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21 *Counsel for Individual and Representative*
22 *Plaintiffs and the Proposed Class*

23 **UNITED STATES DISTRICT COURT**
24 **NORTHERN DISTRICT OF CALIFORNIA**
25 **SAN FRANCISCO DIVISION**

26 **Abdi Nazemian**, an individual;
27 **Brian Keene**, an individual; and
28 **Stewart O’Nan**, an individual;

Individual and Representative Plaintiffs,

v.

NVIDIA Corporation, a Delaware corporation;
Defendant.

Case No.

COMPLAINT

CLASS ACTION

DEMAND FOR JURY TRIAL

1 Plaintiffs Abdi Nazemian, Brian Keene, and Stewart O’Nan (together “Plaintiffs”), on behalf of
2 themselves and all others similarly situated, bring this class-action complaint (“Complaint”) against
3 defendant NVIDIA Corporation (“NVIDIA” or “Defendant”).
4

5 OVERVIEW

6 1. *Artificial intelligence*—commonly abbreviated “AI”—denotes software that is designed
7 to algorithmically simulate human reasoning or inference, often using statistical methods.

8 2. A *large language model* is an AI software program designed to emit convincingly
9 naturalistic text outputs in response to user prompts. NeMo Megatron-GPT (“NeMo Megatron”) is a
10 series of large language models created by NVIDIA and released in September 2022.

11 3. Rather than being programmed in the traditional way—that is, by human programmers
12 writing code—a large language model is *trained* by copying an enormous quantity of textual works,
13 extracting protected expression from these works, and transforming that protected expression into a
14 large set of numbers called *weights* that are stored within the model. These weights are entirely and
15 uniquely derived from the protected expression in the training dataset. Whenever a large language
16 model generates text output in response to a user prompt, it is performing a computation that relies on
17 these stored weights, with the goal of imitating the protected expression ingested from the training
18 dataset.

19 4. Plaintiffs and Class members are authors. They own registered copyrights in certain
20 books that were included in the training dataset that NVIDIA has admitted copying to train its NeMo
21 Megatron models. Plaintiffs and Class members never authorized NVIDIA to use their copyrighted
22 works as training material.

23 5. NVIDIA copied these copyrighted works multiple times to train its NeMo Megatron
24 language models.
25

26 JURISDICTION AND VENUE

27 6. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 because this case
28 arises under the Copyright Act (17 U.S.C. § 501).

AGENTS AND CO-CONSPIRATORS

1
2 14. The unlawful acts alleged against the Defendant in this class action complaint were
3 authorized, ordered, or performed by the Defendant's respective officers, agents, employees,
4 representatives, or shareholders while actively engaged in the management, direction, or control of the
5 Defendant's businesses or affairs. The Defendant's agents operated under the explicit and apparent
6 authority of their principals. Defendant, and its subsidiaries, affiliates, and agents operated as a single
7 unified entity.

8 15. Various persons or firms not named as defendants may have participated as co-
9 conspirators in the violations alleged herein and may have performed acts and made statements in
10 furtherance thereof. Each acted as the principal, agent, or joint venture of, or for Defendant with
11 respect to the acts, violations, and common course of conduct alleged herein.

FACTUAL ALLEGATIONS

12
13
14 16. NVIDIA is a diversified technology company founded in 1993 that originally focused on
15 computer-graphics hardware and has since expanded to other computationally intensive fields,
16 including software and hardware for training and operating AI software programs.

17 17. In September 2022, NVIDIA released its NeMo Megatron series of *large language*
18 *models*. A large language model ("LLM") is AI software designed to emit convincingly naturalistic text
19 outputs in response to user prompts.

20 18. Though an LLM is a software program, it is not created the way most software
21 programs are—that is, by human software programmers writing code. Rather, an LLM is *trained* by
22 copying an enormous quantity of textual works and then feeding these copies into the model. This
23 corpus of input material is called the *training dataset*.

24 19. During training, the LLM copies and ingests each textual work in the training dataset
25 and extracts protected expression from it. The LLM progressively adjusts its output to more closely
26 approximate the protected expression copied from the training dataset. The LLM records the results of
27 this process in a large set of numbers called *weights* that are stored within the model. These weights are
28 entirely and uniquely derived from the protected expression in the training dataset. For instance, the

1 NeMo Megatron-GPT 20B language model is so named because the model stores 20 billion (“20B”)
2 weights derived from protected expression in its training dataset.

3 20. Once the LLM has copied and ingested the textual works in the training dataset and
4 transformed the protected expression into stored weights, the LLM is able to emit convincing
5 simulations of natural written language in response to user prompts. Whenever an LLM generates text
6 output in response to a user prompt, it is performing a computation that relies on these stored weights,
7 with the goal of imitating the protected expression ingested from the training dataset.

8 21. Much of the material in NVIDIA’s training dataset, however, comes from copyrighted
9 works—including books written by Plaintiffs and Class members—that were copied by NVIDIA
10 without consent, without credit, and without compensation.

11 22. In September 2022, NVIDIA first announced the availability of the NeMo Megatron
12 language models in a video on its website: “For the first time, NVIDIA is making its checkpoints
13 available publicly, where the checkpoints are trained with NeMo Megatron ... this is just to begin with.
14 And this is not the end. We will continue to add more checkpoints in the future.”¹ In this context
15 “checkpoints” is an alternate term for language models within the NeMo Megatron series. The
16 language models released in September 2022 include NeMo Megatron-GPT 1.3B, NeMo Megatron-
17 GPT 5B, NeMo Megatron-GPT 20B, and NeMo Megatron-T5 3B.

18 23. Each of the NeMo Megatron models is hosted on a website called Hugging Face, where
19 it has a *model card* that provides information about the model, including its training dataset. The model
20 card for each of the NeMo Megatron models states that, “The model was trained on ‘The Pile’ dataset
21 prepared by EleutherAI.”²

22
23
24
25 ¹ See <https://www.nvidia.com/en-us/on-demand/session/gtcfall22-a41200/?nvid=nv-int-tblg-881125>,
26 starting at 37:25.

27 ² See, e.g., <https://huggingface.co/nvidia/nemo-megatron-gpt-1.3B#training-data>,
28 <https://huggingface.co/nvidia/nemo-megatron-gpt-5B#training-data>,
<https://huggingface.co/nvidia/nemo-megatron-gpt-20B#training-data>,
<https://huggingface.co/nvidia/nemo-megatron-t5-3B#training-data>

1 24. The Pile is a training dataset curated by a research organization called EleutherAI. In
2 December 2020, EleutherAI introduced this dataset in a paper called “The Pile: An 800GB Dataset of
3 Diverse Text for Language Modeling”³ (the “EleutherAI Paper”).

4 25. According to the EleutherAI Paper, one of the components of The Pile is a collection of
5 books called Books3. The EleutherAI Paper reveals that the Books3 dataset comprises 108 gigabytes of
6 data, or approximately 12% of the dataset, making it the third largest component of The Pile by size.

7 26. The EleutherAI Paper further describes the contents of Books3:

8
9 Books3 is a dataset of books derived from a copy of the contents of the
10 Bibliotik private tracker ... Bibliotik consists of a mix of fiction and
11 nonfiction books and is almost an order of magnitude larger than our next
12 largest book dataset (BookCorpus2). We included Bibliotik because
13 books are invaluable for long-range context modeling research and
14 coherent storytelling.⁴

15 27. Bibliotik is one of a number of notorious “shadow library” websites that also includes
16 Library Genesis (aka LibGen), Z-Library (aka B-ok), Sci-Hub, and Anna’s Archive. These shadow
17 libraries have long been of interest to the AI-training community because they host and distribute vast
18 quantities of unlicensed copyrighted material. For that reason, these shadow libraries also violate the
19 U.S. Copyright Act.

20 28. The person who assembled the Books3 dataset, Shawn Presser, has confirmed in public
21 statements that it represents “all of Bibliotik” and contains approximately 196,640 books.

22 29. Plaintiffs’ copyrighted books listed in Exhibit A are among the works in the Books3
23 dataset. Below, these books are referred to as the **Infringed Works**.

24
25
26
27 ³ Available at <https://arxiv.org/pdf/2101.00027.pdf>

28 ⁴ *Id.* at 3–4.

1 thousands of members in the Class geographically dispersed throughout the United States. Therefore,
2 joinder of all members of the Class in the prosecution of this action is impracticable.

3 42. **Typicality.** Plaintiffs' claims are typical of the claims of other members of the Class
4 because Plaintiffs and all members of the Class were damaged by the same wrongful conduct of
5 Defendant as alleged herein, and the relief sought herein is common to all members of the Class.

6 43. **Adequacy.** Plaintiffs will fairly and adequately represent the interests of the members of
7 the Class because the Plaintiffs have experienced the same harms as the members of the Class and have
8 no conflicts with any other members of the Class. Furthermore, Plaintiffs have retained sophisticated
9 and competent counsel who are experienced in prosecuting federal and state class actions, as well as
10 other complex litigation.

11 44. **Commonality and predominance.** Numerous questions of law or fact common to each
12 Class member arise from Defendant's conduct and predominate over any questions affecting the
13 members of the Class individually:

- 14 a. Whether Defendant violated the copyrights of Plaintiffs and the Class when they
15 obtained copies of Plaintiffs' Infringed Works and used them to train the NeMo
16 Megatron language models.
- 17 b. Whether Defendant intended to cause further infringement of the Infringed Works with
18 the NeMo Megatron models because they have distributed these models under an open
19 license and advertised those models as a base from which to build further models.
- 20 c. Whether any affirmative defense excuses Defendant's conduct.
- 21 d. Whether any statutes of limitation constrain the potential for recovery for Plaintiffs and
22 the Class.

23 45. **Other class considerations.** Defendant has acted on grounds generally applicable to the
24 Class. This class action is superior to alternatives, if any, for the fair and efficient adjudication of this
25 controversy. Prosecuting the claims pleaded herein as a class action will eliminate the possibility of
26 repetitive litigation. There will be no material difficulty in the management of this action as a class
27 action. The prosecution of separate actions by individual Class members would create the risk of
28 inconsistent or varying adjudications, establishing incompatible standards of conduct for Defendant.

DEMAND FOR JUDGMENT

WHEREFORE, Plaintiffs request that the Court enter judgment on their behalf and on behalf of the Class defined herein, by ordering:

- a) This action may proceed as a class action, with Plaintiffs serving as Class Representatives, and with Plaintiffs’ counsel as Class Counsel.
- b) Judgment in favor of Plaintiffs and the Class and against Defendant.
- c) An award of statutory and other damages under 17 U.S.C. § 504 for violations of the copyrights of Plaintiffs and the Class by Defendant.
- d) Reasonable attorneys’ fees as available under 17 U.S.C. § 505 or other applicable statute.
- e) Destruction or other reasonable disposition of all copies Defendant made or used in violation of the exclusive rights of Plaintiffs and the Class, under 17 U.S.C. § 503(b).
- f) Pre- and post-judgment interest on the damages awarded to Plaintiffs and the Class, and that such interest be awarded at the highest legal rate from and after the date this class action complaint is first served on Defendant.
- g) Defendant is to be financially responsible for the costs and expenses of a Court-approved notice program through post and media designed to give immediate notification to the Class.
- h) Further relief for Plaintiffs and the Class as may be just and proper.

JURY TRIAL DEMANDED

Under Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of all the claims asserted in this Complaint so triable.

1 Dated: March 8, 2024

By: /s/ Joseph R. Saveri
Joseph R. Saveri

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*Counsel for Individual and Representative
Plaintiffs and the Proposed Class*

**EXHIBIT A:
INFRINGED WORKS**

Stewart O’Nan: *Last Night at the Lobster* (TX0006976136)

Type of Work: Text

Registration Number / Date:
TX0006976136 / 2007-12-19

Application Title: LAST NIGHT AT THE LOBSTER.

Title: LAST NIGHT AT THE LOBSTER.

Description: Book, 146 p.

Copyright Claimant:
Stewart O’Nan.

Date of Creation: 2007

Date of Publication:
2007-11-01

Nation of First Publication:
United States

Authorship on Application:
Stewart O’Nan; Citizenship: United States. Authorship:
entire text.

Names: O’Nan, Stewart

Abdi Nazemian: *Like a Love Story* (TX0008763965)

Type of Work: Text

Registration Number / Date:
TX0008763965 / 2019-06-07

Application Title: LIKE A LOVE STORY.

Title: LIKE A LOVE STORY.

Description: Book, 413 p.

Copyright Claimant:
Abdi Nazemian.

Date of Creation: 2019

Date of Publication:
2019-06-01

Nation of First Publication:
United States

Authorship on Application:
Abdi Nazemian; Domicile: United States; Citizenship: United States. Authorship: text.

Names: Nazemian, Abdi

Brian Keene: *Ghost Walk* (TX0007008484)

Type of Work: Text

Registration Number / Date:
TX0007008484 / 2008-10-14

Application Title: Ghost Walk.

Title: Ghost Walk.

Description: Book, 275p.

Copyright Claimant:
Brian Keene.

Date of Creation: 2008

Date of Publication:
2008-08-01

Nation of First Publication:
United States

Authorship on Application:
Brian Keene; Citizenship: United States. Authorship:
Author of entire work.

Names: Keene, Brian

CIVIL COVER SHEET

The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Abdi Nazemian, an individual; Brian Keene, an individual; and Stewart O'Nan, an individual

(b) County of Residence of First Listed Plaintiff Los Angeles County, CA (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

See Attachment 1

DEFENDANTS

NVIDIA Corporation, a Delaware corporation

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

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

Attorneys (If Known)

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

- 1 U.S. Government Plaintiff
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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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-Transfer
8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 17 U.S.C. § 501

Brief description of cause: Copyright Infringement

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ 1,000,000,000.00

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

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

DATE 03/08/2024

SIGNATURE OF ATTORNEY OF RECORD

/s/ Joseph R. Saveri

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

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

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.

Attachment 1
Attorneys

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Christopher K.L. Young (State Bar No. 318371)
Elissa Buchanan (State Bar No. 249996)

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