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8 Attorneys for Defendants NVIDIA Corporation, Gigabyte
 Global Business Corporation d/b/a Giga-Byte Technology Co.
 Ltd., G.B.T. Inc., ASUS Computer International, and EVGA
 9 Corporation

10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12 OAKLAND DIVISION
 13

14
 15 IN RE NVIDIA GTX 970 GRAPHICS CARD
 LITIGATION

Case No. 15-cv-00760-PJH

CLASS ACTION

16
 17 This Document Relates To:
 18 ALL ACTIONS

**NOTICE OF MOTION AND MOTION
 TO DISMISS SECOND AMENDED
 CONSOLIDATED CLASS ACTION
 COMPLAINT**

Date: March 30, 2016
 Time: 9:00 a.m.
 Judge: Hon. Phyllis J. Hamilton
 Courtroom: 3, 3rd Floor

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1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on March 30, 2016, at 9:00 a.m., or as soon thereafter as
3 the matter may be heard, in the Courtroom of the Honorable Phyllis J. Hamilton, at 1301 Clay
4 Street, Oakland, California, Defendants NVIDIA Corporation, Gigabyte Global Business
5 Corporation d/b/a Giga-Byte Technology Co. Ltd., G.B.T. Inc., ASUS Computer International,
6 and EVGA Corporation (collectively, "Defendants") will and hereby do move the Court for an
7 order dismissing Plaintiffs' Second Amended Consolidated Class Action Complaint (the "SAC"
8 or "Complaint"). This motion is made pursuant to Rules 12(b)(6) and 9(b) of the Federal Rules
9 of Civil Procedure, on the grounds that the Complaint fails to state a claim and fails to comply
10 with Rule 9(b).

11 The motion is based on this Notice and the accompanying Memorandum of Points and
12 Authorities; the Request for Judicial Notice and exhibits attached thereto; the papers on file in the
13 action; argument of counsel at the hearing; and other such matters as may be judicially noticed or
14 come before the Court at the hearing on this matter.

15 **STATEMENT OF ISSUES TO BE DECIDED**

- 16 1. Whether the Complaint fails to state a claim under the Magnuson-Moss Warranty
17 Act, 15 U.S.C. §§ 2301, *et seq.*;
- 18 2. Whether the Complaint fails to state a claim of Breach of Express Warranty;
- 19 3. Whether the Complaint fails to state a claim of Breach of Implied Warranty of
20 Merchantability;
- 21 4. Whether the Complaint fails to state a claim of Common Counts/Assumpsit/Unjust
22 Enrichment;
- 23 5. Whether the Complaint fails to state a claim under the California Consumers Legal
24 Remedies Act, Cal. Civ. Code §§ 1750, *et seq.*;
- 25 6. Whether the Complaint fails to state a claim under the California Unfair
26 Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*;
- 27 7. Whether the Complaint fails to state a claim under the California False Advertising
28 Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.*;

1 8. Whether the Complaint fails to state a claim of Negligent Misrepresentation;

2 9. Whether the Complaint fails to state a claim under the Michigan Consumer
3 Protection Act, Mich. Comp. Laws § 445.901, *et seq.*;

4 10. Whether the Complaint fails to state a claim under the Florida Deceptive and
5 Unfair Trade Practices Act, Fla. Stat. §§ 501.201, *et seq.*;

6 11. Whether the Complaint fails to state a claim under New York Gen. Bus. Law
7 § 349;

8 12. Whether the Complaint fails to state a claim under New York Gen. Bus. Law
9 § 350;

10 13. Whether the Complaint fails to state a claim under the Illinois Consumer Fraud
11 and Deceptive Practices Act, 815 Ill. Comp. Stat. 505/1, *et seq.*;

12 14. Whether the Complaint fails to state a claim under the Missouri Merchandising
13 Practices Act, Mo. Rev. Stat. § 407.010, *et seq.*;

14 15. Whether the Complaint fails to state a claim under the Oklahoma Consumer
15 Protection Act, Okla. Stat. tit. 15 § 751, *et seq.*;

16 16. Whether the Complaint fails to state a claim under the Connecticut Unfair Trade
17 Practices Act, Conn. Gen. Stat. § 42-110, *et seq.*;

18 17. Whether the Complaint fails to state a claim under the North Carolina Unfair and
19 Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1;

20 18. Whether the Complaint fails to state a claim under the Maryland Unfair and
21 Deceptive Trade Practices Act, Md. Code Ann. § 13-303;

22 19. Whether the Complaint fails to state a claim under the Colorado Unfair and
23 Deceptive Trade Practices Act, C.R.S. § 6-1-105;

24 20. Whether the Complaint fails to state a claim under the Pennsylvania Unfair Trade
25 Practices and Consumer Protection Law, 73 Pa. Stat. §§ 201-1, *et seq.*;

26 21. Whether the Complaint fails to state a claim under the Georgia Business Practices
27 Act; and

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1 22. Whether the Complaint fails to state a claim under similar Unfair and Deceptive
2 Trade Practices Acts.

3 Dated: January 22, 2016

ORRICK, HERRINGTON & SUTCLIFFE LLP

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/s/ Robert P. Varian
Robert P. Varian
Attorneys for Defendants