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16 **UNITED STATES DISTRICT COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA**
18 **SAN JOSE DIVISION**

19
20 CARLTON DAVENPORT and QUANG HO,
Individually and on Behalf of All Others
21 Similarly Situated,

22 Plaintiffs,

23 v.

24 NVIDIA Corporation,

25 Defendant.

CASE NO.

CLASS ACTION

**COMPLAINT FOR DAMAGES AND
EQUITABLE RELIEF**

DEMAND FOR JURY TRIAL

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1 Plaintiffs Carlton Davenport and Quang Ho (“Plaintiffs”), individually and on behalf of all
2 others similarly situated, bring this class action against defendant NVIDIA Corporation (“NVIDIA”
3 or “Defendant”), and allege on personal knowledge as to their own acts and experiences, and on
4 information and belief as to all other matters, the following:

5 **NATURE OF THE ACTION**

6 1. This is a class action lawsuit on behalf of purchasers of NVIDIA Shield TV, Shield
7 TV Pro, and Shield K1 Tablet devices (“Shield devices”).¹ These Shield devices contained the
8 GameStream feature, which allowed owners to stream games to their television (“TV”) from a
9 personal computer (“PC”) at up to 60 frames per second in 4K resolution,² and offered the feature
10 as a part of the Nvidia Games Android TV application.³ The gravamen of this action is that
11 Defendant advertised, marketed and sold Shield devices as including the GameStream feature, but
12 subsequently disabled access to the feature, thus depriving Plaintiffs and Class Members of a
13 feature they paid for and impairing the use, functionality and value of Shield devices.

14 2. Defendant unveiled NVIDIA Shield, its first end-to-end consumer product, in
15 January of 2013.⁴ GameStream was a feature included in Shield devices ever since 2013.⁵

16 3. In October of 2013, Defendant announced that the GameStream feature enabled
17 individuals to stream games in 4K resolution from a PC containing a NVIDIA GeForce® GTX
18 graphics card to their TV.⁶

19 4. On December 16, 2022, Defendant issued an “End of Service Notification”⁷
20 warning Shield device owners that, “GameStream may continue to work for a time, but will no
21

22 ¹ www.nvidia.com/en-us/shield/support/shield-tv/gamestream/

23 ² *Id.*

24 ³ www.pcmag.com/news/nvidia-reportedly-drops-shield-tv-support-for-gamestream

25 ⁴ www.engadget.com/2014-07-22-nvidia-shield-tablet.html

26 ⁵ www.theverge.com/2022/12/19/23516370/nvidia-gamestream-feature-shield-devices-end-of-support

27 ⁶ www.engadget.com/2013-10-18-nvidia-montreal-2013-1.html

28 ⁷ https://nvidia.custhelp.com/app/answers/detail/a_id/5436/~/gamestream-end-of-service-notification; www.makeuseof.com/what-happening-nvidia-gamestream/

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1 longer be supported and eventually will stop working.”⁸

2 5. On March 29, 2023, Defendant intentionally forced an update to all Shield devices
3 removing the GameStream feature on all Shield devices.⁹ Thereafter, all owners of Shield devices
4 lost access to the core feature they paid for.

5 6. Defendant promoted two alternative methods for streaming games once
6 GameStream became unavailable: (1) Valve Corporation’s Steam Link (“Steam Link”) application,
7 and (2) NVIDIA’s GeForce NOW service.¹⁰

8 7. Steam Link is not an adequate substitute for GameStream. Games streamed over
9 Steam Link have high latency, which is undesirable to gamers.¹¹ GameStream, by contrast, allowed
10 Shield owners to stream any games they played on their PCs at 4K 60 Hz, with low latency.¹²

11 8. GeForce Now is not an adequate substitute for GameStream. While NVIDIA
12 GeForce NOW allows Shield owners to stream PC games from the cloud, these sessions are time-
13 limited, and, at the time of this filing, cost \$20 per month to stream in 4K resolution.¹³

14 9. Thus, neither alternative is suitable, and NVIDIA’s conduct has forced Plaintiffs
15 into an untenable position: to use the inferior Steam Link service exclusively and/or pay for
16 NVIDIA’s GeForce NOW cloud-based service to receive similar stream quality.

17 10. Plaintiffs bring this action individually and on behalf of all others similarly situated
18 who purchased Shield devices nationwide containing the GameStream feature and subsequently
19 lost access to the feature. Plaintiffs allege trespass to chattels, breach of the implied warranty of
20 fitness for a particular purpose, and violations of (a) California’s Unfair Competition Law, Cal.
21 Bus. & Prof. Code §§17200, et seq. (the “UCL”), (b) California Consumers Legal Remedies Act,
22

23 ⁸ *Id.*

24 ⁹ <https://9to5google.com/2023/03/29/shield-tv-gamestream-removal/>

25 ¹⁰ https://nvidia.custhelp.com/app/answers/detail/a_id/5436/~/gamestream-end-of-service-notification

26 ¹¹ www.theverge.com/2022/12/25/23524514/valve-original-steam-link-discontinued-app-latency-bug

27 ¹² www.digitaltrends.com/gaming/nvidia-kills-gamestream-shield/

28 ¹³ www.makeuseof.com/nvidia-geforce-now-bringing-4k-streaming-to-pc-windows-mac-gamers/

1 Cal. Civ. §§ 1750 et seq. (“CLRA”), and (c) state consumer protection statutes, and seek damages
2 and equitable relief.

3 **THE PARTIES**

4 11. Plaintiff Carlton Davenport is a citizen of New Mexico and resides in Doña Ana
5 County, New Mexico. In 2022, he purchased a Shield device at a Best Buy store in Las Cruces,
6 New Mexico. He purchased the device for his personal use so he could stream games from his
7 desktop computer to his television using the Shield’s GameStream feature.

8 12. Plaintiff Quang Ho is a citizen of California and resides in San Bernardino County,
9 California. In 2020, he purchased two Shield devices, on two separate occasions, at a Best Buy
10 store located in Chino Hills, California. He purchased both devices for his personal use so he could
11 stream games from his desktop computer to his television using the Shield devices’ GameStream
12 feature.

13 13. NVIDIA is a Delaware corporation with its principal place of business in Santa
14 Clara, California. NVIDIA has a reach across several industries including graphics, gaming,
15 supercomputing, autonomous driving, machine learning, the metaverse, artificial intelligence,
16 robotics, and automotive. NVIDIA products include, but are not limited to, their Shield devices. In
17 addition to being headquartered and having its principal place of business in Santa Clara,
18 California, NVIDIA transacts substantial business throughout the State of California and within
19 this District. Further, substantially all of the misconduct alleged in this Complaint occurred in
20 and/or emanated from California.

21 **JURISDICTION AND VENUE**

22 14. This Court has subject matter jurisdiction over this action pursuant to the Class
23 Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because at least one Class member is of diverse
24 citizenship from the Defendant; there are more than 100 Class members nationwide; and the
25 aggregate amount in controversy exceeds \$5,000,000. This Court has personal jurisdiction over the
26 parties because Defendant conducts substantial business in this State, has had systematic and
27 continuous contacts with this State, and has agents and representatives that can be found in this
28 State.

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1 15. Venue is proper in this District under 28 U.S.C. § 1391(a) because a substantial part
2 of the events or omissions giving rise to the claims occurred within this District, and Defendant
3 maintains its headquarters in this District.

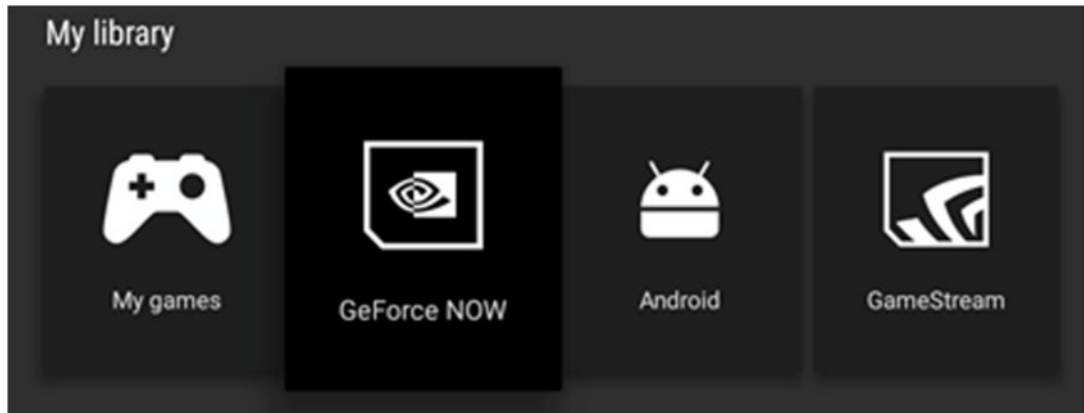
4 **INTRADISTRICT ASSIGNMENT**

5 16. Assignment to the San Jose division of this district is appropriate under Civil Local
6 Rule 3-2 because a substantial part of the events or omissions which give rise to the claims occurred
7 within the jurisdiction of the San Jose division.

8 **SUBSTANTIVE ALLEGATIONS**

9 17. Defendant unveiled its first end-to-end consumer product, NVIDIA Shield, in
10 January of 2013.

11 18. In October of 2013, Defendant announced GameStream. Shield devices containing
12 the GameStream feature allowed Shield owners to stream games to their TV from a PC at up to 60
13 frames per second at 4K resolution, and enabled users to wirelessly play their PC games on their
14 Shield device.¹⁴ Defendant offered the feature as a part of the Nvidia Games Android TV
15 application.

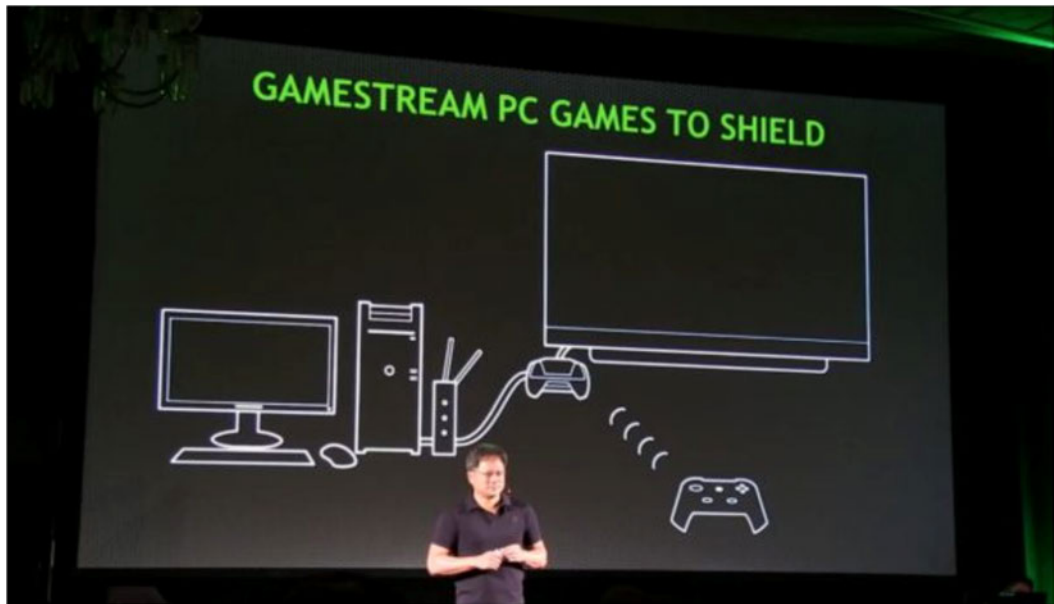


23 19. Since it first introduced the NVIDIA Shield, Defendant has gone to great lengths to
24 promote the benefits of its GameStream functionality. Defendant has described its GameStream
25 technology as “using GeForce Experience to optimize game settings to deliver a seamless out-of-
26
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28 ¹⁴ <https://hothardware.com/news/nvidia-shield-pulling-plug-on-gamestream-feature>

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1 the-box experience.”¹⁵



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12 20. Plaintiffs purchased Shield devices at a price premium compared to similar products
13 that lack features equivalent to GameStream. With the GameStream feature as a key selling point,
14 retailers priced the NVIDIA Shield TV in the range of \$129.99 to \$149.99 and the Shield TV Pro
15 at \$179.99 to \$199.99.¹⁶ In comparison, the Roku Ultra, which Roku has touted as its most powerful
16 Roku player ever, lacks the ability the stream PC games at 4K 60 Hz, and is \$100 less expensive
17 than the Shield TV Pro.¹⁷

18 21. Despite the steep price tag, Plaintiffs chose to pay the premium because they wanted
19 access to the Shield devices’ GameStream feature. Users were very impressed with this feature and
20 expressed their excitement in public forums, including Reddit. As one GameStream review article
21 explained, Defendant’s GameStream feature was particularly attractive to PC gamers who had large
22 collections of games: “One of the nicest things about GameStream is the price: it’s free. Since
23 you’re streaming games you own to devices you own from a PC you own, there’s really nothing to
24 charge for, after all. If your PC has everything it needs, setting up GameStream is pretty much a
25 no-brainer: GeForce Experience handles all the heavy lifting for you. From there, you can stream

26 _____
27 ¹⁵ www.nvidia.com/en-us/support/gamestream/how-gamestream-works/

28 ¹⁶ <https://store.nvidia.com/en-us/shield/>

¹⁷ www.roku.com/products/roku-ultra

1 your PC games pretty much anywhere you are: in the living room, bedroom, Starbucks, or
2 anywhere else there's Wi-Fi.”¹⁸



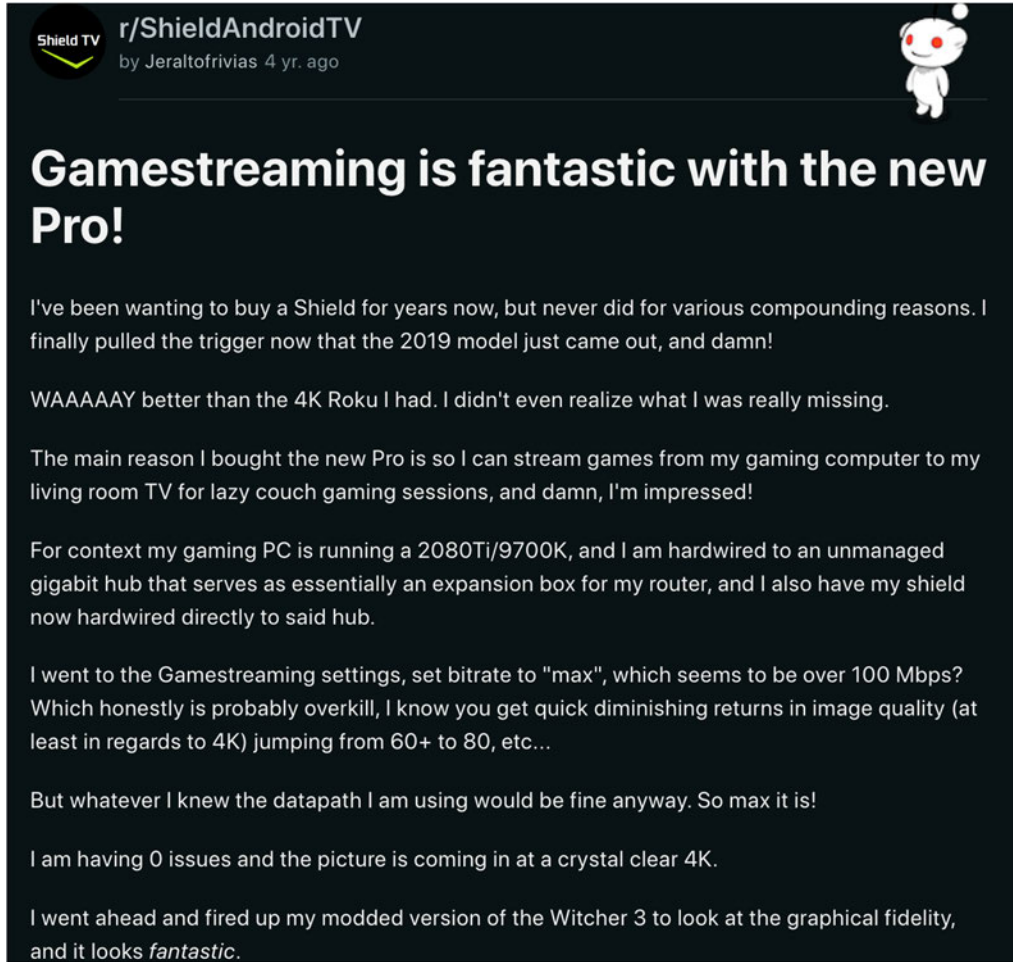
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28 ¹⁸ www.howtogeek.com/294002/nvidia-gamestream-vs.-geforce-now-whats-the-difference/

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22. In December 2022, Defendant announced that it would roll out an update in mid-February 2023 that would remove GameStream from the NVIDIA Games application.¹⁹ Defendant also published an “End of Service Notification” on its website warning Shield owners that if they chose to ignore the February 2023 update, GameStream might continue to work for a time but that it would eventually stop working.²⁰ Moreover, numerous other Shield other features would be disabled until the Update was downloaded.

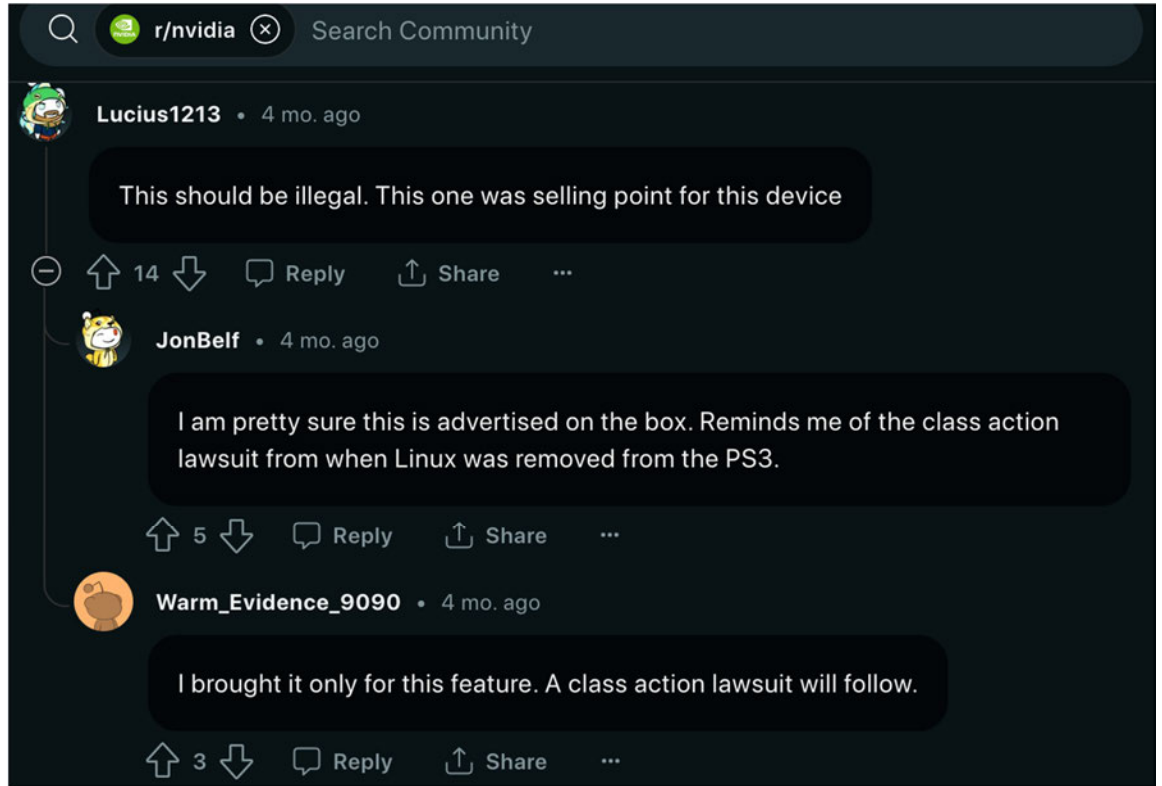
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¹⁹ www.digitaltrends.com/gaming/nvidia-kills-gamestream-shield/

²⁰ https://nvidia.custhelp.com/app/answers/detail/a_id/5436/~gamestream-end-of-service-notification

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23. Not surprisingly, the reaction to NVIDIA’s notification was prompt and vociferous.



24. In fact, a petition entitled “Nvidia: Revert decision to shutdown GameStream.”²¹ was started on Change.org that, as of this filing, has 4,120 signatures. The comments explain the importance of the GameStream feature to Shield device owners:

- “It is outrageous that Nvidia would remove a core feature with no justification whatsoever. Very shameful and disappointing.”
- “We paid for this service for the entire supported lifetime [sic] of the product. Removing it is performing a bait and switch on expensive consumer electronics.”
- “Nvidia scammed us.”²²

25. Defendant promoted two alternative methods for Shield owners to stream games when they no longer have access to GameStream: (1) Valve Corporation’s Steam Link service, and (2) NVIDIA’s GeForce NOW service.²³ However, neither alternative is a suitable replacement for

²¹ www.change.org/p/nvidia-nvidia-revert-decision-to-shutdown-gamestream

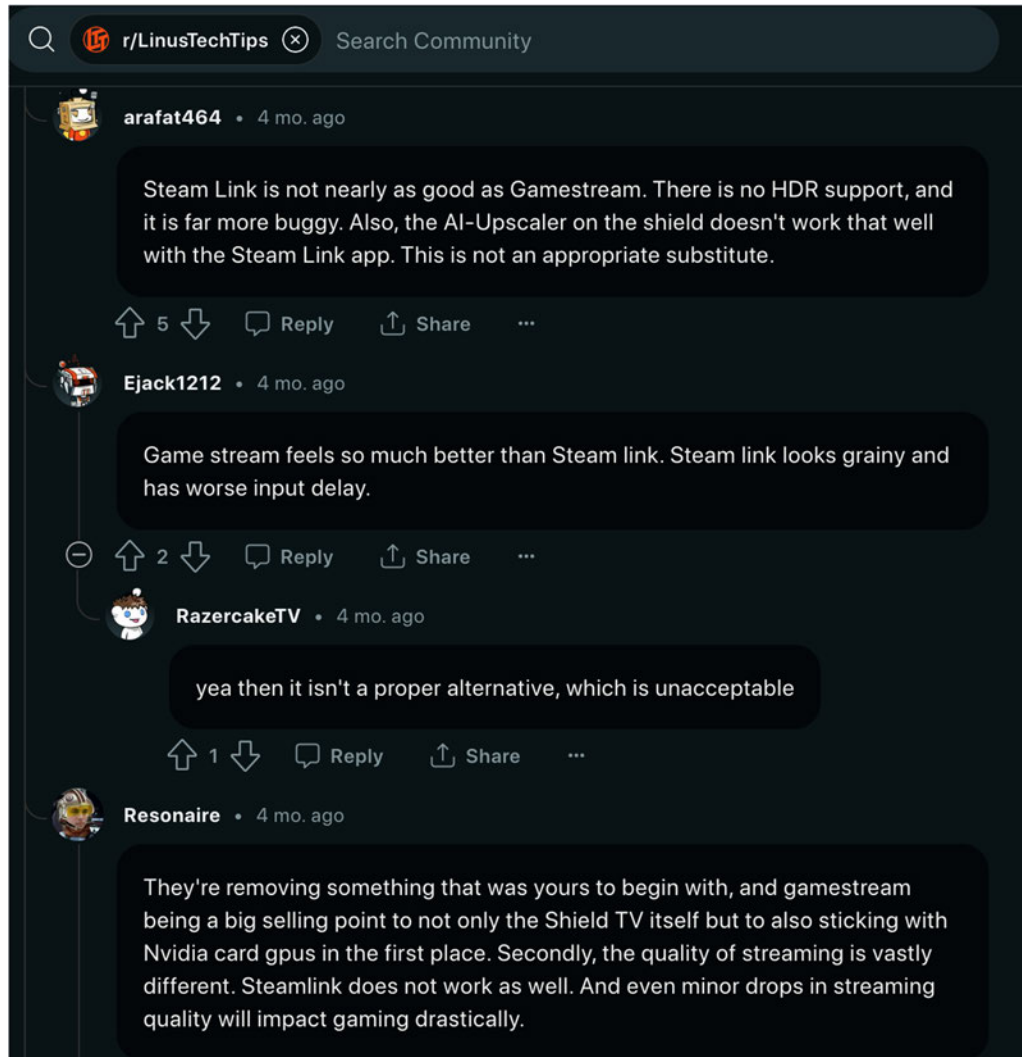
²² *Id.*

²³ *Id.*

1 GameStream.

2 26. Games streamed over Steam Link have high latency, which is undesirable to
3 gamers.²⁴ GameStream, by contrast, allowed Shield owners to stream any games they played on
4 their PCs at 4K 60 Hz, with low latency.²⁵

5 27. Shield owners complained about Steam Link’s streaming quality and support.



23 28. Although NVIDIA GeForce NOW allows Shield owners to stream PC games from
24 the cloud, these sessions are time-limited, and, at the time of this filing, cost approximately \$20 per
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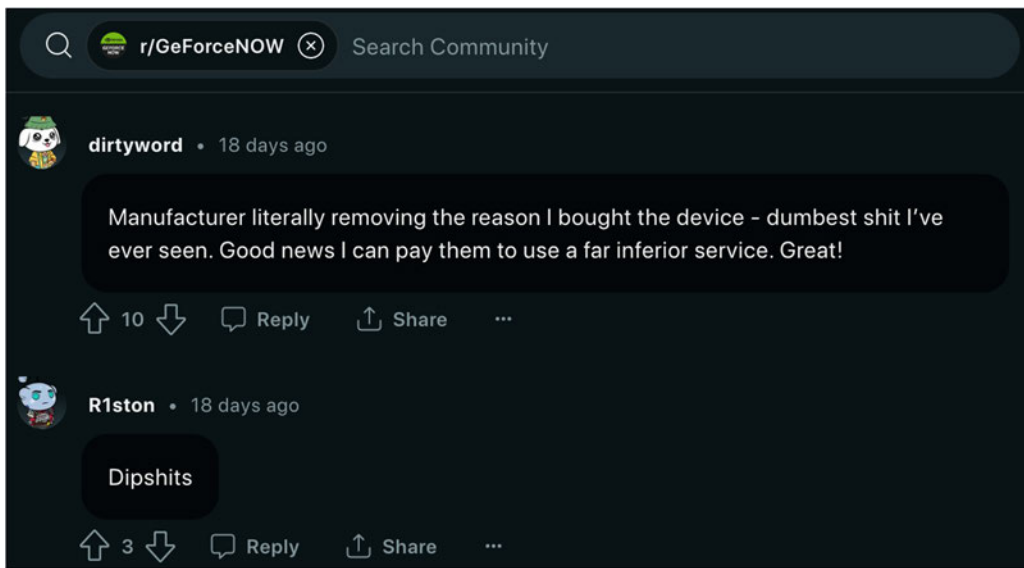
27 ²⁴ www.theverge.com/2022/12/25/23524514/valve-original-steam-link-discontinued-app-latency-bug

28 ²⁵ www.digitaltrends.com/gaming/nvidia-kills-gamestream-shield/

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1 month to stream at 4K resolution.²⁶

2 29. On March 29, 2023, Defendant intentionally forced an update to all Shield devices
 3 that disabled the GameStream feature.²⁷ Thereafter, Shield owners lost access to the core
 4 advertised, promoted feature that they purchased. As expected, the public’s reaction to the March
 5 update was vehement.



CLASS ACTION ALLEGATIONS

17 30. Plaintiffs bring this suit as a class action pursuant to Rule 23 of the Federal Rules of
 18 Civil Procedure, on behalf of themselves and all other similarly situated persons. The Nationwide
 19 Class is defined as:

All persons who purchased, in the United States and its territories, new Shield devices with the GameStream feature and who continued to own them on March 29, 2023.

22 31. Plaintiffs bring this action as a class action on behalf of themselves and all others
 23 similarly situated pursuant to state consumer protection laws. The Multi-State Class is defined as:

All persons who purchased, in the State of California or any state with similar laws,²⁸

25 ²⁶ www.makeuseof.com/nvidia-geforce-now-bringing-4k-streaming-to-pc-windows-mac-gamers/

26 ²⁷ <https://9to5google.com/2023/03/29/shield-tv-gamestream-removal/>

27 ²⁸ While discovery may alter the following, Plaintiffs assert that the other states with similar
 28 consumer protection laws under the facts of this case include, but are not limited to: Arkansas (Ark. Code §§ 4-88-101, et seq.); California (Cal. Bus. & Prof. Code §17200, et seq.); Colorado (Colo.

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1 **new Shield devices with the GameStream feature and who continued to own them on**
2 **March 29, 2023.**

3 32. Plaintiff Ho also seeks certification, to the extent necessary or appropriate, of a
4 California Subclass defined as:

5 **All persons who purchased, in the State of California, new Shield devices with the**
6 **GameStream feature and who continued to own them on March 29, 2023.**

7 33. The class period starts from the earliest date allowed by the applicable statute of
8 limitations and continues to the date of judgment.

9 34. Excluded from the classes are Defendant and its subsidiaries and affiliates, as well
10 as Defendant’s executives, board members, legal counsel, and their immediate families. Also
11 excluded are all governmental entities and any judicial officers assigned to hear any aspect of this
12 case.

13 35. Plaintiffs reserve the right to amend or modify the Class definitions with greater
14 specificity or further division into subclasses or limitation to particular issues.

15 36. Numerosity. The proposed Classes are sufficiently numerous such that joinder of all
16 members is impracticable. Defendant has sold millions of Shield devices to consumers nationwide
17 throughout the class period. The Class members can be identified through Defendant’s and/or Class
18 members’ records.

19
20 _____
21 Rev. Stat. §§ 6-1-101, et seq.); Connecticut (Conn. Gen. Stat. §§ 42-110, et seq.); Delaware (Del.
22 Code tit. 6, §§ 2511, et seq.); District of Columbia (D.C. Code §§ 28-3901, et seq.); Florida (Fla.
23 Stat. §§ 501.201, et seq.); Hawaii (Haw. Rev. Stat. §§ 480-1, et seq.); Idaho (Idaho Code §§ 48-601,
24 et seq.); Illinois (815 ICLS §§ 505/1, et seq.); Maine (Me. Rev. Stat. tit. 5 §§ 205-A, et seq.);
25 Massachusetts (Mass. Gen. Laws Ch. 93A, et seq.); Michigan (Mich. Comp. Laws §§ 445.901, et
26 seq.); Minnesota (Minn. Stat. §§ 325F.67, et seq.); Missouri (Mo. Rev. Stat. §§ 407.010, et seq.);
27 Montana (Mo. Code. §§ 30-14-101, et seq.); Nebraska (Neb. Rev. Stat. §§ 59 1601, et seq.); Nevada
28 (Nev. Rev. Stat. §§ 598.0915, et seq.); New Hampshire (N.H. Rev. Stat. §§ 358-A:1, et seq.); New
Jersey (N.J. Stat. §§ 56:8-1, et seq.); New Mexico (N.M. Stat. §§ 57-12- 1, et seq.); New York (N.Y.
Gen. Bus. Law §§ 349, et seq.); North Dakota (N.D. Cent. Code §§ 51-15-01, et seq.); Oklahoma
(Okla. Stat. tit. 15, §§ 751, et seq.); Oregon (Or. Rev. Stat. §§ 646.605, et seq.); Rhode Island (R.I.
Gen. Laws §§ 6-13.1-1, et seq.); South Dakota (S.D. Code Laws §§ 37-24-1, et seq.); Texas (Tex.
Bus. & Com. Code §§ 17.41, et seq.); Virginia (VA Code §§ 59.1-196, et seq.); Vermont (Vt. Stat.
tit. 9, §§ 2451, et seq.); Washington (Wash. Rev. Code §§ 19.86.010, et seq.); West Virginia (W.
Va. Code §§ 46A-6- 101, et seq.); and Wisconsin (Wis. Stat. §§ 100.18, et seq.).

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1 37. Common Questions of Fact and Law. Common questions of fact and law exist as to
2 all members of the Classes and predominate over any questions affecting solely individual
3 members of the Class, pursuant to Federal Rule of Civil Procedure 23(b)(3). Questions of fact and
4 law that predominate over any individual issues include, but are not limited to, the following:

- 5 (a) Whether Defendant caused the GameStream feature to stop working on Shield
6 devices;
- 7 (b) Whether Defendant’s misconduct described herein constitutes unfair or unlawful
8 business practices pursuant to state consumer protection statutes;
- 9 (c) Whether Defendant’s misconduct described herein constitutes trespass to chattels;
- 10 (d) Whether Plaintiffs and members of the Classes have sustained financial loss, and
11 the proper measure of any such financial loss;
- 12 (e) Whether Plaintiffs and members of the Classes are entitled to equitable relief,
13 including restitution and/or injunctive relief; and
- 14 (f) Whether Plaintiffs and the members of the Classes are entitled to damages, and the
15 proper measure of any such damages.

16 38. Typicality. Plaintiffs’ claims are typical of the claims of Class members because
17 Plaintiffs and Class members bought Shield devices and sustained damages arising out of
18 Defendant’s wrongful conduct as detailed herein. Specifically, Plaintiffs and Class members’
19 claims arise from Defendant intentionally removing access to the GameStream feature.

20 39. Adequacy. Plaintiffs will fairly and adequately protect the interests of the Class
21 members and has retained counsel competent and experienced in class action lawsuits. Plaintiffs
22 have no interests antagonistic to or in conflict with those of Class members and therefore will be
23 adequate as representatives for the Classes.

24 40. Superiority. A class action is superior to other available methods for the fair and
25 efficient adjudication of this controversy since joinder of all the members of the Class is
26 impracticable. Furthermore, the adjudication of this controversy through a class action will avoid
27 the potentially inconsistent and conflicting adjudications of the claims asserted herein. There will
28 be no difficulty in the management of this action as a class action.

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**FIRST CAUSE OF ACTION
TRESPASS TO CHATTELS
(On Behalf of the Nationwide Class)**

41. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

42. Plaintiffs and the Class Members maintained actual or constructive possession of their Shield devices.

43. Defendant intentionally interfered with Plaintiffs and the Class Members' use of their Shield devices by intentionally causing the GameStream feature to stop functioning on Shield devices.

44. Plaintiffs and the Class Members did not consent to Defendant's interference with their Shield devices.

45. Defendant's interference was the actual and proximate cause of injury to Plaintiffs and the Class Members because it actually and substantially harmed the functionality of Shield devices by disabling a key feature of the device. Defendant's conduct significantly impaired the devices' functionality, quality, and value, and Plaintiffs and Class Members' use and enjoyment of the devices.

46. Defendant's interference was malicious and oppressive. Defendant knew and intended that its conduct would cause injury to Plaintiffs and Class Members, and it acted with conscious disregard of their rights.

47. As a result of Defendant's interference with their Shield devices, Plaintiffs and Class Members are entitled to recover the actual damages they suffered in an amount to be determined at trial, as well as punitive damages in an amount to be determined at trial.

**SECOND CAUSE OF ACTION
BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE
(On Behalf of the Nationwide Class)**

48. Plaintiffs repeat and reallege each and every allegation above as if set forth in full herein.

49. Defendant is a merchant as defined by applicable Uniform Commercial Code

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1 provisions and sold Shield devices to Plaintiffs and Class Members.

2 50. Defendant impliedly warranted to Plaintiffs and members of the Class that NVIDIA
3 GameStream is a feature and service that, alongside with the appropriate hardware, would allow
4 Plaintiffs to stream games in 4K from a PC to their TV.

5 51. Plaintiffs and the Class Members were in privity with Defendant as a result of
6 Defendant’s express written warranties, or by Defendant acting in concert with other agents,
7 servants, partners, aiders and abettors, co-conspirators and/or joint venturers that were direct sellers
8 and Defendant’s authorized retail stores.

9 52. As alleged herein, Defendant’s conduct described herein breached the implied
10 warranty of fitness for particular purpose because it eliminated access to the GameStream feature.
11 Defendant’s actions have rendered the Shield devices unmerchantable and unfit for their intended
12 purpose.

13 53. Defendant’s conduct in eliminating access to the GameStream feature is a breach of
14 Defendant’s obligation of good faith and fair dealing.

15 54. Defendant knew or should have known that the update had aforesaid properties and
16 would render Shield devices unmerchantable and unfit for its intended use or purpose.

17 55. Defendant had reasonable and adequate notice of Plaintiffs and the Class Members’
18 claims for breach of implied warranty of merchantability via the publicly available consumer
19 complaints predating the filing of this complaint and failed to cure.

20 56. As a result of Defendant’s breaches of implied warranty, Plaintiffs and Class
21 Members have been injured and are entitled to equitable/injunctive relief and/or damages in a
22 measure and amount which are to be determined at trial.

23 **THIRD CAUSE OF ACTION**
24 **VIOLATIONS OF STATE CONSUMER PROTECTION STATUTES**
(On Behalf of the Multistate Class)

25 57. Plaintiffs repeat and reallege each and every allegation above as if set forth in full
26 herein.

27 58. Each Plaintiff and member of the Multi-State Class is a consumer, purchaser or other
28 person entitled to the protection of the consumer protection laws of the state in which he or she

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1 purchased a new Shield device with the GameStream feature.

2 59. Shield devices with the GameStream feature were advertised, marketed and sold by
3 Defendant and constitute products to which these consumer protection laws apply.

4 60. Plaintiffs and the Multi-State Class Members have been injured as a result of
5 Defendant’s violations of the state consumer protection statutes listed above in paragraph 31 and
6 footnote 28, which also provide a basis for redress to Plaintiffs and Multi-State Consumer Class
7 Members based on Defendant’s deceptive, unfair and unlawful acts, practices and conduct.

8 61. Defendant’s conduct as alleged herein violates the consumer protection, unfair trade
9 practices and deceptive acts laws of each of the jurisdictions encompassing the Multi-State
10 Consumer Class.

11 62. Defendant violated the Multi-State Class states’ unfair and deceptive acts and
12 practices laws by intentionally causing the GameStream feature of Shield devices to stop working,
13 thus substantially affecting Class Members’ use and enjoyment of the devices and denying them
14 access to a feature they purchased.

15 63. As a result of Defendant’s violations of the aforementioned states’ unfair and
16 deceptive practices laws, Plaintiffs and members of the Multi-State Consumer Class paid a
17 premium for Shield devices.

18 64. Pursuant to the aforementioned states’ unfair and deceptive practices laws, Plaintiffs
19 and members of the Multi-State Class are entitled to recover compensatory damages, restitution,
20 punitive damages and special damages, including but not limited to treble damages, reasonable
21 attorney’s fees and costs and other injunctive or declaratory relief as deemed appropriate or
22 permitted pursuant to the aforementioned state statutes.

23 **FOURTH CAUSE OF ACTION**
24 **VIOLATION OF CALIFORNIA’S UNFAIR COMPETITION LAW**
25 **Cal. Bus. & Prof Code § 17200, et seq.**
26 **(On Behalf of the California Subclass)**

27 65. Plaintiff Ho repeats and realleges each and every allegation above as if set forth in
28 full herein.

66. Defendant is a “person” as denied by Cal. Bus. & Prof. Code § 17201.

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1 67. The UCL prohibits acts of “unfair competition.” As used in this section, “unfair
2 competition” encompasses three distinct types of misconduct: (a) any “unlawful” business act or
3 practice;” (b) any “unfair” business act or practice; and (c) “any . . . unfair, deceptive, untrue or
4 misleading advertising.”

5 68. The first type of violation of the UCL is an “unlawful” business act or practice. In
6 committing the acts alleged above, Defendant violated the unlawful prong. An unlawful business
7 act is any act that is prohibited by law. Defendant’s violation of the Consumers Legal Remedies
8 Act, as alleged herein, constitutes an act prohibited by law.

9 69. The second type of violation of Section 17200 is an “unfair” business act or practice.
10 A practice may be “unfair” within the meaning of the UCL even if it does not violate particular
11 provisions of law, and even if the precise nature of the challenged conduct has yet to be addressed
12 in statutes or case law. Rather, in cases involving consumer goods, the “unfair” prong of the UCL
13 is designed to have the flexibility to deal with new situations and new abuses.

14 70. Defendant’s conduct described herein is unfair in that Defendant intentionally
15 interfered with Plaintiff’s and Class Members’ use and enjoyment of their Shield devices and, in
16 doing so, caused them to lose money or property. This conduct by Defendant was substantially
17 injurious to consumers, offended public policy, and was immoral, unethical, oppressive, and
18 unscrupulous, and the gravity of the conduct substantially outweighed any alleged benefits
19 attributable to such conduct.

20 71. Any purported “justification” for Defendant’s conduct is outweighed by the gravity
21 of the consequences to Plaintiffs and Class members and Defendant’s conduct is immoral,
22 unethical, oppressive, unscrupulous or substantially injurious to consumers.

23 72. These above-described unlawful and unfair business practices by Defendant present
24 an ongoing threat to Plaintiffs and the Class Members. Plaintiffs are informed and believe and
25 thereon allege that Defendant has systematically perpetrated deceptive and unfair practices upon
26 members of the public and has intentionally deceived Plaintiffs and the Class Members through the
27 conduct in causing the GameStream feature to stop working on Shield devices.

28 73. As a direct and proximate result of Defendant’s violation of the Unfair Competition

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1 Law, Plaintiff Ho and the California Subclass Members have suffered injury in fact and lost money
2 and property.

3 74. As a direct and proximate result of Defendant’s unlawful and unfair acts and
4 practices, Plaintiff Ho, on behalf of himself and all others similarly situated and, as appropriate, on
5 behalf of the general public, see equitable relief, including full restitution of all improper revenues
6 and ill-gotten profits derived from Defendant’s wrongful conduct to the fullest extent permitted by
7 law.

8 75. The refusal to reinstate access to GameStream on Shield devices constitutes ongoing
9 violations of the UCL and justifies the issuance of an injunction requiring Defendant to act in
10 accordance with the law. There is no other adequate remedy at law and if an injunction is not
11 ordered, Plaintiff Ho and the California Subclass Members will continue to suffer irreparable harm
12 and/or injury in that they will not receive access to a feature that they paid for. All remedies are
13 cumulative pursuant to Cal. Bus. & Prof. Code § 17205.

14 **FIFTH CAUSE OF ACTION**
15 **VIOLATION OF THE CALIFORNIA CONSUMERS LEGAL REMEDIES ACT**
16 **(On Behalf of the California Subclass)**

17 76. Plaintiff Ho repeats and realleges each and every allegation above as if set forth in
18 full herein.

19 77. Defendant is a “person,” as defined by Cal. Civ. Code § 1761(c).

20 78. Plaintiff and the California Subclass Members are “consumers,” within the meaning
21 of Cal. Civ. Code § 1761(d).

22 79. Shield devices are “goods,” within the meaning of Cal. Civ. Code § 1761(a).

23 80. Plaintiff Ho and the California Subclass Members’ purchases of Shield devices are
24 “transaction,” as that term is defined by Cal. Civ. Code § 1761(e).

25 81. As set forth below, the CLRA deems the following unfair methods of competition
26 and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result
27 or which does result in the sale or lease of goods or services to any consumer as unlawful:

- 28 • “Representing that goods ... have sponsorship, approval, characteristics, ingredients,
uses, benefits, or quantities that they do not have.” Cal. Civ. Code § 1770(a)(5);

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- 1 • “Advertising goods or services with intent not to sell them as advertised.” Cal. Civ.
2 Code § 1770(a)(9); and
- 3 • “Representing that the subject of a transaction has been supplied in accordance with a
4 previous representation when it has not.” Cal. Civ. Code § 1770(a)(16).

5 82. Defendant engaged in unfair competition or unfair or deceptive acts in violation of
6 Cal. Civ. Code § 1770 as set forth above when it advertised, marketed and sold Shield devices with
7 access to GameStream and thereafter intentionally interfered with Plaintiff’s and the California
8 Subclass Members’ use and enjoyment of their Shield devices and, in doing so, caused them to lose
9 money or property.

10 83. Defendant’s deceptive acts occurred in a course of conduct involving trade and
11 commerce in California and throughout the United States.

12 84. Defendant intended that Plaintiff Ho and California Subclass Members would rely
13 on their unfair and deceptive acts when purchasing Shield devices.

14 85. Plaintiff Ho and California Subclass Members would not have purchased, or would
15 have paid less for, Shield devices had they known that they would lose access to GameStream
16 feature.

17 86. As a direct and proximate result of Defendant’s violation of Cal. Civ. Code § 1770,
18 Plaintiffs and the Class members have suffered injury in fact and lost money and property.

19 87. As a direct and proximate result of Defendant’s unlawful and unfair acts and
20 practices, Plaintiffs, on behalf of themselves and all others similarly situated and, as appropriate,
21 on behalf of the general public, seek equitable relief, including an injunction and full restitution of
22 all improper revenues and ill-gotten profits derived from Defendant’s wrongful conduct to the
23 fullest extent permitted by law.

24 88. On April 12, 2023, pursuant to Cal. Civ. Code § 1782, Plaintiffs notified Defendant
25 in writing via certified mail, return receipt requested, of its violations of Cal. Civ. Code § 1770
26 described herein and demanded that it correct the problems associated with the actions detailed
27 herein and give notice to all affected consumers of its intent to do so.

28 89. A declaration establishing that venue in this District is proper pursuant to Civil Code

1 §1780(d) is attached hereto as Exhibit A.

2 90. This cause of action does not, at this point, seek damages, but is confined solely to
3 equitable relief. If Defendant does not remedy the conduct alleged herein within thirty days of
4 April 12, 2023, Plaintiffs will amend their Complaint to seek damages under the Consumer Legal
5 Remedies Act. *See* Cal. Civ. Code § 1782(d).

6 **PRAYER FOR RELIEF**

7 **WHEREFORE**, Plaintiffs and the Class Members pray for relief and judgment
8 against Defendant, as follows:

- 9 (g) An order certifying the classes and appointing Plaintiffs as Class Representatives
- 10 and their counsel as Class Counsel;
- 11 (h) Judgment finding Defendant liable for trespass to chattels;
- 12 (i) Judgment finding that Defendant violated the UCL by engaging in unlawful and/or
- 13 unfair business acts and practices;
- 14 (j) Judgment finding that Defendant violated the CLRA by engaging in unfair
- 15 competition or unfair or deceptive acts;
- 16 (k) Judgment finding that Defendant violated state consumer protection statutes by
- 17 engaging in unlawful and/or unfair business acts and practices;
- 18 (l) Damages suffered by Plaintiffs and the Class;
- 19 (m) Restitution and/or restitutionary disgorgement to Plaintiffs and the Class Members
- 20 of all monies wrongfully obtained by Defendant;
- 21 (n) Appropriate injunctive relief;
- 22 (o) Punitive damages for its intentional conduct as set forth herein;
- 23 (p) An award of attorneys’ fees and costs, as allowed by law;
- 24 (q) An award of pre-judgment and post-judgment interest, as provided by law; and
- 25 (r) Such other or further relief as may be appropriate under the circumstances.

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JURY DEMAND

Plaintiffs demand a trial by jury on all claims so triable.

DATED: April 18, 2023

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NAVEED ABAIE

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BENJAMIN GUBERNICK

By: /s/ Daniel L. Warshaw
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EXHIBIT A

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15 Attorneys for Plaintiffs

16 **UNITED STATES DISTRICT COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA**
18 **SAN JOSE DIVISION**

19
20 **CARLTON DAVENPORT and QUANG HO,**
Individually and on Behalf of All Others
21 Similarly Situated,
22
Plaintiffs,
23
v.
24
NVIDIA Corporation,
25
Defendant.
26

CASE NO.
CLASS ACTION
DECLARATION OF QUANG HO
PURSUANT TO CAL. CIV. CODE
SECTION 1780(d)

1 I, QUANG HO, declare as follows:

2 1. I am a citizen of the State of California, and a Plaintiff in this action. I have personal
3 knowledge of the facts herein and, if called as a witness, I could and would testify completely
4 thereto.

5 2. I make this declaration pursuant to California Civil Code § 1780(d) (“CLRA”).

6 3. The CLRA provides that, “[a]n action under subdivision (a) or (b) may be
7 commenced in the county in which the person against whom it is brought resides, has his or her
8 principal place of business, or is doing business, or in the county where the transaction or any
9 substantial portion thereof occurred.”

10 4. Venue for this matter is appropriate in the San Jose Division of the Northern District
11 of California because Defendant’s principal place of business is located in Santa Clara County.

12 I declare under penalty of perjury under the laws of the United States of America that the
13 foregoing is true and correct. Executed on 4/13/2023 in San Bernardino County, California.

14 
15 _____
16 QUANG HO

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Nvidia Hit with Class Action After Removing GameStream from Shield TV Streaming Device](#)
