROPs, and L2 cache properties of the GTX 970 GPU, and affirmatively concealed the fact that the GTX 970 actually provides materially less in performance than advertised.

59. As a result of Defendant’s deceptive business practices, Plaintiff and members of the Class paid a price premium for GTX 970 devices that they would not have otherwise paid, and Plaintiff and members of the Class did not obtain the capabilities promised by Defendant.

60. Defendant’s deceptive business practices alleged herein constituted a continuing course of unfair competition.

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

THIRD CLAIM FOR RELIEF

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

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

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1 63. Plaintiff has standing to pursue this claim because Plaintiff has suffered injury in
2 fact and has lost money or property as a result of Defendant’s actions as set forth above.

3 64. Defendant’s actions as alleged in this Complaint constitute an “unlawful” practice
4 within the meaning of Business and Professions Code §§ 17200, *et seq.* because Defendant’s
5 actions were “unfair” and “fraudulent,” as alleged above because they violated Business and
6 Professions Code §§ 17500, *et seq.*, which proscribes false advertising, as alleged *infra*, and
7 because they violated Civil Code §§ 1750, *et seq.*, the Consumer Legal Remedies Act, as alleged
8 *infra*.

9 65. As a result of Defendant’s “unlawful” business practices, Plaintiff and members of
10 the Class paid a price premium for GTX 970 devices that they would not have otherwise paid, and
11 Plaintiff and members of the Class did not obtain the device capabilities promised by Defendant.

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

15 **FOURTH CLAIM FOR RELIEF**

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

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

19 68. Plaintiff has standing to pursue this claim because Plaintiff has suffered injury in
20 fact and has lost money or property as a result of Defendant’s actions as set forth above.

21 69. Defendant engaged in advertising and marketing to the public and offered for sale
22 GTX 970 devices in California.

23 70. Defendant engaged in the advertising and marketing alleged herein with the intent
24 to directly or indirectly induce the sale of the GTX 970 devices to consumers like Plaintiff.

25 71. Defendant’s advertising and marketing representations regarding the VRAM,
26 ROPs, and L2 cache of the GTX 970 were false, misleading, and deceptive as set forth in detail
27 above. Defendant also concealed material information from consumers regarding the true
28 capabilities of the GTX 970.

1 72. Defendant’s material misrepresentations and omissions alleged herein deceive or
2 have the tendency or likelihood to deceive the general public regarding the benefits of purchasing
3 GTX 970 devices.

4 73. At the time it made the misrepresentations and omissions alleged herein, Defendant
5 knew or should have known that they were untrue or misleading and acted in violation of Bus. &
6 Prof. Code §§ 17500, *et seq.*

7 74. As a result, Plaintiff and each member of the Class has been injured, has lost money
8 or property, and is entitled to relief. Plaintiff and the Class seek disgorgement, restitution,
9 injunctive relief, and all other relief permitted under Bus. & Prof. Code §§ 17500, *et seq.*

FIFTH CLAIM FOR RELIEF

(Violation of Cal. Civ. Code §§ 1750, *et seq.* – Consumer Legal Remedies Act)

11 75. Plaintiff, individually and on behalf of the Subclass, incorporates by reference all of
12 the allegations contained in the preceding paragraphs of this Complaint.

13 76. Defendant is a “person” as defined in Cal. Civ. Code §1761(c).

14 77. Plaintiff and the members of the Subclass are “consumers” as defined in Cal. Civ.
15 Code §1761(d).

16 78. The GTX 970 devices that Plaintiff and the Subclass purchased from Defendant are
17 “goods” within the meaning of Cal. Civ. Code §1761(a).

18 79. The purchase by Plaintiff and the Subclass of the goods sold by Defendant, alleged
19 herein, constitute “transactions” within the meaning of Cal. Civ. Code §§ 1761(e) and 1770.

20 80. In connection with its sale of goods to Plaintiff and the Subclass, Defendant
21 violated the Consumer Legal Remedies Act (the “CLRA”) by:

- 22 a. Misrepresenting to Plaintiff and the Subclass that the GTX 970 devices had 2
23 MB of L2 cache, 64 ROPs, and 4 GB of GDDR5 VRAM, when in fact the GTX
24 970 had only 1.75 MB of L2 cache, 56 ROPs, and two pools of VRAM – a main
25 3.5 GB pool, and a smaller pool of 0.5 GB that runs at approximately one-
26 seventh the speed of the main pool, in violation of Cal. Civ. Code §§
27 1770(a)(5), (7), (9), (14), and (16);
28

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- 1 b. Misrepresenting to Plaintiff and the Subclass that the Defendant’s goods had
- 2 characteristics and benefits they did not have, in violation of Cal. Civ. Code §
- 3 1770(a)(5);
- 4 c. Representing to Plaintiff and the Subclass that Defendant’s goods were of a
- 5 particular standard, quality, or grade, when they were of another, in violation of
- 6 Cal. Civ. Code § 1770 (a)(7);
- 7 d. Advertising goods to Plaintiff and the Subclass with the intent not to sell them
- 8 as advertised, in violation of Cal. Civ. Code § 1770(a)(9);
- 9 e. Misrepresenting that their transactions with Plaintiff and the Subclass conferred
- 10 benefits and rights on Plaintiff and the Subclass, and obligations on Defendant,
- 11 which were not, in fact, conferred, in violation of Cal. Civ. Code § 1770(a)(14);
- 12 and
- 13 f. Misrepresenting to Plaintiff and the Subclass that the subject of a transaction
- 14 has been supplied in accordance with a previous representation when it had not,
- 15 in violation of Cal. Civ. Code § 1770(a)(16).

16 81. In addition, under California law, a duty to disclose arises in four circumstances: (1)

17 when the defendant is in a fiduciary relationship with plaintiff; (2) when the defendant had

18 exclusive knowledge of material facts not known to the plaintiff; (3) when the defendant actively

19 conceals a material fact from the plaintiff; and (4) when the defendant makes partial

20 representations but also suppresses some material facts.

21 82. Defendant had a duty to disclose to Plaintiff and the Subclass the true specifications

22 of the GTX 970 for the following three independent reasons: (a) Defendant had exclusive

23 knowledge of the information the time of sale; (b) Defendant actively concealed from Plaintiff and

24 the Subclass the true specifications of the GTX 970, which were material to customers; and (c)

25 Defendant made partial representations to Plaintiff and the Subclass regarding the specifications of

26 the GTX 970.

27 83. Defendant violated the CLRA by concealing material information from Plaintiff

28 and the Subclass regarding the true specifications of the GTX 970.

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1 84. Defendant’s misrepresentations and omissions in violation of the CLRA were likely
2 to mislead consumers. Plaintiff and the Subclass reasonably believed Defendant’s representations
3 and omissions to mean that the GTX 970 had greater capabilities than it in fact did.

4 85. Defendant’s conduct alleged herein was intentional and was specifically designed to
5 induce customers to purchase the GTX 970 devices.

6 86. Defendant’s misrepresentations and omissions alleged herein were material in that a
7 reasonable person would attach importance to the information and would be induced to act upon
8 the information in making purchase decisions.

9 87. Plaintiff and the Subclass relied to their detriment on Defendant’s
10 misrepresentations and omissions in purchasing GTX 970 devices.

11 88. Plaintiff, on behalf of himself and the Subclass, demands judgment against
12 Defendant under the CLRA for injunctive relief to Plaintiff and the Subclass.

13 89. Plaintiff, on behalf of himself and the Subclass, further intends to seek
14 compensatory damages and, in light of Defendant’s intentional and fraudulent conduct, an award
15 of punitive damages.

16 90. Pursuant to Cal. Civ. Code § 1782(a), Plaintiff will serve Defendant with notice of
17 its alleged violations of the CLRA by certified mail return receipt requested. If, within thirty days
18 after the date of such notification, Defendant fails to provide appropriate relief for its violation of
19 the CLRA, Plaintiff will amend this Complaint to seek monetary (both compensatory and punitive)
20 damages under the CLRA.

21 91. Notwithstanding any other statements in this Complaint, Plaintiff does not seek
22 monetary damages in connection with his CLRA claim – and will not do so – until the applicable
23 thirty-day period has passed.

24 **PRAYER FOR RELIEF**

25 Plaintiff, on behalf of himself and the Class, requests that the Court order the following
26 relief and enter judgment against Defendant as follows:

- 27 a. An Order certifying the proposed Class and Subclass under Fed. R. Civ. P. 23
28 and appointing Plaintiff and his counsel to represent the Class;

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- b. A declaration that Defendant has engaged in the illegal conduct alleged herein;
- c. An Order that Defendant be permanently enjoined from its improper activities and conduct described herein;
- d. A judgment awarding Plaintiff and the Class restitution in an amount according to proof, including without limitation, restitution of, disgorgement of, and/or the imposition of a constructive trust upon, all profits, benefits, and other compensation obtained by Defendant from its deceptive, misleading, and unlawful conduct alleged herein;
- e. Pre-judgment and post-judgment interest at the maximum allowable rate;
- f. Attorneys’ fees and expenses and the costs of this action; and
- g. All other relief that the Court deems necessary, just, and proper.

JURY DEMAND

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

Dated: July 24, 2015

SCHUBERT JONCKHEER & KOLBE LLP

/s/ Robert Schubert

ROBERT C. SCHUBERT S.B.N. 62684
NOAH M. SCHUBERT (S.B.N. 278696)
KATHRYN Y. SCHUBERT (S.B.N. 265803)

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San Francisco, California 94111
Telephone: (415) 788-4220
Facsimile: (415) 788-0161

Attorneys for Plaintiff

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.)

I. (a) PLAINTIFFS

Jorell Dye

(b) County of Residence of First Listed Plaintiff Santa Clara
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Schubert Jonckheer & Kolbe LLP
3 Embarcadero Center, Suite 1650, San Francisco, CA 94111
Ph: 415-788-4220

DEFENDANTS

Nvidia Corporation

County of Residence of First Listed Defendant Santa Clara
(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
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 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 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

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 checked="" 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	<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	<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 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	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY	
<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 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	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	<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"/> 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))	
			IMMIGRATION	FEDERAL TAX SUITS	
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<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(d)

Brief description of cause:
Class action complaint for unfair, deceptive and unlawful business practices, and false advertising

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** 5,000,001.00 **CHECK YES only if demanded in complaint:**
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Hon. Charles R. Breyer DOCKET NUMBER 15-cv-00760-CRB

DATE 07/24/2015 SIGNATURE OF ATTORNEY OF RECORD s/ Robert C. Schubert

(Place an "X" in One Box Only)

- SAN FRANCISCO/OAKLAND
- SAN JOSE
- EUREKA