

ORIGINAL
FILED
08 SEP -9 PM 3:43
RICHARD W. WICKING
CLERK OF DISTRICT COURT
SAN FRANCISCO, CALIFORNIA

Jonathan K. Levine (State Bar No. 220289)
jkl@girardgibbs.com
Aaron M. Sheanin (State Bar No. 214472)
ams@girardgibbs.com
GIRARD GIBBS LLP
601 California Street, 14th Floor
San Francisco, California 94108
Telephone: (415) 981-4800
Facsimile: (415) 981-4846

Ralph M. Stone
rstone@lawssb.com
Thomas G. Ciarlone, Jr.
tciarlone@lawssb.com
SHALOV STONE BONNER & ROCCO LLP
485 Seventh Avenue, Suite 1000
New York, New York 10018
Telephone: (212) 239-4340
Facsimile: (212) 239-4310

Counsel for Individual and Representative Plaintiff Lisa Miller

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LISA MILLER, on behalf of herself and all
others similarly situated,

Plaintiffs,

v.

NVIDIA CORP.; JEN-HSUN HUNAG; and
MARVIN BURKETT

Defendants.

Civil Action No. 4260

**CLASS ACTION COMPLAINT FOR
VIOLATIONS OF THE FEDERAL SECURITIES
LAWS**

JURY TRIAL DEMANDED

IW
HRL

1. Plaintiff, Lisa Miller (“Plaintiff”), alleges the following as her Complaint in the above-captioned matter. Plaintiff so alleges individually and on behalf of all persons and entities (the “Class”) who purchased or otherwise acquired the common stock of NVIDIA Corp. (“NVIDIA” or the “Company”), between November 8, 2007, and July 2, 2008, inclusive (the “Class Period”).

2. The allegations contained herein are made upon information and belief, except as to the allegations about Plaintiff and her counsel, which are made upon personal knowledge. Plaintiff's information and belief are based, among other things, on investigations made by and through her attorneys. Such investigations have included, but have not been limited to, the review and analysis of: (a) filings made by NVIDIA with the United States Securities and Exchange Commission (the "SEC"); (b) press releases issued by the Company; (c) newspaper, magazine, and other periodical articles relating to NVIDIA and the allegations contained herein; and (d) other matters of public record.

I.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to: (a) Section 27 of the Exchange Act, 15 U.S.C. § 78aa; and (b) 28 U.S.C. §§ 1331 and 1337.

4. This action arises under and pursuant to: (a) Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b); (b) Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5; and (c) Section 20(a) of the Exchange Act, 15 U.S.C. § 78t(a).

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

6. In furtherance of and in connection with the acts alleged herein, Defendants (as defined below), directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephonic communications, the Internet, and the facilities of the NASDAQ, a national securities exchange.

II.

PARTIES

The Plaintiff

7. Plaintiff purchased the Company's common stock during the Class Period, as set forth in her attached Certification, and was damaged thereby.

1 *The Defendants*

2 8. Defendant NVIDIA is a corporation organized under the laws of Delaware. NVIDIA
3 maintains its principal place of business in this District, at 2701 San Tomas Expressway, in Santa Clara,
4 California. Its common stock trades on the NASDAQ, a national securities exchange, under the ticker
5 symbol "NVDA."

6 9. At all relevant times, Jen-Hsun Huang ("Huang") was NVIDIA's President and Chief
7 Executive Officer.

8 10. At all relevant times, Marvin Burkett ("Burkett") was NVIDIA's Chief Financial Officer.

9 11. The Company, Huang, and Burkett are collectively referred to herein as "Defendants."

10 **III.**

11 **SUBSTANTIVE ALLEGATIONS**

12 12. This is a class action on behalf of all purchasers of NVIDIA common stock between
13 November 8, 2007, and July 2, 2008, inclusive, seeking to pursue remedies under the Securities
14 Exchange Act of 1934 (the "Exchange Act").

15 13. The Company's current CEO, Jen-Hsun Huang, co-founded NVIDIA in 1993 with
16 venture capital firm Sequoia Capital. According to the investor relations section of the Company's
17 website, NVIDIA is "the world leader in visual computing technologies and the inventor of the GPU,^[1]
18 a high-performance processor which generates breathtaking, interactive graphics on workstations,
19 personal computers, game consoles, and mobile devices." The Company's product portfolio includes
20 graphics processors, wireless communications processors, and PC motherboard chipsets. Among
21 consumers, NVIDIA is probably best known for its "GeForce" line of graphics processors.

22 14. According to a recent survey from a prominent market research firm, NVIDIA captured
23 31.8% of all graphics chip sales in the final quarter of 2007. But NVIDIA's dominant market position
24 hinges almost exclusively on the Company's continued success in designing and manufacturing state-of-
25 the-art GPUs and media and communications processors ("MCPs"). If any of these core technologies
26 exhibit signs of defect or failure, it would have dire consequences for NVIDIA's financial condition and
27 results and its future business prospects.

28 ¹ "GPU" stands for "Graphics Processing Unit."

1 15. History provides vivid examples of this risk in the semiconductor industry. In 1994, for
2 instance, a defect in a mass-produced Intel microprocessor demonstrated the financial shockwaves that
3 can be generated by chip flaws. While the defect became manifest only when consumers attempted rare
4 mathematical calculations, Intel was flooded with an avalanche of complaints and forced to take a \$475
5 million write down to compensate for repairs and returns.

6 16. This kind of disaster scenario materialized for NVIDIA earlier this year. On July 2,
7 2008, the Company announced that flawed processes and materials used in manufacturing GPUs and
8 MCPs was apparently causing these mobile video adapters to fail at unusually high rates. While
9 NVIDIA claims that it has “not been able to determine a root cause for these failures,” the Company
10 admits that “testing suggests a weak material set of die/package combination, system thermal
11 management designs, and customer use patterns are contributing factors.” Prior to the total failure of the
12 graphics cards, affected computers often suffer from a variety of symptoms, including black screens,
13 duplicate images, wireless networking complications, and the random appearance of lines, characters,
14 and other on-screen interference.

15 17. On the same day as these revelations, NVIDIA unexpectedly slashed its second-quarter
16 revenue and margin forecasts after the close of regular trading. In substantial part, the Company
17 attributed the drastically revised projections to the fallout from its defective graphics cards:

18 NVIDIA plans to take a one-time charge from \$150 million to \$200 million
19 against cost of revenue for the second quarter to cover anticipated warranty,
20 repair, return, replacement and other costs and expenses, arising from a weak
21 die/packaging material set in certain versions of its previous generation GPU and
22 MCP products used in notebook systems. Certain notebook configurations with
23 GPUs and MCPs manufactured with a certain die/packaging material set are
24 failing in the field at higher than normal rates.

25 18. Sophisticated market participants have openly questioned the adequacy of this reserve.
26 For example, according to an article from the August 19, 2008, edition of the *Wall Street Journal*, titled
27 “Chip Problems Haunt NVIDIA,” JoAnne Feeney, an equity analyst at FTN Midwest Securities,
28 expressed concerns over whether the \$196 million reserve is sufficient.

 19. Reacting to this news, NVIDIA stock opened at \$12.98 on July 3, 2008, down almost six

1 dollars per share from its intraday high of \$18.78 from the day before. This 31% decline cut NVIDIA's
2 market capitalization by over \$3 billion virtually overnight. In the ensuing weeks, shares in the
3 Company would trade for as little as \$10.55, down \$25.71 (or 71%) from NVIDIA's Class Period high
4 of \$36.26.

5 20. The truth is that, at least as early as November 2007, NVIDIA and the other Defendants
6 have known about these unprecedented failure rates, as well as their "root causes." Indeed, Michael
7 Hara, the Company's Vice President for Investor Relations and Communications, conceded during a
8 September 4, 2008, "Citigroup Technology Conference" that NVIDIA began troubleshooting these
9 problems with major computer manufacturers beginning in August of 2007. "We've ... been working on
10 this problem with the customers for well over a year," Hara admitted, "going all the way back to August
11 of last year."

12 21. The problem stems from what has been termed "heat cycling" by industry professionals.
13 When computers equipped with NVIDIA's graphics cards are switched on, the cards quickly reach high
14 temperatures. As the cards cool down, however, the rapid change in temperature subjects them to
15 extreme physical stress. As a result, solder joints weaken and ultimately crack, causing the video
16 adapters to malfunction or stop working altogether.

17 22. In response to these defects, Dell and Hewlett-Packard, among other computer
18 manufacturers, have released hardware BIOS updates that activate the system cooling fan sooner and for
19 a longer period of time, with the aim of keeping the adapter from growing too hot. This is only a
20 temporary solution, however, and it comes with a host of negative side effects. It dramatically reduces
21 battery life, for example, while simultaneously increasing the level of noise produced by the fan.
22 Recently, the Company's investment relations officer specifically acknowledged that the defects, even if
23 corrected, "cause a degradation in battery life," but suggested that (even if never disclosed to consumers
24 or investors) this was an appropriate solution: "[T]here will always be a trade off, but the trade off of not
25 having your notebook fail is probably the best one to make." Additionally, technology commentators
26 have suggested that this quick fix may lead to the premature failure of the cooling fan. It has also been
27 predicted that these BIOS updates will merely postpone failure of NVIDIA video cards until after their
28 warranties expire. As reported on July 29, 2008, by one of the Internet's leading technology portals,
ZDNet, *"a BIOS update is little more than a band-aid and isn't going to fix the underlying problem."*

1 (Emphasis added.)

2 23. According to multiple public sources, the earliest of the BIOS updates was issued by
3 Hewlett-Packard no later than November 2007. Although NVIDIA and the other Defendants were
4 almost certainly aware of the underlying problem earlier than this, the fact that they had knowledge of
5 the flaws by November 2007 is beyond serious debate. Nevertheless, for at least eight months,
6 Defendants concealed from NVIDIA investors these defects and their obvious impact on the Company's
7 financial condition and future business prospects.

8 24. More recently, in August 2008, industry watchdogs revealed that the flaws in NVIDIA's
9 video adapters may affect an even broader range of the Company's product line. Reacting to this
10 possibility, some notebook manufacturers have reportedly turned to NVIDIA rival ATI to provide
11 graphics options on their new portable systems.

12 25. Consumer response to the defective NVIDIA video cards has been swift and severe.
13 These are some examples gathered from public message boards by technology reporter Adrian
14 Kingsley-Hughes:

15 [H]aving the BIOS activate the fans sooner to compensate for a defective chipset
16 is a band-aid solution.

17 * * *

18 [S]ince this BIOS update won't mysteriously change the die packaging material,
19 the only real thing you can do is to extend warranty or premium support to the
20 amount of years you wan[t to] use the computer, and still then live with the fact
21 that your computer could die on you any time.

22 * * *

23 So rather than replacing the faulty parts you are going to just turn up the fans, at
24 the expense of battery life and noise. I would rather just leave the BIOS as it is
25 and get a proper fix if the problem occurs. Even if the problem occurs out of
26 warranty I think there is a strong case for ... fixing it for free since there is an
27 admitted manufacturing defect.

28 * * *

With this solution, you try to push the issue outside the customers' warranty-time

1 ... but what[] [about] after that time? Will you repair the notebooks for free?

2 * * *

3 Nice to see that a hardware issue is fixed by software update. How is a physical
4 defect suppose[d] to be fixed by software? Time to step up to the plate ... and
5 start offering a replacement device.

6 * * *

7 I tend to agree with some of the other comments. A BIOS update to turn on
8 cooling fans is not the appropriate response when I have spent approx[imately]
9 \$2000 on a[] [laptop computer] that I now fear will have a shortened life span.

10 26. Defendants have known about these problems since November 2007, at the latest.
11 Despite this, for eight months or more NVIDIA and the other Defendants concealed the defects and their
12 ramifications for the Company's financial health and future in a series of false and misleading
13 statements made to the investing public.

14 27. For example, on November 8, 2007, the first day of the Class Period, Defendants issued a
15 press release titled "NVIDIA Reports Record Results for Third Quarter of Fiscal 2008." In the release,
16 Defendants touted the fact that the Company had supposedly set a "new quarterly revenue record,
17 surpassing \$1 billion." Defendants also emphasized that "net income and gross margin [likewise]
18 reach[ed] record highs." More specifically, the press release provided in pertinent part as follows:

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

26 Non-GAAP net income for the third quarter of fiscal 2008, which excludes stock-
27 based compensation charges and the associated tax impact, was \$264.2 million, or
28 \$0.44 per diluted share, an increase of 77 percent compared to the third quarter of

1 fiscal 2007. Non-GAAP gross margin improved to a record 46.4 percent, an
2 increase of 350 basis points from a year ago.

3
4 For the nine months ended October 28, 2007, revenue increased to a record \$2.90
5 billion compared to \$2.19 billion for the nine months ended October 29, 2006, an
6 increase of 32 percent. GAAP net income for the nine months ended October 28,
7 2007 was \$540.7 million, or \$0.89 per diluted share, compared to \$285.3 million,
8 or \$0.50 per diluted share, for the nine months ended October 29, 2006.

9
10 Non-GAAP net income for the nine months ended October 28, 2007, which
11 excludes stock-based compensation charges and the associated tax impact was
12 \$626.7 million, or \$1.06 per diluted share, compared to \$372.3 million, or \$0.66
13 per diluted share, for the nine months ended October 29, 2006.

14 28. NVIDIA's President and CEO, Defendant Jen-Hsun Huang, was quoted in the November
15 8th press release:

16 "We are very proud to have achieved our first billion dollar quarter. And, while it
17 is a wonderful milestone to reach, we believe this is just the beginning," said Jen-
18 Hsun Huang, president and CEO of NVIDIA. "Our core businesses are
19 continuing to grow as the GPU becomes increasingly central to today's computing
20 experience in both the consumer and professional market segments."

21 Mr. Huang added: "This is the era of visual computing and NVIDIA is at the
22 forefront. People want a delightful, compelling experience when they interact
23 with their computing devices, whether it's on a phone, notebook, game console,
24 or workstation. NVIDIA is leading the way in making this experience more
25 intuitive and rewarding through our relentless pace of innovation and focus on
26 execution."

1 29. On November 8, 2007, NVIDIA filed with the SEC, on Form 8-K, a current report that
2 included the November 8th press release as an exhibit. The Company's CFO, Defendant Marvin
3 Burkett, signed the 8-K.

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

12 31. The November 8th press release, the November 8th 8-K, and the November 21st 10-Q
13 were false and misleading because, among other things, they failed to disclose the defects in NVIDIA's
14 graphics cards and their impact on the Company's financial condition and results and future business
15 prospects. Additionally, by failing to adjust the Company's projections and reported financial results for
16 customer warranty, repair, return, replacement, and other consequential costs and expenses arising from
17 the defects, the preceding statements were false and misleading because they understated NVIDIA's
18 expenses and other obligations and overstated the Company's revenue, income, and margin.

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

24 For the fourth quarter of fiscal 2008, revenue increased to a record \$1.20 billion,
25 compared to \$878.9 million for the fourth quarter of fiscal 2007, an increase of 37
26 percent. Net income computed in accordance with U.S. generally accepted
27 accounting principles (GAAP) for the fourth quarter of fiscal 2008 was \$257.0
28 million, or \$0.42 per diluted share, compared to net income of \$163.5 million, or

1 \$0.27 per diluted share, for the fourth quarter of fiscal 2007, a net income increase
2 of 57 percent.

3
4 Non-GAAP net income for the fourth quarter of fiscal 2008, which excludes
5 stock-based compensation charges, a charge for in-process research and
6 development related to an acquisition closed during the quarter, and the associated
7 tax impact, was \$292.6 million, or \$0.49 per diluted share.

8
9 Annual revenue for the fiscal year ended January 27, 2008 was a record \$4.10
10 billion, compared to revenue of \$3.07 billion for the fiscal year ended January 28,
11 2007, an increase of 34 percent. GAAP net income for the fiscal year ended
12 January 27, 2008 was \$797.6 million, or \$1.31 per diluted share, compared to
13 GAAP net income of \$448.8 million, or \$0.76 per diluted share, for the fiscal year
14 ended January 28, 2007, a net income increase of 78 percent.

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

19 33. Huang was quoted in the February 13th press release:

20 "Fiscal 2008 was another outstanding and record year for us. Strong demand for
21 GPUs in all market segments drove our growth. Relative to Q4 one year ago, our
22 discrete GPU business grew 80%. Our growth reflects the ever-increasing use of
23 rich graphics in applications from Google Earth to Apple iTunes to online virtual
24 worlds," said Jen-Hsun Huang, president and CEO of NVIDIA.

25
26 Mr. Huang continued: "This is the era of visual computing. The richness of the
27 graphics is increasingly central to our computing experience. And at the core of
28 that experience is the GPU, the processor that defines the modern PC."

1 34. On February 13, 2008, NVIDIA filed with the SEC, on Form 8-K, a current report that
2 included the February 13th press release as an exhibit. Burkett signed the 8-K.

3 35. The next month, on March 21, 2008, NVIDIA filed with the SEC, on Form 10-K, its
4 annual report for the period ended December 31, 2007. The 10-K repeated the financial results
5 announced in the February 13th press release. Pursuant to the certification requirements of the
6 Sarbanes-Oxley Act of 2002, Huang and Burkett both attested that the 10-K “does not contain any
7 untrue statement of a material fact or omit to state a material fact necessary to make the statements
8 made, in light of the circumstances under which such statements were made, not misleading” They
9 further certified that “the financial statements, and other financial information included in this report,
10 fairly present in all material respects the financial condition, results of operations and cash flows of the
[Company]”

11 36. The February 13th press release, the February 13th 8-K, and the March 21st 10-K were
12 false and misleading because, among other things, they failed to disclose the defects in NVIDIA’s
13 graphics cards and their impact on the Company’s financial condition and results and future business
14 prospects. Additionally, by failing to adjust the Company’s projections and reported financial results for
15 customer warranty, repair, return, replacement, and other consequential costs and expenses arising from
16 the defects, the preceding statements were false and misleading because they understated NVIDIA’s
17 expenses and other obligations and overstated the Company’s revenue, income, and margin.

18 37. On May 8, 2008, Defendants issued a press release titled “NVIDIA Reports Results for
19 First Quarter Fiscal 2009.” In the release, Defendants announced that the Company had purportedly
20 “achieve[d] 37 percent revenue growth and 34 percent net income growth year-over-year.” More
21 specifically, the press release provided in pertinent part as follows:

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

27 Non-GAAP net income for the first quarter of fiscal 2009, which excludes stock-
28

1 based compensation charges and the associated tax impact, was \$211.8 million, or
2 \$0.36 per diluted share.

3 38. Again, Huang was quoted in the press release:

4 "The growth of GPUs continues to outpace the PC market. We shipped 42
5 percent more GPUs this quarter compared to the same period a year ago, resulting
6 in our best first quarter ever," said Jen-Hsun Huang, president and CEO of
7 NVIDIA. "This is the era of visual computing. With a few hundred million
8 GeForce GPUs in the market, developers can now confidently create applications
9 with dazzling graphics. Amazing applications with beautiful graphics are
10 showing up on the Web constantly, driving even faster adoption of GPUs. We
11 expect this positive feedback loop to continue to drive our growth."

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

14 40. Later the same month, on May 22, 2008, NVIDIA filed with the SEC, on Form 10-Q, its
15 quarterly report for the period ended March 31, 2008. The 10-Q repeated the financial results
16 announced in the May 8th press release. Pursuant to the certification requirements of the Sarbanes-
17 Oxley Act of 2002, Huang and Burkett both attested that the 10-Q "does not contain any untrue
18 statement of a material fact or omit to state a material fact necessary to make the statements made, in
19 light of the circumstances under which such statements were made, not misleading" They further
20 certified that "the financial statements, and other financial information included in this report, fairly
21 present in all material respects the financial condition, results of operations and cash flows of the
22 [Company]"

23 41. The May 8th press release, the May 8th 8-K, and the May 22nd 10-Q were false and
24 misleading because, among other things, they failed to disclose the defects in NVIDIA's graphics cards
25 and their impact on the Company's financial condition and results and future business prospects.
26 Additionally, by failing to adjust the Company's projections and reported financial results for customer
27 warranty, repair, return, replacement, and other consequential costs and expenses arising from the
28 defects, the preceding statements were false and misleading because they understated NVIDIA's
expenses and other obligations and overstated the Company's revenue, income, and margin.

42. As set forth in detail above, the truth about the foregoing matters was not revealed until after the market closed on July 2, 2008. When NVIDIA stock resumed trading the next day, the Company's market capitalization promptly dwindled by over \$3 billion, and Plaintiff and other NVIDIA investors collectively lost hundreds of millions of dollars due to Defendants' misconduct.

IV.

APPLICABILITY OF PRESUMPTION OF RELIANCE:

FRAUD-ON-THE-MARKET DOCTRINE

43. At all relevant times, the market for NVIDIA common stock was an efficient market for the following reasons, among others:

- a. NVIDIA common stock was listed and actively traded on the NASDAQ, a highly efficient market;
- b. As a regulated issuer, the Company filed periodic public reports with the SEC;
- c. NVIDIA stock was followed by securities analysts employed by major brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace;
- d. NVIDIA regularly issued press releases which were carried by national news wires. Each of these releases was publicly available and entered the public marketplace.

44. As a result, the market for NVIDIA securities promptly digested current information with respect to the Company from all publicly available sources and reflected such information in the Company's stock price. Under these circumstances, all purchasers of NVIDIA common stock during the Class Period suffered similar injury through their purchase of stock at artificially inflated prices and a presumption of reliance applies.

V.

NO SAFE HARBOR

45. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this complaint. The specific statements pleaded herein were not identified as “forward-looking statements” when made. Nor

1 was it stated with respect to any of the statements forming the basis of this complaint that actual results
2 “could differ materially from those projected.” To the extent there were any forward-looking
3 statements, there were no meaningful cautionary statements identifying important factors that could
4 cause actual results to differ materially from those in the purportedly forward-looking statements.
5 Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements
6 pleaded herein, Defendants are liable for those false forward-looking statements because at the time
7 each of those forward-looking was made the particular speaker knew that the particular forward-looking
8 statement was false, and/or the forward-looking statement was authorized and/or approved by an
9 executive officer of the Company who knew that those statements were false when made.

10 VI.

11 SCIENTER ALLEGATIONS

12 46. As alleged herein, Defendants acted with scienter in that Defendants knew that the public
13 documents and statements, issued or disseminated by or in the name of the Company, were materially
14 false and misleading; knew or recklessly disregarded that such statements or documents would be issued
15 or disseminated to the investing public; and knowingly and substantially participated or acquiesced in
16 the issuance or dissemination of such statements or documents as primary violators of the federal
17 securities laws. Defendants, by virtue of their receipt of information reflecting the true facts regarding
18 the Company and its business practices, their control over and/or receipt of the Company’s allegedly
19 materially misleading misstatements and/or their associations with the Company which made them privy
20 to confidential proprietary information concerning NVIDIA were active and culpable participants in the
21 fraudulent scheme alleged herein. Defendants knew and/or recklessly disregarded the falsity and
22 misleading nature of the information which they caused to be disseminated to the investing public. This
23 case does not involve allegations of false forward-looking statements or projections but instead involves
24 false statements concerning the Company’s business, finances, and operations. The ongoing fraudulent
25 scheme described in this complaint could not have been perpetrated over a substantial period of time, as
26 has occurred, without the knowledge and complicity of the personnel at the highest level of the
27 Company, including Defendants.

28 47. Among other reasons, Defendants engaged in such a scheme to inflate the price of
NVIDIA securities in order to: (a) protect and enhance their executive positions and the substantial

1 compensation and prestige they obtained thereby; and (b) enhance the value of their personal holdings of
2 NVIDIA securities.

3 VII.

4 LOSS CAUSATION

5 48. NVIDIA common stock promptly declined in value in response to corrective disclosures
6 made by Defendants during the Class Period and to the materialization of risks that had been concealed
7 by Defendants.

8 49. For example, on July 3, 2008 (the first day of trading following a disclosure of the
9 relevant truth), NVIDIA stock opened at \$12.98, down almost six dollars per share from its intraday
10 high of \$18.78 from the day before. This steep 31% decline reduced NVIDIA's market capitalization by
11 over \$3 billion in less than one day.

12 50. In the weeks that followed this corrective disclosure, shares in the Company would sell
13 for as little as \$10.55, down \$25.71 (or 71%) from NVIDIA's Class Period high of \$36.26.

14 VIII.

15 CLASS ACTION ALLEGATIONS

16 51. Plaintiff brings this action as a class action pursuant to Rules 23(a) and (b)(3) of the
17 Federal Rules of Civil Procedure on behalf of a Class, consisting of all persons who purchased or
18 otherwise acquired NVIDIA common stock between November 8, 2007, and July 2, 2008, inclusive, and
19 who were damaged thereby. Excluded from the Class are Defendants, members of the immediate family
20 of each of the Defendants, any subsidiary or affiliate of NVIDIA and the directors, officers, and
21 employees of NVIDIA or its subsidiaries or affiliates, or any entity in which any excluded person has a
22 controlling interest, and the legal representatives, heirs, successors and assigns of any excluded person.

23 52. The members of the Class are so numerous that joinder of all members is impracticable.
24 While the exact number of Class members is unknown to Plaintiff at this time and can only be
25 ascertained through appropriate discovery, Plaintiff believes that there are thousands of members of the
26 Class located throughout the United States. Throughout the Class Period, NVIDIA common stock was
27 listed and actively traded, on the NASDAQ, an open and efficient market. Record owners and other
28 members of the Class may be identified from records maintained by the Company and/or its transfer
agents and may be notified of the pendency of this action by mail, using a form of notice similar to that

1 customarily used in securities class actions.

2 53. Plaintiff's claims are typical of the claims of the other members of the Class as all
3 members of the Class were similarly affected by Defendants' wrongful conduct in violation of federal
4 law that is complained of herein.

5 54. Plaintiff will fairly and adequately protect the interests of the members of the Class and
6 has retained counsel competent and experienced in class and securities litigation.

7 55. Common questions of law and fact exist as to all members of the Class and predominate
8 over any questions solely affecting individual members of the Class. Among the questions of law and
9 fact common to the Class are:

- 10 a. whether the federal securities laws were violated by Defendants' acts and
11 omissions as alleged herein;
- 12 b. whether Defendants participated in and pursued the common course of conduct
13 complained of herein;
- 14 c. whether documents, press releases, and other statements disseminated to the
15 investing public and the Company's shareholders during the Class Period
16 misrepresented material facts about the business, finances, financial condition,
17 and prospects of NVIDIA;
- 18 d. whether statements made by Defendants to the investing public during the Class
19 Period misrepresented and/or omitted to disclose material facts about the
20 business, finances, value, performance, and prospects of the Company;
- 21 e. whether the market price of NVIDIA common stock during the Class Period was
22 artificially inflated due to the material misrepresentations and failures to correct
23 the material misrepresentations complained of herein; and
- 24 f. the extent to which the members of the Class have sustained damages and the
proper measure of damages.

25 56. A class action is superior to all other available methods for the fair and efficient
26 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the
27 damages suffered by individual Class members may be relatively small, the expense and burden of
28 individual litigation make it impossible for members of the Class to individually redress the wrongs

1 done to them. There will be no difficulty in the management of this suit as a class action.

2 **IX.**

3 **COUNTS**

4 **FIRST CLAIM**

5 **(Violations Of Section 10(b) Of The Exchange Act And Rule 10b-5**

6 **Promulgated Thereunder Against All Defendants)**

7 57. Plaintiff repeats and realleges each and every allegation contained above.

8 58. Each of the Defendants: (a) knew or recklessly disregarded material adverse non-public
9 information about the Company's financial results and then existing business conditions, which was not
10 disclosed; and (b) participated in drafting, reviewing and/or approving the misleading statements,
11 releases, reports, and other public representations of and about NVIDIA.

12 59. During the Class Period, Defendants, with knowledge of or reckless disregard for the
13 truth, disseminated or approved the false statements specified above, which were misleading in that they
14 contained misrepresentations and failed to disclose material facts necessary in order to make the
15 statements made, in light of the circumstances under which they were made, not misleading.

16 60. Defendants have violated § 10(b) of the Exchange Act and Rule 10b-5 promulgated
17 thereunder in that they: (a) employed devices, schemes and artifices to defraud; (b) made untrue
18 statements of material facts or omitted to state material facts necessary in order to make statements
19 made, in light of the circumstances under which they were made, not misleading; or (c) engaged in acts,
20 practices and a course of business that operated as a fraud or deceit upon the purchasers of NVIDIA
21 stock during the Class Period.

22 61. Plaintiff and the Class have suffered damage in that, in reliance on the integrity of the
23 market, they paid artificially inflated prices for NVIDIA stock, which subsequently declined in value as
24 a result of the revelation of the misrepresentations and omissions alleged herein. Plaintiff and the Class
25 would not have purchased NVIDIA stock at the prices they paid, or at all, if they had been aware that the
26 market prices had been artificially and falsely inflated by Defendants' false and misleading statements.

27 ///

28 ///

///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

Against Defendants Huang and Burkett)

63. The individual Defendants (Huang and Burkett) acted as controlling persons of the Company within the meaning of § 20(a) of the Exchange Act. By reason of their senior executive and/or Board positions they had the power and authority to cause the Company to engage in the wrongful conduct complained of herein.

X.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

///

XI.

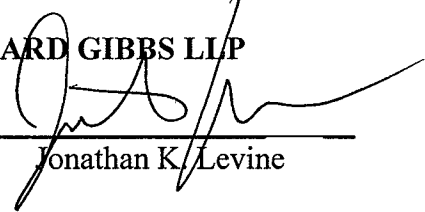
JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated: September 9, 2008

Respectfully submitted,

GIRARD GIBBS LLP

By: 

Jonathan K. Levine

Aaron M. Sheanin
601 California Street, Suite 1400
San Francisco, California 94108
Telephone: (415) 981-4800
Facsimile: (415) 981-4846

SHALOV STONE BONNER & ROCCO LLP

Ralph M. Stone
rstone@lawssb.com
Thomas G. Ciarlone, Jr.
tciarlone@lawssb.com
485 Seventh Avenue, Suite 1000
New York, NY 10018
Telephone: (212) 239-4340
Facsimile: (212) 239-4310

Counsel for Individual and Representative Plaintiff Lisa Miller