UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JESSICA BERLINER, derivatively on behalf of NVIDIA CORPORATION, Plaintiff, vs. JEN-HSUN HUANG, STEPHEN C. NEAL, TENCH COXE, JOHN O. DABIRI, DAWN HUDSON, HARVEY C. JONES, MELISSA B. LORA, A. BROOKE SEAWELL, AARTI SHAH, MARK A. STEVENS, COLETTE M. KRESS, AJAY K. PURI, DEBORA SHOQUIST, and TIMOTHY S. TETER, Defendants, – and – NVIDIA CORPORATION, Nominal Defendant.	No. 1:26-cv-09153 Hon. Jorge L. Alonso

DEFENDANTS' MEMORANDUM OF LAW
IN SUPPORT OF THEIR MOTION TO DISMISS

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INTRODUCTION

To state a derivative claim against a corporation's Board of Directors and Officers, a shareholder must plead facts showing much more than a disagreement with the Board's business or legal judgment—she must plead a dereliction of duty so clear that the directors can be held individually liable. Here, Plaintiff Berliner does not even attempt to meet that exacting standard. Instead, Berliner blindly credits the allegations from the pending wave of misguided copyright litigations against NVIDIA, ignores all the defenses available to NVIDIA, ignores what the Board knew and believed, ignores recent court decisions that endorse NVIDIA's position, and claims that NVIDIA's Board breached their fiduciary duties by not simply surrendering and abandoning AI-model development. In other words, Berliner does nothing more than dispute the Board's reasoned, good faith legal and business judgment to proceed with NVIDIA's business in the face of what they view as meritless and opportunistic copyright claims. Even as pled, that decision was well within the Board's discretion and cannot form the basis for a derivative claim.

For hundreds of years, copyright law has recognized that "every idea, theory, and fact in a copyrighted work becomes instantly available for public exploitation at the moment of publication." *Golan v. Holder*, 565 U.S. 302, 328 (2012) (citation omitted). And although copyright law provides authors with the right to reproduce their work (17 U.S.C. § 106), it has never given authors the right to control how others use the facts, ideas, information, and concepts in copyrighted works. These features are "not some unforeseen byproduct of a statutory scheme" but are "rather, the essence of copyright, and a constitutional requirement." *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 349 (1991) (quotation marks and citations omitted). Thus, copyright law "encourages others to build freely upon the ideas and information conveyed by a work." *Id.* at 350.

Creating an AI model is a classic example of using unprotected facts, ideas, information, and concepts in works that have been published and made available worldwide. The AI model itself is an entirely new and different product, built from a massive volume of facts, ideas, and information that copyright law makes available to everyone.

Despite these longstanding principles, plaintiffs' lawyers have picked up the anti-AI cudgel and filed a frenzy of copyright lawsuits against every significant developer of AI models, including NVIDIA. The lawsuits do not allege that AI developers create copies that compete with the authors' publications. Rather, the lawsuits attempt to give the authors a right they do not have under the copyright law—control over the facts, ideas, information, and concepts in the works.

The copyright plaintiffs do not dispute that AI training draws unprotectable facts and ideas from the underlying works, compiling statistical factual patterns about word usage from massive and diverse datasets. Nonetheless, the copyright plaintiffs argue that because the AI training pipeline moves data into and out of memory, it creates "copies" that the plaintiffs can block.

The argument is an attempt to control uncopyrightable facts and ideas, and it collides with copyright's well-established "fair use" right. In the parlance of copyright law, even if the training pipeline makes interim copies, AI training is highly "transformative"—and exactly the type of activity copyright law is intended to encourage. Or, as courts have stated, AI training is "among the most transformative [technologies] many of us will see in our lifetimes." *Bartz v. Anthropic PBC*, 787 F. Supp. 3d 1007, 1033 (N.D. Cal. 2025); *Kadrey v. Meta Platforms Inc.*, 788 F. Supp. 3d 1026, 1044 (N.D. Cal. 2025) (holding that "[t]here is no serious question" that AI training is "highly transformative").

As the courts are consistently reaffirming, the copyright training lawsuits conflict with the letter, spirit, and policy of copyright law. Undaunted, Plaintiff Berliner seeks to use that meritless training litigation as a springboard, purporting to bring derivative claims as a shareholder on NVIDIA's behalf against NVIDIA's officers and directors. Yet Berliner's complaint adds up to nothing more than a claim that the mere existence of litigation—no matter how meritless or how defensible—is a basis for derivative claims against the officers and directors if they do not immediately surrender. That is not the law.

To begin, Plaintiff must plead particularized facts sufficient to show demand futility under Rule 23.1 to pursue derivative claims on behalf of the Company. But, as addressed in detail below, Plaintiff provides no factual allegations that could "disqualify" any of NVIDIA's directors. To the contrary, NVIDIA's directors and officers are acting exactly as the shareholders expect and demand—and NVIDIA shareholders overwhelmingly reelected this Board after the copyright lawsuits were filed.

Similarly, Berliner has not pled even the most basic elements required to state a claim for her asserted causes of action—reciting a litany of legal concepts, but no well-pleaded claim. For her "fiduciary-duty" claim, Berliner does not plead any facts about what NVIDIA's officers and directors allegedly did, believed, or said, let alone that any of them acted against NVIDIA's interests. Similarly, despite alleging securities fraud, Plaintiff has not alleged with particularity any supposedly fraudulent statements, facts showing scienter, or loss causation. Likewise, she has not alleged the essential-link element of her proxy claim or any of the elements of her insider trading claim. Thus, the Court should dismiss those claims under Rule 12(b)(6) as well.

In sum, the Court should not permit Plaintiff to pile on yet another meritless suit to the dozens already pending against AI developers. Berliner has provided no basis to second-guess the Board's judgment and the Court should dismiss this action with prejudice.

BACKGROUND

I. NVIDIA's Training Of Generative AI Models Is Not Copyright Infringement.

NVIDIA, a Delaware corporation headquartered in Santa Clara, California, designs the hardware and software platforms on which much of modern AI runs. Compl. ¶¶ 2, 19. In November 2021, NVIDIA announced its NeMo Megatron framework for training large language models, and in September 2022 it released several models based on that framework. *Id.* ¶ 58. NVIDIA continued developing language models in the years that followed, including Nemotron-4 15B and Nemotron-4 340B in 2024. *Id.* ¶ 74. By early 2024, NVIDIA was also developing Cosmos, a generative video model designed to produce audiovisual content in response to language prompts. *Id.* ¶ 75. Between 2024 and 2026, NVIDIA announced or released a series of speech and voice models. *Id.* ¶¶ 104-09.

NVIDIA developed its generative AI models through "training." *Id.* ¶¶ 54-57. Training begins by collecting large quantities of data—such as text, images, video, or audio—and providing those materials to the model as inputs. *Id.* The model processes the data to identify facts, patterns, and relationships, which allows the model to generate new outputs in response to user prompts. Because a model's quality and capabilities depend, among other things, on the amount and variety of its training data, developers industry-wide train models by running large-scale datasets through the training pipeline.

When NVIDIA developed the models at issue, existing law contemplated that using copyrighted works to train AI models was protected. To create AI models, developers use unprotected facts, ideas, information, and concepts in works that have been published and made

available worldwide. The Copyright Act expressly provides that "fair use" of a copyrighted work "is not an infringement of copyright," 17 U.S.C. § 107, and the fair use doctrine has long served as a limitation on the rights conferred by the Act. Fair use turns on a flexible case-specific assessment of four statutory factors—including whether the use serves a distinct purpose that is "transformative." 17 U.S.C. § 107(1)-(4).

Those principles map naturally onto the way datasets are used to train AI models. Copyright does not protect the facts, ideas, and information conveyed by a work in the dataset, 17 U.S.C. § 102(b), and copying an entire work is fair use when the copying is reasonably necessary to extract unprotected information or accomplish a non-substitutive purpose. *Kadrey*, 788 F. Supp. 3d at 1050. AI training uses written works for a transformative purpose, rather than reproducing the works for their original expressive purpose.

At the time NVIDIA released the models currently in litigation, courts had not yet expressly addressed whether using copyrighted works to train AI models was the type of transformative activity protected under the Copyright Act. But as anticipated, courts have now affirmed that copyright does not prohibit model training. The court in *Bartz v. Anthropic PBC* held that using copyrighted books to train large language models was "exceedingly transformative" and constituted fair use. 787 F. Supp. 3d at 1019. And in *Kadrey v. Meta Platforms, Inc.*, the court granted summary judgment to Meta on claims that its copying and use of books for LLM training infringed the works' copyrights. 788 F. Supp. 3d at 1060.

The federal government has taken a similar position. In its National Policy Framework for Artificial Intelligence, the White House stated that it "believes that training of AI models on copyrighted material does not violate copyright laws." Ex. A, The White House, *Nat'l Policy*

Framework for A.I.: Legis. Recommendations 3 (Mar. 2026).[1] The United States also filed a Statement of Interest in a copyright lawsuit against OpenAI and Microsoft, arguing that the use of copyrighted text to train LLMs is "highly transformative." *Statement of Interest of the United States* at 1-4, 11-14, *In re OpenAI, Inc. Copyright Infringement Litig.*, No. 25-md-3143 (S.D.N.Y. Sept. 1, 2026), Dkt. 1682. The government further explained that restricting AI development by applying fair use law incorrectly could impede scientific progress and competition, place American companies at a disadvantage to foreign competitors, and threaten the United States' national security interests. *Id.* at 2-5.

II. NVIDIA's Board Oversees Compliance With The Law.

NVIDIA's eleven-member Board is composed of highly accomplished professionals with extensive experience across the technology, engineering, finance, consumer, and legal sectors. Compl. ¶¶ 20-29. The Board consists of ten non-employee directors—Stephen C. Neal, Tench Coxe, John O. Dabiri, Dawn Hudson, Harvey C. Jones, Melissa B. Lora, A. Brooke Seawell, Aarti Shah, Mark A. Stevens, and Suzanne Nora Johnson, each of whom the Board has determined to be independent under Nasdaq listing standards—and one officer director—Jensen Huang, NVIDIA's founder and CEO. *Id.* ¶¶ 20-29; Ex. B, May 8, 2026 Form 8-K; Ex. C, 2026 Proxy Statement.[2]

NVIDIA maintains robust systems through which the Board oversees legal compliance. NVIDIA's Code of Conduct requires employees to respect intellectual property rights; directs them to report questions to management, the Legal department, or the Compliance function; and

[1] The Court may take judicial notice of the White House's policy framework and other public records. *Hickman v. Wells Fargo Bank N.A.*, 683 F. Supp. 2d 779, 784 (N.D. Ill. 2010).
[2] Plaintiff mistakenly alleges that NVIDIA's Board has ten directors, Compl. ¶ 185, omitting Suzanne Nora Johnson, who was named to the Board effective July 13, 2026. Ex. B, May 8, 2026 Form 8-K. Because she was on the Board when this suit was filed, Johnson must be considered when the Court "counts heads." *Cent. Laborers' Pension Fund v. Karp*, 349 A.3d 1165, 1182-83 (Del. Ch. 2025).

requires that those questions be investigated. Compl. ¶¶ 44-46. The Board's Audit Committee—on which five of the directors sit—oversees the Company's internal audit function, risk management, legal and regulatory compliance, and public disclosures, and has authority to investigate any matter within its purview. *Id.* ¶¶ 48-50, 207.

III. Plaintiff Simply Parrots The Meritless Allegations In The AI Training Lawsuits Against NVIDIA To Manufacture A Baseless Derivative Claim.

Plaintiff, a current NVIDIA shareholder, filed this purported derivative lawsuit on July 31, 2026 against ten NVIDIA directors and four officers, without first making a demand on the Board. Compl. ¶¶ 18, 20-34, 184-85. NVIDIA's bylaws require state-law breach of fiduciary duty claims to be filed in the Delaware Court of Chancery—in the state where NVIDIA is incorporated. Ex. D, Am. & Restated Bylaws of NVIDIA Corp. art. XV, sec. 49. To avoid this requirement, Plaintiff tacked on Exchange Act claims that mimic the flawed state law claims. For all her claims, Plaintiff copies the allegations, often verbatim, from three putative class actions against NVIDIA, Compl. ¶¶ 122, 126, 128, assumes the plaintiffs' allegations of copyright infringement in those pending cases are right, and says the Board breached their fiduciary duties and committed securities fraud because they did not immediately abandon AI model development.

Count I asserts that all Defendants breached their fiduciary duties by, among other things, permitting or approving NVIDIA's AI-development practices and failing adequately to oversee them. *Id.* ¶¶ 214-21. Count II asserts a claim against the directors under Exchange Act Section 14(a) and Rule 14a-9 based on allegedly misleading disclosures regarding the Company's AI development efforts that appeared in its Proxy Statements in 2023, 2024, and 2025. *Id.* ¶¶ 222-26. Count III asserts a Section 10(b) and Rule 10b-5 claim against the directors based on NVIDIA's stock repurchases and statements in Proxy Statements, Annual Reports, and the

Company's Code of Conduct. *Id.* ¶¶ 227-37. And Count IV asserts a Section 20A claim against Huang based on his sales of NVIDIA stock in 2025. *Id.* ¶¶ 239, 243.

LEGAL STANDARD

A stockholder who fails to make a litigation demand may maintain a derivative action only if she alleges "with particularity" why demand is futile and should be excused. Fed. R. Civ. P. 23.1(b)(3); *In re Kraft Heinz S'holder Deriv. Litig.*, 2023 WL 2745118, at *4-5 (N.D. Ill. Mar. 31, 2023) (Alonso, J.). That requirement is not a "mere technical, procedural hurdle," but a "substantive sine qua non of derivative suits." *Dorvit v. Winemaster*, 950 F.3d 984, 989 (7th Cir. 2020).

To show demand futility under the Delaware Supreme Court's three-part "universal test,"[3] Plaintiff must plead that a majority of NVIDIA's Board either: (i) "received a material personal benefit from the alleged misconduct that is the subject of the litigation demand"; (ii) "faces a substantial likelihood of liability on any of the claims that would be the subject of the litigation demand"; or (iii) "lacks independence from someone who received a material personal benefit from the alleged misconduct . . . or who would face a substantial likelihood of liability." *United Food & Com. Workers Union v. Zuckerberg*, 262 A.3d 1034, 1059 (Del. 2021). Demand futility is director-specific, *id.*, and must be established on a claim-by-claim basis, *In re Vaxart, Inc. S'holder Litig.*, 2021 WL 5858696, at *15 (Del. Ch. Dec. 1, 2021). Demand is excused only if the answer to at least one of the three questions—personal benefit, substantial likelihood of liability, or lack of independence—is "yes" for at least half of the Board members at the time a lawsuit is filed. *Id.* at *14.

[3] Because NVIDIA is incorporated in Delaware, Delaware law governs whether Plaintiff has alleged facts sufficient to excuse demand. *Kraft Heinz*, 2023 WL 2745118, at *5; Compl. ¶ 186 (conceding that Delaware law applies).

The demand futility pleading burden is high because directors are presumed to be independent and disinterested, and a plaintiff bears the burden of overcoming that presumption with particularized factual statements. *Beam v. Stewart*, 845 A.2d 1040, 1048-49 (Del. 2004). The "substantial likelihood" of liability standard is particularly onerous, and requires Plaintiff to plead, "director-by-director" and "with particularity," bad faith or disloyalty.[4] *Zuckerberg*, 262 A.3d at 1056, 1058. A fiduciary acts in bad faith when he intentionally breaks the law, "intentionally acts with a purpose other than that of advancing the best interests of the corporation," or "intentionally fails to act in the face of a known duty to act, demonstrating a conscious disregard for his duties." *Stone v. Ritter*, 911 A.2d 362, 369 (Del. 2006).

A derivative complaint must also clear the pleading hurdles set by Rules 8 and 9(b). To survive a motion to dismiss under Rule 12(b)(6), a plaintiff must allege facts that "raise a right to relief above the speculative level." *Kraft Heinz*, 2023 WL 2745118, at *4; *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In ruling on a Rule 12(b)(6) motion, the Court "may reject sheer speculation, bald assertions, and unsupported conclusory statements." *Taha v. Int'l Bhd. of Teamsters, Loc. 781*, 947 F.3d 464, 469 (7th Cir. 2020).

ARGUMENT

Plaintiff's allegations fail both the heightened standard under Rule 23.1 and the plausibility standard under Rule 12(b)(6).

Plaintiff's claims second-guess the Board and would substitute her novel legal opinions for established law. She simply assumes that NVIDIA's AI model training practices constitute copyright infringement. NVIDIA and its officers and directors—like other developers—recognize that facts and ideas are free for all, and any incidental copying during training

[4] NVIDIA's directors are exculpated for actions taken in good faith. Ex. E, Restated Certificate of Incorporation art. VI.A; 8 Del. C. § 102(b)(7).

constitutes fair use. To date, multiple courts and the United States have sided with NVIDIA. Operating a business based on a strong legal defense—even if disputed—is not grounds for a breach of fiduciary duty or securities fraud claim. Because Plaintiff's claims are premised on speculative future liability findings that have not yet occurred and are unlikely ever to occur, Plaintiff cannot state a claim on the merits.

In addition, Plaintiff cannot meet the high standard to plead demand futility. NVIDIA's Board consisted of eleven directors when this lawsuit was filed, so Plaintiff must establish that demand is futile as to at least six of them. *Supra* n.2. Plaintiff fails to make a single allegation about the Board's newest director—Suzanne Nora Johnson—effectively conceding that she can impartially consider a demand. And Plaintiff does not allege particularized facts sufficient to establish that any of the remaining Board members—let alone a six-member majority—received any material benefit, faces a substantial likelihood of liability (a question that overlaps with the merits analysis), or lacks independence.

I. Plaintiff Fails To Plead Any Breach Of Fiduciary Duty (Count I).

Plaintiff advances three fiduciary duty theories: (1) that the directors consciously failed to oversee NVIDIA's compliance with copyright and privacy laws (a *Caremark* oversight claim), (2) that they affirmatively caused the Company to adopt a business plan that violated those laws (a *Massey* claim), and (3) that they knowingly issued false or misleading statements regarding its compliance with those laws (a *Malone* claim). Compl. ¶¶ 214-19. Each theory is governed by a distinct but demanding standard, and Plaintiff must allege particularized facts showing both that unlawful conduct actually occurred and that each director Plaintiff seeks to disable—because they allegedly face a "substantial likelihood of liability"—acted with knowledge or bad faith. *Ritchie v. Baker*, 2025 WL 2048014, at *9-15 (Del. Ch. July 22, 2025). Plaintiff does not meet those stringent standards.

A. Delaware Law Does Not Impose Fiduciary Liability For Pending Litigation.

Each of Plaintiff's fiduciary duty claims rests on her implausible assumption that NVIDIA's AI training was copyright infringement—a conclusion that is not supported by court rulings or fundamental principles of copyright law. Plaintiff's only support for her view is that some opportunistic private plaintiffs have sued NVIDIA and other AI developers. Compl. ¶¶ 113-35. That is not enough to show bad faith.

Delaware courts consistently hold that a plaintiff cannot premise breach of fiduciary duty claims on the existence of pending lawsuits alone: instead, at a minimum, they require a "sufficiently concrete corporate injury" such as "a prior adjudication" that the corporation "violated" the underlying law, "payment of a fine or penalty, or a settlement." *Firefighters' Pension Sys. of City of Kan. City, Mo. Tr. v. Found. Bldg. Materials, Inc.*, 318 A.3d 1105, 1182-83 (Del. Ch. 2024); *In re Plug Power Inc. S'holder Deriv. Litig.*, 2025 WL 1277166, at *16 n.116 (Del. Ch. May 2, 2025) (dismissing *Caremark* claim on that basis). This standard prevents stockholders from using fiduciary duty claims as a vehicle to adjudicate, in the first instance, whether a corporation violated some separate statutory regime. *Found. Bldg. Materials*, 318 A.3d at 1183 (rejecting use of fiduciary duty claims as "vehicles to litigate alleged violations of far-flung statutory and regulatory regimes").

The cited lawsuits simply reflect the stampede of opportunistic efforts by lawyers to capitalize on American innovation—not a court determination that any of those theories are meritorious. Plaintiff admits as much when she asks this Court to impose fiduciary liability based on claims for "*potential* copyright infringement," and the prospect that NVIDIA may "potentially" face "massive liability." Compl. ¶¶ 98, 173 (emphasis added); *id.* ¶¶ 8, 13-14, 121-28 (discussing the *Nazemian*, *Ted Entertainment*, and *Rogers* lawsuits), 189-95, 198-201, 218. Indeed, the copyright allegations have faltered, as courts have recently sided with AI developers'

"fair use" defense. *Bartz*, 787 F. Supp. 3d at 1019 (holding training use transformative and fair); *Kadrey*, 788 F. Supp. 3d at 1060 (granting summary judgment to Meta on fair use of plaintiffs' works for LLM training). Even the United States government agrees. *Statement of Interest of the United States*, *In re OpenAI, Inc. Copyright Infringement Litig.*, No. 25-md-3143 (S.D.N.Y. Sept. 1, 2026), Dkt. 1682.

At most, the lawsuits against NVIDIA suggest a legal *risk*, not bad faith or lawbreaking. But Delaware law protects corporate innovation, recognizing that "[s]ome projects involve more legal risk than others" and protects directors who "make a business decision that carries legal risk, but which otherwise involves legally compliant conduct." *Ontario Provincial Council of Carpenters' Pension Tr. Fund v. Walton*, 2023 WL 3093500, at *33 (Del. Ch. Apr. 26, 2023); *In re TransUnion Deriv. S'holder Litig.*, 324 A.3d 869, 894-95 (Del. Ch. 2024) (rejecting *Caremark* and *Massey* claims where the company and regulator reasonably disputed whether conduct was unlawful). To do otherwise would leave Delaware companies facing an impossible choice: either hobble the Company and its shareholders with large licensing fees—which were never necessary for AI training—or sit out on innovation altogether, allowing competitors (foreign and domestic) to surge ahead. That is not the law.

B. Plaintiff Does Not Adequately Allege A *Caremark* Oversight Failure.

A *Caremark* failure-of-oversight claim is "possibly the most difficult theory in corporation law upon which a plaintiff might hope to win a judgment." *In re Caremark Int'l Inc. Deriv. Litig.*, 698 A.2d 959, 967 (Del. Ch. 1996). Plaintiff must plead facts showing that (1) "the directors utterly failed to implement any reporting or information system or controls," or (2) having implemented such a system, they "consciously failed to monitor or oversee its operations." *Stone*, 911 A.2d at 370. Either way, Plaintiff must show that the directors "knew

that they were not discharging their fiduciary obligations." *Id*. Plaintiff cannot show "bad faith," which she concedes is required for demand futility, Compl. ¶ 187, or even state a plausible claim.

No absence of controls. The Complaint concedes that the Board implemented appropriate monitoring and oversight systems. NVIDIA maintained a Code of Conduct requiring lawful use of intellectual property, identifying channels for reporting suspected misconduct, and requiring that reports be investigated. *Id.* ¶¶ 44-46. And NVIDIA's Audit Committee oversees internal audit and risk management and may investigate matters within its purview. *Id.* ¶¶ 48-50. Plaintiff cannot plead that those systems exist and then claim that the Company "utterly" lacked an oversight system. *Fisher v. Sanborn*, 2021 WL 1197577, at *10-11 (Del. Ch. Mar. 30, 2021) ("[P]laintiffs usually lose because they must concede the existence of board-level systems of monitoring and oversight such as a relevant committee, a regular protocol requiring board-level reports about the relevant risks, or the board's use of third-party monitors, auditors, or consultants.").

No red flags. Unable to show an absence of controls, Plaintiff resorts to alleging that the Board ignored red flags. This theory fares no better. "A 'red flag' is not a catch-all for every risk faced by a company and reported to its fiduciaries." *In re The Boeing Co. Deriv. Litig.*, 2026 WL 2350310, at *12 (Del. Ch. Aug. 13, 2026). Instead, "[a]n alleged red flag must inspire a need to act so clear that to ignore it implies a conscious disregard of duty." *Id.* (quotation marks and citation omitted). It must provide evidence of "legal violations so obvious and material that disregarding them amount[ed] to bad faith," *TransUnion*, 324 A.3d at 887, and it must concern misconduct sufficiently similar to the alleged corporate trauma, *Boeing*, 2026 WL 2350310, at *12 & n.183 (collecting cases).

Plaintiff identifies four categories of purported warnings. None supports an inference that any director consciously disregarded known wrongdoing and none was "so obvious and material" that it was "bad faith" to disregard it.

(1) Board knowledge of officer involvement. Plaintiff asserts in a conclusory fashion that "all the Officer Defendants were personally involved in" NVIDIA's AI strategy and training, and that the directors "were made aware" of the officers' "engagement in this copyright infringement." Compl. ¶ 112. This theory cobbles together a series of assumptions without any supporting facts: that the Officer Defendants were involved in AI training, that they told directors about training practices, and that directors believed those practices constituted copyright infringement. There is zero factual support in the Complaint for any of this—and certainly not on a director-by-director basis. A "derivative complaint must plead facts *specific to each director*," *Desimone v. Barrows*, 924 A.2d 908, 943 (Del. Ch. 2007), and the "conclusory" assertion that directors "were made aware" of misconduct is "insufficient under Rule 23.1," *In re GoPro, Inc.*, 2020 WL 2036602, at *13 (Del. Ch. Apr. 28, 2020); *Reiter v. Fairbank*, 2016 WL 6081823, at *8-9 (Del. Ch. Oct. 18, 2016) (rejecting "diffuse theory" that board knew of "evidence of illegality").[5]

[5] Nor does Plaintiff identify any specific act by any officer. *Harcum v. Lovoi*, 2022 WL 29695, at *27 (Del. Ch. Jan. 3, 2022) (disregarding as conclusory allegation that "the Officer Defendants were 'intricately involved in'" the challenged conduct). Plaintiff's impermissible group pleading is further demonstrated by the fact that she attributes the same "involvement" to executives whose functions are clearly unrelated to selecting datasets to train AI models. Compl. ¶¶ 30-33; *Raj & Sonal Abhyanker Fam. Tr. v. Blake*, 2021 WL 2477025, at *4 (Del. Ch. June 17, 2021) (allegations "Against All Defendants" are "impermissible group pleading" and incompatible with the pleading requirements) (cleaned up). For example, Plaintiff alleges that Defendant Kress, the Company's CFO, oversees NVIDIA's accounting, business support, IR, internal audit and tax functions; that Defendant Puri is EVP of Worldwide Field Operations (*i.e.*, sales); that Defendant Shoquist is NVIDIA's EVP of Operations; and that Defendant Teter is General Counsel and Secretary, Compl. ¶¶ 30-33—with no explanation of how, if at all, any of these individuals or functions had anything to do with the training of AI models.

(2) Lawsuits against other companies. Suits "against *other* AI developers" like Anthropic, Microsoft, and Alphabet, Compl. ¶¶ 113-16, 118-19 (emphasis added), are not red flags that *NVIDIA's* AI training practices constituted copyright infringement. *In re Discover Fin. Servs. Deriv. Litig.*, 2015 WL 1399282, at *6 n.8 (N.D. Ill. Mar. 23, 2015) (Alonso, J.) ("Allegations about other companies . . . are insufficient to support an inference that the director defendants knew or should have known" of similar misconduct at their own company); *Okla. Firefighters Pension & Ret. Sys. v. Corbat*, 2017 WL 6452240, at *22 (Del. Ch. Dec. 18, 2017) ("directors' failure to act in the face of warnings about misconduct at other businesses does not imply bad faith"). Those unadjudicated allegations do not even establish that the *other* companies' practices were wrongful. They are merely part of the wave of opportunistic copyright litigation against the AI industry as a whole. *Supra* § I.A. Moreover, the lawsuits came too late to warn of any alleged wrongdoing. The earliest lawsuit identified by Plaintiff was filed in October 2023, more than a year *after* the training practices that Plaintiff attacks. *Reiter*, 2016 WL 6081823, at *13 n.99 (2015 event not a red flag for 2014 conduct).[6]

(3) Books3 removal. Plaintiff alleges that the October 2023 removal of the Books3 dataset from Hugging Face meant that "Defendants knew that NVIDIA was utilizing pirated library copies and would be subject to billions of dollars of damages." Compl. ¶¶ 64, 117. But she makes no allegation that NVIDIA created and posted the "pirated library" or engaged in any improper conduct regarding it. Instead, she assumes that making a fair use of a work posted online is not allowed if the original party posting that work did not have authorization. That is not the law. In any event, she does not allege, as *Caremark* requires, particularized facts establishing that any director even knew of the removal, let alone understood it to show

[6] *Compare* Compl. ¶¶ 58-59 (models released in September 2022) *with id.* ¶¶ 113-18 (lawsuits starting in October 2023, 2024, and 2026).

misconduct. *Pettry v. Smith*, 2021 WL 2644475, at *7 (Del. Ch. June 28, 2021) (*Caremark* requires a "sufficient connection between the corporate trauma and the board"). Inferring "bad faith on the part of [the] director[s]" from a third party's removal of a dataset requires exactly the long chain of "attenuated inferences" Delaware courts refuse to draw. *In re MetLife Inc. Deriv. Litig.*, 2020 WL 4746635, at *16 (Del. Ch. Aug. 17, 2020). And again, the purported "red flag" came too late: the models allegedly trained on Books3 were released more than a year before the removal. Compl. ¶¶ 58-64; *Reiter*, 2016 WL 6081823, at *13 n.99.

(4) Lawsuits against NVIDIA. Finally, Plaintiff points to the *Nazemian*, *Ted Entertainment*, and *Rogers* lawsuits and related media coverage. Compl. ¶¶ 191-93. This circular theory would allow a shareholder to sue a board for every IP lawsuit—grinding the American technology industry to a halt. Furthermore, even leaving aside that these pending lawsuits do not establish any wrongdoing (and instead reflect serial efforts by opportunistic plaintiffs' lawyers to cash in at the expense of slowing American innovation), Plaintiff's *Caremark* claim is that the Board failed to prevent the conduct those suits challenge. *Id.* ¶ 173. A lawsuit filed *after* the conduct occurred could not have alerted the Board to it *when it was occurring*, such that the Board could "prevent or remedy" it. *Reiter*, 2016 WL 6081823, at *7-8 (directors must have known violations "were occurring" and "acted in bad faith by consciously disregarding its duty to address that misconduct"). The articles, which came even later, merely reported on the lawsuits. Compl. ¶¶ 191-93.

C. Plaintiff Does Not Adequately Plead A *Massey* Claim That The Board Knowingly Caused NVIDIA To Violate The Law.

Plaintiff next alleges that Defendants "caus[ed] the Company to adopt and implement an unlawful business plan," through which NVIDIA "knowingly engaged in copyright infringement and BIPA violations." Compl. ¶ 218; *id.* ¶¶ 1, 7, 52, 117. This *Massey* theory sits at the "extreme

end" of Delaware fiduciary liability and requires particularized facts showing that the directors "purposely caused the corporation to break the law in pursuit of greater profits." *TransUnion*, 324 A.3d at 886. Plaintiff's *Massey* theory "stands in tension" with the *Caremark* theory, "since the same conduct would reflect action and inaction." *Id.* at 887. Plaintiff cannot "run the same allegations about the same facts through two separate doctrinal rubrics to see if one sticks." *Id.* at 883.

Plaintiff's *Massey* theory also fails under both Rules 23.1 and 12(b)(6). First, Plaintiff fails to allege facts showing that any officer or director did not believe NVIDIA's fair use defense. That failure negates any "knowing" violation of the law. *In re Massey Energy Co.*, 2011 WL 2176479, at *22 (Del. Ch. May 31, 2011). Second, the Complaint lacks any facts about any director's role in setting NVIDIA's training strategy. *Ritchie*, 2025 WL 2048014, at *13 (disregarding conclusory allegation that directors "caus[ed] the Company to engage in . . . illicit sale practices" and dismissing for failure to allege directors "knew about and purposely caused the violations" (alterations in original)); *Discover*, 2015 WL 1399282, at *6 (rejecting theory, unsupported by facts, that directors "intentionally implemented" the strategy or "actively caused" the company to violate the law). In fact, the handful of factual allegations Plaintiff copies from news articles and the *Nazemian* complaint concern an undifferentiated group of NVIDIA "employees," "officers," or "management"—not the directors. Compl. ¶¶ 83, 94-97, 122-23. This is not enough. *South v. Baker*, 62 A.3d 1, 16 (Del. Ch. 2012) (rejecting *Massey* claim premised on "management" violations that did not "suggest a Board-level decision"). "Delaware courts routinely reject the conclusory allegation that because illegal behavior occurred . . . the board must have known so." *Desimone*, 924 A.2d at 940. This speculative daisy-chain is implausible on its face.

D. Plaintiff's *Malone* Theory Fails Because She Does Not Identify Any False Statements Or Facts Establishing That Any Director Had Knowledge Of False Public Statements Or Inflated Stock Price.

Plaintiff next alleges that the directors breached their fiduciary duties by approving supposedly false statements about NVIDIA's AI datasets, Compl. ¶¶ 196-201, 217, and "by causing NVIDIA to repurchase millions of its own shares" at prices "artificially inflated" by those statements, *id.* ¶ 219. As discussed in relation to Plaintiff's Exchange Act claims, this claim fails under both Rule 23.1 and Rule 12(b)(6) because the Complaint does not identify any false statement, much less plead particularized facts showing that any director knew a challenged statement was false. *Infra* § II.A.

Delaware law requires Plaintiff to plead that Defendants "knowingly disclosed false information." *Dohmen v. Goodman*, 234 A.3d 1161, 1169 (Del. 2020). Plaintiff does not even try to allege such knowledge. Instead, Plaintiff offers conclusory allegations that the directors were "reckless[]" or "knew or should have known" purportedly contrary facts. Compl. ¶ 146.[7]

Plaintiff's repurchase theory is equally flawed. To make such a claim, Plaintiff must allege facts "that would explain how buying stock at the market price—the price at which presumably ordinary and rational businesspeople were trading the stock—could possibly be so one sided that no reasonable and ordinary business person would consider it adequate consideration." *In re Citigroup Inc. S'holder Deriv. Litig.*, 964 A.2d 106, 136-37 (Del. Ch. 2009). Plaintiff does not plead particularized facts showing that any director believed NVIDIA's stock price was artificially inflated (or even that the price was actually inflated) when authorizing the repurchase programs, much less that any director knowingly caused NVIDIA to overpay.

[7] To the extent Plaintiff's theory rests on Proxy Statements, the only injury Plaintiff identifies is to her "voting rights and choices." Compl. ¶ 225. That is alleged harm to Plaintiff in her individual capacity, not to NVIDIA, and cannot be asserted derivatively. *In re J.P. Morgan Chase & Co. S'holder Litig.*, 906 A.2d 766, 772 (Del. 2006).

II. Plaintiff Does Not Adequately Allege A Violation Of The Exchange Act.

In addition to her defective state-law claims, Plaintiff advances three claims under the Securities Exchange Act of 1934: (1) a Section 10(b) and Rule 10b-5 claim for fraud based on statements about NVIDIA's AI training, (2) a Section 14(a) and Rule 14a-9 claim against the directors for "approving" similar statements, and (3) a Section 20A claim against Huang based on alleged insider trading. Compl. ¶¶ 196-201, 222-43. Plaintiff fails to plausibly allege any of these claims, much less meet the higher burden to show the directors face a "substantial likelihood of liability" under Rule 23.1.

Courts routinely reject attempts to recast state-law fiduciary duty claims as federal securities violations. The Court should dismiss the claims on that basis alone. *Behrmann v. Brandt*, 2020 WL 4432536, at *18 (D. Del. July 31, 2020), *R. & R. adopted*, 2020 WL 5752389 (D. Del. Sept. 25, 2020) ("The law is well-established that bootstrapping a federal securities claim to a cause of action for breach of fiduciary duty is not permissible."); *Smith v. Carrillo*, 2019 WL 6328033, at *1 n.1 (D. Del. Nov. 26, 2019) (dismissing Section 14(a) claims "asserted merely as a thinly-pled basis for bringing the case in federal court").

Even if the Court considers these claims, they fail on the merits. For her Sections 10(b) and 14(a) claims, Plaintiff must "specify each statement alleged to have been misleading" and "why." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 321 (2007); *Kraft Heinz*, 2023 WL 2745118, at *4. And her Section 10(b) and 20A claims are subject to the heightened pleading requirements of Federal Rule of Civil Procedure 9(b) and the Private Securities Litigation Reform Act ("PSLRA"), which require Plaintiff to plead "with particularity facts giving rise to a strong inference that [Defendants] acted with the required state of mind," *i.e.*, scienter. 15 U.S.C. § 78u-4(b); *Tellabs*, 551 U.S. at 319-22. Plaintiff does not come close to meeting these standards.

A. Plaintiff's Section 10(b) Claim Is Frivolous (Count III).

Plaintiff theorizes that the directors violated Section 10(b) and Rule 10b-5 because they knew NVIDIA's AI training practices constituted copyright infringement, caused NVIDIA to make statements concealing that fact, and caused NVIDIA to buy back $13.258 billion of its own stock at inflated prices. Compl. ¶¶ 228-36. This claim is nonsensical. The directors, many of whom Plaintiff admits hold substantial NVIDIA shares, would be personally *harmed* by causing the Company to overpay. *Id.* ¶¶ 20, 22, 25, 27, 29. The theory fails on every other level, too.

No reliance. A derivative Section 10(b) claim requires Plaintiff to plead that NVIDIA "*relied on* the defendant's misrepresentation in deciding to buy or sell a company's stock." *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 263 (2014) (emphasis added). Plaintiff has not and cannot allege such reliance.

The Seventh Circuit has long held that "it is impossible to state that the corporation was deceived by or relied on any misrepresentations or omissions" allegedly made by its own directors. *Ray v. Karris*, 780 F.2d 636, 641 (7th Cir. 1985) (affirming dismissal of derivative Rule 10b-5 claim against a bank's directors). This is because "[a] story of deception needs two characters: the liar and the dupe." *Elfers v. Gonzalez*, 2020 WL 7264272, at *2 (D. Del. Dec. 10, 2020). Plaintiff's theory "has only one character"—NVIDIA. *Id.* at *3. According to Plaintiff, the *same people*—the directors—both approved the false or misleading statements and authorized the stock repurchases. Compl. ¶¶ 228, 230. Because NVIDIA's directors "could not have both lied about the wrongdoing and yet been tricked by those lies," Plaintiff's claim is not viable. *Elfers*, 2020 WL 7264272, at *3; *Franklin v. Doheny*, 2022 WL 2064972, at *2 (D. Del. June 8, 2022).[8]

[8] Plaintiff's invocation of the fraud-on-the-market presumption, Compl. ¶ 242(a), changes nothing. That presumption is rebutted by "[a]ny showing that severs the link between the alleged misrepresentation and

No loss causation or economic loss. Plaintiff's theory of economic loss is equally frivolous—and false. According to Plaintiff, NVIDIA repurchased shares at inflated prices and suffered a loss when NVIDIA's stock price fell after disclosure of the alleged fraud. Compl. ¶ 156. Plaintiff anchors the supposed disclosure and drop to a specific date: "May 5, 2026, the date that the Court denied in part NVIDIA's motion to dismiss in the *Nazemian* action." *Id.* ¶ 158. Even putting aside that the court ruling did not add anything new to the allegations in that case or decide the ultimate merits of the claims, NVIDIA's stock price closed down only $2 on that day. Plaintiff does not even allege that the court issued the order before the market closed (because it did not), and fails to allege any facts connecting that small drop with the ruling on the motion to dismiss. Moreover, NVIDIA's stock price immediately rebounded and closed more than $11 *higher* the next day.[9] A momentary one-day dip followed by a spectacular rebound the next does not show an "economic loss" caused by alleged fraud; it is just market noise. *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 338 (2005) (Plaintiff must allege particularized facts showing that the alleged "fraud caused an economic loss.").

No actionable misstatement. Quoting at length from public filings, Plaintiff asserts that the directors "disseminated or approved false or misleading statements and omissions about NVIDIA related to the Company's AI strategy," Compl. ¶ 228, in three Annual Reports (2023-2025), three Proxy Statements (2023-2025), and NVIDIA's Code of Conduct, *id.* ¶¶ 137-50. But

. . . [the] decision to trade." *Basic Inc. v. Levinson*, 485 U.S. 224, 248 (1988). The allegation that the directors "knew" the truth about NVIDIA's AI training practices—and in fact it was publicly disclosed—before the buyback severs that link. Compl. ¶¶ 58-59, 75 n.10, 121, 165, 230.

[9] Specifically, NVIDIA's closing stock price declined only from $198.48 on May 4, 2026, to $196.50 on May 5. By May 6, NVIDIA's stock price jumped to $207.83—far eclipsing the "decline" from ordinary stock price volatility on May 5. The Court may take judicial notice of publicly reported stock prices on a motion to dismiss. *Pugh v. Tribune Co.*, 521 F.3d 686, 691 n.2 (7th Cir. 2008).

Plaintiff fails to specify "each statement alleged to have been misleading," 15 U.S.C. § 78u-4(b)(1), and she blatantly misconstrues the few that she does identify.

Plaintiff asserts that NVIDIA's Proxy Statements represented that its "training dataset[s] contained *exclusively public domain* materials," Compl. ¶¶ 143, 145 (emphasis added), and "unequivocal[ly] state[d] . . . that NVIDIA was not infringing copyright and BIPA laws," *id.* ¶ 194; *id.* ¶ 146 (similar). Not true; none of Plaintiff's assertions appear anywhere in NVIDIA's Proxy Statements. In fact, none of the cited Proxy Statements say anything about the models' training materials or copyright law. *Id.* ¶¶ 141, 143, 145.[10] [11]

The other challenged statements fare no better. Plaintiff block quotes several pages of Annual Reports that describe NVIDIA's GPUs, programming model, "platform strategy," research spending, and the general proposition that its models learn from "massive datasets." *Id.* ¶¶ 137-39. Plaintiff does not make a single particularized allegation that those statements are false or misleading. "No reasonable shareholder would conclude that, by making these disclosures . . . [NVIDIA] promised that its practices ensured that it faced no legal or compliance risks." *In re Fifth Third Bancorp. Deriv. Litig.*, 2023 WL 2429009, at *21 (N.D. Ill. Mar. 8, 2023) (collecting cases).

Finally, courts routinely reject fraud theories based on a company's adoption and publication of a Code of Conduct, Compl. ¶¶ 149-51, as nonactionable aspirational statements. *KBC Asset Mgmt. NV v. Discover Fin. Servs.*, 2025 WL 976120, at *24-25 (N.D. Ill. Mar. 31, 2025) ("Indeed, a company's adoption and publication of a code of ethics does not imply that all

[10] In any event, those statements were inactionable because they did not make "any concrete assertion," instead "express[ing] only vague optimism." *City of Taylor Police & Fire Ret. Sys. v. Zebra Techs. Corp.*, 8 F.4th 592, 595 (7th Cir. 2021).

[11] Plaintiff invokes the 2026 Proxy Statement, but does not assert it was false or misleading. Rather, Plaintiff complains that it *omitted* the prior aspirational language she claims was false or misleading. Compl. ¶¶ 147-48.

of its directors and officers are in compliance with that code.") (quotation marks and citation omitted) (collecting cases).

No scienter. Plaintiff fails to adequately allege scienter against any director, let alone a majority of the Board. The PSLRA requires particularized facts raising a strong inference that each director had "knowledge of the statement's falsity or reckless disregard of a substantial risk that the statement is false." *Higginbotham v. Baxter Int'l, Inc*., 495 F.3d 753, 756 (7th Cir. 2007). The inference must be "cogent and at least as compelling as any opposing inference one could draw from the facts alleged." *Tellabs*, 551 U.S. at 324.

Plaintiff relies on impermissible group pleading. Lumping all directors together, she asserts that they "knew, or *should have known*" the statements were misleading, "*should have been aware*" of the misstatements, and "[a]t best . . . acted recklessly." Compl. ¶¶ 146, 151, 200, 234 (emphasis added). The Seventh Circuit has squarely rejected such group pleading. *Pugh*, 521 F.3d at 693 (plaintiffs "must create a strong inference of scienter with respect to each individual defendant"). And Plaintiff fails to allege facts to show that the directors knew or "should have known" the statements were allegedly misleading given the strong defenses that NVIDIA has in the underlying cases. *In re Fifth Third Bancorp. Deriv. Litig.*, 2022 WL 970569, at *16 (N.D. Ill. Mar. 30, 2022).

Plaintiff's scienter theories also fail on their own terms. Without any facts, she alleges that the directors were "actively involved in the development of NVIDIA's AI strategy." Compl. ¶ 164. But even if true, "it does not necessarily follow" that the directors "disbelieved their statements or sought to deceive [investors] with their statements" about legal compliance. *Fifth Third*, 2022 WL 970569, at *15 (quoting *Societe Generale Secs. Servs., GbmH v. Caterpillar, Inc.*, 2018 WL 4616356, at *8 (N.D. Ill. Sept. 26, 2018)). Plaintiff's proxy modification theory—

that the language changed after NVIDIA had been sued, Compl. ¶ 169—is nothing more than "fraud by hindsight" that courts reject. *Higginbotham*, 495 F.3d at 759-60; *Holwill v. AbbVie Inc.*, 2025 WL 1908156, at *15 (N.D. Ill. July 10, 2025) ("[A] modification does not necessarily indicate that the prior statements were false.").[12]

The far more compelling inference is the non-culpable one: the directors believed that the Company complied with the law and did not allow the possibility of opportunistic IP lawsuits to cripple innovation and hurt shareholders. NVIDIA's directors were right—multiple courts and the United States government agree that AI model training practices are transformative.

Because Plaintiff does not come close to pleading reliance, loss causation, a false or misleading statement, or scienter—all required elements under Section 10(b)—her claim should be dismissed under both Rule 12(b)(6) and the heightened standard of Rule 23.1.

B. Plaintiff Fails To Allege Bad Faith Or An "Essential Link" Under Section 14(a) And Rule 14a-9 (Count II).

"Section 14(a) prohibits soliciting proxies in violation of SEC rules and regulations." *Kuebler v. Vectren Corp.*, 13 F.4th 631, 637 (7th Cir. 2021). "To state a claim under Section 14(a), a plaintiff must allege: (i) that the proxy statement contained a material misstatement or omission that (ii) caused the plaintiff's injury, and (iii) that the proxy solicitation was an essential link in accomplishing the transaction." *Id*. Plaintiff's claim fails both on the merits and on demand futility.

First, on demand futility, Plaintiff does not allege any particularized facts that each director acted "knowingly, intentionally, or in bad faith" and thus "[her] claim does not threaten the [directors] with a substantial likelihood of liability." *Kraft Heinz*, 2023 WL 2745118, at *9.

[12] And in fact, the language did not change. Rather, NVIDIA simply included the relevant language about "Trustworthy AI" in a different public document, its 2026 Sustainability Report. Ex. F, NVIDIA Sustainability Report Fiscal Year 2026 at 24.

Here, Plaintiff "*disclaims* any allegations of intentional or fraudulent misconduct" with regard to her Section 14(a) claim, Compl. ¶ 222 (emphasis added), and alleges that the directors acted "recklessly and/or negligently," *id.* ¶ 223. On that basis alone, the claim fails under Rule 23.1. *City of Detroit Police & Fire Ret. Sys. v. Hamrock*, 2021 WL 877720, at *5 (D. Del. Mar. 9, 2021) (a Section 14(a) claim "grounded solely in negligence" cannot support demand futility); *Carrillo*, 2019 WL 6328033, at *8.

Second, on the merits, Plaintiff's Section 14(a) claim, like her Section 10(b) claim fails to allege that the Proxy Statements were false or misleading. *Supra* § II.A. Finally, Plaintiff fails to allege any injury to NVIDIA. The only alleged injury—interference with her "voting rights and choices at the annual meetings," Compl. ¶ 225—is direct, not derivative. *J.P. Morgan Chase*, 906 A.2d at 772. Plaintiff does not explain how any of the purported omissions could have affected stockholders' decision to re-elect Board nominees, approve executive compensation, or ratify NVIDIA's independent auditor. She simply asserts in a conclusory fashion that such harm and an "essential link" exist. Compl. ¶¶ 223-24. That is not sufficient. *Treppel Family Tr. v. Gonzalez*, 2024 WL 4416630, at *10 (N.D. Ill. Oct. 4, 2024) (dismissing derivative Section 14(a) claim under Rule 23.1 where complaint did "not causally connect the proxy statement to the allegedly injurious behavior"); *Oakland Cnty. Emps.' Ret. Sys. v. Massaro*, 736 F. Supp. 2d 1181, 1186 (N.D. Ill. 2010) (dismissing derivative Section 14(a) claim under Rule 12(b)(6) because theory that misleading proxies procured auditor ratification was "too attenuated").[13]

[13] Plaintiff's Section 14(a) claim also is not timely. Her assertion that "[t]his action was timely commenced within three years of the date of the Proxy Statements and within one year from the time Plaintiff discovered or reasonably could have discovered the facts on which this claim is based," Compl. ¶ 226, is demonstrably wrong. The 2023 Proxy Statement was filed May 8, 2023, more than three years before this action was filed. And Plaintiff's own allegations reveal that the facts about NVIDIA's AI model training were public, at the latest, by the time the *Nazemian* lawsuit was filed in early 2024. Because Plaintiff's claim was brought after the statute of repose and/or statute of limitations expired, her Section 14(a) claim is barred. 15 U.S.C. § 78i(f).

C. Plaintiff Does Not Allege That Huang Traded On Inside Information In Violation Of Section 20A (Count IV).

Plaintiff asserts her Section 20A claim against Huang alone. Compl. ¶¶ 238-43. By simple math, it cannot move the needle on demand futility. Even if Plaintiff could disable Huang—and she cannot—she must still disable five more directors. As demonstrated above, she has not.

Plaintiff's Section 20A claim is defective on the merits also. "Section 20A provides a derivative cause of action for an underlying insider trading violation while in possession of material, nonpublic information." *Arbitrage Event-Driven Fund v. Tribune Media Co.*, 2020 WL 60186, at *11 (N.D. Ill. Jan. 6, 2020). Huang made the challenged sales pursuant to Rule 10b5-1 plans starting in June 2025—long *after* the information about the datasets used to train NVIDIA's models was public. Compl. ¶¶ 58-59, 75 n.10, 121, 165, 175, 239.

III. Plaintiff's Remaining Demand Futility Allegations Fail Under Well-Established Delaware Law.

A. Plaintiff's Other Liability Allegations Do Not Show That Any Director Faces A Substantial Likelihood Of Liability.

Delaware courts routinely reject the remaining theories on which Plaintiff bases her demand futility argument.

First, Plaintiff alleges the five director Defendants on NVIDIA's Audit Committee face liability because the Committee charter assigns them oversight responsibilities for technology security, privacy, legal compliance, internal controls, and public disclosures. *Id.* ¶ 207. But "membership on the Audit Committee" is not a basis to infer scienter or disloyalty. *Wood v. Baum*, 953 A.2d 136, 142 (Del. 2008); *Kraft Heinz*, 2023 WL 2745118, at *7-8 (Plaintiff's Audit-Committee-membership "argument is a non-starter under well-settled Delaware law . . . .

Committee membership is . . . an insufficient basis on which to infer knowledge.") (quotation marks and citation omitted).

Second, Plaintiff's allegation that the directors violated NVIDIA's Code of Conduct, Compl. ¶ 208, cannot create a substantial likelihood of fiduciary liability either. Internal governance standards "do not define standards of liability." *Brehm v. Eisner*, 746 A.2d 244, 256 (Del. 2000); *Newman v. KKR Phorm Invs., L.P.*, 2023 WL 5624167, at *8 n.56 (Del. Ch. Aug. 31, 2023) (internal policy did not "create additional or new fiduciary duties").

Finally, Plaintiff's convoluted insurance theories do not excuse demand. She alleges that a Company-initiated suit might expose the directors to uninsured liability by triggering an insured-versus-insured exclusion in the Company's D&O policy, Compl. ¶ 211, and, alternatively, that the directors could not consider a demand if the Company had no D&O policy at all, *id.* ¶ 212. Both are versions of the same consistently rejected argument: "It is no answer to say that demand is necessarily futile because" directors will not "sue themselves." *Brehm*, 746 A.2d at 257 n.34; *Pirelli Armstrong Tire Corp. Retiree Med. Benefits Tr. v. Lundgren*, 579 F. Supp. 2d 520, 532, 537 (S.D.N.Y. 2008) (collecting cases); *Decker v. Clausen*, 1989 WL 133617, at *2 (Del. Ch. Nov. 6, 1989) (rejecting insured-versus-insured exclusion as inadequate to plead demand futility); *Ellis v. Gonzalez*, 2018 WL 3360816, at *11 (Del. Ch. July 10, 2018).

B. No Director Received A Material Personal Benefit From The Alleged Misconduct.

Plaintiff next asserts that the directors cannot consider a demand because they received "improper financial benefits" in the form of ordinary-course compensation—director fees, stock grants, and Huang's employment compensation—and Huang's stock sales. Compl. ¶¶ 175-80, 202-06. None conferred a material personal benefit on any director, let alone one "from the alleged misconduct that is the subject of the litigation demand." *Zuckerberg*, 262 A.3d at 1058.

It is well settled that "the receipt of customary directors' fees does not suggest a conflict of interest . . . if it did, every director who receives a director's fee would be deemed biased." *Marchner v. Riley*, 2026 WL 2332358, at *6 (Del. Ch. Mar. 30, 2026).[14] That analysis does not change because the directors received a portion of this compensation in the form of NVIDIA stock. *Jacobs v. Yang*, 2004 WL 1728521, at *4 (Del. Ch. Aug. 2, 2004), *aff'd*, 867 A.2d 902 (Del. 2005) (demand not futile where directors were compensated via equity). Nor does Plaintiff even attempt to allege, as she must, that this compensation—which was targeted to be "within the 25th to 75th percentile range of [NVIDIA's] peer group," Compl. ¶ 206—was material to any particular director. *CIBC Bank USA v. Barker*, 2026 WL 1507755, at *10 (Del. Ch. May 29, 2026) (a benefit is material if it is "significant enough in the context of the director's economic circumstances, as to have made it improbable that the director could perform her fiduciary duties to the [] shareholders without being influenced by her overriding personal interest").

Plaintiff's only response is a cursory assertion that the directors "caused NVIDIA's reported financial performance to be artificially inflated," which in turn "directly inflat[ed] the financial metrics used by the Compensation Committee to set" director compensation. Compl. ¶ 206. But Plaintiff pleads no facts to support any of this, requiring dismissal. *Brehm*, 746 A.2d at 257 (rejecting increased compensation demand-futility theory because it was "not supported by well-pleaded facts, only conclusory allegations"). In fact, Plaintiff's own allegations refute her theory. The compensation tables show director compensation was essentially flat year to year during a period in which NVIDIA's stock price rose roughly ten-fold. Compl. ¶¶ 154, 177-80. Compensation that did not move with the stock price cannot have been "inflated" by it.

[14] *Robotti & Co., LLC v. Liddell*, 2010 WL 157474, at *14 (Del. Ch. Jan. 14, 2010) ("director compensation, standing alone, cannot be the basis for asserting a lack of independence"); *In re Stem, Inc. Deriv. Litig.*, 2026 WL 880441, at *5 (D. Del. Mar. 31, 2026) (similar).

Huang's employment compensation and stock sales, Compl. ¶¶ 175-76, 202-03, also fall short. A director is not interested simply because he serves as an officer and receives "substantial compensation" in that role. *Foote v. Mehrotra*, 2023 WL 7214728, at *11 (D. Del. Nov. 2, 2023) (applying Delaware law). Nor does Plaintiff adequately allege that Huang engaged in insider trading. *Supra* § II.C. Absent such allegations, the proceeds of Huang's stock sales are not a personal benefit "from the alleged misconduct." *Karp*, 349 A.3d at 1196-98 ("billions of dollars" in stock sales not a material personal benefit absent "a substantial likelihood of personal liability for insider trading").

C. No Director Lacks Independence.

Finally, Plaintiff fails to plead that any director lacks independence from any conflicted director. *Zuckerberg*, 262 A.3d at 1058. Because Plaintiff has not pleaded that any director received a material personal benefit or faces a substantial likelihood of liability, there is no conflicted director from whom another could lack independence. *Karp*, 349 A.3d at 1198.

At most, Plaintiff asserts that Huang is not "independent" because he is NVIDIA's CEO and "does not qualify as an independent director" under Nasdaq's exchange rules. Compl. ¶ 202. Employee status alone does not determine whether a director is independent. *In re Sagent Tech., Inc. Deriv. Litig.*, 278 F. Supp. 2d 1079, 1089 (N.D. Cal. 2003) (Delaware law); *Carrillo*, 2019 WL 6328033, at *5. And "[a]n independence determination under stock exchange rules is qualitatively different from, and thus does not operate as a surrogate for . . . analysis of independence under Delaware law for demand futility purposes." *In re Kraft Heinz Co. Deriv. Litig.*, 2021 WL 6012632, at *12 (Del. Ch. Dec. 15, 2021) (quotation marks and citation omitted). Independence turns on whether a director maintains a "bias-producing" relationship that would impair the director's ability to evaluate a litigation demand that implicates them. *Beam*, 845 A.2d at 1050. Plaintiff does not identify any such relationship as to Huang—or any

other director. Nor does she plead that any other director, much less *five* additional directors, lacked independence from Huang.

CONCLUSION

Plaintiff fails to establish a cogent theory of liability for any of her claims under Rule 12(b)(6), much less the heightened standards of demand futility under Rule 23.1. The continuation of this baseless action could serve only to harm NVIDIA's stockholders. The Complaint should be dismissed without leave to amend.

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Respectfully submitted,

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