

1 QUINN EMANUEL URQUHART &  
SULLIVAN, LLP  
2 Sean S. Pak (Bar No. 219032)  
seanpak@quinnemanuel.com  
3 50 California Street, 22nd Floor  
4 San Francisco, CA 94111  
Telephone: (415) 875-6600  
5 Facsimile: (415) 875-6700

HOGAN LOVELLS US LLP  
Trenton H. Norris (Bar No. 164781)  
trent.norris@hoganlovells.com  
4 Embarcadero Center, Suite 3500  
San Francisco, CA 94111  
Telephone: (415) 374-2300  
Facsimile: (415) 374-2499

6 QUINN EMANUEL URQUHART &  
SULLIVAN, LLP  
7 Andrew Schapiro (*pro hac vice forthcoming*)  
andrewschapiro@quinnemanuel.com  
8 191 N. Wacker Drive, Suite 2700  
9 Chicago, IL 60606-1881  
Telephone: (312) 705-7400  
10 Facsimile: (312) 705-7401

HOGAN LOVELLS US LLP  
Neal Kumar Katyal  
(*pro hac vice forthcoming*)  
William E. Havemann  
(*pro hac vice forthcoming*)  
Nathaniel A.G. Zelinsky  
(*pro hac vice forthcoming*)  
neal.katyal@hoganlovells.com  
will.havemann@hoganlovells.com  
nathaniel.zelinsky@hoganlovells.com  
555 Thirteenth Street NW  
Washington, D.C. 20004  
Telephone: (202) 637-5600  
Facsimile: (202) 637-5910

11 QUINN EMANUEL URQUHART &  
SULLIVAN, LLP  
12 Alex Spiro (*pro hac vice forthcoming*)  
13 Jessica Rose (*pro hac vice forthcoming*)  
14 Ron Hagiz (*pro hac vice forthcoming*)  
alexspiro@quinnemanuel.com  
15 jessicarose@quinnemanuel.com  
ronhagiz@quinnemanuel.com  
16 51 Madison Avenue, 22nd Floor  
17 New York, NY 10010  
Telephone: (212) 849-7000  
18 Facsimile: (212) 849-7100

19 Attorneys for Defendant NVIDIA Corporation

20 **UNITED STATES DISTRICT COURT**

21 **NORTHERN DISTRICT OF CALIFORNIA**

22 ABDI NAZEMIAN, BRIAN KEENE,  
23 STEWART O’NAN, individually and behalf of  
others similarly situated,

24 Plaintiffs,

25 v.

26 NVIDIA CORPORATION,

27 Defendant.  
28

Case No. 4:24-cv-01454-JST

**DEFENDANT NVIDIA  
CORPORATION’S ANSWER  
TO COMPLAINT**

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

3 **OVERVIEW**

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

28

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 **PLAINTIFFS**

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

15 **DEFENDANT**

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

17 **AGENTS AND CO-CONSPIRATORS**

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

25 **FACTUAL ALLEGATIONS**

26 16. NVIDIA admits that it was founded in 1993, that it invented the GPU (Graphics  
27 Processing Unit) in 1999, and that it provides hardware, software, and systems for  
28

1 computationally intensive workloads. NVIDIA denies the remaining allegations contained in  
2 Paragraph 16.

3 17. NVIDIA admits that it released a set of LLMs named NeMo Megatron–GPT in  
4 September 2022. NVIDIA further admits that some large language models may be designed to be  
5 used, potentially in conjunction with additional software, to generate outputs that are similar to  
6 human-generated text and/or to respond to user prompts, but denies that the term large language  
7 model is limited to the alleged definition. NVIDIA denies the remaining allegations contained in  
8 Paragraph 17.

9 18. NVIDIA admits that LLMs are models that may be trained at least in part  
10 using a large and diverse corpus of textual material, and that the material used for training  
11 may be referred to as a “training dataset.” NVIDIA denies the remaining allegations  
12 contained in Paragraph 18.

13 19. NVIDIA admits that LLMs include numerical parameters that may be referred to as  
14 “weights,” and that during training, “weights” may be adjusted. NVIDIA further admits that the  
15 NeMo-Megatron–GPT 20B model is so named at least in part because the model includes 20  
16 billion total trainable parameters. NVIDIA denies the remaining allegations contained in  
17 Paragraph 19.

18 20. To the extent Paragraph 20 states legal conclusions, no response is required. To the  
19 extent a response is required, NVIDIA admits that some large language models may be designed  
20 to be used, potentially in conjunction with additional software, to generate outputs that are similar  
21 to human-generated text and/or to respond to user prompts and that the model’s “weights” may be  
22 used in generating the outputs. NVIDIA denies the remaining allegations contained in Paragraph  
23 20.

24 21. NVIDIA denies that it has improperly used or copied the alleged works of Plaintiffs  
25 or of any of the putative Class members, and denies the allegations contained in Paragraph 21.

26 22. NVIDIA admits that it first announced the availability of the four NeMo Megatron  
27 LLMs referenced in Paragraph 22 in September 2022 and that those four models were released in  
28 September 2022. To the extent the allegations in Paragraph 22 purport to quote from portions of a

1 publicly available video, the full text of the video speaks for itself. NVIDIA denies the remaining  
2 allegations contained in Paragraph 22.

3 23. NVIDIA admits that the four referenced LLMs, NeMo Megatron–GPT 1.3B,  
4 NeMo Megatron–GPT 5B, NeMo Megatron–GPT 20B, and NeMo Megatron–T5 3B, are available  
5 on Hugging Face. NVIDIA admits that each of those four LLMs includes a model card, and that  
6 each model card states that, “The model was trained on ‘The Pile’ dataset prepared by  
7 EleutherAI.” NVIDIA denies the remaining allegations contained in Paragraph 23.

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

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

12 26. NVIDIA lacks sufficient information to form a belief as to the truth of the  
13 allegations contained in Paragraph 26, and on that basis denies them.

14 27. To the extent Paragraph 27 states legal conclusions, no response is required.  
15 NVIDIA denies the characterization of the listed data repositories as “shadow libraries” and denies  
16 that hosting data in or distributing data from the data repositories necessarily violates the U.S.  
17 Copyright Act. NVIDIA lacks sufficient information to form a belief as to the truth of the  
18 remaining allegations contained in Paragraph 27, and on that basis denies them.

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

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

23 30. NVIDIA lacks sufficient information to form a belief as to the truth of the  
24 allegations contained in Paragraph 30, and on that basis denies them.

25 31. To the extent Paragraph 31 states legal conclusions, no response is required.  
26 NVIDIA denies the remaining allegations contained in Paragraph 31.

27  
28

**COUNT 1**

**DIRECT COPYRIGHT INFRINGEMENT (17 U.S.C. § 501)**

**AGAINST NVIDIA**

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

33. To the extent Paragraph 33 states legal conclusions, no response is required.

NVIDIA lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 33, and on that basis denies them.

34. To the extent Paragraph 34 states legal conclusions, no response is required. To the extent a response is required, NVIDIA denies that it has infringed the copyrighted works asserted in this action. NVIDIA admits that a third-party dataset referred to as “The Pile” and at one time distributed by Eleuther.AI was included in the training dataset used in connection with the four NeMo Megatron models referenced in the Complaint, NeMo Megatron–GPT 1.3B, NeMo Megatron–GPT 5B, NeMo Megatron–GPT 20B, and NeMo Megatron–T5 3B. NVIDIA denies the allegations of the third sentence of Paragraph 34. NVIDIA lacks sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph 34, and on that basis denies them.

35. To the extent Paragraph 35 states legal conclusions, no response is required. To the extent a response is required, NVIDIA denies that it has infringed the copyrighted works asserted in this action and denies the remaining allegations contained in Paragraph 35.

36. To the extent Paragraph 36 states legal conclusions, no response is required. To the extent a response is required, NVIDIA denies that it has infringed the copyrighted works asserted in this action and denies the remaining allegations contained in Paragraph 36.

37. To the extent Paragraph 37 states legal conclusions, no response is required. To the extent a response is required, NVIDIA denies the allegations contained in Paragraph 37.

**CLASS ALLEGATIONS**

38. Paragraph 38 states conclusions of law and Plaintiffs’ characterization of their claims as to which no response is required. To the extent a response is required, NVIDIA denies the allegations contained in Paragraph 38.

1           39. Paragraph 39 states conclusions of law and Plaintiffs' characterization of their  
2 claims as to which no response is required. To the extent a response is required, NVIDIA denies  
3 that this action is suitable for class treatment under Rule 23 of the Federal Rules of Civil  
4 Procedure.

5           40. Paragraph 40 states conclusions of law and Plaintiffs' characterization of their  
6 claims as to which no response is required. To the extent a response is required, NVIDIA denies  
7 the allegations contained in Paragraph 40.

8           41. Paragraph 41 states conclusions of law or arguments as to which no response is  
9 required. To the extent a response is required, NVIDIA denies that it possesses information  
10 concerning the exact number of members of Plaintiffs' putative class. NVIDIA lacks sufficient  
11 information to form a belief as to the truth of the remaining allegations contained in Paragraph 41,  
12 and on that basis denies them.

13           42. Paragraph 42 states conclusions of law and Plaintiffs' characterization of  
14 their claims as to which no response is required. To the extent a response is required,  
15 NVIDIA denies the allegations contained in Paragraph 42.

16           43. Paragraph 43 states conclusions of law and Plaintiffs' characterization of  
17 their claims as to which no response is required. NVIDIA lacks sufficient information to  
18 form a belief as to the truth of the allegations contained in Paragraph 43, and on that basis  
19 denies them.

20           44. Paragraph 44 states conclusions of law and Plaintiffs' characterization of  
21 their claims as to which no response is required. To the extent a response is required,  
22 NVIDIA denies that this action is suitable for class treatment under Rule 23 of the Federal  
23 Rules of Civil Procedure.

24           45. Paragraph 45 states conclusions of law and Plaintiffs' characterization of their  
25 claims as to which no response is required. To the extent a response is required, NVIDIA denies  
26 that this action is suitable for class treatment under Rule 23 of the Federal Rules of Civil  
27 Procedure.

28

1 **DEMAND FOR JUDGMENT**

2 NVIDIA denies all allegations contained in the section entitled “Demand For Judgment,”  
3 and further denies that any relief should be granted to Plaintiffs whatsoever.

4 **JURY TRIAL DEMANDED**

5 NVIDIA denies any claim Plaintiffs assert is sufficient to survive to trial or warrant relief.

6 **AFFIRMATIVE DEFENSES**

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

11 **FIRST AFFIRMATIVE DEFENSE**

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

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

15 **SECOND AFFIRMATIVE DEFENSE**

16 **(Non-Infringement)**

17 Plaintiffs’ claims and the putative class members’ claims fail, in whole or in part, because  
18 NVIDIA has not infringed Plaintiffs’ alleged copyrighted works.

19 **THIRD AFFIRMATIVE DEFENSE**

20 **(Fair Use)**

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

23 **FOURTH AFFIRMATIVE DEFENSE**

24 **(Lack of Copyrightability)**

25 Plaintiffs’ claims and the putative class members’ claims fail, in whole or in part, to the  
26 extent they claim rights to elements of works or to works which are not protectable under  
27 copyright law, such as under the doctrines of *scènes à faire*, merger, or under 17 U.S.C. § 102(b),  
28 or that are in the public domain, are facts, lack requisite originality, are unregistered, are works to



1 which copyright protection has been abandoned, or are works to which Plaintiffs own no valid  
2 copyright.

3 **FIFTH AFFIRMATIVE DEFENSE**

4 **(De Minimis Copying)**

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

7 **SIXTH AFFIRMATIVE DEFENSE**

8 **(Laches, Waiver, Estoppel)**

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

11 **SEVENTH AFFIRMATIVE DEFENSE**

12 **(Statute of Limitations)**

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

15 **EIGHTH AFFIRMATIVE DEFENSE**

16 **(Injunctive Relief)**

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

19 **ADDITIONAL DEFENSES**

20 NVIDIA reserves the right to assert additional defenses.

21  
22 DATED: May 24, 2024

Respectfully submitted,

23 QUINN EMANUEL URQUHART & SULLIVAN, LLP

24  
25 By /s/ Sean S. Pak

26  
27 Attorneys for Defendant NVIDIA Corporation