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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

22 ANDRE DUBUS III, SUSAN ORLEAN,
23 Individually and on behalf of all others
24 similarly situated,
25 v.
26 NVIDIA CORPORATION, a Delaware
27 corporation,
28 Defendant.

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Case No. 4:24-cv-2655-JST
**DEFENDANT NVIDIA
CORPORATION'S ANSWER TO
COMPLAINT**

1 Defendant NVIDIA Corporation (“NVIDIA”) submits this Answer to Plaintiffs’
2 Complaint.

3 **INTRODUCTION**

4 1. NVIDIA admits that artificial intelligence is commonly abbreviated “AI.”
5 NVIDIA admits that that the term “artificial intelligence” may include software as described in
6 Paragraph 1, but denies that the term is limited to the alleged definition.

7 2. NVIDIA admits that some large language models (“LLMs”) may be designed to be
8 used, potentially in conjunction with additional software, to generate outputs that are similar to
9 human-generated text and/or to respond to user prompts, but denies that the term large language
10 model is limited to the alleged definition. NVIDIA further admits that it released a set of large
11 language models named “NeMo Megatron–GPT” in September 2022. NVIDIA denies the
12 remaining allegations of Paragraph 2.

13 3. To the extent Paragraph 3 states legal conclusions, no response is required. To the
14 extent a response is required, NVIDIA admits that LLMs may be trained on textual works.
15 NVIDIA further admits that training is a highly transformative process that may include adjusting
16 numerical parameters including “weights,” and that outputs of an LLM may be based, at least in
17 part, on such “weights.” NVIDIA denies the remaining allegations contained in Paragraph 3.

18 4. To the extent Paragraph 4 states legal conclusions, no response is required.
19 NVIDIA admits that Plaintiffs purport to bring this action as a class action. NVIDIA lacks
20 sufficient information to form a belief as to the truth of the remaining allegations contained in
21 Paragraph 4.

22 5. To the extent Paragraph 5 states legal conclusions, no response is required. To the
23 extent a response is required, NVIDIA denies the allegations of Paragraph 5.

24 **JURISDICTION AND VENUE**

25 6. NVIDIA admits the allegations contained in Paragraph 6.

26 7. To the extent Paragraph 7 states legal conclusions, no response is required. To the
27 extent a response is required, NVIDIA admits that it resides in this district and that venue is proper

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1 for purposes of this action. NVIDIA denies that it has committed or is committing any act
2 complained of in the Complaint, and denies the remaining allegations contained in Paragraph 7.

3 8. To the extent Paragraph 8 states legal conclusions, no response is required. To the
4 extent a response is required, NVIDIA admits that this case is an Intellectual Property Action
5 under Civil Local Rule 3-2(c) that is assigned to the Oakland Division.

6 **PARTIES**

7 9. NVIDIA lacks sufficient information to form a belief as to the truth of the
8 allegations contained in Paragraph 9, and on that basis denies them.

9 10. NVIDIA lacks sufficient information to form a belief as to the truth of the
10 allegations contained in Paragraph 10, and on that basis denies them.

11 11. NVIDIA lacks sufficient information to form a belief as to the truth of the
12 allegations contained in Paragraph 11, and on that basis denies them.

13 12. NVIDIA admits the allegations contained in Paragraph 12.

14 **AGENTS AND CO-CONSPIRATORS**

15 13. To the extent Paragraph 13 states legal conclusions, no response is required. To the
16 extent a response is required, NVIDIA denies that it has committed or is committing any act
17 complained of in the Complaint, and denies the remaining allegations contained in Paragraph 13.

18 14. To the extent Paragraph 14 states legal conclusions, no response is required. To the
19 extent a response is required, NVIDIA denies that it has committed or is committing any act
20 complained of in the Complaint, and denies the remaining allegations contained in Paragraph 14.

21 **FACTUAL ALLEGATIONS**

22 15. NVIDIA admits that it was founded in 1993, that it invented the GPU (Graphics
23 Processing Unit) in 1999, and that it provides hardware, software, and systems for
24 computationally intensive workloads. NVIDIA denies the remaining allegations contained in
25 Paragraph 15.

26 16. NVIDIA admits that it released a set of LLMs named NeMo Megatron–GPT in
27 September 2022. NVIDIA further admits that some large language models may be designed to be
28 used, potentially in conjunction with additional software, to generate outputs that are similar to

1 human-generated text and/or to respond to user prompts, but denies that the term large language
2 model is limited to the alleged definition. NVIDIA denies the remaining allegations contained in
3 Paragraph 16.

4 17. NVIDIA admits that LLMs are models that may be trained at least in part using a
5 large and diverse corpus of textual material, and that the material used for training may be referred
6 to as a “training dataset.” NVIDIA denies the remaining allegations contained in Paragraph 17.

7 18. NVIDIA admits that LLMs include numerical parameters that may be referred to as
8 “weights,” and that during training, “weights” may be adjusted. NVIDIA further admits that the
9 NeMo-Megatron–GPT 20B model is so named at least in part because the model includes 20
10 billion total trainable parameters. NVIDIA denies the remaining allegations contained in
11 Paragraph 18.

12 19. To the extent Paragraph 19 states legal conclusions, no response is required. To the
13 extent a response is required, NVIDIA admits that some large language models may be designed
14 to be used, potentially in conjunction with additional software, to generate outputs that are similar
15 to human-generated text and/or to respond to user prompts and that the model’s “weights” may be
16 used in generating the outputs. NVIDIA denies the remaining allegations contained in Paragraph
17 19.

18 20. NVIDIA denies that it has improperly used or copied the alleged works of Plaintiffs
19 or of any of the putative Class members, and denies the allegations contained in Paragraph 20.

20 21. NVIDIA admits that it first announced the availability of the four NeMo Megatron
21 LLMs referenced in Paragraph 21 in September 2022 and that those four models were released in
22 September 2022. To the extent the allegations in Paragraph 21 purport to quote from portions of a
23 publicly available video, the full text of the video speaks for itself. NVIDIA denies the remaining
24 allegations contained in Paragraph 21.

25 22. NVIDIA admits that the four referenced LLMs, NeMo Megatron–GPT 1.3B,
26 NeMo Megatron–GPT 5B, NeMo Megatron–GPT 20B, and NeMo Megatron–T5 3B, are available
27 on Hugging Face. NVIDIA admits that each of those four LLMs includes a model card, and that
28

1 each model card states that, “The model was trained on ‘The Pile’ dataset prepared by
2 EleutherAI.” NVIDIA denies the remaining allegations contained in Paragraph 22.

3 23. NVIDIA lacks sufficient information to form a belief as to the truth of the
4 allegations contained in Paragraph 23, and on that basis denies them.

5 24. NVIDIA lacks sufficient information to form a belief as to the truth of the
6 allegations contained in Paragraph 24, and on that basis denies them.

7 25. NVIDIA lacks sufficient information to form a belief as to the truth of the
8 allegations contained in Paragraph 25, and on that basis denies them.

9 26. To the extent Paragraph 26 states legal conclusions, no response is required.
10 NVIDIA denies the characterization of the listed data repositories as “shadow libraries” and denies
11 that hosting data in or distributing data from the data repositories necessarily violates the U.S.
12 Copyright Act. NVIDIA lacks sufficient information to form a belief as to the truth of the
13 remaining allegations contained in Paragraph 26, and on that basis denies them.

14 27. NVIDIA lacks sufficient information to form a belief as to the truth of the
15 allegations contained in Paragraph 27, and on that basis denies them.

16 28. NVIDIA lacks sufficient information to form a belief as to the truth of the
17 allegations contained in Paragraph 28, and on that basis denies them.

18 29. NVIDIA lacks sufficient information to form a belief as to the truth of the
19 allegations contained in Paragraph 29, and on that basis denies them.

20 30. To the extent Paragraph 30 states legal conclusions, no response is required.
21 NVIDIA denies the remaining allegations contained in Paragraph 30.

22 **COUNT 1**

23 **Direct Copyright Infringement (17 U.S.C. § 501)**

24 **against NVIDIA**

25 31. NVIDIA incorporates by reference its responses to Paragraphs 1-30.

26 32. Paragraph 32 states conclusions of law and Plaintiffs’ characterization of their
27 claims as to which no response is required.

28

1 **AFFIRMATIVE DEFENSES**

2 NVIDIA asserts the following affirmative defenses to the claim alleged in the Complaint,
3 without assuming the burden of proof on such defenses that would otherwise fall on Plaintiffs.
4 NVIDIA reserves the right to supplement and/or amend these defenses, including to assert new
5 defenses, as discovery is conducted.

6 **FIRST AFFIRMATIVE DEFENSE**

7 **(Failure to State a Claim)**

8 Plaintiffs' claims and the putative class members' claims fail, in whole or in part, because
9 Plaintiffs have failed to state a claim upon which relief may be granted.

10 **SECOND AFFIRMATIVE DEFENSE**

11 **(Non-Infringement)**

12 Plaintiffs' claims and the putative class members' claims fail, in whole or in part, because
13 NVIDIA has not infringed Plaintiffs' alleged copyrighted works.

14 **THIRD AFFIRMATIVE DEFENSE**

15 **(Fair Use)**

16 Plaintiffs' claims and the putative class members' claims are barred, in whole or in part, by
17 fair use under Section 107 of the Copyright Act.

18 **FOURTH AFFIRMATIVE DEFENSE**

19 **(Lack of Copyrightability)**

20 Plaintiffs' claims and the putative class members' claims fail, in whole or in part, to the
21 extent they claim rights to elements of works or to works which are not protectable under
22 copyright law, such as under the doctrines of *scènes à faire*, merger, or under 17 U.S.C. § 102(b),
23 or that are in the public domain, are facts, lack requisite originality, are unregistered, are works to
24 which copyright protection has been abandoned, or are works to which Plaintiffs own no valid
25 copyright.

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FIFTH AFFIRMATIVE DEFENSE

(De Minimis Copying)

Plaintiffs’ claims and the putative class members’ claims fail, in whole or in part, because they are barred by the doctrine of de minimis copying.

SIXTH AFFIRMATIVE DEFENSE

(Laches, Waiver, Estoppel)

Plaintiffs’ claims and the putative class members’ claims are barred, in whole or in part, by the doctrines of laches, waiver, and/or estoppel.

SEVENTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

Plaintiffs’ claims and the putative class members’ claims are barred, in whole or in part, by the applicable statutes of limitations.

EIGHTH AFFIRMATIVE DEFENSE

(Injunctive Relief)

Plaintiffs’ claims and the putative class members’ claims for injunctive relief are barred because Plaintiff has an adequate remedy at law.

ADDITIONAL DEFENSES

NVIDIA reserves the right to assert additional defenses.

DATED: July 1, 2024

Respectfully submitted,

QUINN EMANUEL URQUHART & SULLIVAN, LLP

By /s/ Sean S. Pak

Attorneys for Defendant NVIDIA Corporation