ESTTA Tracking number: **ESTTA1147299**

Filing date: **07/16/2021**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91269705
Party	Defendant NEO4J, INC.
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Date	07/16/2021
Attachments	HC_DOCS-3786375-v7-_Neo4j_TTAB__-_MSJ_and_Motion_to_Dismiss.pdf(393925 bytes) HC_DOCS-3799717-v4-_Neo4j_TTAB__-_Patel_Decl_iso_MTD_and_MSJ.pdf(146256 bytes) Exhibit 1 - Registration Certificate 86267006.pdf(147877 bytes) Exhibit 2 - Rathle Declaration iso of Neo4j MSJ.pdf(348465 bytes) Exhibit 3 - 2019 11 25 Second Amended Complaint Doc 50.pdf(5091578 bytes) Exhibit 4 - 2020 09 28 Third Amended Complaint Doc 90.pdf(1468630 bytes) Exhibit 5 - 2019 12 09 Defendants Answer to SAC Doc 54.pdf(173001 bytes) Exhibit 6 - 2019 12 09 PureThink iGov First Amended CC Doc 55.pdf(1381967 bytes) Exhibit 7 - 2020 02 11 Neo4j Motion for Judgment on the Pleadings doc 60.pdf(261999 bytes) Exhibit 8 - 2020 05 21 Order Granting Motion for Judgment on the Plea dings doc 70.pdf(201470 bytes) Exhibit 9 - 2020 06 05 Defendants First Amended Answer to SAC.pdf(184233 bytes) Exhibit 10 - 2020 06 19 Neo4j Motion to Dismiss and Strike doc 73.pdf (256745 bytes) Exhibit 11 - 2020 07 06 Opposition to Neo4j Motion to Dismiss doc 78. pdf(151256 bytes) Exhibit 12 - 2020 08 20 Order Granting Neo4js Motions to Dismiss and Strike doc 85.pdf(1178010 bytes) Exhibit 13 - 2020 10 19 Defendants Answer to TAC doc 91.pdf(185601 bytes) Exhibit 14 - 2021 03 03 ORDER Granting Motion to Strike Doc 110.pdf(116037 bytes) Exhibit 15 - 2021 01 15 Defendants Consolidated Oppo to MSJ doc 100.pdf(2470585 bytes) Exhibit 16 - 2021 05 18 ORDER Granting Plaintiffs MSJ and Denying Def endants Cross-MSJ doc 118.pdf(361170 bytes) Exhibit 17 - Chart of TM Opp and SACC Allegations.pdf(120479 bytes)

	Exhibit 18 - AGPL - part of Exhibit C to Opposition.pdf(183997 bytes) Exhibit 19 - Neo4j Sweden GPL License.pdf(151834 bytes) Exhibit 20 - 2021 04 13 Archive of Neo4j Certified Professional Page.pdf(343635 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 90/056,224
For the mark: NEO4J
Published: December 8, 2020

iGov Inc.

Opposer,
v.

Neo4j, Inc.

Applicant.

Opposition No.: 91269705

APPLICANT'S MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

The Opposition filed by iGov Inc. and its principal John Mark Suhy (collectively "iGov" or "Opposer") is the latest chapter in a three-year legal dispute with Neo4j, Inc. ("Neo4j USA" or "Applicant"). While Opposer discloses the existence of trademark infringement action Applicant filed against Opposer in the Northern District of California, it has concealed from the Board that the District Court previously considered Opposer's allegations of fraud on the PTO and purported abandonment of the Neo4j Mark via naked licensing and rejected them. In fact, Opposer brazenly asserts almost identical allegations to those in its naked licensing counterclaims and affirmative defenses that the District Court dismissed and struck, respectively, with prejudice. As evidenced by the same typographical and grammatical errors in those prior pleadings, Opposer's cut-and-paste opposition to the Neo4j Mark as set forth in the Application (U.S. Application Serial No. 90/056,224, as defined herein), is barred by the doctrine of issue preclusion. Thus, warranting summary judgment in favor of Applicant.

Even if summary judgment were not appropriate, Opposer's fraud theory based on allegations that the first use dates stated in the present application for the Neo4j Mark are inaccurate is fatally defective. Federal Circuit and TTAB precedent makes clear that first use dates ***cannot*** constitute a material misrepresentation so long as those dates are fact preceded the application date. Such is the case here, and as a result, iGov's opposition to the current registration for the Neo4j mark fails as a matter of law.

Opposer's recycled allegations that Neo4j USA abandoned the NEO4j mark via naked licensing by (1) creating "confusion" by using it as both a company and a trademark for software products; and (2) distributing NEO4j®-branded software via the AGPL and GPL open source licenses also still fail as a matter of law. Neither of these grounds meet the Lanham Act's specific definitions of abandonment under 15 U.S.C. § 1127, which requires either non-use or a course of conduct by the mark holder that causes the mark to become generic or otherwise lose significance as a mark. Aside from the absence of such allegations, the first theory runs contrary to established case law that holds that it is permissible to use a mark as both a trade name and trademark. The second theory fails as a matter of law because the AGPL and GPL are not trademark licenses, and thus third party modification of the licensed software and an alleged lack of quality control over such modified software cannot form the basis of a naked licensing claim. In any event, two other courts that have specifically addressed these licenses and held that they establish an intent to control trademark rights rather than an intent relinquishing them. Accordingly, the Board should dismiss the present Opposition ("Opp.") with prejudice as granting Opposer leave to amend would be futile due to the incurable legal defects therein.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Neo4j Sweden, Neo4j USA and the Neo4j Mark

In conjunction with its business, Neo4j USA filed for and obtained several federally registered trademarks, including U.S. Trademark Registration No. 4,784,280 for the word mark "NEO4J" (the "Neo4j Mark") covering the goods and services in International Classes, 009, 035, 041, 042 and 045 (the "Neo4j Registration"). *See* Declaration of Mitesh Patel ("Patel Decl."), Ex. 1. Neo4j USA is the parent corporation of Neo4j Sweden AB ("Neo4j Sweden"), which in turn is a wholly owned subsidiary of Neo4j USA, and the two are related companies under 15 U.S.C. section 1127 (together, "Applicant" or "Plaintiffs" as collectively referenced in the civil action *infra*). *See* Opp., Ex. 3 (hereinafter "SACC") at ¶ 89; Patel Decl., Ex. 2 at ¶¶ 3–4. Applicant specializes in graph database management systems and offers its graph database platform (the "Neo4j® Software") and related goods and services in connection with the NEO4J Mark throughout the world, including in the United States. Applicant has historically licensed the copyrights to its Neo4j® Software, including the underlying source code, under open source copyright licenses and its own proprietary copyright licenses, none of which grant rights to use the Neo4j Mark. Patel Decl., Ex. 2 at ¶¶ 4–15.

B. Neo4j USA Files a Lanham Act Action Against iGov and its Founder Suhy

On November 28, 2018, Applicant filed suit against PureThink and its successor-in-interest, Opposer, along with their founder John Mark Suhy (together, "Defendants" as collectively referred to in the Federal Case), that included claims for (1) trademark infringement 15 U.S.C. § 1114(1); (2) false designation of origin and false advertising in violation of 15 U.S.C. § 1125(a); and (3) federal unfair competition in violation of 15 U.S.C. § 1125(a) ("the Federal Case"). *See* Opp., Ex. A. Applicant's Lanham Acts claims were based on its rights in the Neo4j Mark and Registration and, inter alia, Defendants' unauthorized use of the same in conjunction with the sale and advertising of Defendants' graph database solutions and software and related support services. Applicant twice amended its complaint alleging additional violations of the Lanham Act and the Digital Millennium Copyright Act (DMCA) by Defendants, which Neo4j Sweden also joined as a plaintiff (collectively "Plaintiffs"). *See* Patel Decl., Exs. 3–4.

C. Opposer Asserts Naked Licensing and Fraud Counterclaims and Affirmative Defenses in the Federal Case

On November 25, 2019, Applicant filed a Second Amended Complaint ("SAC"). *See* Patel Decl., Ex. 3. In response, Opposer filed an answer asserting its Seventh Affirmative Defense for Cancellation of Trademark Procured by Fraud based on Applicant allegedly misrepresenting first use dates that were prior to its existence. *See* Patel Decl., Ex. 5 at 18:20–19:3. Opposer also asserted its Ninth Affirmative Defense for Naked License Abandonment of Trademark based on alleged "confusion whether that is a company name trademark or product name trademark" and "by Neo4J Sweden's open source license for the Neo4J software." *Id.* at 19:12–25. Opposer further alleged Applicant abandoned the Neo4j Mark under the doctrine of naked license due to the licensing of Neo4J software on an open source basis. *Id.* Opposer asserted these defenses as identical counterclaims. *See id.*, Ex. 6 at ¶¶ 85–86, 88–92.

D. The District Court Grants Applicant's Motion for Judgment on the Pleadings

1. The Court Dismisses Opposer's Fraud Arguments With Prejudice

Applicant moved for judgment on the pleadings on Opposer's cancellation counterclaim and affirmative defense alleging fraud on the PTO ("Fraud Arguments"). *See* Patel Decl., Ex. 7 at 8:17–10:8. Opposer's Fraud Arguments failed as a matter of law because an alleged misstatement of the date of first use in commerce of a mark is not material to the registration. *See id.* at 10:11–11:24. Notably, Opposer ***conceded*** that its Fraud Arguments were not legally viable in its opposition. *See* Patel Decl., Ex. 8 at 8:4–18. The District Court thus held that Opposer "effectively conceded that the [Fraud] Arguments fail to establish a legally plausible claim or defense. Given this concession, the Court finds that amendment would be futile. [] Accordingly, the Court **GRANTS** the Motion as to the [Fraud] Arguments and **DISMISSES** these claims with prejudice." *Id.* (emphasis in original).

2. The District Court Finds Opposer's Naked Licensing Theory to be Non-Viable

Applicant also moved for judgment on the pleadings on Opposer's naked licensing theory based on allegations that Applicant had abandoned the Neo4j Registration and all rights in the Neo4j Mark by (1) creating "confusion" by using it as both a company name and a product name; and (2) licensing the underlying source code for Neo4j® Software via the GNU General Public License ("GPL") and a variant for server deployment called the GNU Affero General Public License ("AGPL"). *See* Patel Decl., Ex. 7 at 11:24–15:24. On May 21, 2020, the District Court granted Applicant's motion, agreeing with Applicant that Opposer's naked license theory failed as a matter of law because the use of the Neo4j Mark in both a company name and product name is not sufficient to show that the mark has been abandoned. *See id.,* Ex. 8 at 8:26–10:24.

Applicant argued that Defendants' naked license theory also failed as a matter of law because courts, including the Eleventh Circuit in *Planetary Motion, Inc. v. Techsplosion, Inc.*, 261 F.3d 1188, 1198 (11th Cir. 2001), recognize that the open source licensing of software via the GPL and AGPL constitutes an intent to control trademark rights, not a relinquishment of rights. Patel Decl., Ex. 8 at 10:26–13:14. The District Court agreed, holding that "the absence of specific quality control provisions—either in the GPL, AGPL, or in a separate trademark license—is not dispositive," and in fact, "the notice requirements in the GPL and AGPL evidence an effort to control the use of the mark." *Id.* at 13:15–23. The court further held that "the fact that Plaintiff distributed Neo4j software on an open source basis pursuant to the GPL and AGPL is not, without more, sufficient to establish a naked license or demonstrate abandonment." *Id.* at 13:24–26. However, the Court granted them leave to amend only "[t]o the extent that Defendants are able to allege that Plaintiff failed to exercise actual control over licensees' use of the trademark." *Id.* at 13:27–14:2.

E. The District Court Dismisses and Strikes Defendants' Further Amended Naked License Counterclaim and Affirmative Defense With Prejudice

On June 5, 2020, Opposer filed their Second Amended Counterclaim and First Amended Answer to Applicant's Second Amended Complaint containing the same recycled naked license defense. Opposer merely re-alleged its naked licensing defense based on the open source licensing of the Neo4j® Software by replacing "Neo4j USA" with "Neo4j Sweden." *See* SACC, ¶¶ 84–98; Patel Decl., Ex. 9 at 19:7–23:17.

The core of Opposer's naked licensing counterclaim and defense remained that distribution of the source code for the Neo4j® Software under the terms of the AGPL and GPL amounted to the naked licensing of the Neo4j Mark. Opposer extended that theory to Applicant's predecessor-in-interest and current wholly-owned subsidiary and related company, Neo4j Sweden. SACC, ¶¶ 85–97. Namely, that Neo4j Sweden's licensing of underlying source code for the Neo4j® Software via the GPL and AGPL before Applicant existed amounted to naked licensing of the Neo4j Mark. As a result, when Applicant "obtained rights to the Neo4J trademark years later, the [Neo4j Mark] was already abandoned by Neo4J Sweden's lack of contractual and actual or adequate quality control for third party's extensive use of the [Neo4j Mark]." SACC, ¶¶ 86–88. Opposer then alleged that even after Applicant was incorporated and was assigned the rights to the Neo4j Mark, "Neo4J Sweden has not exercise[d] contractual control over GPL and AGPL licensee's use of the [Neo4j Mark]." *Id.* at ¶¶ 89–91. Opposer further alleged that because third parties could modify the source code for Neo4j® Software under these licenses, Applicant's failure to exercise any quality control over the modified software amounted to the naked licensing of the Neo4j Mark. *Id.* at ¶¶ 89–95.

Applicant filed a FRCP 12(b)(6) motion to dismiss and FRCP 12(f) motion to strike, arguing that the new allegations were part of the same nucleus of facts as those in its prior pleadings and do not cure the defects addressed by the District Court's order. Patel Decl., Ex. 10. In relevant part, Applicant argued that the distinction Opposer attempted to draw between Neo4j Sweden and Neo4j USA was of no matter because it conceded that even before Neo4j USA existed, Neo4j Sweden used the same GPL and AGPL licenses to distribute source code underlying the Neo4j® Software. *Id.* at 10:7–20.

In response, Opposer simply reargued that the GPL and AGPL did not have any terms to control and verify third party modified versions of Neo4J® Software as required to maintain the Neo4j Mark. Patel Decl., Ex. 11 at 5:13–17. And, because Neo4j Sweden did not allegedly control any use of that mark with modified versions of the open source software, "[w]hen Neo4J USA obtained rights to the Neo4J trademark years later, the Neo4J trademark was already abandoned by Neo4J Sweden's lack of contractual and actual or adequate quality control for third party's extensive use of the Neo4J trademark." *Id.* at 5:1–6:3.

On August 20, 2020, the District Court granted Applicant's motion, again ***rejecting*** Opposer's assertion that Neo4j Sweden, and later Applicant, engaged in the naked licensing of the Neo4j Mark due to inadequate quality control over third party modifications of open source versions of software utilizing the source code licensed under the GPL and the AGPL. Patel Decl., Ex. 12 at 7:18–10:17. The District Court did so because "[t]he GPL and the AGPL are copyright licenses, not trademark licenses" and that "[t]hird party developers who modify the open source version of the [Neo4j®] software pursuant to the GPL or AGPL do not have any right to use the [Neo4j Mark] absent a separate trademark license agreement" *Id.* at 7:27–8:7. Further, because there was no allegation or evidence of Applicant licensing the Neo4j Mark to these third parties, Opposer's naked license theory simply did "not fit comfortably within the doctrine of naked licensing." *Id.* at 8:8–10:6. Likewise, because Opposer failed to allege any facts establishing that either Applicant or Neo4j Sweden actually licensed the Neo4j Mark, let alone failed to exercise any control under such license, Opposer failed to establish abandonment via naked licensing based on the open source licensing of software bearing the Neo4j Mark. *Id.*

The Court also addressed Opposer's failed theory that the Neo4j Mark was abandoned due to its use by Suhy/PureThink, Opposer's predecessor-in-interest. Patel Decl., Ex. 12 at 10:18–11:21. The Court held that the doctrine of licensee estoppel prevented Opposer from challenging the validity of the Neo4j Mark because it relied upon facts that arose during the time that Opposer's predecessor was licensed to use the Neo4j Mark (and then later terminated). *Id.* at 11:12–21. Based on the foregoing, the Court ***dismissed*** Defendants' Abandonment of Trademark counterclaim and ***struck*** their affirmative defense for Naked License Abandonment of Trademark ***with prejudice.*** *Id.* at 12:2–3 (emphasis in original.)

F. The District Court Further Affirms that Opposer's Fraud Arguments and Naked Licensing Theories are Not Legally Viable

On September 9, 2020, Applicant filed its Third Amended Complaint. Patel Decl., Ex. 4. A month later, Opposer filed its answer wherein it resuscitated the same fraud arguments – that stated dates of first use of the Neo4j Mark were false because Neo4j USA did not exist at that time – it previously conceded to be unmeritorious. Patel Decl., Ex. 13 at 20:11–21:2. Opposer also improperly revived its naked licensing defense. Opposer re-alleged that the open source licensing of Neo4j® Software constituted naked licensing because there were no quality control provisions under the GPL and AGPL and licensees allegedly have the unfettered right to modify, use and distribute modified versions of Neo4j® graph database software. *Id.* at 21:11–22:9. Applicant moved to strike those defenses because they remained fatally defective as a matter of law.

On March 3, 2021, the District Court issued an order granting Applicant's motion, holding that the legal theories and facts underpinning those defenses were not new. Patel Decl., Ex. 14 at 4:22–6:4. As a result, the District Court once again struck those defenses and made clear that Applicant was "not permitted to reassert any affirmative defense or counterclaim in this action based on the cancellation or abandonment theories asserted in the stricken defenses." *Id.* at 6:2–4.

G. The District Court Grants Summary Judgment in Favor of Applicant

On December 11, 2020, Neo4j USA filed a partial motion for summary judgment on the liability element of its Lanham Act claims. In opposition to that motion, Defendants asserted the same arguments made in the present Opposition that was that the original registration from the Neo4j Mark was invalid because Applicant was not the true owner of that mark because Neo4j Sweden has only granted Applicant a non-exclusive license thereto. Patel Decl., Ex. 15[1] at 11:11–14, 13:4–14:9; Opp., Ex. G at ¶¶ 2–5. Opposer also argued that Neo4j Sweden's ownership of registrations for the Neo4j Mark outside the US purportedly evidenced that Applicant does not have the right to register the mark in the US. Opp., Ex. G at ¶ 7.

On May 18, 2020, the District Court granted summary judgment in favor of Applicant. Patel Decl., Ex. 16 at 14:3–18:1. Citing Federal Circuit precedent, the District Court recognized that the ownership of a mark between a parent and wholly owned subsidiary was unnecessary when deciding whether a registration of a mark was valid. *Id.* at 15:20–17:4. The District Court relied upon the express language of TMEP section 1201.03(c) that "[e]ither a parent corporation or a subsidiary corporation may be the proper applicant, depending on the facts concerning ownership of the mark" and that the PTO "will consider the filing of the application in the name of either the parent or the subsidiary to be the expression of the intention of the parties as to ownership in accord with the arrangements between them." *Id*. at 17:5–13. Thus, the fact that Applicant had obtained a US registration for the Neo4j Mark established that Neo4j Sweden considered Applicant to be the owner of the mark in the US, which was also confirmed by the fact that Opposer understood Neo4j USA to be the owner when it entered in to a trademark license agreement with Applicant. *Id*. at 17:14–18. Citing TMEP section 1201.01, the District Court further held that since it was undisputed that Applicant owns and controls Neo4j Sweden, the alleged non-exclusive license between those related companies was insufficient to establish that Applicant was not the owner of the original registration for the Neo4j Mark. *Id*. at 17:19–18:1.

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[1] Opposer attaches all of its papers filed in opposition to Applicant's summary judgment motion as Exhibit B to the Opposition. Due to the voluminous and disorganized nature of Exhibit B, Applicant is providing this document as Exhibit 15 to the Patel Declaration for the Board's convenience and ease of reference.

H. Neo4j USA's Present Application for the Neo4j Mark and iGov's Opposition Thereto

On July 16, 2020, Applicant filed U.S. Serial No. 90056224 for the Neo4j Mark to encompass a more complete listing of goods and services in International Classes 009 and 042, than protected on the Neo4j Registration, claiming use of the Neo4j Mark for those goods and services at least as early as 2014 on an in-use basis (hereinafter "the Application"). The Application was published on December 8, 2020.

On January 7, 2021, the Board granted Opposer a 30-day extension of time to oppose the Application. TTAB Dkt. 2. On February 1, 2021, Suhy, again on behalf of himself and iGov, requested an additional 60 day extension of time to oppose the Application again because of the purported need to confer with counsel about obtaining the aforementioned license agreement, which was designated by Applicant as "Attorneys' Eyes Only." TTAB Dkt. Nos. 7, 9. The Board provided an extension until April 7, 2021. TTAB Dkt. Nos. 8, 10. Without providing notice to Applicant, Opposer deceptively sought and obtained a final 60-day extension to oppose for extraordinary circumstances "due to the effects of the COVID-19 outbreak." TTAB Dkt. No. 11.

Three months ***after*** the District Court entered its final order striking Opposer's fraud and naked licensing defenses, and nineteen days ***after*** it entered a summary judgment order rejecting Opposer's ownership arguments, Opposer filed the instant Opposition. Remarkably, Opposer reasserts the baseless theory that a discrepancy in the dates of first use constitutes fraud. *Compare* Opp. at 4:3–12 *and* Patel Decl., Ex. 6 at ¶¶ 88–92. Likewise, Opposer asserts identical naked licensing theories that the District Court conclusive held to be insufficient as a matter of law. *Compare* Opp., ¶¶ 9–13, 15–20, 22 *and* SACC, ¶¶ 85–98.

Opposer inexplicably re-alleges ***verbatim*** that "[t]here is confusion whether Neo4j is a company name trademark or a product name trademark." *Compare* Opp., ¶ 17 *and* Patel Decl., Ex. 9, ¶ 85. Similarly, Opposer re-alleges that Neo4j Sweden's licensing of copyrights for the source code underlying the Neo4j® Software under the GPL and AGPL existed amounted to naked licensing of the Neo4j Mark because Neo4j Sweden did not implement any further quality controls beyond those licenses. *Compare* Opp., ¶¶ 9–12 *and* SACC, ¶¶ 86–88, 91. As a result, when Applicant "obtained rights to the Neo4J trademark years later, the Neo4J trademark was already abandoned by Neo4J Sweden AB's lack of contractual and actual or adequate quality control for third party's extensive use of the Neo4J trademark." *Id.*

Further, Opposer further re-alleges that even after Neo4j USA was incorporated and was assigned the rights in the Neo4j Mark, "Neo4J Sweden AB has not exercise contractual control over GPL and AGPL licensee's use of the Neo4J trademark." *Compare* Opp., ¶ 12 *and* SACC, ¶ 89. And, that because Applicant is not the licensor of the source code for Neo4J® Software under the GPL and AGPL licenses, it "has no privity of contract to control GPL and AGPL licensees [sic] use of the Neo4J trademark [and] cannot rely on contract terms to show any control." *Compare* Opp., ¶ 22 *and* SACC, ¶ 90. Opposer re-alleges in contradictory fashion that "[t]he GPL and AGPL provide that a licensee must carry prominent notices stating that you modified it and giving a relevant date." *Compare* Opp., ¶ 12 *and* SACC, ¶ 89. Yet, it simultaneously maintains that this requirement "does not control quality to maintain the Neo4J trademark" and "any person could modify the source code to Neo4J software and convey the modified Neo4J software to third parties" under the GPL and AGPL licenses. *Compare* Opp., ¶¶ 12, 20 *and* SACC, ¶¶ 89, 92. Opposer then concludes that "[b]ecause Neo4J Sweden and Neo4J USA had no contractual controls and did not exercise actual and adequate controls over the prolific use of the Neo4J trademark by third parties who modified and conveyed modified versions of Neo4J software, the trademark should be deemed abandoned." *Compare* Opp., ¶¶ 15–16 *and* SACC, ¶¶ 91, 97.

Once again, Opposer cites to the same third party repositories that it baselessly assumes could potentially be third party modified software purporting to bear the Neo4j Mark. *Compare* Opp., ¶¶ 18–20 *and* SACC, ¶¶ 85, 91–95. Yet, Opposer still fails to allege any specific examples of where either Neo4j USA or Neo4j Sweden failed to exercise actual quality control over Neo4j® Software (third party modified or otherwise) or where the public was deceived into believing such modified software was an official unmodified version of Neo4j® Software, and instead relies on the fact that third parties modified and distributed Neo4j®

Software as expressly contemplated by the GPL and AGPL. *See id.* In addition, Opposer recycles allegations that the modification of Neo4j® Software by Opposer's alter ego and predecessor called "Neo4J Government Edition" amounts to naked licensing.[2] *Compare* Opp., ¶¶ 14, 21 *and* SACC, ¶¶ 95–96.

Finally, Opposer reasserts that Applicant is not "the rightful owner of the Neo4j mark." Opp. at 3:2–3. Opposer again claims that because Applicant only has a non-exclusive license from Neo4j Sweden for the Neo4j Mark and that ownership of various trademark registrations outside the US show Neo4j Sweden AB, not applicant as being the owner of record, Neo4j USA is not entitled to obtain another registration for the Neo4j Mark in the US. *Compare* Opp. at 3:1–4:2 *and* Patel Decl., Ex. 15 at 12:14–14:9. As demonstrated by the comparison chart attached to the Patel Declaration as Exhibit 17, Opposer asserts no new material facts or legal theories in opposition to the current registration that were not already unsuccessfully raised in the District Court litigation, and thus Opposer still fails to state a viable claim of fraud or abandonment via naked licensing.

III. APPLICABLE LEGAL STANDARDS

A motion to dismiss for failure to state a claim upon which relief can be granted is a test solely of the legal sufficiency of a complaint. *Advanced Cardiovascular Sys., Inc. v. Scimed Life Sys., Inc.*, 988 F.2d 1157, 1160 (Fed. Cir. 1993). In order to withstand such a motion, an opposition to registration need only allege such facts as would, if proved, establish that the Opposer is entitled to the relief sought, that is, that (1) the Opposer has an entitlement to a statutory cause of action to bring the proceeding; and (2) a valid ground exists for denying the registration. *Fair Indigo LLC v. Style Conscience*, 85 USPQ2d 1536, 1538 (TTAB 2007). To survive a motion to dismiss, a complaint in opposition must contain sufficient factual matter to "state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Where opposing a registration based on alleged fraud in procuring a trademark registration, the Opposer must plead such a claim "with particularity" under the heighted pleading standards of meet the heightened pleading requirements of Fed. R. Civ. P. 9(b). *See* 37 C.F.R. § 2.116(a). A pleading that simply alleges the substantive elements of fraud, without setting forth the particularized factual bases for the allegation does not satisfy the heighted pleading requirements of Rule 9(b). *Exergen Corp. v. Wal-Mart Stores Inc.*, 575 F.3d 1312, 1326–27 (Fed. Cir. 2009).

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[2] This is the same software that PureThink marketed to government entities under a partner agreement with Neo4j USA, which contained a now-terminated trademark license. *Compare* Opp., ¶ 14 *and* SACC, ¶¶ 15–19, Ex. B at §§ 4.1, 7.3.

While the Board construe the complaint in the light most favorable to the plaintiff and accept its allegations as true, it is not required to accept as true legal conclusions or unwarranted factual inferences. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 555). The Board may consider exhibits to the complaint and any attached written instrument attached without converting a motion to dismiss to one for summary judgment. *See In re Bill of Lading Transmission and Processing System Patent Litig.*, 681 F.3d 1323, 1337 (Fed. Cir. 2012); F.R.Civ.P. 10(c); *accord Caymus Vineyards v. Caymus Medical, Inc.*, 107 USPQ2d 1519, 1522 fn. 3 (TTAB 2013) (considering exhibits attached to applicant's first amended answer and counterclaim in ruling on motion to dismiss) (citing same). It must also consider "other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice. *Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 322 (2007). "In ruling on a 12(b)(6) motion, a court need not 'accept as true allegations that contradict matters properly subject to judicial notice or by exhibit….'" *Secured Mail Sols. LLC v. Universal Wilde, Inc.*, 873 F.3d 905, 913 (Fed. Cir. 2017) (internal citation omitted).

Where an applicant moves for the dismissal of an opposition based on the doctrine of issue or claim preclusion, the Board treats it as a motion for summary judgment that may be filed prior to parties making their initial disclosures. *See Freki Corp. N.V. v. Pinnacle Entm't, Inc.*, 126 USPQ2d 1697 (TTAB 2018). This is "because if the factual question has been previously determined between the parties, there is no triable issue of fact on that matter." J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, § 32:87 (5th ed. Sept. 2018); *see also NH Beach Pizza LLC v. Cristy's Pizza Inc.*, 119 USPQ2d 1861, 1863 (TTAB 2016).

The Board may grant summary judgment where the movant shows the absence of any genuine dispute of material fact, and that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *see also Freki Corp.*, 126 USPQ2d at 1700 (granting summary judgment in favor of applicant where opposer had unsuccessfully asserted a naked license defense in a prior action). The movant merely has the initial burden of demonstrating that there is no genuine dispute of material fact remaining for trial and that it is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(c); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322–24 (1986).

When the moving party sufficiently demonstrates that there is no genuine dispute of material fact, and that it is entitled to judgment, the burden shifts to the nonmoving party to demonstrate the existence of specific genuinely disputed facts that must be resolved at trial. *Freki Corp.*, 126 USPQ2d at 1700. The nonmoving party may not rest on the mere allegations of its pleadings and assertions of counsel, but "must point to an evidentiary conflict created on the record [,] at least by a counterstatement of facts set forth in detail in an affidavit by a knowledgeable affiant." *Octocom Sys., Inc. v. Hous. Computs. Servs., Inc.*, 918 F.2d 937, 940 (Fed. Cir. 1990).

As discussed below, summary judgment is appropriate because iGov's efforts to oppose the Application relating the Neo4j Mark are barred by the doctrine of issue preclusion. Alternatively, Opposer fails to state legally viable theories of fraud and abandonment via naked licensing, the Board should dismiss this Opposition.

IV. THE BOARD SHOULD GRANT SUMMARY JUDGMENT IN FAVOR OF APPLICANT BASED ON THE DOCTRINE OF ISSUE PRECLUSION

As recognized by the Supreme Court, "[w]hen a district court, as part of its judgment, decides an issue that overlaps with part of the TTAB's analysis, the TTAB gives preclusive effect to the court's judgment." *B & B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 152–53 (2015). Issue preclusion can bar the re-litigation of the same issue of law or fact in a second proceeding. Under this doctrine, "the second action is upon a different cause of action and the judgment in the prior suit precludes re-litigation of issues actually litigated and necessary to the outcome of the first action." *Montana v. United States,* 440 U.S. 147, 153–55 (1979). Issue preclusion bars the re-litigation of an issue of law or fact regardless of whether or not the two proceedings are based on the claim. *In re Freeman*, 30 F.3d 1459, 1465 (Fed. Cir. 1994). The application of issue preclusion thus requires: (1) identity of an issue in a prior proceeding, (2) that the identical issue was actually litigated, (3) that determination of the issue was necessary to the judgment in the prior proceeding, and (4) that the party defending against preclusion had a full and fair opportunity to litigate the issue in the prior proceeding. *Mayer/Berkshire Corp. v. Berkshire Fashions, Inc.*, 424 F.3d 1229, 1232 (Fed. Cir. 2005).

A. The Doctrine of Claim Preclusion Bars Opposer From Re-Litigating Its Fraud and Naked Licensing Claims/Defenses Before the Board

The doctrine of claim preclusion clearly bars Opposer from re-asserting its fraud and abandonment via naked licensing claims in opposition to the Application for the same rights at issue in the District Court litigation. It is indisputable that the parties are identical in both actions: "The current application being opposed was started after a civil case was filed by Applicant against Defendants, including iGov, accusing iGov of trademark infringement related to the Neo4j Mark." iGov Opp, ¶ 5. It is also indisputable that the District Court ***twice*** dismissed/struck iGov's fraud and naked licensing counterclaims and affirmative defenses ***with prejudice***. *See* Patel Decl., Exs. 8, 12, 14. A dismissal under FRCP 12(b)(6) operates as a judgment on the merits to which claim preclusion applies. *Federated Dep't Stores v. Moitie*, 452 U.S. 394, 399 n. 3 (1981).

More importantly, Opposer cannot dispute that it is seeking to re-litigate the ***identical*** transactional facts supporting ***identical*** fraud and naked licensing claims it unsuccessfully asserted in the District Court litigation. As detailed above, Opposer's fraud theory is primarily based on misrepresenting the first use dates in the Application for the Neo4j Mark, which it previously conceded failed as a matter of law. *See* Patel Decl., Ex. 8 at 8:4–18. Likewise, it is indisputable that Opposer's naked licensing claim based on nearly identical facts as the one asserted in the District Court proceedings.

Opposer alleges the same nucleus operative facts that (1) the use of the Neo4j Mark as company and product names creates "confusion;" (2) the Neo4j Mark has been abandoned due to the naked licensing via the GPL and AGPL; (3) Applicant and its predecessor's failure to implement quality control measures over third-party modifications to such software; and (4) Applicant allegedly failed to control the quality of PureThink/Suhy's Neo4j Government Edition. *Compare* Opp., ¶¶ 9–26 *and* SACC, ¶¶ 84–98; *see also* Patel Decl., Ex. 17. As a result, iGov's Opposition is nothing more than an improper collateral attack on the District Court's dismissal of the same claims with prejudice, which bars Opposer from raising them again before the Board. *See Vitaline Corp. v. Gen. Mills, Inc.*, 891 F.2d 273, 275 (Fed. Cir. 1989) (affirming summary judgment holding that claim preclusion barred action seeking cancellation of competitor's mark on theory of abandonment, where plaintiff sought to relitigate claim of non-use of mark, originally asserted in prior action alleging fraud in obtaining mark since both theories were based on same transaction facts).

B. The Doctrine of Issue Preclusion Also Bars Opposer From Re-Litigating Its Fraud and Naked Licensing Claim/Defense Before the Board

Even assuming *arguendo* that claim preclusion did not apply, the doctrine of issue preclusion would bar Opposer's attempt to re-litigate Applicant's alleged misrepresentation of the first use dates of the Neo4j Mark on the Application and Neo4j Registration and the alleged abandonment of the Neo4j Mark via the naked licensing thereof. There is no dispute that Opposer has asserted the same legal theories and factual allegations in both proceedings. *See* Patel Decl., Ex. 17. There is also no question that the parties disputed the viability of Opposer's fraud and naked licensing theories in the district court action and the trier of fact found them to be fatally flawed. *See In re Freeman*, 30 F.3d at 1466 ("the requirement that the issue have been actually decided is generally satisfied if the parties to the original action disputed the issue and the trier of fact decided it"). Indeed, the District Court expressly found that Opposer had "***thoroughly briefed [its] cancellation and abandonment theories on multiple motions over the last year, and this Court has unequivocally found those theories insufficient as a matter of law***." *Id.*, Ex. 14 at 5:25–27 (emphasis added). This satisfies the second and fourth elements of claim preclusion.

Finally, the third element is met because the District Court's rulings were essential to the resulting dismissals with prejudice. The District Court addressed the first use date issue in a substantive manner, agreeing with the parties that the alleged misrepresentation of first use dates was not a viable basis to assert a fraud on the PTO claim. Patel Decl., Ex. 8 at 5:14–26, 8:5–18. Similarly, the District Court dismissed Opposer's abandonment via naked licensing claim and defense after substantively holding that Applicant did ***not*** abandon the Neo4j Mark by (1) using the Neo4j Mark as a company and product name; (2) licensing the underlying source code for Neo4j® Software via the AGPL and the GPL; and (3) and allowing third parties to modify and redistribute such software. *Id.*, Ex. 8 at 4:26–5:10, 9:3–10:24; Ex. 12 at 6:24–10:17. It further determined that Opposer was estopped from alleging Applicant's purported lack quality control over Opposer's Government Edition version of Neo4j® Software. *Id.,* Ex. 12 at 10:18–11:21.

C. iGov Cannot Re-Litigate Whether Neo4j is the Owner of the Neo4j Mark

The doctrine of issue preclusion also prevents Opposer from re-litigating the issue of whether Applicant is the owner of the Neo4j Mark. As demonstrated by the papers attached to the Opposition as Exhibit C and the District Court's substantive order rejecting Opposer's arguments that Applicant does not own the Neo4j Mark, the four elements of issue preclusion are met. Opposer once again alleges that Applicant merely received a non-exclusive license from Neo4j Sweden and that Neo4j Sweden's ownership of various trademark foreign registrations for the Neo4j Mark purportedly establishes Applicant does not have the right to register the Neo4j Mark in the US. *Compare* Opp. at 3:2–4:2 *and* Patel Decl., Ex. 15 at 12:13–14:9; Opp., Ex. G at ¶¶ 2–5, 7.

Opposer brazenly attaches its summary judgment opposition and supporting declarations to "bolster" its allegations that Applicant does not allegedly own the Neo4j Mark, but conceals from the Board that Opposer ***lost*** on the issue in the district court action. Opp., Exs. B and G. As demonstrated by the District Court's order, however, there was a final determination on the merits that Applicant was the owner of the Neo4j Registration and that the ownership issue was central to the Court finding Opposer's infringement thereof. *See id.,* Patel Decl., Ex. 16 at 14:3–22:21. These same filings show that there is also no question that Opposer had a full and fair opportunity to litigate the issue. Accordingly, the doctrine of issue preclusion bars Opposer's duplicitous attempt to re-litigate this ownership issue before the Board.

V. IN THE ALTERNATIVE THE BOARD SHOULD DISMISS THE OPPOSITION

A. Applicant is Entitled to Obtain a Registration for the Neo4j Mark

Opposer alleges that Applicant cannot obtain a registration for or apply for the Neo4j Mark because Neo4j Sweden is the actual owner of the mark, and only licensed it to Applicant on a non-exclusive basis. *See* Opp. at 3:2–4:2. Taking such allegations at face value, they are still insufficient to preclude registration because Opposer admits that Neo4j Sweden is the subsidiary of Applicant. *See id.*, ¶ 11. This is because the Federal Circuit rejected the idea that a parent company cannot register a trademark simply based on the fact that the company's wholly owned subsidiary technically owned the mark. *See In re Wella A.G.*, 787 F.2d 1549, 1555 (Fed. Cir. 1986); *In re Wella A.G.*, 858 F.2d 725 (Fed. Cir. 1988); *see also W. Fla. Seafood, Inc. v. Jet Restaurants, Inc.*, 31 F.3d 1122, 1126–27 (Fed. Cir. 1994) (separate corporate, business and personal entities operating as a single entity in the eyes of the consuming public may be treated as such for trademark purposes).

The TMEP also expressly states that "[e]ither a parent corporation or a subsidiary corporation may be the proper applicant, depending on the facts concerning ownership of the mark." TMEP § 1201.03(c). Furthermore, the PTO "will consider the filing of the application in the name of either the parent or the subsidiary *to be the expression of the intention of the parties as to ownership in accord with the arrangements between them*." *Id*. (emphasis added). The fact that Applicant is owner of the Neo4j Registration (Opp. at 4:4–6 [citing SN 86267006]) and is now seeking to protect the Neo4j Mark as seen in the Application, can only be reasonably understood as evidence of the intention between Applicant and its wholly owned subsidiary Neo4j Sweden as to ownership of the mark in the United States. *See Ashcroft*, 556 U.S. at 678 (courts disregard unwarranted factual inferences). More importantly, Opposer clearly understood the ownership structure and rights in the mark when Suhy, the founder of both Opposer and its predecessor-in-interest, PureThink, executed a non-exclusive, limited trademark license with Applicant to use the Neo4j Mark.[3] *See* Opp., Ex. B at Suhy Declaration, ¶¶ 4–5; SACC at ¶¶ 15, 21 and Ex. B. Thus, Opposer cannot now allege the contrary.

The TMEP further explains that "[w]here the mark is used by a related company, the owner is the party who controls the nature and quality of the goods sold or services rendered under the mark." TMEP § 1201.01. Again, Opposer has conceded that Neo4j USA wholly owns and controls Neo4j Sweden. *See* Opp., ¶ 11. It also does not dispute that Applicant and Neo4j Sweden, are "related companies" under the Lanham Act. This is important omission because the PTO does not require an applicant to disclose if a mark is being used by a related company. *See* TEMP5th § 1201.03(a). Moreover, "the inherent nature of the parent's overall control over the affairs of a subsidiary will be sufficient to presume that the parent is adequately exercising control over the nature and quality of goods and services sold by the subsidiary … without the need for a license or other agreement." *Noble House Home Furnishings, LLC v. Floorco Enterprises, LLC*, 118 USPQ2d 1413, 1421 (TTAB 2016); *see also Copperweld Corp. v. Independence Tube Corp*., 467 U.S. 752, 772–73 (1984) ("[a]t least when a subsidiary is wholly owned … the ultimate interests of the subsidiary and the parent are identical"); TMEP §§ 1201.07(b)(i), 1201.07(b)(ii). Consequently, there is no legal or factual basis in the Opposition to contest Applicant's rights in the Neo4j Mark or ownership of the Application.

B. Opposer Still Fails to State a Legally Viable Fraud-on-the-PTO Claim

To the extent that Opposer seeks to set forth a claim of fraud, its conclusory allegations that Applicant fraudulently misrepresented the dates of first use in the Application fail to state such a claim. A party alleging fraud in the procurement of a registration bears the heavy burden of proving fraud with clear and convincing evidence. *See In re Bose Corp*., 580 F.3d 1240, 1243 (Fed. Cir. 2009). Thus, Opposer must allege with particularity that Applicant has made knowingly made a false, material representation of fact with the intent to deceive the PTO. *See id.* at 1244–45 (emphasizing that fraud requires the intent to mislead the PTO). Opposer does not allege any such specific facts, including applicant's ***knowledge and intent to defraud the PTO***, as it pertains to the Application. Rather, Opposer includes vague allegations of fraud consisting of Applicant alleging asking PureThink to sign false documents and providing false information to the IRS "about applicant's open source usage rights" without explaining how this pertains to the current Application or how it affects the validity of Applicant's rights in the Neo4j Mark. *See* Opp., ¶¶ 6–7.

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[3] As discussed above, documents that are attached to a complaint as exhibits may be considered, and control where they contradict allegations in the complaint. *See Secured Mail*, 873 F.3d at 913 (in ruling on a motion to dismiss, the court need not "accept as true allegations that contradict matters properly subject to judicial notice or by exhibit"). In this regard, the trademark license in the Partner Agreement is referenced in Paragraph 14 of the Opposition, and the Partner Agreement is Exhibit B to Opposer's SACC, both of which are attached as Exhibit C to the Opposition.

More importantly, citing an incorrect date of first use for the applied-for mark does not as a matter of law support a fraud claim where the date of first use precedes the filing date of the application at issue. *See, e.g., CarX Service Systems, Inc. v. Exxon Corp*., 215 USPQ 345, 351 (1982) (claim of a date of first use is not a material allegation as long as the first use in fact preceded the application date); *Georgia-Southern Oil, Inc. v. Harvey Richardson*, 16 USPQ2d 1723 (TTAB 1990) (date of first use alleged in application cannot, even if false, constitute fraud on the PTO). Here, the Application was filed on July 16, 2020. *See* Opp. at 1:15–10. Opposer then alleges that the only "fraud" on the PTO consists of the dates on the Application having the first use anywhere and first use in commerce dates as "At least as early as 00/00/2014" when the earlier Neo4j Registration stated "the first use date anywhere as: 'At least as early as 06/04/2006', and the first use in commerce date as 'At least as early as 05/28/2007." *See* Opp. at 4:3–12. Since both applications state "as least as early" dates prior to the current application's filing date, Opposer fails to state a fraud claim upon which relief can be granted.[4] *See CarX Service*, 215 USPQ at 351; *see also* TMEP §1109.09(a).

C. Opposer's Allegations of Abandonment via Naked Licensing Fail as a Matter of Law

Under the Lanham Act, a mark can only be deemed "abandoned" when either of the following occurs: "(1) When its use has been discontinued with intent not to resume such use," or "(2) When any course of conduct of the owner, including acts of omission as well as commission, causes the mark to become the generic name for the goods or services on or in connection with which it is used or otherwise to lose its significance as a mark." 15 U.S.C. § 1127. Naked licensing falls under the second definition of abandonment because it is an "uncontrolled" license where the licensor "fails to exercise adequate quality control over the licensee."

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[4] Opposer also alleges on information and belief that Applicant engaged in fraud by filing the Application and not disclosing that Neo4j Sweden was the owner of the mark. *See* Opp., at ¶ 8. This falls well short of alleging the elements of fraud, including an intent to defraud the PTO, with the requisite particularity required by Rule 9(b). As detailed above in Section V.A., Applicant is the owner of the Neo4j Mark for purposes of obtaining a registration in the United States.

Barcamerica Int'l USA Trust v. Tyfield Importers, Inc., 289 F.3d 589, 595–96 (9th Cir. 2002); *accord Woodstock's Enterprises Inc. v. Woodstock's Enterprises Inc.*, 43 USPQ2d 1440, 1446 (TTAB 1997), *aff'd*, 152 F.3d 942 (Fed. Cir. 1998). The proponent of a naked license theory of abandonment "faces a stringent standard" of proof. *See id.*; *see also Winnebago Industries, Inc. v. Oliver & Winston, Inc.*, 207 USPQ 335 (TTAB 1980) (clear and convincing proof required). As discussed below, Opposer's allegations purporting to establish naked licensing are neither factually sufficient nor legally cognizable under 15 U.S.C. § 1127.

1. Opposer's "Confusion" Does Not Legally Constitute Abandonment

Opposer's first theory is based on the conclusory allegation that the use of the Neo4j name in multiple contexts, namely as a "product name trademark" and "company name trademark" has caused confusion, which is allegedly "exacerbated" by Neo4j Sweden being the owner of the copyright for Neo4j® Software and licensing on an open-source basis. *See* Opp., ¶ 17. However, the use of a mark in a company name and product name, without more, is insufficient to show that the mark has been abandoned. Indeed, companies often share a name with their products without causing any confusion to the public or reducing the significance of the mark, and even the Trademark Act defines *a trade name* as registrable matter so long as it functions as an identifier of source. *See* 15 U.S.C. § 1052(d); *see also Accuride Int'l, Inc. v. Accuride Corp.*, 871 F.2d 1531, 1534 (9th Cir. 1989) ("[t]rade names often function as trademarks or service marks as well"); *SunEarth, Inc. v. Sun Earth Solar Power Co.*, 846 F.Supp.2d 1063, 1074 (N.D. Cal. 2012) (trademark still protected where plaintiff "used SunEarth as both a trade name, referring to the company, and a trademark, referring to particular products"); *Stork Rest. v. Sahati*, 166 F.2d 348, 353 (9th Cir. 1948) ("[a] corporate name or trade name identifies a corporation; it also identifies its business and the goods or services which it sells or renders"); *Standard Oil Co. of N. M. v. Standard Oil Co. of Cal.*, 56 F.2d 973, 979 (10th Cir. 1932) (same). There are simply no plausible facts alleged establishing Applicant's use of the Neo4j Mark in its company name and product name has caused confusion. Even accepting Opposer's allegations as true, there are no allegations that this "confusion" has caused the mark "to become the generic name" for goods of the same type or "to lose its significance as a mark" such that the mark could be found to be abandoned. 15 U.S.C. § 1127. In sum, Defendants' "confusion" allegations do not come close to establishing abandonment under 15 U.S.C. § 1127.

Opposer's allegation that the Neo4j Mark is used in the company names of both Neo4j, Inc., as well as its subsidiary Neo4j Sweden, is also insufficient to establish abandonment. *See* Opp., ¶¶ 11, 17. The Lanham Act expressly recognizes that a registered mark "may be used legitimately by related companies, such use shall inure to the benefit of the registrant…." 15 U.S.C. § 1055; *see also* 15 U.S.C. § 1127 ("The term 'related company' means any person whose use of a mark is controlled by the owner of the mark with respect to the nature and quality of the goods or services on or in connection with which the mark is used."). The use of the mark in two companies' names, without more, does not demonstrate that the mark has "become the generic name" for goods of the same type or has "los[t] its significance as a mark" such that the mark could be found to be abandoned. 15 U.S.C. § 1127. Accordingly, Opposer's allegations that Applicant used the Neo4j Mark in multiple company names and product names fails to establish an abandonment claim as a matter of law.

2. The GPL and AGPL Are Not Naked Trademark Licenses

The crux of Opposer's abandonment theory is that the distribution of source code underlying the Neo4j® Software, subject to the AGPL and GPL, amounts to the naked licensing of the Neo4j Mark. Any distinction Opposer attempts to draw between Neo4j Sweden and Applicant is of no matter because it concedes that even before Applicant existed, Neo4j Sweden used the GPL and AGPL to distribute source code underlying the Neo4j® Software. Opp., ¶ 12 ("[f]or a period of 5 years before the applicant (Neo4j Inc) existed and thereafter…Neo4j Sweden AB used the GPL and AGPL licenses to proliferate the free use, development and modification of Neo4J software"). Thus, the terms of the GPL and AGPL governed any copies made using the source code underlying Neo4j's software ***at all times alleged***. *See* Patel Decl., Exs. 18–19.[5]

The fact that Neo4j Mark was used by Applicant's predecessor-in-interest is also of no consequence as Neo4j Sweden's use properly inured to the benefit of Neo4j USA. *See* 15 U.S.C. §§ 1127, 1055. As such, the fact that Neo4j Sweden continues to be the owner of the copyright in the Neo4j® Software and is the licensor thereof under the GPL and AGPL does not amount to abandonment. *See* Opp., ¶¶ 11–13, 22. As conceded by Opposer, Applicant is the parent of Neo4J Sweden. *See id.*, ¶ 11. Thus, they continue to meet the definition of

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[5] The Board may consider the terms of the AGPL attached in Exhibit C to Opposition (SACC, Ex. A). *See In re Bill of Lading*, 681 F.3d at 1337. Applicant is resubmitting the AGPL as Exhibit 18 to the Patel Declaration for ease of reference. The Board may also consider the terms of the GPL, attached as Exhibit 19 to the Patel Declaration, because the Opposition extensively refers to this license and it is one of the primary bases of Opposer's naked licensing claim. *See Tellabs,* 551 U.S. at 322; *accord Rocky Mountain Helium, LLC v. United States*, 841 F.3d 1320, 1325 (Fed. Cir. 2016) (citing same).

"related companies" under 15 U.S.C. § 1127 and their combined use of the mark "shall not affect the validity of such mark." 15 U.S.C. § 1055; *see also Hokto Kinoko Co. v. Concord Farms, Inc.*, 738 F.3d 1085, 1098 (9th Cir. 2013) (no naked licensing where subsidiary used parent company's trademark); *Sock It To Me, Inc. v. Aiping Fan*, --- USPQ2d ---, 2020 WL 3027605, at *4–7 (TTAB 2020) (precedential) (non-ownership claim dismissed where oral license with informal control sufficient to qualify licensee as related company).

Opposer's allegations that there is a lack of quality control based on third-parties modifying and re-distributing software under the GPL and AGPL is also not legally viable. *See* Opp., ¶¶ 15–16, 18–20. As an initial matter, "[t]he GPL and AGPL are copyright licenses, not trademark licenses." *Neo4j, Inc. v. PureThink, LLC*, 480 F.Supp.3d 1071, 1077 (N.D. Cal. 2020) ("[t]hird party developers who modify the open source versions of the software pursuant to the GPL or AGPL do not have any right to use the Neo4j trademark absent a separate trademark license agreement"). It is axiomatic that no naked licensing occurs where no trademark license exists in the first place. *See id.*; *see also Sweetheart Plastics, Inc. v. Detroit Forming, Inc.*, 743 F.2d 1039, 1047 (4th Cir. 1984) ("Th[e] rule of uncontrolled licensing of a trademark is inapplicable to the instant case as no evidence of licensing has been presented."). Thus, Opposer's misplaced allegations that Applicant has no right to maintain control over how licensees redistribute modified versions of the underlying code for Neo4j® Software released under the AGPL and GPL does not constitute naked licensing. *See* Opp. ¶¶ 13, 22.

Furthermore, the open source licensing of software via the GPL and AGPL constitutes an ***intent to control*** trademark rights, not a relinquishment of rights. *See Planetary Motion*, 261 F.3d at 1198 & fn. 16 (recognizing that the GPL allows users to copy, distribute and/or modify the software under certain restrictions, e.g., users modifying licensed files must carry prominent notices stating that the user changed the files and the date of any change). Opposer even ***admits*** Sections 5(a) of "[t]he GPL and AGPL provide that a licensee must carry prominent notices stating that you modified it and giving a relevant date." Opp., ¶ 12; *see also* Patel Decl., Exs. 18–19. It is precisely these notice requirements that act as a control on quality and indication of origin, by allowing a user to distinguish the original source code from the licensee's copy and whatever modifications may have been made thereto. *See Exxon Corp. v. Oxxford Clothes, Inc.*, 109 F.3d 1070 (5th Cir. 1997) (courts will not find existence of trademark license when authorization of trademark use is structured in such way as to avoid misleading or confusing consumer as to origin and/or nature of respective parties' goods).

Opposer's allegations that there are "significant downloads and use of applications using the neo4j name and modified versions of Neo4j," "millions of copies of modified versions of Neo4J downloaded where the modified version of the software uses the Neo4J trademark," and reliance on Bitnami as an example,[6] also do not establish a lack of quality control that amounts to naked licensing. *See* Opp., ¶¶ 19–20, 23. This is because Opposer alleges that all these third-party copies of Neo4j® Software were proliferated pursuant to the terms of the GPL and AGPL. Opp., ¶¶ 12, 22. As a result, these allegations are negated by the fact that these are ***not*** trademark licenses (*Sweetheart Plastics*, 743 F.2d at 1047; *Neo4j, Inc.*, 480 F.Supp.3d at 1077) and that the notice requirements in the GPL and AGPL are "evidence of [Applicant's] efforts to control the use of the … mark in connection with the Software" (*Planetary Motion* 261 F.3d at 1198 fn. 16). *See also Stockpot, Inc. v. Stock Pot Rest., Inc.,* 220 U.S.P.Q. 52, 58–59 (T.T.A.B.1983) (holding that, if the validity of the license were determined solely on the basis of the lease provisions, the failure of the lease to control the quality of the food and service of the restaurant would constitute insufficient compliance with the Trademark Act).

Finally, Opposer fails to allege any facts that the copies of the Neo4j® Software licensed under the GPL and AGPL "caused the mark to become the generic name for the goods or services on or in connection with which it is used or otherwise to lose its significance as a mark." 15 U.S.C. § 1127. This is fatal to Opposer's abandonment claim, notwithstanding the use of the GPL and AGPL, a trademark owner does not abandon its trademark "where the particular circumstances of the licensing arrangement suggests that the public will not be deceived." *See Hokto Kinoko*, 738 F.3d at 1098; *see also Exxon*, 109 F.3d at 1079–80 ("if a trademark has not ceased to function as an indicator of origin there is no reason to believe that the public will be misled; under these circumstances, neither the express declaration of Congress's intent in subsection 1127(2) nor the corollary policy considerations which underlie the doctrine of naked licensing warrant a finding that the trademark owner has forfeited his rights in the mark"); *Leatherwood Scopes Int'l, Inc. v. Leatherwood*, 63 USPQ2d 1699 (TTAB

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[6] Notwithstanding that the AGPL and GPL are not trademark licenses, Opposer's allegations that Applicant's alleged failure to police Bitnami's distribution of open source Neo4j® Software does not establish abandonment via naked licensing. *See* Opp., ¶ 21 and Ex. F. This is because a trademark owner's alleged failure to pursue potential infringers does not in and of itself establish that the mark has lost its significance as an indicator of origin. *See Babbit Elecs., Inc. v. Dynascan Corp.*, 38 F.3d 1161, 1180 (11th Cir. 1994) ("failure to institute legal action against an infringer is insufficient to establish abandonment of a trademark"); *see also Sweetheart Plastics, Inc.*, 743 F.2d at 1047–1048 ("[e]vidence of a trademark owner's failure to prosecute infringers is relevant to a determination of the defense of abandonment only where there is proof that the mark has lost all significance as an indication of origin).

2002) (abandonment claim insufficiently pled because failed to allege facts showing the mark has lost all capacity as a source-indicator for applicant's goods). Consequently, Opposer's legally defective abandonment claim based on the alleged naked licensing via the GPL and AGP should be dismissed with prejudice.

D. Allegations Concerning Certification Testing Do Not Establish Naked Licensing

Opposer's claim of naked licensing based on Applicant's professional training programs also fail to allege facts detailing any alleged lack of control by Applicant as required under 15 U.S.C. § 1127. Opp., ¶ 25. Opposer provides no factual details of acts or omissions of alleged lack of quality control and its conclusory statements to Applicant's professional training programs are factually incorrect in that "[t]here are no guidelines on how these newly certified professionals can use the [N]eo4j [M]ark." Applicant's website offering the professional training programs that Opposer's directly references, but conveniently does not attach, indicates that standards are imposed in order to pass the test. *See* Patel Decl., Ex. 20.[7] Consequently, the fact that users of Neo4j® Software must pass a test to obtain a certification does not establish any naked licensing.

E. Opposer Cannot Rely on the Government Edition to Claim Abandonment

1. The Opposition Fails Allege Facts Establishing Any Naked Licensing

Opposer's allegations concerning the Government Edition software—which it alleges was the result of a joint development effort—does not establish any alleged naked licensing. *See* Opp., ¶¶ 14, 21. The Opposition is devoid of any plausible facts indicating deception in the marketplace, and the SACC (attached as Exhibit C thereto) establishes the contrary. Opposer alleged that the idea to develop the Government Edition originated with Applicant, which it authorized and contracted with Suhy/PureThink to develop. *See* SACC, ¶ 16; *see also* Opp., ¶ 15, Ex. B. Opposer further alleged that Suhy/Purethink worked tireless to ensure that the Government Edition would properly function and meet the demands of government customers. *See* SACC, ¶ 17. Thus, the Board should disregard any contradictory allegations that Applicant failed maintain quality control over Suhy/PureThink's creation of the Government Edition as an unwarranted deduction of fact and an unreasonable inference. *See Ashcroft*, 556 U.S. at 678; *Secured Mail*, 873 F.3d at 913.

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[7] The Board may consider the website attached as Exhibit 20 to the Patel Declaration in ruling on this motion to dismiss, because the Opposition refers to this license and it is one of the bases of Opposer's naked licensing claim. *See Tellabs*, 551 U.S. at 322; *accord Rocky Mountain Helium*, 841 F.3d at 1325 (citing same).

Even if these contradictory facts could be reconciled, the only plausible inference is that Applicant was familiar with and could reasonably rely upon PureThink's efforts to control the quality of the Government Edition. *See* SACC, ¶¶ 12–15. It also appears this was the point of the exclusive agreement between Applicant and Opposer's predecessor-in-interest. *Id.*, ¶¶ 16–17. As such, there is no legal basis for Applicant to assert otherwise. *See TMT N. Am., Inc. v. Magic Touch GmbH*, 124 F.3d 876, 885 (7th Cir. 1997) (licensor was the manufacturer of the basic product subject to the license agreement with licensee, which was a distributor of licensor's product); *Edwin K. Williams & Co., Inc. v. Edwin K. Williams & Co.-East*, 542 F.2d 1053, (9th Cir. 1976) (no quality control by licensor required in mark license for accounting services, where licensor knew from experience that licensee was a competent accountant, well-acquainted with bookkeeping, and would present no danger to the public if uncontrolled); *Winnebago*, 207 USPQ at 335 (informal inspection and reliance on reputation of quality standards of licensees held sufficient control to prevent abandonment).

Opposer also misses the mark because there are no facts establishing that there were ***any*** quality control issues with the Government Edition. *Woodstock's Enterprises Inc.*, 43 USPQ2d at 1446 (recognizing that "'the inference of abandonment is not drawn... [where] satisfactory quality was maintained, and, hence, no deception of purchasers occurred'") (internal citation omitted). To the contrary, it previously alleged that PureThink "did deals with MPO, Sandia National Laboratories, and the FBI" and allegedly had the potential for numerous other sales of the Government Edition before Applicant terminated the parties' contractual relationship. *See* SACC, ¶¶ 18, 21, 23–27, 50–52. Thus, it is unwarranted to infer from Opposer's conclusory (and contradictory) there was a lack of quality control in the Government Edition. *See Ashcroft*, 556 U.S. at 678; *see also New Hampshire v. Maine*, 532 U.S. 742, 749 (2001) (judicial estoppel precludes a party from maintaining a position one legal proceeding, and taking an inconsistent or inapposite position in different proceeding).

In addition, the Opposition fails to allege facts that the public was deceived by the Government Edition, which it must establish to establish abandonment via naked licensing. *See Taco Cabana Int'l, Inc. v. Two Pesos*, Inc., 932 F.2d 1113, 1121 (5th Cir. 1991), *aff'd sub nom*, 505 U.S. 763 (1992) ("The purpose of the quality-control requirement is to prevent the public deception that would ensue from variant quality standards under the same mark or dress. Where the particular circumstances of the licensing arrangement persuade us that the public will not be deceived, we need not elevate form over substance and require the same policing rigor appropriate to more formal licensing and franchising transactions."); *accord Hokto Kinoko*, 738 F.3d at 1098. No reasonable inference taken from the totality of the facts alleged even suggest any customer was confused about the source of the Government Edition or was deceived. Indeed, the resultant product allegedly "enhanc[ed] Neo4j to address critical government requirements." SACC, ¶ 17.

Taken as a whole, Opposer's allegations concerning the Government Edition do not come close to meeting the stringent standard of proof required to establish abandonment via naked licensing. *See Transgo, Inc. v. Ajac Transmission Parts Corp.*, 768 F.2d 1001, 1017–18 (9th Cir. 1985) (even though licensor never directed inspected or tested the final product, reliance on a licensee's own quality control was sufficient where 90% of the components were made by the licensor, the parties worked closely in development of new products, and no complaints were ever received about licensee's products). Accordingly, the Board should dismiss the Opposition to the extent it alleges abandonment based on the creation and marketing of the Government Edition.

2. Opposer is Estopped From Basing an Abandonment Claim based on the Development and Sale of the Government Edition

Defendants' allegations concerning the Government Edition run afoul with the doctrine of licensee estoppel. A licensee cannot challenge the validity of a trademark based on a failure to police the licensee's own licensed use of that trademark or that the license itself constituted a naked license. *See Leatherwood Scopes*, 63 USPQ2d at 1703 (under doctrine of licensee estoppel, "licensee is estopped to challenge [licensor's] ownership of the mark" based on naked licensing); *accord Monster, Inc. v. Dolby Laboratories Licensing Corp.,* 920 F.Supp.2d 1066, 1076–77 (N.D. Cal. 2013) ("The licensee estoppel doctrine precludes a licensee from challenging the validity of the licensor's trademark based upon conduct that occurred during the life of its license, particularly with respect to the licensee itself).

The doctrine of licensee estoppel applies here. PureThink and Applicant entered into the Partner Agreement on September 30, 2014, which was executed by Suhy (the owner and operator of both Opposer and PureThink). SACC at ¶ 15, Ex. B. Under Section 4.1 of the Partner Agreement, Applicant provided a non-exclusive, non-transferable limited license during the term of that agreement to, *inter alia*, "use [Applicant's] trademarks solely to market and promote the Products in accordance with the terms of [the Partner Agreement]." SACC, Exhibit B. This license remained in place until Applicant terminated the Partner Agreement and the

Government Edition in July 2017. *See* SACC, ¶ 21. Opposer's allegations of Applicant's alleged lack of quality control over Neo4j Government Edition arise entirely when the Partner Agreement was in effect. *See* Opp., ¶¶ 14, 21; SACC, ¶¶ 16–17, 20, 96. Opposer was admittedly formed to evade the post-termination restrictions imposed by the Partner Agreement, and as PureThink's alter ego cannot escape the application of licensee estoppel. *See* SACC at ¶ 21. The doctrine applies here because Opposer "essentially seeks to benefit from its own misfeasance." *Westco Group, Inc. v. K.B. & Assocs., Inc.*, 128 F.Supp.2d 1082, 1089 (N.D. Ohio 2001). Thus, Opposer is estopped from arguing that the Government Edition evidences Applicant's alleged abandonment of the Neo4j Mark via naked licensing.

F. The Board Should Dismiss the Opposition with Prejudice

As detailed above, Opposer's fraud and abandonment via naked licensing theories are identical to those in the district court action. Despite several years of litigation and the District Court giving Opposer multiple opportunities to overcome the fatal defects in those theories, Opposer could not do so. Thus, there is no reason to believe granting Opposer leave to amend here would serve a useful purpose. *See Pure Gold, Inc. v. Syntex (U.S.A.) Inc.*, 221 USPQ 151, 154 (TTAB 1983) ("[a]lthough it is the general practice of the Board to allow a party an opportunity to correct a defective pleading, in the instant case leave to amend the pleading would serve no useful purpose"), *aff'd*, 739 F.2d 624 (Fed. Cir. 1984). Moreover, as discussed in detail above, these theories are legally defective, and Opposer previously admit as much with respect to its fraud theory. As a result, granting leave to amend would be futile. *See Leatherwood Scopes*, 63 USPQ2d 1699 (recognizing that where opposer could not prevail on an abandonment claim as matter of law, it would be futile to grant opposer leave to amend to assert such claim). Accordingly, the Board should dismiss the present Opposition with prejudice and allow the new registration to issue.

VI. CONCLUSION

For the reasons set forth herein, Applicant respectfully requests that the Board grant summary judgment in favor of Applicant and bar Opposer from attempting to re-litigate the same issues that were resolved by the District Court. Alternatively, the Board should grant Applicant's Rule 12(b)(6) motion dismiss the Opposition with prejudice as it fails to state any legally cognizable basis to oppose the Application.

Respectfully submitted,

Dated: July 16, 2021

By: /Mitesh Patel/
Mitesh Patel
Chancellor Tseng
HOPKINS & CARLEY
70 SOUTH FIRST ST.
SAN JOSE, CA 95113
Attorneys for Applicant Neo4j, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Motion for Summary Judgment and Motion to Dismiss with Declaration of Mitesh Patel and Exhibits have been served on John Mark Suhy, Jr., Principal for iGov Inc, by forwarding said copy on July 16, 2021, via email to:

iGov Inc
JOHN MARK SUHY JR
IGOV INC
7686 RICHMOND HIGHWAY, SUITE 101-B
ALEXANDRIA, VA 22306
jmsuhy@igovsol.com

/s/ Mitesh Patel
Mitesh Patel

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 90/056,224
For the mark: NEO4J
Published: December 8, 2020

iGov Inc. Opposer, v. Neo4j, Inc. Applicant.	Opposition No.: 91269705

DECLARATION OF MITESH PATEL IN SUPPORT OF APPLICANT'S MOTION FOR SUMMARY JUDGMENT AND MOTION TO DISMISS

I, Mitesh Patel, declare:

1. I am an attorney at law and duly licensed to practice before all courts of the State of California, and am an attorney with Hopkins & Carley, a Law Corporation, attorneys of record for Applicant Neo4j, Inc. ("Applicant"). I make this declaration in support of Applicant's Motion to Dismiss and Motion for Summary Judgment against the Opposition filed by iGov Inc. ("Opposer").

2. The facts stated herein are based on my personal knowledge and if called upon to testify as a witness in this matter, I could and would do so competently.

3. On November 28, 2018, Neo4j USA filed suit in the United States District Court, Northern District of California against PureThink and its successor-in-interest Opposer, along with their founder John Mark Suhy that included claims for (1) trademark infringement 15 U.S.C. § 1114(1); (2) false designation of origin and false advertising in violation of 15 U.S.C. § 1125(a); and (3) federal unfair competition in violation of 15 U.S.C. § 1125(a). *See* Opposition, Exhibit A. Case No. 5:18-cv-7182-EJD. ("the Federal Action").

4. Attached hereto as **Exhibit 1** is a true and correct copy of the Trademark Registration Certificate for the "Neo4j" trademark, Registration No. 4,784,280, dated August 4, 2015, which was downloaded from the USPTO's Trademark Status and Document Retrieval (TSDR) system.

5. Attached hereto as **Exhibit 2** is a true and correct copy of the Declaration of Philip Rathle in Support of Plaintiffs' Consolidated Motion for Summary Judgment, which was filed in the Federal Action on December 11, 2020 and is publically available via the Public Access to Court Electronic Records (PACER) system maintained by the Administrative Office of the U.S. Courts on behalf of the federal Judiciary (hereafter referred to as "PACER").

6. Attached hereto as **Exhibit 3** is a true and correct copy of the Second Amended Complaint, which was filed by Applicant on November 25, 2019 in the Federal Action and is publicly available on PACER.

7. Attached hereto as **Exhibit 4** is a true and correct copy of the Third Amended Complaint, (without referenced exhibits) which was filed by Applicant on September 28, 2020 in the Federal Action and is publicly available on PACER.

8. Attached hereto as **Exhibit 5** is a true and correct copy of Defendants Purethink LLC, iGov, Inc and John Mark Suhy's Answer to Plaintiffs' Second Amended Complaint, which was filed by Opposer on December 9, 2019 in the Federal Action and is publicly available on PACER.

9. Attached hereto as **Exhibit 6** is a true and correct copy of Defendant Purethink LLC and iGov, Inc's First Amended Counterclaim Against Neo4j, Inc. and Neo4j Sweden AB, which was filed by Opposer on December 9, 2019 in the Federal Action and is publicly available on PACER.

10. Attached hereto as **Exhibit 7** is a true and correct copy of Plaintiff Neo4j, Inc.'s Notice of Motion and Motion for Judgement on the Pleadings; Memorandum of Points and Authorities in Support Thereof, which was filed by Applicant on February 11, 2020 in the Federal Action and is publicly available on PACER.

11. Attached hereto as **Exhibit 8** is a true and correct copy of the Order Granting Motion for Judgment on the Pleadings, which was filed by the District Court on May 21, 2020 in the Federal Action and is publicly available on PACER.

12. Attached hereto as **Exhibit 9** is a true and correct copy of Defendants PureThink, LLC, iGov Inc and John Mark Suhy's First Amended Answer to Plaintiffs' Second Amended Complaint, which was filed by Opposer on June 5, 2020 in the Federal Action and is publicly available on PACER.

13. Attached hereto as **Exhibit 10** is a true and correct copy of Plaintiff Neo4j, Inc.'s Notice of Motion and Motion to Dismiss for Failure to State a Claim and Motion to Strike; Memorandum of Points and Authorities in Support Thereof, which was filed by Applicant on June 19, 2020 in the Federal Action and is publicly available on PACER.

14. Attached hereto as **Exhibit 11** is a true and correct copy of Defendants and Counterclaimants' Memorandum of Points and Authorities in Support of Opposition to Neo4j, Inc.'s Motion to Dismiss for Failure to State a Claim and Motion to Strike, which was filed by Opposer on July 6, 2020 in the Federal Action and is publicly available on PACER.

15. Attached hereto as **Exhibit 12** is a true and correct copy of the Order Granting Motions to Dismiss and Strike, which was filed by the District Court on August 20, 2020 in the Federal Action and is publicly available on PACER

16. Attached hereto as **Exhibit 13** is a true and correct copy of Defendants PureThink, LLC, iGov Inc and John Mark Suhy's Answer to Plaintiffs' Third Amended Complaint, which was filed by Opposer on October 19, 2020 in the Federal Action and is publicly available on PACER.

17. Attached hereto as **Exhibit 14** is a true and correct copy of the Order Granting Motion to Strike, which was filed by the District Court on March 3, 2021 in the Federal Action and is publicly available on PACER.

18. Attached hereto as **Exhibit 15** is a true and correct copy of Defendants' Consolidated, Combined Opposition to Plaintiff's Motion for Summary Judgment / Notice of Motion and Cross Motion Motion [sic] for Summary Judgment; Memorandum or Points and Authorities in Support, which was filed by Opposer on January 15, 2021 in the Federal Action and is publicly available on PACER. This is pleading is also attached as part of Exhibit B to the Opposition.

19. Attached hereto as **Exhibit 16** is a true and correct copy of the Order Granting Plaintiffs' Motion for Partial Summary Judgment; Denying Defendants' Cross-Motion for Summary Judgment, which was filed by the District Court on May 18, 2021 in the Federal Action and is publicly available on PACER.

20. Attached hereto as **Exhibit 17** is a true and correct copy of a chart I prepared, which compares the allegations in the Opposition to the various pleadings filed by Opposer in the Federal Action that are attached as Exhibits 5, 6, 9, 13 and 15 hereto, and attached as Exhibits C and G to the Opposition.

21. Attached hereto as **Exhibit 18** is a true and correct copy of Neo4j Sweden AB's version of the GNU Affero General Public License version 3 (AGPL), which is repeatedly referenced in Paragraphs 12, 13 and 22 of the Opposition. The AGPL is also Exhibit A to Opposer's Second Amended Counterclaim filed in the Federal Action, which is attached as Exhibit C to Opposition.

22. Attached hereto as **Exhibit 19** is a true and correct copy of Neo4j Sweden AB's version of the GNU General Public License version 3 (GPL) that is repeatedly referenced in Paragraphs 12, 13 and 22 of the Opposition, and which was printed out from Neo4j Sweden AB's GitHub repository at https://github.com/neo4j/neo4j/blob/4.3/LICENSE.txt.

23. Attached hereto as **Exhibit 20**, is a true and correct copy of an April 13, 2021 capture of Neo4j, Inc.'s https://neo4j.com/graphacademy/neo4j-certification/ webpage from the Wayback Machine, a digital archive of the World Wide Web (https://web.archive.org), which was printed out on July 16, 2021. This certification test webpage is referred to in Paragraph 25 of the Opposition.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed on this 16th day of July 2021, at San Jose, California.

By: /Mitesh Patel/
Mitesh Patel

United States of America

United States Patent and Trademark Office

NEO4J

Reg. No. 4,784,280

Registered Aug. 4, 2015

Int. Cls.: 9, 35, 41, 42 and 45

TRADEMARK

SERVICE MARK

PRINCIPAL REGISTER

Michelle K. Lee

Director of the United States
Patent and Trademark Office

NEO TECHNOLOGY (DELAWARE CORPORATION)
111 E. 5TH AVE.
SAN MATEO, CA 94401

FOR: COMPUTER PROGRAMS FOR MANAGING, STORING, AND ACCESSING DATA FROM A DATABASE, ANALYZING DATA IN COMPUTER DATABASES FOR BUSINESS PURPOSES, PROCESSING IN THE NATURE OF UPDATING DATA IN COMPUTER DATABASES, AND VISUALIZING IN THE NATURE OF CREATING GRAPHS FROM DATA STORED IN DATABASES; COMPUTER PROGRAMS FOR STORING, MANAGING, AND QUERYING DATA FROM DATABASES ON COMPUTERS, COMPUTER NETWORKS, AND GLOBAL COMPUTER NETWORKS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 6-4-2006; IN COMMERCE 5-28-2007.

FOR: CONSULTING SERVICES AND ADVICE IN THE FIELD OF UPDATING AND MAINTENANCE OF DATA IN COMPUTER DATABASES , IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 6-4-2006; IN COMMERCE 5-28-2007.

FOR: EDUCATIONAL SERVICES, NAMELY, CONDUCTING TRAINING CLASSES, CERTIFICATION TRAINING, WORKSHOPS, TUTORIAL SESSIONS, AND ONLINE CLASSES IN THE FIELDS OF DESIGNING COMPUTER DATABASES AND UPDATING AND MAINTENANCE OF DATA IN COMPUTER DATABASES, AND DISTRIBUTING COURSE MATERIALS IN CONNECTION THEREWITH; PROVIDING TRAINING SERVICES IN THE FIELDS OF DESIGNING COMPUTER DATABASES AND UPDATING AND MAINTENANCE OF DATA IN COMPUTER DATABASES, AND DISTRIBUTING COURSE MATERIALS IN CONNECTION THEREWITH, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 6-4-2006; IN COMMERCE 5-28-2007.

FOR: PROVIDING A WEB SITE FEATURING TECHNOLOGY THAT ENABLES END USERS TO STORE, MANAGE, AND QUERY DATA FROM DATABASES ON COMPUTERS, COMPUTER NETWORKS, AND GLOBAL COMPUTER NETWORKS; CLOUD COMPUTING FEATURING SOFTWARE FOR USE IN MANAGING, STORING, AND ACCESSING DATA FROM A DATABASE, ANALYZING DATA IN COMPUTER DATABASES FOR BUSINESS PURPOSES, PROCESSING IN THE NATURE OF UPDATING DATA IN COMPUTER

DATABASES, AND VISUALIZING IN THE NATURE OF CREATING GRAPHS FROM DATA STORED IN DATABASES; TECHNICAL SUPPORT SERVICES, NAMELY, INSTALLATION, ADMINISTRATION, AND TROUBLESHOOTING OF DATABASE APPLICATIONS; COMPUTER SERVICES, NAMELY, PROVIDING CONSULTATION SERVICES AND ADVICE IN THE FIELDS OF DESIGNING COMPUTER DATABASES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 6-4-2006; IN COMMERCE 5-28-2007.

FOR: CONSULTING SERVICES AND ADVICE IN THE FIELD OF MAINTAINING THE SECURITY AND INTEGRITY OF DATABASES, IN CLASS 45 (U.S. CLS. 100 AND 101).

FIRST USE 6-4-2006; IN COMMERCE 5-28-2007.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 86-267,006, FILED 4-30-2014.

SIMON TENG, EXAMINING ATTORNEY

REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.

Requirements in the First Ten Years*
What and When to File:

First Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. *See* 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

Second Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.* *See* 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*
What and When to File:

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. *See* 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. *See* 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see http://www.wipo.int/madrid/en/.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at http://www.uspto.gov.

NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at http://www.uspto.gov.

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Attorneys for Plaintiffs and Counter-Defendants
NEO4J, INC. and NEO4J SWEDEN AB

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

NEO4J, INC., a Delaware corporation, and NEO4J SWEDEN AB, a Swedish corporation, Plaintiffs, v. PURETHINK LLC, a Delaware limited liability company, IGOV INC., a Virginia corporation, and JOHN MARK SUHY, an individual, Defendants.	CASE NO. 5:18-cv-07182-EJD **DECLARATION OF PHILIP RATHLE IN SUPPORT OF PLAINTIFFS' CONSOLIDATED MOTION FOR SUMMARY JUDGMENT** Date: March 25, 2021 Time: 9:00 a.m. Dept.: Courtroom 4, 5th Floor Judge: Hon. Edward J. Davila
AND RELATED COUNTERCLAIM.	
NEO4J, INC., a Delaware corporation, and NEO4J SWEDEN AB, a Swedish corporation, Plaintiffs, v. GRAPH FOUNDATION, INC., an Ohio corporation, GRAPHGRID, INC., an Ohio corporation, and ATOMRAIN INC., a Nevada corporation, Defendants.	CASE NO. 5:19-CV-06226-EJD

I, Philip Rathle, declare as follows:

1. I am the Vice President of Products at Neo4j, Inc. ("Neo4j USA"). I have held that position since December 2013 and prior to that worked in a similar position as Senior Director of Products at Neo4j USA, beginning May 2012. I am responsible for product management of the Neo4j product portfolio, which includes the Neo4j® graph database platform ("Neo4j® Platform"). My responsibilities include product strategy and product roadmap, including specifying what features are to be built in successive versions of the Neo4j® Platform, as well as the design and behaviors of those features. My team and I work closely with the Neo4j Product Engineering team who are responsible for building and testing each successive version of the Neo4j® Platform and who comprise of over 100 engineers primarily employed by Neo4j Sweden AB.

2. I submit this declaration on behalf of Plaintiffs in support of their Consolidated Motion for Summary Judgment. The facts stated in this declaration are based on my personal knowledge, except with respect to those matters stated to be on information and belief, and as to those matters, I believe them to be true. If called upon to testify as a witness in this matter, I could and would do so competently.

3. Neo4j USA is the parent corporation of Neo4j Sweden AB ("Neo4j Sweden"), which in turn is as a wholly owned subsidiary of Neo4j USA. As Vice President of Products for Neo4j USA, I work with Neo4j Sweden and other subsidiaries world-wide as referenced above. This includes working with Neo4j Sweden's continuing development of the source code underlying the software for the Neo4j® Platform and various quality assurance and testing on software package builds compiled from this source code. I also work closely with Neo4j Marketing, Developer Relations, Field Engineering, Support, Customer Success, and Professional Services, to ensure they understand the Neo4j® Platform and its capabilities, and can communicate about it and use it as appropriate to their role. I also spend a great deal of time meeting with customers about their use of the Neo4j® Platform and their needs.

4. As Vice President of Products for Neo4j USA, I have been involved in strategic decisions concerning the world-wide licensing strategy for the Neo4j® Platform. Neo4j Sweden

is the owner of all copyrights related to the Neo4j® Platform, including the source code, and has licensed those copyrights to Neo4j USA in connection with the making, use, creation of derivative works, sale, offer to sell, importation, performance, display, reproduction and distribution of the copyrighted material, and the sublicensing of such rights in the United States. This includes Neo4j USA being solely responsible for the commercial licensing of Neo4j® Platform products and managing the Neo4j Solution Partner program in the United States.

5. From 2010 until present, Neo4j Sweden and Neo4j USA's business model followed the "multi-licensing" model in the software industry. In this scenario, one option is a proprietary software license, which allows the possibility of creating proprietary applications derived from it, while the other license is a "copyleft" open-source license, which requires public release under the same open-source license of any derived work. Under this model, Plaintiffs offered two products, Neo4j® Community Edition ("Neo4j® CE") along with a richer and more feature-robust Enterprise Edition ("Neo4j® EE") designed for commercial deployment, both products engineered by Neo4j Sweden.

6. Neo4j® CE is offered by Plaintiffs for royalty-free use, subject to the terms of the GNU General Public License version 3 ("GPL") license and provides a limited feature set. For example, Neo4j® CE limits the ability to operate on only one machine at a time (i.e. no clustering), work with only one database at a time (i.e. no "multi-database" capability). It also has limited operational features, security features, and is offered without support contracts or warranties from Neo4j USA and Neo4j Sweden (collectively, "Plaintiffs").

7. Neo4j® offers its EE under commercial licensing terms, including technical support, and is the primary source of revenue for Plaintiffs. Neo4j® EE provides customers with added advanced scalability, availability, security, and operational features. Users requiring those additional features for more advanced commercial operation, including unlimited number of user databases, together with support, license use of the Neo4j® Platform through Neo4j® EE under commercial terms. Commercial users benefit from a turn-key solution with the assistance of authorized Neo4j solution partners, typically avoiding drawn-out development processes. Neo4j® EE is a full superset of Neo4j® CE, containing significant additional functionality intended for

commercial use. In the United States, a commercial license to Neo4j® EE entitled the purchaser to use it in a custom setting composed of proprietary modules with industry standard terms, receive support or professional services from Neo4j USA, and the right to receive periodic software updates, which included feature updates, bug and security fixes and assistance. Both Neo4j® EE and Neo4j® CE undergo extensive testing and review as described below.

8. Plaintiffs originally offered Neo4j® EE under a paid-for commercial license and also made the source code available under the GNU Affero General Public License, version 3 ("AGPL"), to allow testing and trial use, and non-commercial use, following well-accepted dual-licensing model that has been, or is being, used by software companies, such as Oracle (with MySQL), IBM (with Linux), and MongoDB.

9. Purchasing a commercial license supported the continued development and improvement of Neo4j® EE and the Neo4j® Platform as a whole, including the development of source code for proprietary modules made for enterprise uses and overall improvements to the source code underlying Neo4j® CE. Importantly, the commercial license for Neo4j® EE also relieved customers of the "copyleft" obligations included in the AGPLv3, which obligated end users to open source any applications that access the database either locally or over a network. Attached hereto as **Exhibit 1** is a true and correct copy of an exemplar of the AGPL as previously used by Neo4j Sweden for Neoj4® EE version 3.3 (and earlier versions), which is still available on Plaintiffs' GitHub repository.[1]

10. Neo4j® EE version 3.3 was the first version of Neo4j® EE to include a small number of closed-source features for increased security as needed by commercial users of the Neo4j® Platform, namely Kerberos and intra-cluster encryption. The source code for those two features were not included in Neo4j's public GitHub source code repository, but were instead built and managed inside a private repository. All of the tests to Neo4j® EE version 3.3

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[1] GitHub provides hosting for software development and version control. It offers software distributed version control, source code management, as well as access control and collaboration features such as bug tracking, feature requests, task management, and continuous integration. GitHub offers its basic services free of charge. Its more advanced professional and enterprise services are available on commercial terms.

conducted by Plaintiff were done so specifically accounting for these features and the interplay between that functionality and the other classes of code within the software.

11. In May 2018, Plaintiffs released Neo4j® EE version 3.4, which they continued to offer under a dual license. Attached hereto as **Exhibit 2** is a true and correct copy of a May 17, 2018 announcement I published on Neo4j USA's website regarding the release of Neo4j® CE and Neo4j® EE version 3.4. However, Neo4j Sweden replaced the AGPLv3 with a stricter license, which included the terms of the AGPLv3 with additional restrictions and further information about the owner and author of the copyrights underlying the source code (the "Neo4j Sweden Software License"), which in relevant part stated:

> NOTICE
>
> This package contains software licensed under different licenses, please refer to the NOTICE.txt file for further information and LICENSES.txt for full license texts. Neo4j Enterprise object code can be licensed independently from the source under separate commercial terms. Email inquiries can be directed to: licensing@neo4j.com. More information is also available at:https://neo4j.com/licensing/ The software ("Software") is developed and owned by Neo4j Sweden AB (referred to in this notice as "Neo4j") and is subject to the terms of the GNU AFFERO GENERAL PUBLIC LICENSE Version 3, with the Commons Clause as follows:
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Attached hereto as **Exhibit 3** is a true and correct copy of an exemplar of the Neo4j Sweden Software License used with Neo4j® EE version 3.4, which is still available on Plaintiffs' GitHub repository.

12. This marked an important transition for newer versions of the source code for Neo4j® EE: from being "open source", to being "source available." More specifically: while allowing code to be publicly viewable and used within a certain limited scope of usage, the Neo4j Sweden Software License imposes commercial restrictions that included third-party resale and

services activity. This new license, applied to Neo4j® EE version 3.4 and several pre-release versions of Neo4j® EE version 3.5, and are sufficiently restrictive so as to no longer qualify as "open source" under industry-accepted definitions of open source. Plaintiffs made the decision to modify the license terms used to distribute Neo4j® EE to prevent third parties from monetizing its software while not contributing back to the software or companies who are producers of the software. Plaintiffs also wanted to be able to control their reputation and brand by certifying and approving services partners working with the flagship commercial version of its product.

13. In November 2018, Plaintiffs officially released Neo4j® EE version 3.5 solely under a proprietary and commercial license, while they continued to offer the source code for Neo4j® CE under the GPL open source license. This meant that Plaintiffs were no longer publishing source code for new versions of Neo4j® EE to their public GitHub repository. This was done to simplify the Neo4j® Platform's licensing model, as well as to more clearly communicate the commercial intent of the Neo4j® EE product, and prevent third parties from engaging parasitic behavior and diverting funds from the Plaintiff to themselves in closed, proprietary commercial projects. Attached hereto as **Exhibit 4** is a true and correct copy of November 15, 2018 announcement regarding the release of Neo4j® CE and Neo4j® EE version 3.5 that I published on Neo4j USA's website.

14. Prior to its official release, Plaintiffs published several beta versions of the source code for Neo4j® EE v3.5 via their GitHub repository subject to the Neo4j Sweden Software License. Plaintiffs did so in order to obtain user input and to make it easier to identify potential bugs that could be fixed prior to its official release. Neo4j® EE version 3.5.0-RC1 was the last pre-release beta version made available via GitHub. Thereafter, Plaintiffs only made the source code for Neo4j® CE available under the GPL via Github and only distributed Neo4j® EE as executable object code under a commercial license.

15. Both Neo4j® EE and Neo4j® CE have been subject to trademark policies and guidelines published on Plaintiffs' website. These policies made clear that to the extent any authorized modifications are made to Neo4j® Software, such modified software should indicate so and no longer bear the Neo4j® Mark. Neo4j USA did this to ensure that consumers knew

when they were receiving genuine Neo4j® Software that was quality assured by Plaintiffs rather than third-party modified open source versions thereof.

16. Attached hereto as **Exhibit 5** is a true and correct copy of a July 10, 2017 capture of Neo4j USA's Trademark Policy located at https://neo4j.com/trademark-policy/, which was downloaded from the Wayback Machine website, a digital archive of the World Wide Web (https://web.archive.org). This version of Neo4j USA's Trademark Guidelines was updated on October 13, 2015, and to my knowledge publicly available on Neo4j USA's website between October 15, 2015 and April 2, 2019.

17. Attached hereto as **Exhibit 6** is a true and correct copy of a September 26, 2019 printout of Neo4j USA's Trademark Guidelines. This version of Neo4j USA's Trademark Guidelines has been publicly available on Neo4j USA's website since April 3, 2019.

18. Attached hereto as **Exhibit 7** is a true and correct copy of an August 8, 2020 capture of Neo4j USA's Trademark Guidelines located at https://neo4j.com/trademark-policy/, which was downloaded from the Wayback Machine website, a digital archive of the World Wide Web (https://web.archive.org). Again, this version of Neo4j USA's Trademark Guidelines has been publicly available on Neo4j USA's website since April 3, 2019.

19. As Vice President of Products, I am also involved in and work with Neo4j Sweden AB's continuing development of the source code underlying the software for the Neo4j® Platform and various quality assurance and testing on software package builds compiled from this source code. Neo4j Sweden AB ("Neo4j Sweden") relies on more than 100 engineers, dozens of engineering-years of build and test infrastructure, and millions of dollars annually in infrastructure costs alone in continuing to improve Neo4j® EE.

20. Included in our tests is approximately 150,000 unit and integration tests that run automatically on every code change to each new version of both Neo4j® CE and Neo4j® EE. We also have an extensive suite of stress and robustness tests, which subject the database product artifacts that we build to complex randomized scenarios that include deliberately-induced machine outages, to ensure that distributed computing ("clustering") features, which are unique to Neo4j® EE, adequately protect customers and their data from the kinds of network, server, and

software outages that occur in real-world customer environments, providing resilience in the face of technical adversity.

21. Another important kind of test that we have is end-to-end soak testing, which is based on an infrastructure was expensive and time consuming to build. Plaintiffs have had a team of engineers that are dedicated to building and maintaining this testing framework since at least 2014. This test is only performed on Neo4j® EE releases and not independently performed on Neoj4® CE release. This layer, like the others, leverages a complex proprietary automation suite that simulates how end users would automate and run Neo4j® EE. It access a Neo4j® EE cluster through Neo4j's programmatic software drivers, running realistic load through the system for days at a time, to ensure stable operation over extended periods, simulating customer usage. Neo4j also has a complex benchmarking suite that is run with every candidate release of the Neo4j® EE software, designed to ensure that there are no performance regressions in between releases of software. This includes micro benchmarks, which are highly localized and fine grained; macro benchmarks, which use larger data sets, some of which are obfuscated and anonymized data sets provided by customers for this purpose; and full workloads, which test databases of different size with mixed workloads with high levels of concurrency.

22. In addition to all of the automated testing outlined above, Neo4j USA and Neo4j Sweden's customer-facing technical experts, including Customer Support, Field Engineering (pre-sales), Professional Services (consulting), Product Management (my own team that has included employees of both Neo4j USA and Neo4j Sweden), carry out manual testing of releases as part of our certification process, before they are deemed ready to be shipped to customers.

23. In or about September 2017, I learned that John Mark Suhy had formed a new company called iGov Inc., and that a group within Internal Revenue Service intended to award PureThink a sole-source contract for their so-called "iGov Graph Database" software, which appeared to be compiled using the source code from a version of Neo4j® EE licensed under the AGPL. On September 19, 2017, Neo4j USA filed a protest objecting to the sole source justification of the intended award.

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24. In or about October 2017, I learned from iGov's website, www.igovsol.com, that John Mark Suhy was recompiling binaries allegedly from source code underlying Neo4j® EE v3.3, which he called "Neo4j Enterprise" and was advertised as being identical to Plaintiffs' official Neo4j® EE v3.3 binaries. I downloaded this version distributed by iGov from https://igovsol.com/downloads.htm and found that this software as compiled by Mr. Suhy was not of the same quality as official binary compiled by Neo4j Sweden, and did not include several closed-sourced features and corresponding source code.

25. In particular, I learned the following from the inspection of Mr. Suhy's recompiled version of Neo4j® EE v3.3:

- Mr. Suhy was using modified versions of older build scripts to assemble iGov's Government Package for Neo4j/Neo4j Enterprise.
- Mr. Suhy did not include key security feature such as kerberos and intra-cluster encryption, which were only available in the official Neo4j® EE v3.3 release.
- Neo4j® EE includes many components ("jar" files). The version made available by Mr. Suhy included many but not all of the components, calling into question whether the software would operate to the same level of capability and quality as Neo4j Sweden's official release of the software. Specifically, two commercial-only libraries, neo4j-server-commercial-3.3.0.jar and neo4j-causal-clustering-commercial-3.3.0.jar did not exist in Mr. Suhy's version of "Neo4j Enterprise."

26. By recompiling Neo4j® EE v3.3 in the foregoing manner, Mr. Suhy introduced modifications that Plaintiffs would not consider to be of the same quality as if were compiled by Neo4j Sweden. Mr. Suhy's intermixing of scripts from older versions of Neo4j® EE increased the likelihood of stability issues for end-user customers and the co-mingling of divergent code increases the risk of environment failure and/or loss of database and/or data availability.

27. After Plaintiffs released Neo4j® EE version 3.4, I learned from iGov's website that it was promoting what it called open source "Neo4j Enterprise" version 3.4. I downloaded a copy of this software and found that similar to the software iGov released supposedly based on Neo4j® EE version 3.3, this "version 3.4" had been built with older versions of build scripts

modified by Mr. Suhy, and that the Neo4j Sweden Software License had also been replaced with a generic copy of the APGL in the LICENSE.txt files accompanying iGov's versions of what it called version 3.4 of its own offering it called "Neo4j Enterprise" and ONgDB.

28. Since Plaintiffs were no longer offering the binaries for Neo4j® EE version 3.4 under a non-commercial license, iGov's version of what it called "Neo4j Enterprise v3.4" it would be highly unlikely that it would be of the same quality as if were compiled by Neo4j Sweden AB, which is subject to the extensive proprietary testing described above beyond what is publicly available in Neo4j® CE.

29. On or about September 20, 2019, I inspected a copy of ONgDB v3.5.9 that GFI claimed was licensed under the AGPL and purported to mirror Neo4j® EE version 3.5.9, which I obtained from Defendant Graph Foundation's GitHub repository. Plaintiffs never offered this version of the software as either open source under the AGPL, nor as source available. ONgDB version 3.5.9 contained 247 Java classes that were released for the first time under the Neo4j Sweden Software License either in (a) Neo4j® EE version 3.4 and were incorporated into Neo4j® EE version 3.5; or (b) Neo4j® EE version 3.5.0-RC1, and were therefore never previously licensed under the AGPLv3. Additionally, the full underlying source code for the enterprise-only components of Neo4j® EE version 3.5.9 was never made available or released under the Neo4j Sweden Software License, or any open source license. Specifically, Neo4j® EE version 3.5.9 includes ten versions worth of discrete advances (fixes & improvements critical to the reliable function of the software) not present in the last version of restricted source available software that I understand that ONgDB used as the basis for its software.

30. Also as part of my inspection, I also reviewed a commit (https://github.com/graphfoundation/ongdb/commit/c0b23b21e051fe12bd01a50d46ca3a7ad9e88374) authored by John Mark Suhy in the ONgDB Github repository where he replaced at least 28 LICENSE.txt files that contained the Neo4j® Sweden Software License covering the aforementioned source code files and replaced it with the AGPL.

31. As described above, Neo4j Sweden employs significant propriety testing and quality assurances beyond what is publicly available in Neo4j® CE to create and build Neo4j®

EE version 3.5. The substantially complex nature of those scripts and tests, combined with the significant multi-year investment in said infrastructure, the large team involved in operating these tests and knowledge and training required to maintain and evolve them, the high cost of running these tests (over $1M/year in infrastructure costs alone), the complex nature of the Neo4j® EE software itself, and the lack of visibility into the code changes being made in all versions subsequent to Neo4j® EE version 3.5-RC, make it improbable that any third party, including John Mark Suhy (iGov & PureThink), Brad Nussbaum and Ben Nussbaum of the Graph Foundation (and AtomRain and GraphGrid), would be able to replicate the same level of reliability, quality, or features of subsequent releases of Neo4j® EE 3.5.x by Plaintiffs. As a result, there would be an increased potential for instability and compatibility issues in ONgDB software that is compiled in this manner, and that fails to include incremental improvements to the proprietary software.

32. Given the number of engineers that work on developing Neo4j® EE, the amount of man hours they put in and the rigors of Neo4j Sweden's proprietary development and testing protocols, and the long period of onboarding required for each engineer to become familiar with the code and quality processes, it would be virtually impossible for Graph Foundation replicate this. Consequently, neither Neo4j USA nor Neo4j Sweden would consider ONgDB v3.5.9 to be the exact equivalent both in function and quality as the same version of official Neo4j® EE v3.5.9, and this would be true for any other version of ONgDB 3.5.x that Graph Foundation claims to be the equivalent version of Neo4j EE v3.5.x.

33. When Neo4j Sweden closed off the enterprise source code after Neo4j® EE version 3.5.0-RC1, any changes or additions it made to that code that were not mirrored in Neo4j® CE would not available to developers and end users of Neo4j® EE v3.5.x. This includes Neo4j 3.5.0, which was the first version certified for General Availability by Plaintiff, and collectively includes critical fixes and other ongoing improvements in closed-off enterprise code, a substantial number of which are in the clustering layer of the software, which is now closed source. Thus, Graph Foundation would not have received such fixes and improvements, nor have been aware of the precise nature of all of the fixes. As of the date of this declaration, the latest

version of Neo4j® EE is 4.2.1; and the latest version of the Neo4j® EE 3.5 code line is Neo4j 3.5.25. *See* https://neo4j.com/release-notes/. With over twenty proprietary patch releases differentiating the underlying code line of Neo4j® EE 3.5.25, any versions of ONgDB relying on older code would be meaningfully different from version 3.5.0-RC1, the pre-general availability release candidate upon which ONgDB is based.

34. Examples include multiple critical patches introduced by Neo4j Sweden that were only included in the closed enterprise code for Neo4j® EE 3.5.x and were never publicly release under the Neo4j Sweden Software License or the AGPL, or otherwise made publicly accessible or available via Neo4® CE. The specific fixes to the closed Neo4j® EE source code consisted of security and functionality fixes crucial to proper operation of clustering and other commercial-only features. These patches were necessary to increase the stability and functionality of Neo4j® EE, and in particular to avoid the risk that customers using the software might face risks and instabilities with their data and operation of the software, including risk of unplanned downtime, data corruption, returning incorrect results for certain queries, and risks the reliable operation of backups. The absence of these Neo4j-developed and tested patches in ONgDB software leaves users vulnerable to these and other problems, for which Plaintiff is uniquely positioned and has uniquely invested in addressing.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration was executed on this 10th day of December 2020, at San Mateo, California

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NEO4J, INC. and NEO4J SWEDEN AB

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

NEO4J, INC., a Delaware corporation, and NEO4J SWEDEN AB, a Swedish corporation,

Plaintiffs,

v.

PURETHINK LLC, a Delaware limited liability company, IGOV INC., a Virginia corporation, and JOHN MARK SUHY, an individual,

Defendants.

CASE NO. 5:18-cv-07182-EJD

SECOND AMENDED COMPLAINT FOR:
(1) TRADEMARK INFRINGEMENT;
(2) FALSE DESIGNATION OF ORIGIN;
(3) FALSE ADVERTISING; (4) FEDERAL AND STATE UNFAIR COMPETITION;
(5) BREACH OF CONTRACT;
(6) INVASION OF PRIVACY; AND
(7) VIOLATIONS OF THE DMCA

DEMAND FOR JURY TRIAL

Plaintiffs Neo4j, Inc. (“Neo4j USA”) and Neo4j Sweden AB (“Neo4j Sweden”) hereby brings the present action against Defendants PureThink LLC, iGov Inc., and John Mark Suhy (collectively “Defendants”) and alleges as follows:

NATURE OF ACTION

1. This is an action for damages and injunctive relief arising out of Defendants’ infringement of Neo4j USA’s registered trademarks, acts amounting to unfair competition, breaches of contract, and invasion of privacy, as well as Defendants’ violations of the Digital Millennium Copyright Act.

THE PARTIES

2. Neo4j USA is a corporation organized under the laws of the State of Delaware with its principal place of business in San Mateo, California. Neo4j USA originally incorporated as Neo Technology, Inc. and then changed its name to Neo4j, Inc. in or about July 2017. Neo4j USA is the graph company behind the number one platform for connected data, marketed and sold under the trademark Neo4j®. The Neo4j® graph platform helps organizations make sense of their data by revealing how people, processes and digital systems are interrelated. This connections-first approach powers intelligent applications tackling challenges such as artificial intelligence, fraud detection, real-time recommendations and master data.

3. Neo4j USA boasts the world's largest dedicated investment in native graph technology. It has more than 300 commercial customers, including global enterprises like Walmart, Comcast, Cisco, eBay, and UBS use Neo4j® to create a competitive advantage from connections in their data. Neo4j USA also does substantial business with government agencies, including a number of agencies within the United States Government.

4. Neo4j Sweden is a Swedish corporation, having its principal place of business at Anckargripsgatan 3, S-21119 Malmo, Sweden, and is a wholly owned subsidiary of Neo4j USA. Neo4j Sweden is the owner of all copyrights related to the Neo4j® graph platform, including the source code, and has licensed said copyrights to Neo4j USA in connection with the making, use, creation of derivative works, sale, offer to sell, importation, performance, display, reproduction and distribution of the copyrighted material, and the sublicensing of such rights.

5. Defendant PureThink LLC ("PureThink") is a limited liability company organized under the laws of the State of Delaware with a principal place of business in Reston, Virginia. PureThink purports to be a software development company and was previously an authorized Neo4j® Solution Partner. PureThink is no longer an authorized Neo4j® Solution Partner and Neo4j USA is informed and believes that PureThink is currently a shell entity maintained by the other defendants and is not currently conducting or engaged in any meaningful business activities.

6. Plaintiffs are informed and believe, and based thereon allege, that Defendant iGov Inc. ("iGov") is a corporation organized under the laws of the Commonwealth of Virginia with a

principal place of business in Reston, Virginia. Plaintiffs are informed and believe, and based thereon allege, that iGov is software development and consulting company that focuses on large-scale graph and AI solutions, which competes with Neo4j® and its authorized Solution Partners. Plaintiffs are further informed and believe that iGov is the assignee and successor-in-interest to PureThink, or otherwise acquired substantially all of PureThink's assets sometime in mid-2017.

7. Plaintiffs are informed and believe, and based thereon allege, that iGov also does business as GraphStack, which also competes with Neo4j® and its authorized Solution Partners.

8. Plaintiffs are informed and believe, and based thereon allege, that Defendant John Mark Suhy ("Suhy") is an individual residing in Reston, Virginia. Plaintiffs are further informed and believe that Suhy is the sole member and manager of PureThink. Plaintiffs are also informed and believe that Suhy is the sole shareholder of iGov, as well as an officer and director of iGov.

ALTER EGO ALLEGATIONS

9. Plaintiffs are informed and believe, and based thereon allege, that at all times herein mentioned there existed a unity of interest and ownership between iGov and PureThink. Any individuality and separateness between iGov and PureThink ceased and/or never existed, and iGov is the alter ego of PureThink, in that, among other reasons, and that iGov was conceived, intended, and used by Suhy and PureThink as a device to avoid liability and that PureThink is so inadequately capitalized that, compared with the business done by iGov and the risk of loss attendant thereon, such capitalization was illusory and/or trifling.

10. Plaintiffs are informed and believe, and based thereon allege, that at all times herein mentioned that PureThink is a mere shell instrumentality maintained to protect iGov. It now carries on its business in the company name exactly as PureThink and Suhy had conducted it previous to iGov's formation and/or previous to them acquiring a controlling interest in iGov and/or previous to becoming promoters thereof, exercised complete control and dominance of the business done by PureThink and now iGov to such an extent that any individuality or separateness of PureThink and iGov at all times herein mentioned did and do not exist.

11. For example, PureThink and iGov originally shared the same principal place of business at 1902 Campus Commons Drive, Suite 101, Reston, VA 20191. Likewise, PureThink

and iGov still share the same customer support number, 1-855-979-7771.

12. PureThink and iGov's websites are also virtually identical and contain much of the same verbiage, such as their core philosophies and results:

> To help you succeed, we believe in working closely and cooperatively with our clients. Our goal is to ensure everyone on the same page regarding project status, methods and tasks. Our approach is to develop software according to an Agile methodology which means we emphasize people and interaction rather than complicated processes and endless documentation.
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> * * *
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> Our mission is to bring the greatest value to our clients by leveraging our considerable depth of resources and experience. We align our approach to the specific business drivers of each business we work with whom we tailor solutions to best suit different cultural environments, industries, and market conditions. We focus on business strategy implementation, not business strategy development.

Compare https://purethink.com/about.html *and* https://igovsol.com/about.html.

13. Plaintiffs are informed and believe, and based thereon allege, that other components from PureThink's website were ported over to iGov's website.

14. Plaintiffs are informed and believe, and based thereon allege, that adherence to the fiction of the separate existence of iGov as an entity distinct from PureThink would permit an abuse of the privilege of formation and would sanction fraud and/or promote injustice, and that among other circumstances, Suhy and PureThink caused monetary and other assets to be withdrawn and/or transferred from PureThink without any consideration, or with insufficient consideration, to iGov, all for the purposes of avoiding liability and preventing attachment and execution by creditors, including Plaintiffs, thereby rendering PureThink insolvent and unable to fully perform its obligations; and at all times herein mentioned, was not so capitalized, solvent and unable to fully perform any obligations undertaken by as set further herein.

JURISDICTION AND VENUE

15. The jurisdiction of this Court over the subject matter of this action is predicated, pursuant to 28 U.S.C. § 1331, on the fact that Plaintiffs present a civil action arising under the Federal Trademark Act (the "Lanham Act"), 15 U.S.C. § 1051 et seq., and the Digital Millennium Copyright Act (DMCA), 17 U.S.C. § 1201 et seq. The remainder of Plaintiffs' claims are subject

to the jurisdiction of this Court, pursuant to 28 U.S.C. §§ 1338(b) and 1367, because the claims are joined with one or more substantial and related claims under the Lanham Act.

16. This action arises out of wrongful acts committed by Defendants in California and this District, which acts subject Defendants to the personal jurisdiction of this Court. Plaintiffs are informed and believe, and based thereon allege that Defendants specifically target consumers and derive substantial revenue within California and this District, and expect their actions to have consequences within California and this District. For all of these reasons, personal jurisdiction over Defendants exists.

17. Venue is proper in the Northern District of California pursuant to 28 U.S.C. § 1391 as Defendants engage in infringing activities and acts of unfair competition in this District. In addition, Defendants have on a continual basis committed the wrongful acts alleged below within this District, in business interactions purposefully elicited by Defendants with or directed to residents of the district, all of which has harmed and continues to harm Plaintiffs within this District.

18. At least one defendant, PureThink, entered into a Solution Partner Agreement with Neo4j USA ("the Partner Agreement"), which is subject to the claims asserted herein and contains a provision wherein it effectively agreed and consented to jurisdiction within California and specifically a court within the Northern District of California.

INTRADISTRICT ASSIGNMENT

19. Pursuant to Northern District Local Rule 3-2(c) and Northern District General Order 44, venue in this action is proper in any Courthouse in this District because this case is brought under the Lanham Act and involves intellectual property rights.

THE NEO4J® BRAND

20. Plaintiffs' business was formed after its founders encountered performance problems with relational database management systems (RDMS). Plaintiffs then developed a graph database management system developed under the Neo4j® brand and quickly became the industry leader in graph database solutions and software.

21. In conjunction with Plaintiffs' business, Neo4j USA filed for and obtained several

federally registered trademarks. Specifically, Neo4j USA is the owner of U.S. Trademark Registration No. 4,784,280 for the word mark "NEO4J" covering the following goods and services:

- (IC 009) Computer programs for managing, storing, and accessing data from a database, analyzing data in computer databases for business purposes, processing in the nature of updating data in computer databases, and visualizing in the nature of creating graphs from data stored in databases; computer programs for storing, managing, and querying data from databases on computers, computer networks, and global computer networks.
- (IC 035) Consulting services and advice in the field of updating and maintenance of data in computer databases.
- (IC 041) Educational services, namely, conducting training classes, certification training, workshops, tutorial sessions, and online classes in the fields of designing computer databases and updating and maintenance of data in computer databases, and distributing course materials in connection therewith; providing training services in the fields of designing computer databases and updating and maintenance of data in computer databases, and distributing course materials in connection therewith.
- (IC 042) Providing a web site featuring technology that enables end users to store, manage, and query data from databases on computers, computer networks, and global computer networks; cloud computing featuring software for use in managing, storing, and accessing data from a database, analyzing data in computer databases for business purposes, processing in the nature of updating data in computer databases, and visualizing in the nature of creating graphs from data stored in databases; Technical support services, namely, installation, administration, and troubleshooting of database applications; Computer services, namely, providing consultation services and advice in the fields of designing computer databases.

- (IC 045) Consulting services and advice in the field of maintaining the security and integrity of databases.

22. Neo4j USA first used the NEO4J® Mark in June 2006 and first used that mark in commerce in May 2007, and has continually used the NEO4J® Mark since being published by the USPTO in May 2015 and issued on August 4, 2015. A true and correct copy of U.S. Trademark Registration No. 4,784,280 is attached hereto as **Exhibit 1**.

23. Neo4j USA has spent considerable effort and investment in the NEO4J® Mark and brand, which as a result have become widely known and are closely identified with Neo4j USA and represent substantial, valuable goodwill.

THE EVOLUTION OF PLAINTIFFS' LICENSING MODEL FOR NEO4J® SOFTWARE

24. Prior to November 2018, Plaintiffs' business model was to offer a free open source version of its primary software offering, NEO4J® Community Edition ("Community Edition"), under the GNU General Public License version 3 ("GPLv3") license. This edition is limited in its feature set and offers no support. Users requiring additional features for more advanced commercial operation, together with support, licensed its NEO4J® Enterprise Edition ("NEO4J® EE") under commercial terms. NEO4J® EE is a full superset of NEO4J® Community Edition, containing significant additional functionality intended for commercial use.

25. Plaintiffs originally offered the NEO4J® EE under both a paid for commercial license and the free GNU Affero General Public License, version 3 ("AGPLv3"). A commercial license to NEO4J® EE entitled the purchaser to use it in a proprietary setting with industry standard terms, receive support or professional services from Neo4j USA, and the right to receive software updates, which included feature updates, bug fixes and assistance. Purchasing a commercial license at a fair price supported the continued development and improvement of NEO4J® EE and NEO4J® Community Edition software.

26. In May 2018, Plaintiffs released NEO4J® EE version 3.4, which they continued to offer under a proprietary commercial license. However, Plaintiffs replaced the AGPLv3 with a stricter license, the AGPLv3 with Commons Clause. This new license, while allowing code to be publicly viewable and used within a certain limited scope of usage, is generally recognized in the

software industry not to qualify as open source, as it prohibits all third-party resale and services activity. Plaintiffs added the Commons Clause to the license for NEO4J® EE to prevent third parties, such as Defendants, from monetizing such software while not contributing back to the companies who are producers of the software.

27. In November 2018, Plaintiffs released version 3.5 of NEO4J® EE solely under a commercial license, while they continued to offer NEO4J® Community Edition as open source software. This meant that Plaintiffs were no longer publishing source code for NEO4J® EE on open source terms. This was done to simplify its licensing model, as well as prevent bad actors (such as Defendants) from willfully misrepresenting the AGPLv3 with Commons Clause and profiting by providing commercial support services in closed, proprietary projects.

28. All versions of NEO4J® software are subject to Plaintiffs' Trademark Policy found on Neo4J USA's website, which states in relevant part:

> Although some Neo4j projects may be available under free and open licenses, those licenses cover copyright only and do not include any express or implied right to use our trademarks. Neo4j does not allow third parties to use its trademarks without a written agreement or express permission. Thus, Neo4j projects that are available under open source licenses may be copied, modified, or sold by third parties, but they cannot be branded or marketed with Neo4j trademarks in the absence of a trademark license.
>
> While open-source licenses allow modification of copyrighted software and distribution in original or modified form, such distribution could be misleading if distributed under the same name. This could cause confusion among consumers of the software as to source. They may mistakenly believe they are receiving software that is produced or supported by Neo4j. This Policy describes the circumstances under which you may use our trademarks, regardless of the type of license you may have from Neo4j.
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> * * *
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> Any use of the Marks must be licensed and comply with these guidelines. Whenever you use one of the Marks, you must always do so in a way that does not mislead anyone, either directly or by omission, about exactly what they are getting and from whom. For example, you cannot say you are distributing the Neo4j® software when you're distributing a modified version of it, because people would be confused when they are not getting the same features and functionality they would get if they downloaded the software directly from us. You also cannot distribute Neo4j® software using the Marks if you do not have a license from us, because that would imply that your distribution comes from or is supported by Neo4j.

> You cannot use our Marks on your website in a way that suggests that your website is an official website or that we endorse your website, unless permitted in a written agreement with us.

A true and correct copy of Neo4j USA's Trademark Guidelines (https://neo4j.com/trademark-policy) is attached hereto as **Exhibit 2**.

NEO4J'S AGREEMENT WITH PURETHINK

29. On or about September 30, 2014, Neo4j USA and PureThink entered into the Partner Agreement. Under the Partner Agreement, PureThink agreed to provide first and second line support to end-users of NEO4J® EE software in exchange for annual partner program fees and shared revenue as specified in the Partner Agreement.

30. Under Section 4.1 of the Partner Agreement, Neo4j USA provided PureThink with a non-exclusive, non-transferable limited license during the term of that agreement to, inter alia, "use [Neo4j USA's] trademarks solely to market and promote the Products in accordance with the terms of [the Partner Agreement]." Section 4.1 also incorporated Neo4j's trademark policies as additional limitations on Defendants' use of the NEO4J® mark and making representations about NEO4J® EE and NEO4J® Community Edition software products, which at the time provided in relevant part that:

> Neo Technology software, which is created and/or distributed by Neo Technology and thus properly bears the Trademarks, is the software in the exact binary form that it is distributed by Neo Technology, without modification of any kind. To the extent any authorized modifications are made to the software, such modified software should no longer bear the Trademarks. The public has a right to know when it is receiving a genuine Neo Technology product that is quality assured by Neo Technology.
>
> You must not use any Trademark in a web page title, titletag, metatag, or other manner with the intent or the likely effect of influencing search engine rankings or results listings.

31. In or about March 2017, Plaintiffs learned that Defendants had encouraged at least one government agency to use "free open source NEO4J® EE under the AGPL" and pay PureThink for consulting and support instead of obtaining a commercial license. Plaintiffs also learned that Defendants used a server that belonged to another company to compile in an attempt to avoid the restrictions imposed by the Partner Agreement on PureThink. Defendants even

admitted that they intended to form a new company that would market and offer consulting services for users of NEO4J® open source products.

32. Defendants' words and actions constituted a material breach of the express terms of the Partner Agreement that precluded PureThink from modifying open source Neo4j software and providing related support services. The fact that PureThink led this government agency to believe that it was getting an authentic version of NEO4J® EE was also a breach of the express terms of Section 4.1. When PureThink recompiled NEO4J® EE, it was actually creating software that is not of the same quality as if were compiled by Neo4j, which uses tens of thousands of integrated test scripts. They introduced their own modifications in recompiling the software, thereby misleading that government agency and potentially damaging the NEO4J® Mark and associated goodwill.

33. As a result, on or about May 30, 2017, Neo4j USA provided PureThink with a formal notification of PureThink's material breaches of the Partner Agreement and a demand to cure such breaches pursuant to Section 7.2 thereof. PureThink's material breaches included compiling, using and distributing NEO4J® open source products, and performing services on, as well as continuing to perform services on, NEO4J® open source products in violation of Section 4.3 of the Partner Agreement. A true and correct copy of this May 30, 2017 is attached hereto as **Exhibit 3**.

34. On or about June 30, 2017, Neo4j USA provided PureThink with 90-days written notice pursuant to Sections 7.1 and 7.2 of its election to terminate the Partner Agreement and not to renew the Partner Agreement for a renewal term that would commence on September 30, 2017.

35. On or about July 11, 2017, Neo4j USA provided PureThink with written notice that the Partner Agreement was terminated pursuant to Section 7.2 thereof due to PureThink's failure to timely cure the material breaches set forth in the May 30, 2017 letter ("Breach Notice"). A true and correct copy of this letter is attached hereto as **Exhibit 4**.

36. Neo4j USA also reminded PureThink that several provisions in the Partner Agreement survived termination pursuant to Section 7.4 thereof. This includes, Section 7.3, which provides that upon such termination

> all rights and licenses of Partner hereunder will terminate and Partner shall cease all communications with End Users regarding the Products; and (b) each party … will cease using any trademarks, service marks and other designations of the other party….

37. Section 10 also survived termination and provides that "either party may assign this Agreement without the other party's consent to a parent or subsidiary of such party or in the case of a merger or sale of all or substantially all of its assets or stock."

38. In light of these continuing obligations, Neo4j USA provided notice that it was terminating PureThink's rights and licenses under the Partner Agreement. Neo4j USA demanded that PureThink "cease using [Neo4j USA's] trademarks, service marks, and other designations… and remove from PureThink's website(s) and marketing materials, [Neo4j USA's] trademarks and tradenames, including, without limitation, Neo4j." Neo4j USA further advised that PureThink had "no rights to use [Neo4j USA's] trademarks or tradenames and continued use of such trademarks and/or tradenames will constitute trademark infringement." *See* Exhibit 4.

DEFENDANTS' MISINFORMATION CAMPAIGN REGARDING NEO4J'S SOFTWARE AND INFRINGEMENT OF THE NEO4J® MARK

39. Since Neo4j USA terminated the Partner Agreement, Defendants have engaged in acts that amount to the breach thereof and constitute violations of the Lanham Act. These acts include using the NEO4J® Mark in an improper manner that falsely suggests the Neo4j USA's authorization and/or sponsorship of Defendants' products and services.

40. Plaintiffs are informed and believed, and based thereon allege that Suhy incorporated iGov on or about June 23, 2017 in response to the May 30th notice of breach, and in anticipation of Neo4j USA's termination of the Partner Agreement, and to avoid the aforementioned continuing, agreed-upon restrictions placed on PureThink thereunder and the potential liability for breaching such restrictions.

41. As of November 2017, iGov's website admitted this was Defendants' intent:

> PureThink, the company who created, managed and sold Neo4j Government Edition to all US Federal agencies has ceased their partnership with Neo Technology and Neo4j Government Edition has been retired.

> The principle behind PureThink and the Government Package has created a new corporate entity called iGov Inc, which is not a Neo4j Solution Partner. Because iGov Inc is not a solution partner, it can offer packages at great cost savings to US Government Agencies as it has no restrictions on working with Neo4j Enterprise open source licenses!
>
> iGov Inc and the new Government Package for Neo4j allows agencies to spend their money on developing innovative solutions around Neo4j, not paying for unnecessary production support before they even have a solution built that could be in production.

A true and correct copy of this archived webpage is attached hereto as **Exhibit 5**.

42. However, Plaintiffs are informed and believed, and based thereon alleges that PureThink assigned the Partner Agreement as part of the transfer and/or sale of substantially all of its assets to iGov in conjunction with Suhy's incorporation of iGov. Alternatively, iGov assumed PureThink's obligations under the Partner Agreement as its alter ego. As a result, iGov became subject to the aforementioned contractual restrictions relating to the use of the NEO4J® Mark and any resulting liability for the breach of such provisions in the Partner Agreement.

43. Defendants deceive prospective customers about the source of legitimate NEO4J® products by marketing software modified by Defendants as genuine a NEO4J® EE product via iGov's website. In particular, iGov's website claims that end-users did not need to purchase a commercial license for NEO4J® EE and obtain support from Neo4j or its Solution Partners. Rather, consumers can download iGov's unauthorized recompiled and modified version of NEO4J® EE (confusingly called "Neo4j Enterprise" by iGov) because in Defendants' unqualified legal opinion:

> Neo4j Enterprise can be used for free under the [AGPL]. [] There are no hidden or limiting terms beyond the standard [AGPL]. With Neo4j Enterprise under its free open source [AGPL] license, you simply don't get production email and phone support from Neo4j Inc. You can get a much cheaper support contract through iGov Inc for a fraction of the cost to support your production.

A true and correct copy of the aforementioned portions of iGov's website are attached hereto as **Exhibits 6-8**.

44. Via iGov's website, Defendants published step-by-step instructions on how to circumvent the commercial license requirement for NEO4J® EE version 3.3, and the security

features released as closed-source along with it. A true and correct copy of a blog published by Defendants containing these instructions is attached hereto as **Exhibit 9.**

45. When Neo4j released NEO4J® EE version 3.4 under the AGPLv3 with Commons Clause, Defendants continued to take advantage of the fact that most of this source code was available on GitHub (an open source software hosting site). This allowed them to copy the code while ignoring the restrictions imposed by the AGPL with Commons Clause. Defendants also stripped out valid legal notices and license terms in NEO4J® source code files.

46. Defendants even went as far as to giving unsolicited answers to public posts on open community websites, such as www.stackoverflow.com, to spread further misinformation concerning the nature of Plaintiffs' licensing model and promote Defendants' own unauthorized hybrid offerings as identical to those originating from Neo4j. True and correct copies of Defendants' posts on www.stackoverflow.com are attached hereto as **Exhibits 10-11**.

47. Defendants also mislead consumers by claiming iGov's haphazard "Neo4j Enterprise" builds were equivalent to corresponding versions of NEO4J® EE, which Defendants knew were not. They also ignored that Section 4.1 of the Partner Agreement incorporated Neo4j USA's trademark policies and expressly prohibited Defendants from using the NEO4J® Mark in conjunction with recompiled and modified versions of NEO4J® EE.

48. Defendants further breached Section 4.1 of the Partner Agreement and violated the Lanham Act by include the link titled "Graph Packages" on the home page of iGov's website directs to the domain "https://igovsol.com/**neo4j**.html" (emphasis added). A true and correct copy of a screenshot of this homepage is attached hereto as **Exhibit 12**. Use of NEO4J® in the domain is unnecessary in this instance as any number of generic terms could have been used in place of NEO4J®. The use of NEO4J® as a part of a domain is for a purpose other than to reference Neo4j USA or its NEO4J®-branded products and services, and is in fact misleading to confuse the source or origin of its own offerings to those of Neo4j USA.

49. The top of iGov website at https://igovsol.com/neo4j.html prominently displays "Request Procurement Document Package" link that has "mailto:neo4j@igovsol.com" embedded in the html and creates an email addressed to "neo4j@igovsol.com" upon activation. *See* Exhibit

8. This link is a clear attempt by Defendants to mislead and confuse consumers that it is somehow an authorized source of NEO4J® software and/or support packages for that software. The "Downloads" page on iGov's website (https://igovsol.com/downloads.html) also provides the same contact email address, neo4j@igovsol.com. *See* Exhibit 7.

50. The usage of "neo4j" as an email alias constitutes an unauthorized use of the NEO4J® Mark, especially since more common descriptive or non-infringing terms such as "support@igovsol.com" and "sales@igovsol.com" should be readily available. In fact, iGov uses info@igovsol.com elsewhere on its website as an email address for potential customers to inquire about iGov's services and products.

51. iGov's website at https://igovsol.com/neo4j.html also contains false and misleading statements concerning the source of at least one NEO4J® software product: "Our team is the same team that created Neo4j Enterprise Government Edition. Further, we are the same team that sold and supported every US Federal Government procurement of Neo4j Enterprise Government Edition up until its retirement in July 2017." *See* Exhibit 8. This statement is untrue because neither PureThink nor Suhy created an authorized NEO4J® software product entitled "Neo4j Enterprise Government Edition." Instead, Defendants are improperly rebranding Plaintiff's Neo4j Enterprise Edition without the authorization of Plaintiff.

DEFENDANTS ENGAGE IN UNFAIR COMPETITION BY FALSELY PROMOTING THIRD PARTY SOFTWARE AS BEING IDENTICAL TO NEO4J® EE

52. Defendants remained undeterred in their efforts tarnish the NEO4J® brand and mislead consumers. In or about September 2018, Defendants began to promote a third-party graph database software, Open Native Graph DB (ONgDB), which they describe on iGov's website as "a non-restrictive fork of Neo4j, the world's leading Graph Database."

53. Defendants deceptively market ONgDB via iGov's website as being the equivalent of Neo4j's current version of NEO4J® EE that was only available via a commercial license:

> ONgDB (AKA ONgDB Enterprise) 3.5.5 is Neo4j 3.5.5 Core + the enterprise features Neo4j Inc removed from the code base as of v3.5. All ONgDB and Neo4j Enterprise AGPL distributions can be used in production, in closed source projects, and with no limitations on # of cores or causal cluster instances. ONgDB is a

> drop in replacement for the Neo4j Community and Enterprise branded distributions.

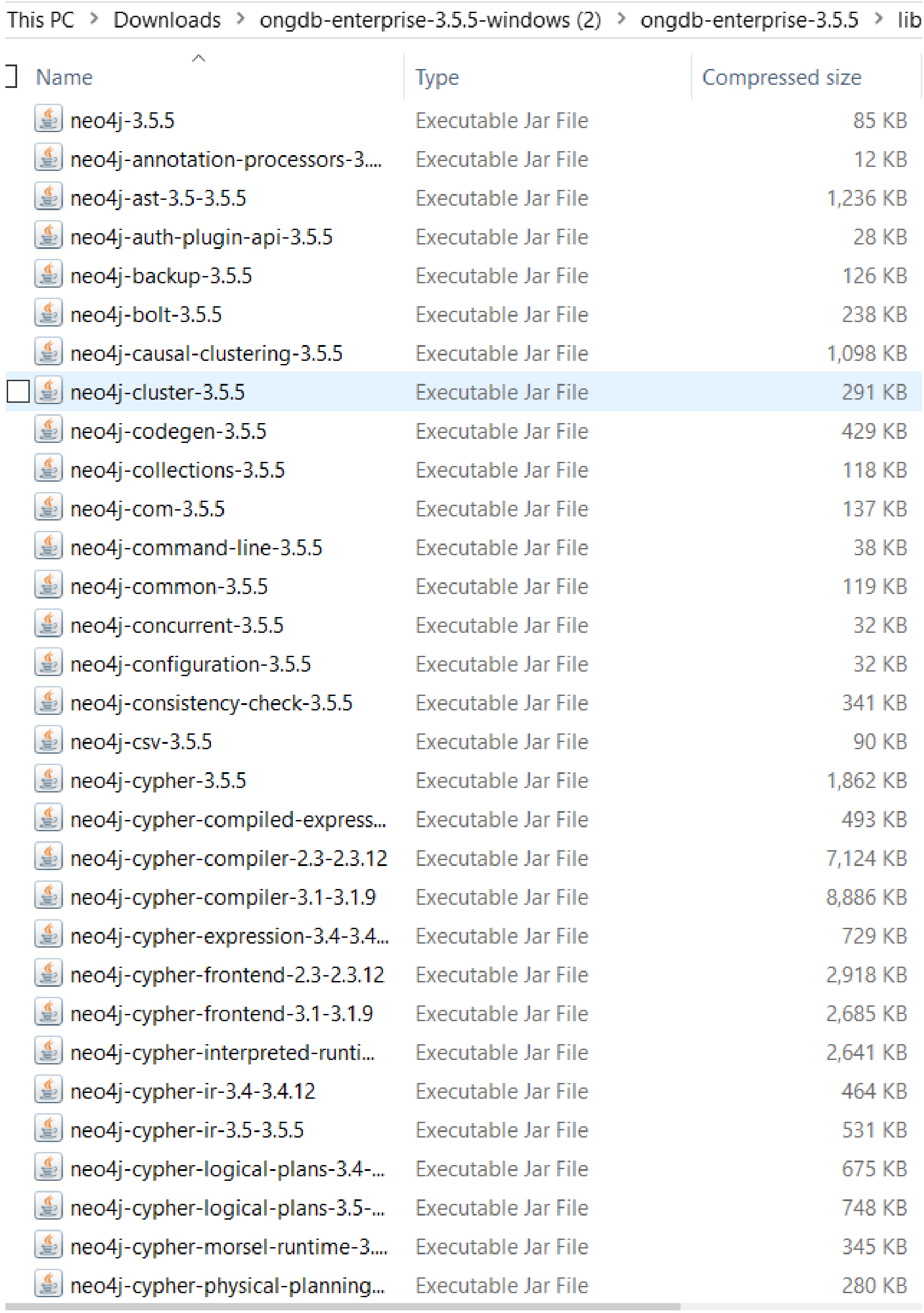
See Exhibit 6.

54. iGov's website also contains a "Neo4j Enterprise Open Source Frequently Asked Questions" section, which deceives consumers into downloading "Neo4j Enterprise from our the Neo4j Inc. [sic] distribution site, or from our Amazon Gov Cloud mirror. **Download Neo4j Enterprise Here**" rather than download an official trial version of NEO4J® EE from Plaintiffs. *See* Exhibit 7. This link misleadingly redirects consumers to the top of iGov's download page with links to download ONgDB rather than to Neo4j USA's distribution site. *See id.* Thus, the use of "Neo4j Enterprise" and corresponding bold texted link is a clear attempt to mislead and confuse consumers regarding ONgDB being the purported equivalent of NEO4J® EE.

55. Plaintiffs are informed and believe, and based thereon allege that ONgDB is actually compiled from pre-version 3.5 NEO4J® EE source code that is frozen in time and includes source code authored by Defendant, while being passed off by Defendants as identical to Neo4j's current commercial-only releases of NEO4J® EE.

56. Defendants are thus promoting software that is not of the same quality as if were compiled by Plaintiffs. This is because the unauthorized hybrid ONgDB software was not entirely created using Plaintiffs' build infrastructure, which carries out tens of thousands of functional, performance, load, stress, and other tests to ensure quality. ONgDB also does not include critical fixes or any other ongoing improvements made by Plaintiffs to NEO4J® EE. Further, because Graph Foundation introduced its own modifications in recompiling ONgDB from various older iterations of NEO4J® software, this increases the potential for instability and compatibility issues with ONgDB. As a result, Defendants are misleading consumers into believing they are downloading an exact copy of Plaintiffs' current commercial-only releases of NEO4J® EE, which in actuality is an inferior product that is not a true "drop in" replacement.

57. Additionally, the ONgDB downloads available from iGov's website at https://igovsol.com/downloads.html (Exhibit 7) contains numerous executable files which are called "neo4j" that clearly infringes on the NEO4J® Mark:



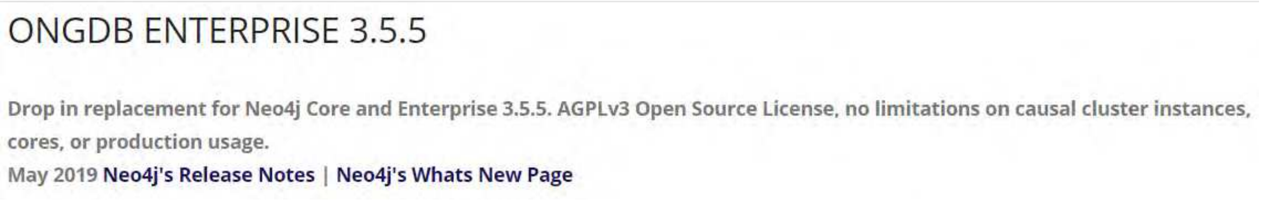
This PC > Downloads > ongdb-enterprise-3.5.5-windows (2) > ongdb-enterprise-3.5.5 > lib

Name	Type	Compressed size
neo4j-3.5.5	Executable Jar File	85 KB
neo4j-annotation-processors-3....	Executable Jar File	12 KB
neo4j-ast-3.5-3.5.5	Executable Jar File	1,236 KB
neo4j-auth-plugin-api-3.5.5	Executable Jar File	28 KB
neo4j-backup-3.5.5	Executable Jar File	126 KB
neo4j-bolt-3.5.5	Executable Jar File	238 KB
neo4j-causal-clustering-3.5.5	Executable Jar File	1,098 KB
neo4j-cluster-3.5.5	Executable Jar File	291 KB
neo4j-codegen-3.5.5	Executable Jar File	429 KB
neo4j-collections-3.5.5	Executable Jar File	118 KB
neo4j-com-3.5.5	Executable Jar File	137 KB
neo4j-command-line-3.5.5	Executable Jar File	38 KB
neo4j-common-3.5.5	Executable Jar File	119 KB
neo4j-concurrent-3.5.5	Executable Jar File	32 KB
neo4j-configuration-3.5.5	Executable Jar File	32 KB
neo4j-consistency-check-3.5.5	Executable Jar File	341 KB
neo4j-csv-3.5.5	Executable Jar File	90 KB
neo4j-cypher-3.5.5	Executable Jar File	1,862 KB
neo4j-cypher-compiled-express...	Executable Jar File	493 KB
neo4j-cypher-compiler-2.3-2.3.12	Executable Jar File	7,124 KB
neo4j-cypher-compiler-3.1-3.1.9	Executable Jar File	8,886 KB
neo4j-cypher-expression-3.4-3.4...	Executable Jar File	729 KB
neo4j-cypher-frontend-2.3-2.3.12	Executable Jar File	2,918 KB
neo4j-cypher-frontend-3.1-3.1.9	Executable Jar File	2,685 KB
neo4j-cypher-interpreted-runti...	Executable Jar File	2,641 KB
neo4j-cypher-ir-3.4-3.4.12	Executable Jar File	464 KB
neo4j-cypher-ir-3.5-3.5.5	Executable Jar File	531 KB
neo4j-cypher-logical-plans-3.4-...	Executable Jar File	675 KB
neo4j-cypher-logical-plans-3.5-...	Executable Jar File	748 KB
neo4j-cypher-morsel-runtime-3....	Executable Jar File	345 KB
neo4j-cypher-physical-planning...	Executable Jar File	280 KB

58. Defendants' widespread use of the NEO4J® Mark on iGov's website in conjunction with their promotion of unauthorized hybrid software violates Neo4j USA's Trademark Guidelines and Section 4.1 of the Partner Agreement. It also create consumer confusion that iGov is offering a current authorized version of NEO4J® EE or that ONgDB is

otherwise endorsed by Neo4j USA.

59. Defendants do not provide their own release notes in relation to their promotion of ONgDB. Instead, Defendants use html links on iGov's website to redirect consumers to Neo4j USA's official release notes (https://neo4j.com/release-notes/neo4j-3-5-5/) and "What's New" page (https://neo4j.com/whats-new-in-neo4j/):



ONGDB ENTERPRISE 3.5.5

Drop in replacement for Neo4j Core and Enterprise 3.5.5. AGPLv3 Open Source License, no limitations on causal cluster instances, cores, or production usage.

May 2019 **Neo4j's Release Notes** | **Neo4j's Whats New Page**

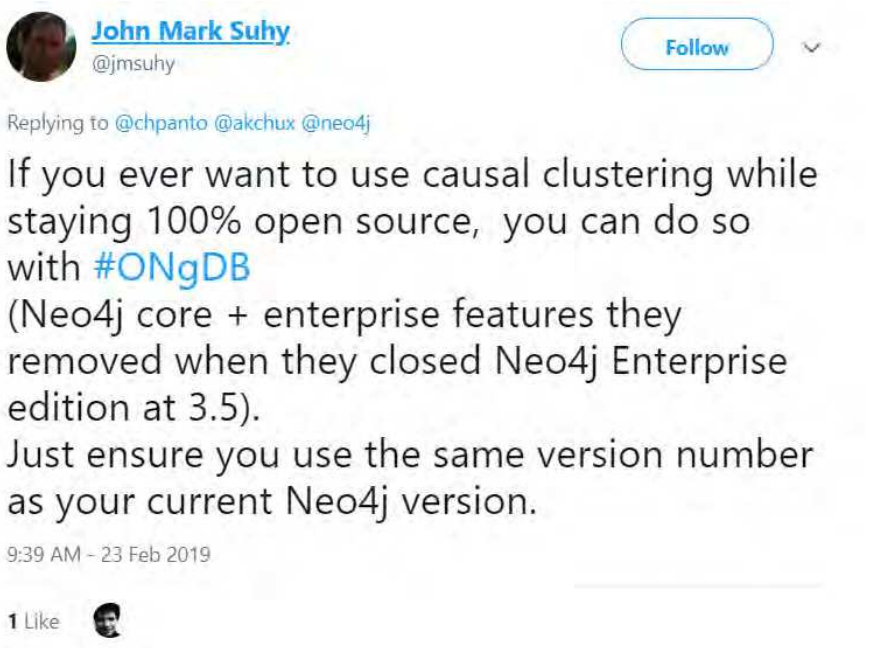
See Exhibit 7. Thus, further promoting the false equivalency between ONgDB and the latest version of NEO4J® EE.

60. Defendants use a second website, www.graphstack.io, to further promote the false equivalency between ONgDB and the latest version of NEO4J® EE. Defendants openly admit that "iGov Inc is the company behind GraphStack" and that "iGov Inc offers production support packages for Neo4j / ONgDB Enterprise open source distributions for US government agencies." Defendants' GraphStack website contains misleading statements concerning ONgDB similar to those on iGov's website, including that ONgDB "is a non-restrictive fork of Neo4j" and "a drop in replacement for any Neo4j Enterprise (or community) distribution of the same version number." A true and correct copy of the homepage for GraphStack's website is attached hereto as **Exhibit 13**.

61. Defendants' GraphStack website offers downloads of ONgDB, which contain numerous executable files which are called "neo4j" that clearly infringes on the NEO4J® Mark. In conjunction therewith, GraphStack website improperly uses html links to redirect consumers to Neo4j USA's official release notes (https://neo4j.com/release-notes/neo4j-3-5-5/) and "What's New" page (https://neo4j.com/whats-new-in-neo4j/) in conjunction with encouraging consumers to download ONgDB as an alleged "[d]rop in replacement for Neo4j Core and Enterprise 3.5.3."

62. Defendants also use Twitter to spread misinformation concerning NEO4J® EE and unfairly complete with Plaintiffs. For example, Suhy has falsely suggested potential

customer that ONgDB contains the same source code as commercial-only licensed NEO4J® EE:



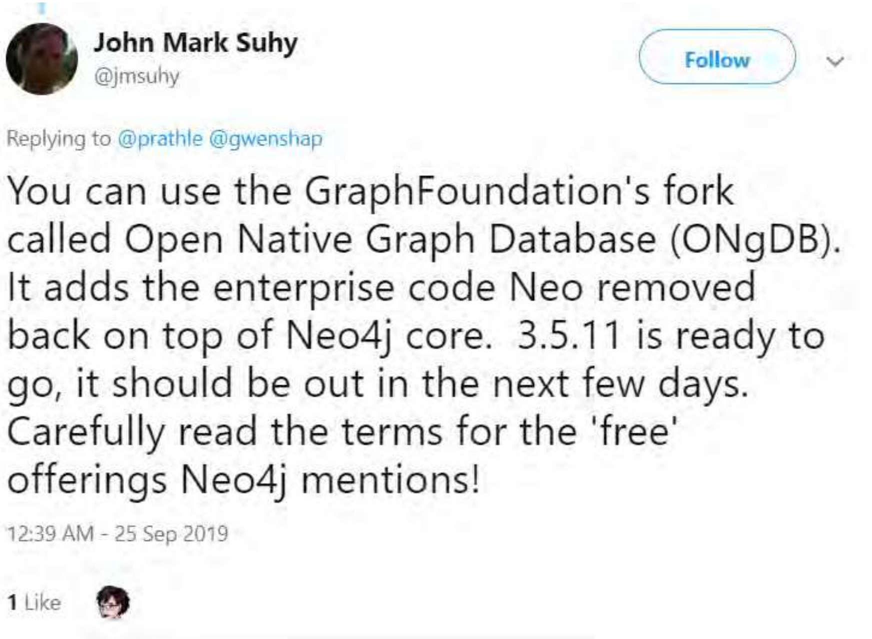
John Mark Suhy
@jmsuhy

Replying to @chpanto @akchux @neo4j

If you ever want to use causal clustering while staying 100% open source, you can do so with #ONgDB
(Neo4j core + enterprise features they removed when they closed Neo4j Enterprise edition at 3.5).
Just ensure you use the same version number as your current Neo4j version.

9:39 AM - 23 Feb 2019

1 Like



John Mark Suhy
@jmsuhy

Replying to @prathle @gwenshap

You can use the GraphFoundation's fork called Open Native Graph Database (ONgDB). It adds the enterprise code Neo removed back on top of Neo4j core. 3.5.11 is ready to go, it should be out in the next few days. Carefully read the terms for the 'free' offerings Neo4j mentions!

12:39 AM - 25 Sep 2019

1 Like

A true and correct copy of these Tweets are attached hereto as **Exhibit 14** and **Exhibit 15**.

DEFENDANTS' MISCONDUCT IS LIKELY TO CAUSE CONSUMER CONFUSION AND HAS RESULTED IN ACTUAL CONSUMER CONFUSION

63. Defendants' actions described above constitute unauthorized use of the NEO4J® Mark in commerce in connection with the distribution, offering, or promotion of its "Neo4j

Enterprise" and ONgDB software is likely to cause consumer confusion. Such actions were made with an intent to deceive consumers, which interferes with Neo4j's ability to differentiate its NEO4J® offerings from those of these unauthorized, third-party compiled offerings.

64. Plaintiffs are informed and believe, and based thereon allege that Defendants actions described above have caused actual consumer confusion. For example, users have expressed uncertainty and confusion over license obligations, as well as encountered compatibility issues resulting from downloading ONgDB:

> Do the terms of use for "neo4j Desktop" apply to the ONGDB server which I downloaded under AGPLv3 license? I read the Desktop terms carefully and they refer everywhere to "neo4j Desktop software". Has anybody encountered this issue? I am feeling really stupid for not thinking this through before downloading the Desktop Software, especially as database authentication keeps failing. Before I spend any more time troubleshooting, could someone indicate any features of Desktop that are really worth it (other than UI)? I am planning production, so the license is important to me.

A true and correct copy of the foregoing post on the Neo4j Online Community is attached hereto as **Exhibit 17**.

65. Plaintiffs are informed and believe, and based thereon allege that consumers that have downloaded ONgDB rather than official NEO4J® software have experienced issues that Plaintiffs would have been able to address for licensed users with authorized support services and/or may not have occurred at all had such users downloaded official NEO4J® Software rather than ONgDB. True and correct copies of printouts from third party websites www.stackoverflow.com and www.xbuba.com illustrating these issues are attached hereto as **Exhibits 18 - 22**.

66. Plaintiffs are informed and believes, and based thereon allege that Defendants continues to extenuate such issues and causes consumer confusion by engaging in the above-described unauthorized use of the NEO4J® Mark and making the foregoing false and misleading statements in connection with the distribution, offering, and promotion of its "Neo4j Enterprise" and ONgDB software.

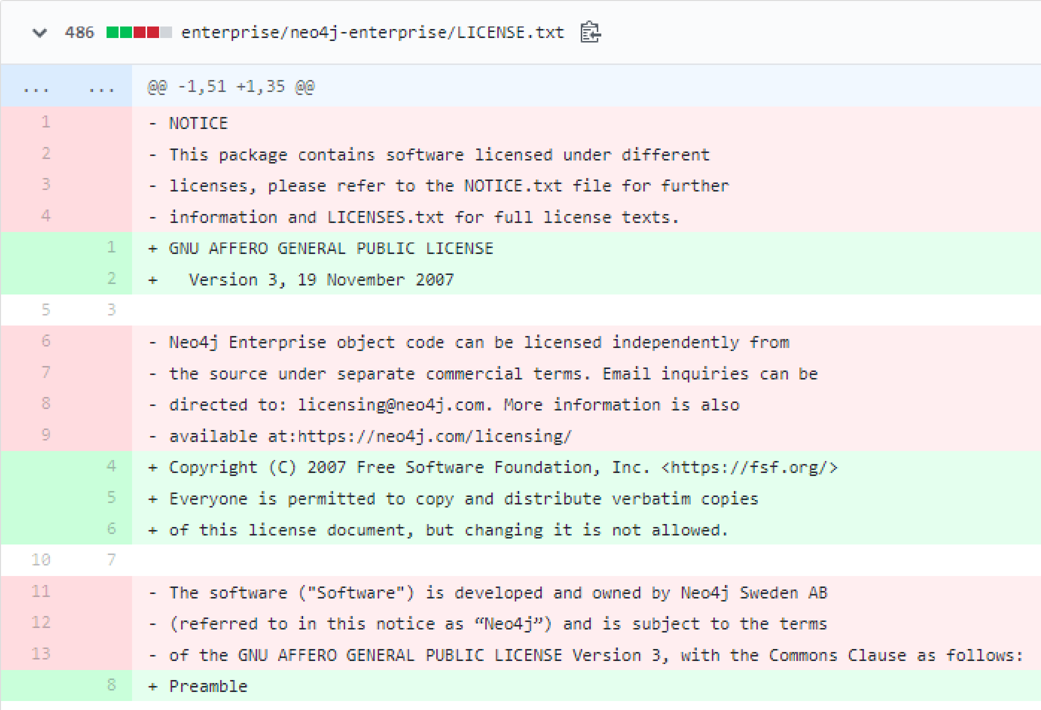
67. Neo4j USA is informed and believes, and based thereon alleges that Suhy was the

moving, active conscious force behind the foregoing acts of infringement and false advertising by iGov and PureThink. Suhy either personally took part in the foregoing infringing activities or specifically directed, controlled, ratified PureThink and iGov's employees to engage in such infringing activities.

DEFENDANT SUHY'S VIOLATIONS OF THE DMCA

68. Plaintiffs include copyright management information in each electronic source code file for NEO4J® EE, including information identifying Neo4j Sweden as the owner of the copyright and the terms and conditions for the use of these copyrighted works.

69. Plaintiffs are informed and believe, and based thereon that Suhy copied these NEO4j EE source code files and their associated license.txt files, and removed (a) the existing APGLv3 with Commons Clause; (b) copyright owner information; and (c) other terms and conditions for the use of the copyrighted source code files from at least 28 separate files from NEO4j® EE. Suhy replaced it with the APGLv3 thereby removing the additional copyright restrictions imposed by the Commons Clause, and republished these source code files on Graph Foundation's Github repository for ONgDB. The following is an example of the changes (deletions in red, additions in green) Suhy made an NEO4J® EE file entitled "enterprise/neo4j-enterprise/License.txt":



```
486 enterprise/neo4j-enterprise/LICENSE.txt

@@ -1,51 +1,35 @@
- NOTICE
- This package contains software licensed under different
- licenses, please refer to the NOTICE.txt file for further
- information and LICENSES.txt for full license texts.
+ GNU AFFERO GENERAL PUBLIC LICENSE
+   Version 3, 19 November 2007

- Neo4j Enterprise object code can be licensed independently from
- the source under separate commercial terms. Email inquiries can be
- directed to: licensing@neo4j.com. More information is also
- available at:https://neo4j.com/licensing/
+ Copyright (C) 2007 Free Software Foundation, Inc. <https://fsf.org/>
+ Everyone is permitted to copy and distribute verbatim copies
+ of this license document, but changing it is not allowed.

- The software ("Software") is developed and owned by Neo4j Sweden AB
- (referred to in this notice as “Neo4j”) and is subject to the terms
- of the GNU AFFERO GENERAL PUBLIC LICENSE Version 3, with the Commons Clause as follows:
+ Preamble
```

Suhy made virtually identical changes to the other 27 files. A true and correct print out of the listing of these source code files on Graph Foundation's Github repository for ONgDB is attached hereto as **Exhibit 23**.

DEFENDANTS' OTHER MISCONDUCT

70. Between 2015 and 2018, employees of Neo4j USA engaged in numerous telephone, cellular and VOIP communications with Suhy, via Skype and/or GoToMeeting via his accounts at jmsuhy@purethink.com. These calls related to the Parties' business activities.

71. In the fall of 2016, Suhy informed Neo4j USA's Director of Global Alliances (who resides in California) that Suhy had recorded prior telephone conversations with him and other employees of Neo4j USA. He then demanded that Suhy immediately cease recording the conversation and confirmed that Suhy and PureThink did not have permission to record that conversation or any other conversation with Neo4j USA's employees.

72. In or about February 7, 2018, Suhy admitted in an email exchange with Neo4j USA's Vice President of Products that he recorded multiple calls with Neo4j USA's Director of Global Alliances and Neo4j USA's federal sales representative.

73. On or about May 25, 2018, approximately mid-way through a 28-minute cellular phone call, Suhy informed Neo4j USA's Vice President of Products that he was recording that call, as well as had recorded all of Suhy's prior conversations with him "as a matter of course." Neither Neo4j USA's Vice President of Products nor any other employee of Neo4j USA consented to the recording of the aforementioned communications.

FIRST CAUSE OF ACTION

TRADEMARK INFRINGEMENT – 15 U.S.C. § 1114

(By Neo4j USA Against All Defendants)

74. Neo4j USA incorporates and realleges the allegations set forth in paragraphs 1 through 73 of this Complaint as though fully set forth herein.

75. Neo4j USA has been actively using the NEO4J® Mark in interstate commerce since at least as early as 2007. Neo4j USA's graph database solutions and software and related supported services offered under the NEO4J® Mark has enjoyed and continues to enjoy extensive

recognition among customers, reviewers and industry professionals in the marketplace.

76. Neo4j USA currently offers, and has a long and established history of offering graph database solutions and software and related services, both directly and through authorized Neo4j® Solution Partners under the distinctive NEO4J® Mark. Through favorable acceptance and recognition by customers, reviewers and industry professionals, the NEO4J® Mark has come to be associated in the public with Neo4j USA, have become an asset of substantial value to Neo4j USA, and a symbol of its high quality, industry leading graph database solutions and software and related services, as garnered substantial goodwill.

77. Neo4j USA's graph database solutions and software and related services offered under the NEO4J® Mark are advertised via print publications, over the Internet through Neo4j USA's website and through third-party websites and blogs, paid advertising on LinkedIn, Twitter, Facebook, and elsewhere, as well as via mobile applications and publications, physical billboards, and signage at both company-branded and third-party events.

78. Neo4j USA has expended considerable time, money and effort in advertising and promoting its graph database solutions and software and related support services under the NEO4J® Mark among consumers and authorized Neo4j® Solution Partners. Consequently, Neo4j USA has developed substantial and exclusive goodwill and reputation in connection with the NEO4J® Mark for its graph database solutions and software and related support services.

79. As a result of these expenditures, combined with substantial sales of Neo4j USA's graph database solutions and software and related support services under the NEO4J® Mark, the relevant consuming public and likely customers have come to recognize the NEO4J® Mark as favorably distinguishing Neo4j USA's graph database solutions and software and related support services from those of its competitors.

80. Due to this widespread public use and recognition, the NEO4J® Mark has become an asset of significant value and goodwill, and a successful indicator of the source of Neo4j USA's graph database solutions and software and related support services.

81. Defendants' software and related support services directly compete with Neo4j USA's graph database solutions and software and related support services offered and sold under

Neo4j USA's NEO4J® Mark. The customers and users, and potential users and consumers of Neo4j USA's graph database solutions and software and related support services offered and sold under Neo4j USA's NEO4J® Mark are identical to the user and customers and potential users and customers of the graph database solutions and software and related support services offered by Defendants.

82. Defendants have had and have actual knowledge of Neo4j USA's rights in the NEO4J® Mark and are willfully infringing and intentionally adopted and used this mark in commerce without Neo4j USA's consent in connection with the sale, offering for sale, distribution and advertising of competing graph database solutions and software and related support services. The software and related support services promoted by Defendants have been disseminated and distributed through various means including, without limitation, sales and solicitations through PureThink, iGov and GraphStack's Internet interactive websites and other third party websites, including within this District.

83. Defendants' willful, intentional and unauthorized use of the NEO4J® Mark in conjunction with the sale and advertising of Defendants and third parties' unauthorized database solutions and software and related support services is likely to cause and is causing confusion, mistake, and deception as to the origin and quality of Neo4j USA's graph database solutions and software and related support services.

84. Defendants' activities constitute willful trademark infringement under Section 32 of the Lanham Act, 15 U.S.C. § 1114.

85. The injuries and damages sustained by Neo4j USA have been directly and proximately caused by Defendants' wrongful sale, offering for sale, distribution, or advertising of Defendants and third parties' software products and services in conjunction with their unauthorized use of the NEO4J® Mark. Specifically, Neo4j USA has been damaged in an amount according to proof at trial, but in no event less than approximately $3.1 million, plus interest thereon under applicable law.

86. As iGov and Suhy's acts are likely to continue, the award of money damages alone will not adequately compensate Neo4j USA. By their unauthorized use of the NEO4J® Mark and

refusal to cease such use, Defendants have caused, and will continue to cause irreparable harm, damages and injury to Neo4j USA. Neo4j USA's injuries will continue unless restrained by order of this Court. Accordingly, Neo4j USA is entitled to preliminary and permanent injunctive relief.

SECOND CAUSE OF ACTION

FALSE DESIGNATION OF ORIGIN AND FALSE ADVERTISING – 15 U.S.C. § 1125(a)

(By Neo4j USA Against All Defendants)

87. Neo4j USA incorporates and realleges the allegations set forth in paragraphs 1 through 86 of this Complaint as though fully set forth herein.

88. Defendants' actions constitute a false designation of origin and false advertising under 15 U.S.C. § 1125(a), which is likely to cause confusion, mistake or to deceive and has confused and deceived consumers into believing that Defendants' goods and services are affiliated with, sponsored by, or somehow connected with Neo4j USA and/or Neo4j USA's NEO4J® Mark, and, as a consequence, are likely to divert customers away from Neo4j USA and/or its authorized NEO4J® Solution Partners.

89. Defendants' unlawful activities reflect adversely on Neo4j USA because it has no control over the nature and quality of the services and products advertised and sold by iGov, and as the believed source of origin, Neo4j USA's efforts to continue to protect its reputation for high quality graph database solutions and software and related support services sold under the NEO4J® Mark will be hampered, resulting in the loss of goodwill and sales, to the irreparable harm of Neo4j USA.

90. Further, any failure, neglect, or default by Defendants in using the NEO4J® Mark in offering its and third parties' unauthorized software products will continue to reflect adversely on Neo4j USA as the believed source of origin thereof, hampering efforts by Neo4j USA to continue to protect its outstanding reputation for high quality graph database solutions and software and software-related services, resulting in loss of customers and partners, as well as the loss of goodwill and sales, all to the irreparable harm of Neo4j USA.

91. The actions of Defendants as alleged herein constitute intentional, willful, knowing and deliberate false designation of origin and false advertising pursuant to 15 U.S.C. §

1125(a).

92. Defendants' willful, intentional and unauthorized use of the NEO4J® Mark is likely to cause and is causing confusion, mistake, and deception as to the origin and quality of Defendants' software products and software-related services.

93. The injuries and damages sustained by Neo4j USA have been directly and proximately caused by Defendants' wrongful and misleading sale, offering for sale, distribution, or advertising of Defendants and third parties' unauthorized software products and software-related services. Specifically, Neo4j USA has been damaged in an amount according to proof at trial, but in no event less than the approximate amount of approximately $3.1 million, plus interest thereon under applicable law.

94. As Defendants' acts are likely to continue, the award of money damages alone will not adequately compensate Neo4j USA. By their false designation of origin and false advertising, and refusal to cease the use of the NEO4J® Mark, Defendants have caused, and will continue to cause irreparable harm, damages and injury to Neo4j USA. Neo4j USA's injuries will continue unless restrained by order of this Court. Accordingly, Neo4j USA is entitled to preliminary and permanent injunctive relief.

THIRD CAUSE OF ACTION

UNFAIR COMPETITION – 15 U.S.C. § 1125(a)

(By Neo4j USA Against All Defendants)

95. Neo4j USA incorporates and realleges the allegations set forth in paragraphs 1 through 94 of this complaint as though fully set forth herein.

96. Defendants' conduct described and alleged in this complaint constitutes unfair competition and fraudulent business practices in violation of 15 U.S.C. § 1125. Defendants are deliberately, intentionally and unlawfully exploiting the NEO4J® Mark and consumer goodwill for their benefit.

97. Defendants' use of the NEO4J® Mark in conjunction with their business constitutes the use of a word, term, name, or any combination thereof, that is likely to cause confusion, mistake, or deception as to the affiliation, connection, origin, sponsorship, approval

and/or association of Defendants and their software products and software-related services with Neo4j USA, within the meaning of 15 U.S.C. § 1125(a)(1).

98. In addition, Defendants' use of the NEO4J® Mark constitutes a commercial use that causes actual and/or likely dilution of the distinctive quality of the NEO4J® Mark by lessening the capacity of the NEO4J® Mark to identify Neo4j USA and distinguish its software products and software-related services. Defendants knowingly traded on Neo4j USA's reputation after the NEO4J® Mark had become well known.

99. As a direct and proximate result of Defendants' acts and misconduct, Neo4j USA is informed and believes, and thereon alleges, that customers and prospective customers have been confused and misled, deceived and mistaken as to the source or sponsorship of Defendants and third parties' unauthorized software products and software-related services, and have been deterred from purchasing Neo4j USA's graph database solutions and software and related support services, in disruption of Neo4j USA's business activities.

100. Neo4j USA has therefore been damaged and is likely to suffer further damage in an amount to be proven at trial, but in excess of the minimum jurisdiction of this Court. In particular, Neo4j USA is entitled to, without limitation, damages for its loss of sales and goodwill, as well as recovery of any and all profit derived by Defendants through their wrongful acts in an amount according to proof at trial, but in no event less than the approximate amount of $3.1 million, plus interest thereon under applicable law.

101. As Defendants' wrongful acts are likely to continue, the award of money damages alone will not adequately compensate Neo4j USA. By their use of the NEO4J® Mark, Defendants have caused, and will continue to cause irreparable harm, damages and injury to Neo4j USA. Neo4j USA's injuries will continue unless restrained by order of this Court. Accordingly, Neo4j USA is entitled to preliminary and permanent injunctive relief.

FOURTH CAUSE OF ACTION

UNFAIR COMPETITION – Cal. Bus. Prof. Code §§ 17200 et seq.

(By Neo4j USA Against All Defendants')

102. Neo4j USA incorporates and realleges the allegations set forth in paragraphs 1

through 101 of this complaint as though fully set forth herein.

103. Neo4j USA is informed and believes, and thereon alleges, that Defendants' conduct business within California, including, without limitation, the advertising and distribution of Defendants and third parties' unauthorized software products and services through its headquarters and over iGov's interactive internet website.

104. Defendants' and third parties' unauthorized software products conduct described and alleged in this Complaint constitutes unfair, unlawful, and fraudulent business practices in violation of California Business & Professions Code §§ 17200 et seq.

105. Defendants' knew or reasonably should have known that use of NEO4J® Mark deceives and/or confuses customers into believing that Defendants and third parties' unauthorized software products and software related services are produced, endorsed, affiliated and/or associated with Neo4j USA.

106. Neo4j USA is informed and believes, and thereon alleges, that Defendants' misuse of the NEO4J® Mark was an intentional and deliberate attempt to trade on the Neo4j USA's goodwill.

107. As a direct and proximate result of Defendants' wrongful acts, Neo4j USA is informed and believes, and thereon alleges, that customers and prospective customers have been confused and misled, deceived and mistaken as to the source or sponsorship of Defendants and third parties' unauthorized software products and services, and have been deterred from purchasing and/or using Neo4j USA's NEO4J® software and services, in disruption of Neo4j USA's business activities. Neo4j USA has therefore been damaged and is likely to suffer further damage in an amount to be proven at trial, and is entitled to the remedies available under Business and Professions Code § 17200 et seq., including but not limited to injunctive relief and restoration of money or property acquired by means of Defendants' wrongful acts.

FIFTH CAUSE OF ACTION

BREACH OF CONTRACT

(By Neo4j USA Against Defendant PureThink LLC and iGov Inc.)

108. Neo4j USA incorporates and realleges the allegations set forth in paragraphs 1

through 81 of this complaint as though fully set forth herein.

109. The Partner Agreement constitutes a valid and enforceable contract between Neo4j USA and PureThink.

110. Under Section 4.1 of the Partner Agreement, Neo4j USA provided PureThink with a non-exclusive, non-transferable limited license during the term of the Partner Agreement to, *inter alia*, use the NEO4J® Mark solely to market and promote Neo4j USAs' products.

111. Section 7.3 of the Partner Agreement further provided that all rights and licenses to Neo4j USA's software products and the NEO4J® Mark would terminate upon the expiration or termination of the Partner Agreement, and upon such an event, PureThink agreed to "cease all communications with End Users regarding the Products" and "cease using any trademarks, service marks and other designations of Neo4j USAs" including the NEO4J® Mark.

112. Under Section 4.3.2 of the Partner Agreement, PureThink further agreed and understood that during the term of the Partner Agreement, it would not "develop, market, distribute or offer any services related to any [NEO4J®] Community Edition Products, derivative works of such products, or any [PureThink] software code made to work with [NEO4J®] Community Edition Products (including, without limitation, hosting services, training, technical support, configuration and customization services, etc.)." It was PureThink's acts and omissions in breach of this section occurring prior to July 11, 2017, among other things, that led to Neo4j's termination of the Partner Agreement on that date.

113. The foregoing provisions were intended and necessary to protect Neo4j USA's legitimate business interests in its goodwill and intellectual property and survived termination pursuant to Section 7.4 of the Partner Agreement.

114. Neo4j USA is informed and believed, and based thereon alleges that iGov is bound by the aforementioned restrictions and liable for breaches thereof as PureThink's successor-in-interest, assign, acquirer of substantially all of PureThink's assets as contemplated by Section 10 of the Partner Agreement and/or as PureThink's alter ego.

115. Neo4j USA has performed every promise and condition required to be performed by it pursuant to the Partner Agreement except any which were or would be excused or prevented

by the breaches of PureThink and iGov as set forth herein.

116. PureThink and iGov have willfully and with conscious disregard for the contractual obligations owed to Neo4j USA have breached and continue to breach Sections 4.1 and 7.3 of the Partner Agreement by (a) their unauthorized use of the NEO4J® Mark in conjunction with the sale and advertising of graph database solutions and software and related support services; (b) deceptively offering support and development services related to NEO4J® Community Edition Products and unauthorized derivative works of such products; and (c) deceptively developing, marketing, and distributing software purporting to be the equivalent of NEO4J® products. Their breaches of the Partner Agreement also include falsely suggesting Neo4j USA's authorization and/or sponsorship of PureThink and iGov's products and services, as well as misleading consumers regarding their prior contributions to NEO4J®-branded products.

117. The misconduct and breaches alleged above also constitute violations of the covenant of good faith and fair dealing implied in the Partner Agreement, because those activities injured and frustrated the right of Neo4j USA to the benefits of the Partner Agreement.

118. As a direct and proximate result of PureThink and iGov's breaches of contract, Neo4j USA has been damaged in an amount according to proof at trial, but in no event less than the approximate amount of $3.1 million, plus interest thereon under applicable law.

119. As a direct and proximate result of PureThink and iGov's breaches of contract, Neo4j USAs has suffered irreparable injury and harm and will continue to suffer such injury and harm unless and until PureThink and iGov are enjoined from further misuse and infringement of the NEO4J® Mark.

120. PureThink and iGov have derived, received, and will continue to derive and receive from the aforementioned breaches of contract, gains, profits and advantages, many of which are not presently known to Neo4j USA. Unless restrained and enjoined by the Court, PureThink and iGov will continue to breach the Partner Agreement. PureThink and iGov is therefore entitled to injunctive relief or specific performance, as well as damages as provided by law and the Partner Agreement.

/ / /

SIXTH CAUSE OF ACTION

INVASION OF PRIVACY – CAL. PENAL CODE §§ 632, 637.2

(By Neo4j USA Against PureThink LLC and John Mark Suhy)

121. Neo4j USA incorporates and realleges the allegations set forth in paragraphs 1 through 120 of this complaint as though fully set forth herein.

122. Unbeknownst to Neo4j USA and its employees, between 2015 and 2018, PureThink and Suhy intentionally recorded their conversations and audible communications transmitted over various electronic and telephonic devices with employees of Neo4j USA by using an electronic device. Neo4j USA's employees utilized cellular devices to communicate with PureThink and Suhy for one or more of these communications.

123. Neo4j USA and its employees were located and/or resided in California at the time that these communications occurred.

124. These communications related sensitive aspects of the Neo4j USA's business, including confidential customer information, private financial information, and other confidential business information. Neo4j USA and its employees thus had a reasonable expectation that these communications were not being recorded by PureThink and Suhy.

125. At no time did Neo4j USA or its employees consent to the recording of any of their communications with PureThink and Suhy. Rather, in the Fall of 2016, Neo4j USA instructed PureThink and Suhy not to record any of their calls and confirmed that PureThink and Suhy that did not have permission record any audible communications with Neo4j USA. Notwithstanding these demands, PureThink and Suhy continued to secretly record their calls with Neo4j USA for the next two years without first obtaining Neo4j USA's consent.

126. Neo4j USA is informed and believed, and based thereon on allege that PureThink and Suhy intentionally recording such conversations and audible communications with the intent to disclose those recordings to third parties and/or the general public that would not otherwise be privy to or have a right to listen to such communications.

127. Neo4j USA is informed and believed, and based thereon on allege that PureThink and Suhy intentionally recording such conversations and audible communications with the intent

to cause harm to Neo4j USA.

128. Neo4j USA seeks statutory damages in the amount $5,000 per incident of unauthorized recording as authorized by Cal. Penal Code § 637.2.

129. As PureThink and Suhy's wrongful acts are likely to continue due to their unauthorized possession of the aforementioned recordings, the award of money damages alone will not adequately compensate Neo4j USA. By possessing aforementioned recordings, PureThink and Suhy have caused, and will continue to cause irreparable harm, damages and injury to Neo4j USA. Neo4j USA's injuries will continue unless restrained by order of this Court. Accordingly, Neo4j USA is entitled to preliminary and permanent injunctive relief.

SEVENTH CAUSE OF ACTION

REMOVAL OF COPYRIGHT MANAGEMENT INFORMATION – 17 U.S.C. § 1202(b)

(By Plaintiffs Against John Mark Suhy)

130. Plaintiff incorporates and realleges the allegations set forth in paragraphs 1 through 129 of this complaint as though fully set forth herein.

131. Neo4j Sweden is the exclusive owner of the copyrights associated with all versions of NEO4J® graphing database software, including the versions of NEO4J® EE referenced herein (collectively "NEO4J® Software"). Neo4j Sweden is the exclusive owner of the rights to license, copy or distribute and license the use of copies of the NEO4J® Software.

132. The NEO4J® Software is published and distributed with copyright management information that includes the owner's name, a copyright notice, and a license providing the terms and conditions for the use of these copyrighted works ("NEO4J® CMI"). Each source code file for the NEO4J® Software conspicuous displays the NEO4J® CMI, which is conveyed in connection with each such file and protected under 17 U.S.C. § 1202(b).

133. Suhy intentionally copied source code files for the NEO4J® Software containing NEO4J® CMI, and then intentionally altered and removed NEO4J® CMI, including licensing restrictions, in at least 28 separate source code files for the NEO4J® Software. Suhy publicly distributes these altered source code files as part of the Graph Foundation's ONgDB software on iGov's website and Graph Foundation's Github repository with the intent and knowledge that the

NEO4J® CMI had been intentionally removed therefrom.

134. Suhy intentionally removed the NEO4J® CMI and distributed altered versions of NEO4J® Software with the knowledge that doing so would induce, enable, facilitate, or conceal an infringement of NEO4J Sweden's rights under the Copyright Act.

135. Suhy engaged in these activities without the consent or authorization of Neo4j Sweden.

136. Plaintiffs have been injured as a result of these violations of 17 U.S.C. § 1202(b) and is entitled to injunctive relief, damages, costs, and attorneys' fees. Pursuant to 17 U.S.C. § 1203(c)(3), Neo4j Sweden may also elect to recover statutory damages for not less than $2,500 or more than $25,000 for each violation of 17 U.S.C. § 1202(b).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. For compensatory damages in an amount to be proven at trial, in amount no less than $3,100,000, and that the amount of damages for infringement of Neo4j USA's NEO4J® Mark be increased by a sum not exceeding three times the amount thereof as provided by 15 U.S.C. § 1117;

2. For an award of all profits heretofore realized by Defendants during their infringing use of the NEO4J® Mark pursuant to 15 U.S.C. § 1117 and other applicable laws and statutes;

3. For reasonably attorneys' fees and costs pursuant to 15 U.S.C. § 1117 and/or 18 U.S.C. § 2520(b)(3);

4. Compensatory damages according to proof for Defendants' breaches of contract, but in amount no less than $3,100,000;

5. Disgorgement and restitution of Defendants' ill-gotten gains;

6. For a preliminary and permanent injunction restraining Defendant, its officers, agents, servants, employees, attorneys, confederates, and all persons acting for, with, by through, under, or in active concert with them temporarily, preliminarily, and permanently enjoined and restrained from use of the NEO4J® Mark;

7. For injunctive relief, costs, and attorneys' fees pursuant to 17 U.S.C. § 1203(b);

8. For actual damages, or in the alternative statutory damages for not less than $2,500 or more than $25,000 for each violation of 17 U.S.C. § 1202(b), pursuant to 17 U.S.C. § 1203(c);

9. For interest as allowed by law;

10. For cost of suit herein incurred; and

11. For such other and further relief as this Court may deem proper.

Dated: November 25, 2019

HOPKINS & CARLEY
A Law Corporation

By: */s/ Jeffrey M. Ratinoff*
John V. Picone III
Jeffrey M. Ratinoff
Attorneys for Neo4j USA
NEO4J, INC.

DEMAND FOR JURY TRIAL

Neo4j USA Neo4j, Inc. hereby demands trial by jury for all causes of action presented herein pursuant to Fed. R. Civ. P. 38.

Dated: November 25, 2019

HOPKINS & CARLEY
A Law Corporation

By: */s/ Jeffrey M. Ratinoff*
John V. Picone III
Jeffrey M. Ratinoff
Attorneys for Plaintiffs
NEO4J, INC. AND NEO4J SWEDEN AB

EXHIBIT 1

United States of America

United States Patent and Trademark Office

NEO4J

Reg. No. 4,784,280

Registered Aug. 4, 2015

Int. Cls.: 9, 35, 41, 42 and 45

TRADEMARK

SERVICE MARK

PRINCIPAL REGISTER

NEO TECHNOLOGY (DELAWARE CORPORATION)
111 E. 5TH AVE.
SAN MATEO, CA 94401

FOR: COMPUTER PROGRAMS FOR MANAGING, STORING, AND ACCESSING DATA FROM A DATABASE, ANALYZING DATA IN COMPUTER DATABASES FOR BUSINESS PURPOSES, PROCESSING IN THE NATURE OF UPDATING DATA IN COMPUTER DATABASES, AND VISUALIZING IN THE NATURE OF CREATING GRAPHS FROM DATA STORED IN DATABASES; COMPUTER PROGRAMS FOR STORING, MANAGING, AND QUERYING DATA FROM DATABASES ON COMPUTERS, COMPUTER NETWORKS, AND GLOBAL COMPUTER NETWORKS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 6-4-2006; IN COMMERCE 5-28-2007.

FOR: CONSULTING SERVICES AND ADVICE IN THE FIELD OF UPDATING AND MAINTENANCE OF DATA IN COMPUTER DATABASES , IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 6-4-2006; IN COMMERCE 5-28-2007.

FOR: EDUCATIONAL SERVICES, NAMELY, CONDUCTING TRAINING CLASSES, CERTIFICATION TRAINING, WORKSHOPS, TUTORIAL SESSIONS, AND ONLINE CLASSES IN THE FIELDS OF DESIGNING COMPUTER DATABASES AND UPDATING AND MAINTENANCE OF DATA IN COMPUTER DATABASES, AND DISTRIBUTING COURSE MATERIALS IN CONNECTION THEREWITH; PROVIDING TRAINING SERVICES IN THE FIELDS OF DESIGNING COMPUTER DATABASES AND UPDATING AND MAINTENANCE OF DATA IN COMPUTER DATABASES, AND DISTRIBUTING COURSE MATERIALS IN CONNECTION THEREWITH, IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 6-4-2006; IN COMMERCE 5-28-2007.

FOR: PROVIDING A WEB SITE FEATURING TECHNOLOGY THAT ENABLES END USERS TO STORE, MANAGE, AND QUERY DATA FROM DATABASES ON COMPUTERS, COMPUTER NETWORKS, AND GLOBAL COMPUTER NETWORKS; CLOUD COMPUTING FEATURING SOFTWARE FOR USE IN MANAGING, STORING, AND ACCESSING DATA FROM A DATABASE, ANALYZING DATA IN COMPUTER DATABASES FOR BUSINESS PURPOSES, PROCESSING IN THE NATURE OF UPDATING DATA IN COMPUTER

Michelle K. Lee

Director of the United States
Patent and Trademark Office

Reg. No. 4,784,280

DATABASES, AND VISUALIZING IN THE NATURE OF CREATING GRAPHS FROM DATA STORED IN DATABASES; TECHNICAL SUPPORT SERVICES, NAMELY, INSTALLATION, ADMINISTRATION, AND TROUBLESHOOTING OF DATABASE APPLICATIONS; COMPUTER SERVICES, NAMELY, PROVIDING CONSULTATION SERVICES AND ADVICE IN THE FIELDS OF DESIGNING COMPUTER DATABASES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 6-4-2006; IN COMMERCE 5-28-2007.

FOR: CONSULTING SERVICES AND ADVICE IN THE FIELD OF MAINTAINING THE SECURITY AND INTEGRITY OF DATABASES, IN CLASS 45 (U.S. CLS. 100 AND 101).

FIRST USE 6-4-2006; IN COMMERCE 5-28-2007.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 86-267,006, FILED 4-30-2014.

SIMON TENG, EXAMINING ATTORNEY

REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.

Requirements in the First Ten Years*
What and When to File:

First Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. *See* 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.

Second Filing Deadline: You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between the 9th and 10th years after the registration date.*
See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*
What and When to File:

You must file a Declaration of Use (or Excusable Nonuse) **and** an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. *See* 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. *See* 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see http://www.wipo.int/madrid/en/.

NOTE: **Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at** http://www.uspto.gov.

NOTE: **A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at** http://www.uspto.gov.

EXHIBIT 2

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Trademark Guidelines

Legal Notices

Terms
California Privacy Rights
Privacy Policy
Trademark Policy

This document outlines the policy for allowable uses of trademarks owned by Neo4j, Inc. and its subsidiaries ("Neo4j") by other parties.

Neo4j owns all Neo4j-related trademarks, service marks, and logos on behalf of our communities and the names of all Neo4j® projects are trademarks of Neo4j.

The role of trademarks is to provide assurance about the quality of the products or services with which the trademark is associated. Neo4j has established this Policy to encourage others to make accurate, non-confusing use of the Neo4j trademarks, while also ensuring that those trademarks maintain their distinctiveness and strength as reliable indicators of the source and quality of Neo4j products and services. Although some Neo4j projects may be available under free and open licenses, those licenses cover copyright only and do not include any express or implied right to use our trademarks. Neo4j does not allow third parties to use its trademarks without a written agreement or express permission. Thus, Neo4j projects that are available under open source licenses may be copied, modified, or sold by third parties, but they cannot be branded or marketed with Neo4j trademarks in the absence of a trademark license.

While open-source licenses allow modification of copyrighted software and distribution in original or modified form, such distribution could be misleading if distributed under the same name. This could cause confusion among consumers of the software as to source. They may mistakenly believe they are receiving software that is produced or supported by Neo4j. This Policy describes the circumstances under which you may use our trademarks, regardless of the type of license you may have from Neo4j. In this Policy we are not trying to limit the lawful use of our trademarks, but rather describe for you what we consider the parameters of lawful use to be. Trademark law can be ambiguous, so we hope to provide enough clarity for you to understand whether we will consider your use licensed or non-infringing.

Neo4j® software, which is created and/or distributed by Neo4j, is the software in the exact form that it is distributed by Neo4j without modification of any kind. To the extent any authorized modifications are made to the software, such modified software should no longer bear the Neo4j trademarks. The public has a right to know when it is receiving a genuine Neo4j® product that is quality assured by Neo4j.

The sections that follow describe what trademarks are covered by this Policy, as well as uses of the trademarks that are allowed without additional permission from us. Any use that does not comply with this Policy or for which we have not separately provided written permission is not a use that we have approved, so you must decide for yourself whether the use is nevertheless lawful.

Our Commitment to Open Source Principles

We want to encourage and facilitate the use of our open source software by the community, but do so in a way that still ensures that the Neo4j trademarks are meaningful as a source and quality indicator for our software and the associated goods and services and continue to embody the high reputation of the software and the community associated with it. This Policy therefore tries to strike the proper balance between: 1) our need to ensure that our trademarks remain reliable indicators of the qualities that they are meant to preserve and 2) our community members' desire to be full participants in Neo4j® projects.

Trademarks Subject to the Guidelines

Our Trademarks

This Policy covers the following non-exhaustive list of our trademarks:

1. Our word trademarks and service marks (the "Word Marks"):
   Neo4j®
   Cypher®
   Neo4j® Bloom™
   Neo4j® Desktop™
   Neo Technology®
2. Our logos (the "Logos")
3. The unique visual styling of our website and elements used in or otherwise related to the products and services we offer (the "Trade Dress"). See our Style Guide for further information.

This Policy encompasses all trademarks and service marks, whether Word Marks, Logos or Trade Dress, which are collectively referred to as the "Marks." Some Marks may not be registered, but registration is not necessarily required for ownership of trademarks. This Policy covers our Marks whether they are registered or not.

Universal Considerations for All Uses

The following guidelines show proper (and improper) use of Marks. Any use of the Marks must be licensed and comply with these guidelines. Whenever you use one of the Marks, you must always do so in a way that does not mislead anyone, either directly or by omission, about exactly what they are getting and from whom. For example, you cannot say you are distributing the Neo4j® software when you're distributing a modified version of it, because people would be confused when they are not getting the same features and functionality they would get if they downloaded the software directly from us. You also cannot distribute Neo4j® software using the Marks if you do not have a license from us, because that would imply that your distribution comes from or is supported by Neo4j. You cannot use our Marks on your website in a way that suggests that your website is an official website or that we endorse your website, unless permitted in a written agreement with us. You can, though, say you like the Neo4j® software, say that you participate in the Neo4j® community, or refer to Neo4j® products and services.

This fundamental requirement, that it is always clear to people what they are getting and from whom, is reflected throughout this Policy. It should also serve as your guide if you are not sure about how you are using the Marks.

In addition:
You may not use the Marks in association with the use or distribution of software if you are also not in compliance with the copyright license for the software.

You may not use or register, in whole or in part, the Marks as part of your own trademark, service mark, domain name, company name, trade name, product name or service name.

Provided that you have obtained a license from Neo4j, you can use the Word Marks in book and article titles, and the Logo in illustrations within the document, as long as the use does not suggest that we have published, endorse, or agree with your work.

Trademark law does not allow your use of names or trademarks that are too similar to ours. You therefore may not use an obvious variation of any of our Marks or any phonetic equivalent, foreign language equivalent, takeoff, or abbreviation for a similar or compatible product or service. This includes combinations or integrations of all or portions of the Marks in a way that the public may think of the use as a new mark (e.g. SuperNeo4j, or Neo5k).

You agree that you will not acquire any rights in the Marks and that any goodwill generated by your use of the Marks inures solely to our benefit.

Proper Use of the Marks

These rules hold true for all trademarks, not just ours, so you should follow them for our Marks as well as anyone else’s.

Always use the Marks in their Exact Form and Distinguishable from Other Text. Always use the Word Marks in a manner distinguished from surrounding text, with initial capital letters, and in the exact form with the correct spelling (neither abbreviated, hyphenated, or combined with any other word or words).

CORRECT	**INCORRECT**
Neo4j®	NEO4J Neo-4j neo4j n4j Neo

Use Marks as Proper Adjectives Followed by a Generic Term. Trademarks should be used as adjectives followed by a generic modifier, and not as nouns or verbs. Trademarks are products or services, never actions. Do not use "a" or "the" to refer to an instance of the Marks. For example:

CORRECT	**INCORRECT**

CORRECT	INCORRECT
The Neo4j® graph platform is widely used in many industries.	Neo4j® is widely used.
I was able to quickly realize graph epiphanies with Neo4j® Bloom™ visualization software.	We use the Neo4j.
I downloaded the Neo4j® database from [neo4j.com](neo4j.com).	I use Cypher.
Cypher® query language	I load data into and out of Neo4j.

Do Not Use Marks in the Possessive Form. Because trademarks are not nouns, they should not be used in the possessive from. For example:

CORRECT	INCORRECT
The Neo4j® graph database software presents and stores data natively as a graph.	Neo4j's storage presents and stores data natively as a graph.

Do Not Use Marks in the Plural Form. Because trademarks are not nouns, they should not be used in the plural form. For example:

CORRECT	INCORRECT
The Neo4j® platform allows multiple instances of the Neo4j database software to form a single highly-available cluster.	High-availability clustering allows a cluster of instances to be formed using multiple Neo4js.

Do Not Use Marks to Suggest Endorsement by Neo4j.

CORRECT	INCORRECT
graph database software	"Open Neo4j" XYZ ENTERPRISE 3.4.9 (FREE AND OPEN UNRESTRICTED NEO4J ENTERPRISE FORK)

Use of Logos

You may not change any Logo except to scale it proportionally. This means you may not add decorative elements, change the colors, change the proportions, distort it, add elements, or combine it with other logos. The logo may only be used displaying the exact colors shown in our Style Guide.

Mark Attribution and Notices

The first or most prominent mention of a Mark on a webpage, document, packaging, or documentation should be accompanied by a symbol indicating whether the mark is a registered trademark ("®") or an unregistered trademark ("™"). Also, if you are using our Marks for uses for which we are granting a separate license, please put following notice at the foot of the page where you have used the Mark (or, if in a book, on the credits page), on any packaging or labeling, and on advertising or marketing materials: "Neo4j is a trademark or registered trademark of Neo4j, Inc. or its subsidiaries in the United States and/or other countries."

Possible Infringement

If you are aware of any confusing use or misuse of the Marks in any way, we would appreciate you bringing this to our attention. Please contact us at webinfo@neo4j.com so that we can investigate it further.

Updates

Neo4j reserves the right to modify or update this Policy at any time. You should review this Policy from time to time so that you will be aware of any modifications or updates as they will apply as soon as they as posted on this page.

Further Information

Neo4j has tried to make this Trademark Policy as comprehensive and understandable as possible. If you have any questions about this Policy, would like to speak with us about the use of our Marks in ways not described in the Policy, or see any abuse of our Marks, please contact us.

Updated April 3, 2019

- *PRODUCTS*
- *SOLUTIONS*
- *PARTNERS*

- *CUSTOMERS*
- *LEARN*
- *DEVELOPERS*

- *Why Graph Databases?*
- *Graph Databases vs RDBMS*
- *What’s New in Neo4j*
- *Graphdatabases.com*

- *Company*
- *News*
- *Awards*
- *Careers*
- *Staff*

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of Neo4j, Inc.

Contact Us →

US: 1-855-636-4532
Sweden +46 171 480 113
UK: +44 20 3868 3223
France: +33 (0) 8 05 08 03 44
Germany: +49 (0)89 26204 6300

Contact Sales: 1.855.636.4532 Email a graph expert

EXHIBIT 3

DocuSign Envelope ID: BDC97257-6BF7-41BE-81F8-3745ED257574

neo4j
111 East Fifth Avenue.
San Mateo, CA 94401
(855) 636 - 4532

May 30, 2017

PureThink LLC
4202 Adrienne Dr.
Alexandria, VA 22309
Attn: John Mark Suhy Jr.

To Mr. Suhy:

Re: PureThink LLC's ("PureThink") breach of Neo4j Solution Partner Agreement with Neo Technology, Inc. ("Neo Technology") dated September 30, 2014 ("Agreement")

I am writing on behalf of Neo Technology. As we have discussed and as you know, PureThink is prohibited from using any Neo Technology open source products and from developing, marketing distributing or offering any services related to any Neo Technology open source products as set forth in Section 4.3 of the Agreement. From your own admissions in conversations with both John Broad and Jason Zagalsky, PureThink uses Neo Technology open source products and has distributed and performed services on, and continues to perform services on, Neo Technology open source products for the Internal Revenue Service. PureThink has also stated its intent to market and create a consulting business around Neo Technology open source products.

Thus, the purpose of this letter is to provide PureThink with a formal notification of PureThink's material breach of the Agreement under Section 7.2 of the Agreement. If PureThink fails to cure this breach within thirty (30) days of the date of this letter by both: (i) entering into an order form for the Internal Revenue Service's use of Neo4j software with Neo Technology in the form provided by Neo Technology and paying the applicable fees to Neo Technology, (ii) executing the proposed amendment to the Agreement and (iii) ceasing all use of all Neo Technology open source products and ceasing all marketing, distribution, development and services of or for any Neo Technology open source products to Neo Technology's satisfaction except as expressly set forth in the proposed amendment to the Agreement, then the Agreement is and will be automatically terminated. Such termination will be effective on the thirtieth day after the date of this letter (whether or not Neo Technology provides a subsequent termination notice to PureThink).

If the Agreement terminates as set forth herein, we would like to remind you of your continuing obligations under the Agreement as set forth in Section 7.4 of the Agreement.

Neo Technology further reserves all of its rights and remedies at law and equity under the Agreement and does not waive any rights under the Agreement.

If you have any questions regarding this letter, please contact John Broad at john.broad@neotechnology.com.

Sincerely,

DocuSigned by:
LARS NORDWALL
5E8692364E8643F

Neo Technology, Inc.

By: LARS NORDWALL

EXHIBIT 4

DocuSign Envelope ID: 28425D4E-82C1-4B72-8577-2E8FAC23ED2B

neo4j
111 East Fifth Avenue
San Mateo, CA 94401
(855) 636 - 4532

July 11, 2017

PureThink LLC
Attn: John Mark Suhy Jr
4202 Adrienne Dr.
Alexandria, VA 22309

To Mr. Suhy:

Re: Termination of Neo4j Solution Partner Agreement between PureThink LLC ("PureThink") and Neo4j, Inc. formerly Neo Technology, Inc. ("Neo ") dated September 30, 2014 ("Agreement") due to PureThink's uncured breach

Neo hereby notifies PureThink that the Agreement is immediately terminated pursuant to Section 7.2 of the Agreement. As you are aware, PureThink failed to timely cure its numerous material breaches set forth in our letter dated May 30, 2017 ("Breach Notice") or to otherwise respond to Neo's attempts to delay termination of the Agreement.

With the termination of the Agreement, Neo would like to remind PureThink of its continuing obligations as set forth in Section 7.4 of the Agreement. Critically, as PureThink's rights and licenses under the Agreement have terminated, PureThink must immediately cease representing that it is an authorized partner or reseller of Neo, including without limitation, ceasing all references to Government Edition of Neo4j, soliciting any current, former, or prospective End Users (including Sandia National Lab, IRS, MPO and FBI), assisting in the procurement or renewal of any of Neo's products, solutions, or services, or providing any procurement support, FISMA services, software development services, or training services to Neo's existing or prospective End Users.

Additionally, as set forth in the Agreement, for thirty six (36) months after the termination of this Agreement, PureThink must not develop, market, distribute or offer any services related to any Neo Technology Community Edition Products (defined in the Agreement as an open source version of a Neo software product, which includes, but is not limited to, GPL v3 licensed Neo4j Community Edition and AGPL v3 licensed Neo4j Enterprise Edition), derivative works of such products, or any PureThink software code made to work with Neo Technology Community Edition Products (including, without limitation, hosting services, training, technical support, configuration and customization services, etc.).

PureThink must also return all Confidential Information in its possession, custody, and control and cease using Neo's trademarks, service marks, and other designations. Neo therefore demands that PureThink immediately cease and desist all uses of, and remove from PureThink's website(s) and marketing materials, Neo's trademarks and tradenames, including, without limitation, Neo4j. PureThink has no rights to use Neo's trademarks or tradenames and continued use of such trademarks and/or tradenames will constitute trademark infringement.

Neo further reserves all of its rights and remedies at law and equity under the Agreement, including without limitation invoking its audit rights under the Agreement. Neo does not waive any rights under the Agreement, and this termination is not intended to and does not affect any prior or other termination rights or notices provided under the Agreement.

If you have any questions regarding this letter, please contact John Broad at john.broad@neotechnology.com.

Sincerely,

DocuSigned by:
LARS NORDWALL
5E9692354E8643E...

Neo4j, Inc.
By: LARS NORDWALL

EXHIBIT 5

Neo4j Government Edition News

If your agency was planning on procuring Neo4j Government Edition, then please checkout iGov Inc's new **Government Package** for Neo4j (https://web.archive.org/web/20171102094315/https://igovsol.com/neo4j.html).

PureThink, the company who created, managed and sold Neo4j Government Edition to all US Federal agencies has ceased their partnership with Neo Technology and Neo4j Government Edition has been retired.

The principle behind PureThink and the Government Package has created a new corporate entity called **iGov Inc**, which is not a Neo4j Solution Partner. Because iGov Inc is not a solution partner, it can offer packages at great cost savings to US Government Agencies as it has no restrictions on working with Neo4j Enterprise open source licenses!

iGov Inc and the new **Government Package** for Neo4j allows agencies to spend their money on developing innovative solutions around Neo4j, not paying for unnecessary production support before they even have a solution built that could be in production.

iGov Inc's new **Government Package** for Neo4j can be added to any Neo4j instance making it a "Government Edition". By default, all Government Packages for Neo4j now comes with Neo4j Enterprise included under it's open source license!

Learn More about iGov Inc and it's new Government Package for Neo4j (https://web.archive.org/web/20171102094315/ht

WHO WE ARE

PureThink is a software development company established in 2002 and located in Reston, Va. It is part of the Dulles High Tech corridor and Washington, DC Metro area.

DISTINGUISHERS

- Solid past performance in Federal, DOD, and commercial spaces.
- Our management team is comprised of highly experienced technology professionals.
- No off-shoring : Because we focus on the US Government exclusively, our resources are all located in the USA and have the ability to be cleared or already hold clearances.
- Extensive domain knowledge, adaptability, and experience in emerging technologies, methodologies and processes.
- Security focused. All of our software development professionals must go through security training. We were 2011 RSA speakers regarding continuous monitoring and the cloud.
- Our company is well established with over 12 years in business.

General Contact

(703) 348-3968

✉ info@purethink.com
(mailto:info@purethink.com)

1902 Campus Commons Drive
Suite 101 Reston, VA 20191

Customer Support

Toll Free: **+1 (855) 979-7771**

✉ support@purethink.com
(mailto:support@purethink.com)

See our support page (support.html) for more information.

INTERNET ARCHIVE WaybackMachine
(/web/)
http://purethink.com:80/ Go SEP (HTTPS://WEB.ARCHIVE.ORG/WEB/2017
112 captures (/web/*/http://purethink.com:80/)
14 Dec 2001 - 5 Aug 2018 ()
(https://archive.org/account/login.php) (http://faq.web.archive.org/)
(https://web.archive.org/we
2016 (https://web.archive.org/w
About this capture

PHILOSOPHY

To help you succeed, we believe in working closely and cooperatively with our clients. Our goal is to ensure everyone on the same page regarding project status, methods and tasks. Our approach is to develop software according to an Agile methodology which means we emphasize people and interaction rather than complicated processes and endless documentation.

RESULTS

Our mission is to bring the greatest value to our clients by leveraging our considerable depth of resources and experience. We align our approach to the specific business drivers of each business we work with whom we tailor solutions to best suit different cultural environments, industries, and market conditions. We focus on business strategy implementation, not business strategy development.

DUNS & CAGE Information

- DUNS: 147591627
- CAGE Code: 5KLU9

NAICS Codes

- 511210 Software Reseller
- 541511 Software Development
- 541512 Systems Integration / CAD / CAM / LAN
- 541519 Software Installation / Disaster Recover
- 611420 Software Training
- 541330 Engineering Services

SIC Codes

- 5045 Computers and Computer Peripheral Equipment and Software
- 7371 Computer Programming Services
- 7372 Prepackaged Software
- 7373 Computer Integrated Systems Design
- 7378 Computer Maintenance and Repair
- 7379 Computer Related Services, Not Elsewhere Classified

About PureThink

PureThink is a software development company established in 2002 and located in Reston, Va. We focus on bringing innovative technologies to US Federal and State government agencies.

CONTACT US

(703) 348-3968

✉ info@purethink.com (mailto:info@purethink.com)

1902 Campus Commons Drive
Suite 101 Reston, VA 20191

PURETHINK
(index.html)

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EXHIBIT 6

iGov (index.html) ≡

iGov Inc. is a Northern Virginia software development and consulting company focused on building innovative open source solutions for our US government customers. We focus on large scale graph and AI solutions.

March 2019 News: ONgDB Enterprise 3.5.5 is ready for production.

Open Native Graph DB (ONgDB) is a non-restrictive fork of Neo4j, the world's leading Graph Database.

ONgDB (AKA ONgDB Enterprise) 3.5.5 is Neo4j 3.5.5 Core + the enterprise features Neo4j Inc removed from the code base as of v3.5.
All ONgDB and Neo4j Enterprise AGPL distributions can be used in production, in closed source projects, and with no limitations on # of cores or causal cluster instances. ONgDB is a drop in replacement for the Neo4j Community and Enterprise branded distributions.

Neo4j Enterprise Commercial Prices Blog Post (https://blog.igovsol.com/2018/01/10/Neo4j-Commercial-Prices.html)

About iGov

iGov Inc. is a software development company located in the Washington DC Metro area.
We focus on building innovative solutions for US Government agencies using leading open-source technologies.

CONTACT US

(

(index.html)

[to:info@igovsol.com)

7686 Richmond Highway Suite 101-B Alexandria, VA 22306

(index.html)

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EXHIBIT 7

iGov (index.html)

If you've been misled by Neo4j Inc sales people regarding your rights to use Neo4j Enterprise AGPL distributions with no limitations, please contact us. You can also view a few FAQs we have put together for our US Federal clients : Neo4j open source FAQs (downloads.html#neo4j-os-faqs)

Downloads

Below are Open Native Graph Database (ONgDB) Enterprise distributions.

You can access the source code via the Graphfoundation GitHub Site (https://github.com/graphfoundation).

If you want an older Neo4j Enterprise open source distribution not found on the site, please email info@graphstack.io (mailto:info@graphstack.io) and tell us what version you would like. We are happy to package it for you then make it available on this site for everyone to benefit from.

ONGDB ENTERPRISE 3.5.5

Drop in replacement for Neo4j Core and Enterprise 3.5.5. AGPLv3 Open Source License, no limitations on causal cluster instances, cores, or production usage.
May 2019 Neo4j's Release Notes (https://neo4j.com/release-notes/neo4j-3-5-5/) | Neo4j's Whats New Page (https://neo4j.com/whats-new-in-neo4j/)

Mac/Linux	ongdb-enterprise-3.5.5-unix.tar.gz (https://cdn.graphfoundation.org/ongdb/dist/ongdb-enterprise-3.5.5-unix.tar.gz)
Windows 64 bit	ongdb-enterprise-3.5.5-windows.zip (https://cdn.graphfoundation.org/ongdb/dist/ongdb-enterprise-3.5.5-windows.zip)
Windows 32 bit	ongdb-enterprise-3.5.5-windows.zip (https://cdn.graphfoundation.org/ongdb/dist/ongdb-enterprise-3.5.5-windows.zip)

Docker ONgDB 3.5.5 Enterprise Docker Hub (https://hub.docker.com/r/graphfoundation/ongdb/)

(index.html)

```
docker run \
       --publish=7474:7474 --publish=7687:7687 \
       --volume=$HOME/neo4j/data:/data \
       graphfoundation/ongdb:3.5

Go to:  http://localhost:7474
```

ONGDB ENTERPRISE 3.4.12

AGPLv3 Open Source License, no limitations on causal cluster instances, cores, or production usage.

October 14th, 2018 Neo4j's Release Notes (https://neo4j.com/release-notes/neo4j-3-4-12/) | Neo4j's Whats New Page (https://neo4j.com/whats-new-in-neo4j/)

Mac/Linux	ongdb-enterprise-3.4.12-unix.tar.gz (https://cdn.graphfoundation.org/ongdb/dist/ongdb-enterprise-3.4.12-unix.tar.gz)
Windows 64 bit	ongdb-enterprise-3.4.12-windows.zip (https://cdn.graphfoundation.org/ongdb/dist/ongdb-enterprise-3.4.12-windows.zip)
Windows 32 bit	ongdb-enterprise-3.4.12-windows.zip (https://cdn.graphfoundation.org/ongdb/dist/ongdb-enterprise-3.4.12-windows.zip)
Docker Image	ONgDB 3.4.12 Enterprise Docker Hub (https://hub.docker.com/r/graphfoundation/ongdb/)

```
docker run \
       --publish=7474:7474 --publish=7687:7687 \
       --volume=$HOME/neo4j/data:/data \
       graphfoundation/ongdb:3.4

Go to:  http://localhost:7474
```

Neo4j Enterprise Open Source Frequently Asked

(index.html)

We've gathered together questions we receive from agencies and integrators regarding Neo4j Enterprise Open Source licenses. If you have a question for us, please email us at neo4j@igovsol.com (mailto:neo4j@igovsol.com).

Is Neo4j Enterprise Really Open Source?

YES, Neo4j Enterprise is open source under the AGPLv3 open source license created by the Free software foundation. View License (https://www.gnu.org/licenses/agpl-3.0.en.html). This is the same license used by Mondgo DB and many other open source projects. As long as you follow the open source license terms you are free to use it in any environment, for any purpose you wish. These terms simply ensure custom derivatives of Neo4j Enterprise are also themselves open source. US government agencies are restricted from making closed source software in most situations and do not try to create their own derivative (version) of Neo4j. Instead they use Neo4j as a server in a much larger enterprise architecture stack. AGPLv3 is a no-brainer for US government use cases! It's that simple!

What is the open source license does Neo4j Enterprise use?

Neo4j Enterprise can be used for free under the Free Software Foundation's GNU AFFERO GENERAL PUBLIC LICENSE Version 3 (https://www.gnu.org/licenses/agpl-3.0.en.html).

It is the same license used by many open source tools such as MongoDb. There are no hidden or limiting terms beyond the standard AGPL v3.0 license (AGPLv3). With Neo4j Enterprise under its free open source AGPLv3 license, You simply don't get production email and phone support from Neo4j Inc. You can get a much cheaper support contract through iGov Inc for a fraction of the cost to support your

Where can I download the open source Neo4j Enterprise binaries?

Neo4j removed the open source binaries they compiled from their distribution sites so you can no longer get open source packages from Neo4j Inc. Luckily iGov Inc compiles the binaries from the official Neo4j source code repositories (https://github.com/neo4j).

See our blog post to learn more (https://blog.igovsol.com/2017/11/14/Neo4j-330-is-out-but-where-are-

Where can I get the sourcecode for Neo4j Enterprise?

(index.html)

Neo4j Enterprise source code at the official Neo4j GitHub Repositories

What are the restrictions of AGPLv3 and do I need to worry about them?

There simply are none that we've ever run into.

The AGPL license ensures that if you make a derivative of Neo4j that you must ensure that you release the code of the derivative back to the community. That's it! It does not require you to release the tools, other applications, that connect and use Neo4j.

Can I use Neo4j Enterprise open source licenses in production?

Yes ,It's 100% free and open source. The standard AGPLv3 open source license simply ensures that Neo4j remains open source and that any custom derivatives of Neo4j should be shared with the community.
If you are ever told by a Neo4j sales person that you can not use Neo4j Enterprise open source license in

Does Neo4j open source license have any other restrictions above the AGPLv3 open source license?

No, Neo4j Enterprise is released only under the standard AGPLv3 open source license that is managed by the free software foundation. View the AGPLv3 License (https://www.gnu.org/licenses/agpl-

What is the difference between Neo4j Enterprise AGPLv3 and Neo4j Enterprise Trial?

Read the Neo4j Enterprise Trial license agreement they ask you to agree to before downloading and you will see the difference. It tries to bind you to restrictive commercial terms. There is no reason you would want to agree to restrictive terms for the Trial download , when you can use Neo4j Enterprise for any environment including Production under the simple AGPLv3 open source license. Instead of downloading a trial - download Neo4j Enterprise from our the Neo4j Inc. distribution site, or from our

(index.html)

Neo4j Enterprise Commercial & Open Source Comparisons

There are no physical differences between Neo4j Enterprise commercial and AGPL open source licenses! Neo4j Enterprise open source licenses have no other limitations beyond the standard GNU AGPL open source license.
The Neo4j Enterprise commercial end user license agreement (EULA) actually adds restrictions preventing you from using Neo4j open source licenses in many circumstances!! Make sure to read it!

License	Neo**4**j Enterprise open source license	Neo**4**j Enterprise commercial license
Can use in any environment for any purpose?	YES	YES
Can I use this with any amount of cores without incurring additional costs?	YES	NO
Can I create custom derivative versions of Neo4j Enterprise? (Ex: My custom Neo4j Enterprise Edition)	YES	YES
Does NOT require you to open source your systems that simply use Neo4j Enterprise as a component in your system.	YES for both *You do □□□ have to open source your system that uses Neo4j Enterprise as a server as it is intended to be used. You only need to open source custom Neo4j Enterprise derivatives under the open source license and then only under certain distribution conditions.*	

About iGov

iGov Inc. is a software development company located in the Washington DC Metro area.

We focus on building innovative solutions for US Government agencies using leading open-source technologies.

CONTACT US

((index.html)

[to:info@igovsol.com)

7686 Richmond Highway Suite 101-B Alexandria, VA 22306

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EXHIBIT 8

iGov (index.html)

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Proven past performance and value supporting Neo4j Enterprise open source licensed distributions.

Our team has been providing Neo4j support to US Federal agencies for many years, and we now only offer commercial equivelent support packages for Neo4j Enterprise open source licensed distributions.

Request Procurement Document Package (mailto:neo4j@igovsol.com)

Our team is the same team that created Neo4j Enterprise Government Edition. Further, we are the same team that sold and supported every US Federal Government procurement of Neo4j Enterprise Government Edition up until its retirement in July 2017.

We only focus on only supporting 100% free and open source ONgDB Enterprise (https://www.graphfoundation.org/projects/ongdb/) & Neo4j Enterprise open source licensed distributions. Not only does this cut down on unecessary commercial license costs, the open source licenses do not place any restrictions on the number of cluster instances or cores like the commercial licenses do.

Open source graph packages

Did you know that the Neo4j Enterprise commercial packages available from Neo4j Inc and their partners are essentially support offerings?

Are you aware that, unlike the commercial licensed options, the Neo4j Enterprise open source AGPL license does not place any restrictions on the number of cluster instances and cores?

iGov Inc's open source enterprise packages provide a better value than Neo4j Enterprise commercial support subscriptions because 100% of the cost goes to support and development services, not unecessary and more restrictive commercial licenses.

If you do not need support for your ONgDB Enterprise or Neo4j Enterprise open source licensed

distribution, then simply download ONgDB Enterprise
hfoundation.org/projects/ongdb/) as a drop in replacement for an existing
mmercial licensed distribution of the same version number.

(index.html)

Know your options

It is important to know your options before you make any procurement decisions around Neo4j. The information below provides you with a complete breakdown of the 3 main Neo4j offerings available including the free open source option. Most people are not aware that Neo4j Enterprise Edition is open source like its sibling, Neo4j Community edition. In fact, there is no reason you should be using the community edition. If you've chosen to use Neo4j open source, then you should use the enterprise edition under it's open source license.

The information below should provide you with a clear understanding of your options, so you can choose what's best for your agency.

View our blog post on Neo4j Commercial Prices (https://blog.igovsol.com/2018/01/10/Neo4j-Commercial-Prices.html)

NEO4J INC. COMMERCIAL SUBSCRIPTION

$2□□ - $1□+

Commercial packages are those sold by Neo4j solutions partners. You are paying for production support. The commercial license is actually more restrictive than the open source license!

Neo4j Enterprise Software

Available through Neo4j Inc. and all Neo4j Solution Partners

Yearly Subscription. You are paying for production support backed by Neo4j Inc.. If you don't renew your subscription you simply fall back to the Neo4j Enterprise open source license.

Production Email and Phone Support from vendor which is backed by Neo4j Inc.

Commercial License (Most government agencies do not need.)

Cost is based on number of instances and cores. (See below)

IGOV DEVELOPMENT PACKAGES

iGov (index.html) ≡

$25□+

100% of the cost goes into services aimed at building a solution around Neo4j, not unnecessary production support for something not yet built!.

ONgDB Enterprise open source distributions

No annual subscription, you are free to do whatever you want in the future.

Production Email and Phone Support from iGov Inc, but not backed by Neo4j Inc.

ONgDB Enterprise is free and open source. You have all the feature parity of Neo4j Enterprise commercial licenses, but without limits on usage, cluster instances, cores, etc.

No limitations on usage, instances or cores - cost goes 100% to solutions development

FISMA and 508 Toolkit and Services

Suite of Tools, Frameworks, and Starter Projects we use for scalable big data graph projects.

IGOV ENTERPRISE SUPPORT PACKAGES

$1□+

We offer the same support features and SLAs as the Neo4j Enterprise commercial subscriptions offered by Neo4j Inc partners, but for the open source licensed enterprise distributions. This allows us to only charge for support, not an unecessary and more restrictive commercial license.

ONgDB Enterprise open source distributions

No limitations on cluster instances or cores.

ONgDB Enterprise is a drop In replacement for Neo4j Enterprise commercial packages downloaded from Neo4j.com

FISMA and 508 Toolkit and Services

Open source Suite of Tools, Frameworks, and Starter Projects we use for scalable big data Neo4j projects. (See https://graphstack.io)

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OPEN SOURCE

□□□□□

Simply download the appropriate enterprise release version you need and start using it. There are no limitations on cluster instances, cores, etc.

The distributions we package for the federal government and community as a whole are drop in replacements for Neo4j Enterprise commercial packages you download from neo4j.com.

Learn More about Neo4j Enterprise Open Source (downloads.html#neo4j-os-faqs)

DE□ELOPMENT PACKAGE O□ER□IE□(NEO4J.HTML#NEO4J-DE□-FEATURES)

□(NEO4J.HTML#NEO4J-PR□CE-COMPAR□SON)

PROCUREMENT COMPAR□SON (NEO4J.HTML#NEO4J-COMPAR□SON)

□H□□GO□□NC?(NEO4J.HTML#PROCUREMENT-□NFO)

Development Package Overview

The Government Development Packages are aimed at agencies who need help building a robust and scalable solution around Neo4j. Unlike the commercial production support subscriptions, 100% of the cost goes into consulting services that help you build out your solution.

All iGov Inc packages also include a suite of tools and services which are combined to address critical FISMA and accessibility requirements relating to Neo4j.

Customer Support

iGov Inc provides umbrella support across all the components of your Neo4j solution, including Neo4j itself. For example, a solution using Neo4j Enterprise, Apache Kafka, Elastic Search, and custom micro-service architecture components are all covered under the umbrella support provided with these packages. The Neo4j commercial support subscriptions only cover Neo4j

UI/UX Development

The development packages include UI and UX design services to assist developing everything from your dashboards and visualization. We ensure all development meets 508(c) requirements. We cover all modern web design frameworks including ReactJS and AngularJS. Furthermore, we provide a toolbox of open source visualization libraries and webapp starter projects to get your project up and running quickly.

You can also add on UI packages such as Linkurious OGMA and Graphlytic Visualization tools and APIs.

Starter Projects and Toolsets

We provide a suite of starter projects (maven and gradle), templates, and tools to get your Neo4j projects off the ground quickly. Our Starters include Docker images, Microservice architecture components (api gateways, service registries, etc), UI and visualization components and more.

Enterprise Architecture Development

Neo4j is usually just one of many components in a common graph solution. Other components include ElasticSearch, Apache Kafka, and other technologies.

Our team brings a wide range of enterprise architecture development expertise to the table. From monolithic to micro-service architectures, our team will help design a solution that best fit's your agency's needs.

GraphGrid Data Platform

GraphGrid Data Platform (GDP) is an enterprise-grade graph data management platform that enables a centralized architecture for running batch, interactive and real-time analytics and data processing applications simultaneously across your connected graph data. Development packages include the tools, and platform components needed to get a robust and scalable ETL pipeline in place.

Newest Libraries and Repositories

The Government Packages for Neo4j include many of the leading technologies which are all covered under the umbrella package support. In many cases, this allows for agencies to start working with new technologies that would have usage restrictions if not part of a vendor supported package such as this. All libraries and repositories are kept on Amazon GovCloud and can be easily accessed once an agency whitelists the servers. Development packages include access to the newest libraries and repositories for the tools we package and support.

GovCloud Development and Continuous Integration Environment

We understand that many agencies have not adopted the newest technologies and best practices

ke modern web application development almost impossible. Our development

(index.html)

de use of GovCloud resources including EC2, S3,Container Services, and more.

Pricing Comparison

Below is a price comparison for a Neo4j Inc. commercial subscription package covering 3 production instances with 8 cores each. (3x8). The Neo4j Inc. commercial package is not a perpetual license, and the commercial EULA limits your use of Neo4j open source licenses in many ways once accepted. Notice that it also has unnecessary production elements which you are paying for as part of the subscription. Neo4j Inc's pricing can be found via a simple GSA Advantage search.

Neo4j Inc. Commercial Subscription (Annual Subscription)

Neo4j Enterprise Bundle – Standard cluster for enterprise applications that are used by more than one department (or by a larger department), or by customer-facing applications.

Neo4j Enterprise Bundle basic configuration includes:

- a. 3 Production Instances (up to 8 Cores per Instance).
- b. 3 Test Instances (no Core limit).
- c. Premium Support: 24 x 7 / 1-hour response time for Severity 1 issues, email and phone .
- d. Unlimited number of licensed developers.

Name & Description	Annual Subscription Price
Neo4j Enterprise Bundle Base (3 Instances X 8 Cores Each)	$189,188 / yr
Additional Production Capacity (per Core)	+ $6,609 / yr
Disaster Recovery (per Core)	+ $3,305 / yr
Additional Test Instances (per Instance)	+ $4,957 / yr

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Name & Description	Annual Subscription Price
p to 8 Cores)	+ $52,874 / yr
8-Core pack	+ $52,874 / yr
12-Core pack	+ $79,310 / yr
16-Core pack	+ $105,747 / yr
24-Core pack	+ $158,621 / yr
32-Core pack	+ $211,494 / yr

iGov Inc's Government Development Package with Neo4j Enterprise

Comes with same physical Neo4j Enterprise software. Under open source license there are no limitations on how you use it. You have no limits on environments, number of instances, cores, etc!

Government Bundle for Neo4j Enterprise basic configuration includes:

- a. Unlimited instances with no core limits for any environment! (dev, test, staging, production, etc)
- c. Premium support and development services by iGov Inc. Unlike the Neo4j commercial package, we support your entire architecture not just Neo4j. (Neo4j, ElasticSearch, UI, Micro Services, etc..)
- d. No limitations on number of developers, etc.

$25,000+

100% goes into development.

The minimum development package costs $25,000. For comparison - you can choose the $189,000 Development package option - where $189,000 goes into consulting services at GSA approved rates.

Of course - you can choose how much you want to spend. We simply offer packages that parallel commercial subscription rates to help make procurement easier.

iGov (index.html)

Neo4j Inc. Commercial Support vs iGov Inc. evelopment Package Comparison

So what exactly do you get with a Neo4j Inc. commercial subscription? You get the peace of mind knowing Neo4j Inc. is there to assist with production support tickets if the vendor you purchased it from can not solve an issue on their own. This is not very useful when you are in development, using Neo4j for R & D, or do not have a mission critical Neo4j deployment.

	Government Development Package w/ Neo4j Enterprise	Neo4j Enterprise commercial support subscription	Neo4j Enterprise (default open source license)
Has full Neo4j Enterprise functionality.	YES	YES	YES
Can purchase through Neo4j Inc. or its resellers	NO *The Government Packages for Neo4j are only available through iGov Inc.*	YES	NO *Neo4j partners are forbidden on offering services or support for Neo4j open source licenses.*
Can use in any environment for any purpose?	YES	YES **Your subscription has limits on number of cores and instances*	YES
Comes with consulting services which can be used to build your solution around Neo4j. (Including UI/UX design, ETL implementation, enterprise architecture, and FISMA and 508c services)	YES *This is what seperates out the Government Development Package from the commercial support subscription. Support is swapped out with consulting services you can use to build your solution around Neo4j.*	NO	NO

iGov (index.html)

	Government Development Package w/ Neo4j Enterprise	Neo4j Enterprise commercial support subscription	Neo4j Enterprise (default open sour license)
Comes with tools, services and support to address Accessability (508c) and FISMA requirements.	YES	NO	NO
Can I use this with any amount of cores or instances without incurring additional costs?	YES	NO **The cost of a commercial support subscription is based on the cores and instances you use.*	YES
Can I create custom derivative versions of Neo4j Enterprise? (Ex: My custom Neo4j Enterprise Edition)	YES	YES	YES
Does Neo4j Inc. provide official email and phone production support?	No* *Development packages do not need production support, they swap out production support for consulting services you use to build your solution.*	YES	NO
Does NOT require you to open source your systems that simply use Neo4j Enterprise as a component in your system.	YES for all *You do NOT have to open source your system that uses Neo4j Enterprise as a server as it's intended to be used. You only need to open source custom Neo4j Enterprise derivatives under the open source license and then only under certain distribution conditions.*		

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About iGov

iGov Inc. is a software development company located in the Washington DC Metro area.

We focus on building innovative solutions for US Government agencies using leading open-source technologies.

CONTACT US

(703) 672-1205

✉ info@igovsol.com (mailto:info@igovsol.com)

📍 7686 Richmond Highway Suite 101-B Alexandria, VA 22306

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EXHIBIT 9

(https://blog.igovsol.com November 14, 2017 (/) 10 min read

Neo4j 3.3.0 is out , but where are the open source enterprise binaries?

Neo4j Enterprise is still open source under it's AGPLv3 license (https://www.gnu.org/licenses/agpl-3.0.en.html). However you may have noticed that you can no longer build the enterprise package binary from the source code or download the enterprise package binary with it's free AGPLv3 license (https://www.gnu.org/licenses/agpl-3.0.en.html) from dist.neo4j.org. Furthermore, if you use docker, you must now accept a 'commercial agreement' before proceeding (https://github.com/neo4j/docker-neo4j-publish/commit/aa31654ee8544cd544b369d2646cf372086f7b70). In other words, official Neo4j docker images are no longer packaged with the free AGPLv3 (https://www.gnu.org/licenses/agpl-3.0.en.html) licensed binaries.

Neo4j Enterprise 'binaries' are simply the compiled and packaged Neo4j distributions you download and run on your computer, server, container, etc.

For the 3.3.0 release the enterprise binary package file names would be neo4j-enterprise-3.3.0-unix.tar.gz (https://dist.igovsol.com/neo4j-enterprise-3.3.0-unix.tar.gz) for the linux package and neo4j-enterprise-3.3.0-windows.zip (https://dist.igovsol.com/neo4j-enterprise-3.3.0-windows.zip) for the windows package. (The links above point to the binaries iGov Inc compiled and packaged using the source code found at the Neo4j Github repository. By default it is packaged with the AGPLv3 license (https://www.gnu.org/licenses/agpl-3.0.en.html).)

Why has Neo4j Inc made it harder to access the open source enterprise binaries?

If they are going to take the trouble to make Neo4j Enterprise more inaccessible to the public, why not just take Neo4j closed source before releasing 3.3.0?

Only Neo4j Inc can answer these questions, and I feel they owe an explanation to the open source community which has made Neo4j what it is today.

With ambitions of an IPO, it would be an extremely risky maneuver to attempt taking Neo4j closed source. It could backfire and be disastrous if the community revolted and creates a more successful Neo4j fork. Even the perceived threat of this sort of behavior could trigger a revolt and fork.

As a reference, look no further than MySQL and MariaDB (https://mariadb.org/about/) , the more popular fork of MySQL, and you can see what could happen (https://www.zdnet.com/article/open-source-mariadb-a-mysql-fork-challenges-oracle/).

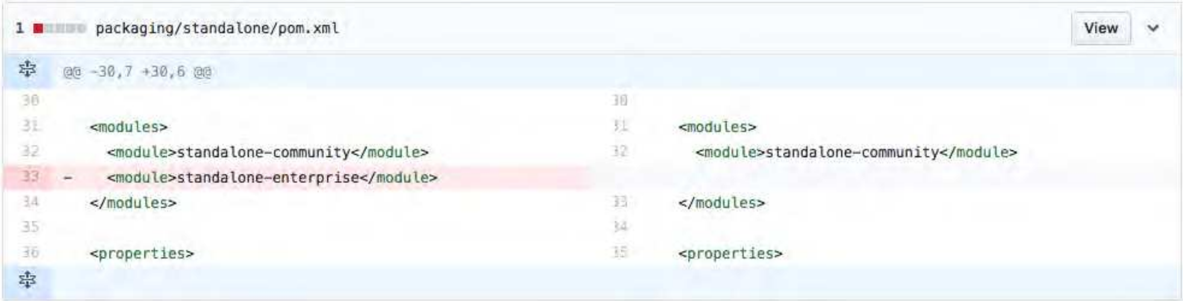
It looks like Neo4j Inc does not want to tempt fate with a closed source move just yet. Instead another path was taken which makes it very hard to get ahold of the enterprise packaged binaries with the free AGPLv3 license (https://www.gnu.org/licenses/agpl-3.0.en.html). As a passionate advocate of both open source software and Neo4j, this does not sit well with me.

Federal agencies have already invested in the adoption and use of Neo4j Enterprise and many are using it's free AGPLv3 license (https://www.gnu.org/licenses/agpl-3.0.en.html). Luckily, iGov Inc builds the Neo4j binaries from the source code and makes it available via a distribution site we setup (https://igovsol.com/downloads.html).

Back to the core of this post. So what has Neo4j Inc done to limit your access to Neo4j Enterprise binaries packaged with the free open source AGPLv3 license (https://www.gnu.org/licenses/agpl-3.0.en.html)?

Action 1: The enterprise packaging build instructions were removed from the code base (https://github.com/neo4j/neo4j/commit/affe1a0b4ab47c9d4673bfa507868ccd03c48ddd). Until the 3.3.0 release, anyone could have checked out the Neo4j source code from github (https://github.com/neo4j/neo4j), and run a few simple commands to build the Neo4j Enterprise binaries complete with the AGPLv3 license (https://www.gnu.org/licenses/agpl-3.0.en.html). That's not the case anymore. If you run the build commands on the 3.3.0 branch you will notice that only the Neo4j Community Edition binary is present after the build process completes. Who really uses Neo4j Community Edition once they realized Neo4j Enterprise edition is also free?

The packaging system simply provides the instructions on how to 'build' the Neo4j Enterprise distribution binary, much like the instructions you get with furniture purchased at IKEA. All the artifacts that are used to build the Neo4j Enterprise binary are all open source, but the instructions explaining how to put together these artifacts have disappeared.



```
packaging/standalone/pom.xml
@@ -30,7 +30,6 @@
30                                                  30
31      <modules>                                   31      <modules>
32        <module>standalone-community</module>     32        <module>standalone-community</module>
33  -     <module>standalone-enterprise</module>
34      </modules>                                  33      </modules>
35                                                  34
36      <properties>                                35      <properties>
```

Action 2: Neo4j Inc slipped a commercial license into the official binaries found on their distribution site that is used for docker images. Until now, if you wanted to download the Neo4j Enterprise binary from Neo4j Inc directly, you could have done so using the distribution site which is publically available. It just isn't advertised for obvious reasons.

Those who were using the official docker images or downloading the enterprise binary directly from dist.neo4j.org were in for a surprise when they were forced to accept commercial terms in order to access the distributions.

Want to see for yourself - download the Neo4j Enterprise binary (http://dist.neo4j.org/neo4j-enterprise-3.3.0-unix.tar.gz) which Neo4j Inc packages and take a look at the LICENSE.txt file.

Instead of the standard AGPLv3 license (https://www.gnu.org/licenses/agpl-3.0.en.html) which used to be there, the LICENSE.txt file now says:

```
Network Engine for Objects in Lund AB. 2017.
All Rights Reserved. Use of this Software without
a proper commercial license with Neo4j, Inc. or its affiliates
is prohibited.
```

As copyright holders, Neo4j Inc has the right to add any license they want for the binary distributions they build, package, and make available for download themselves. If anyone else packages the enterprise binary distribution like we do, you must simply make sure the LICENSE.txt file is the AGPLv3 license (https://www.gnu.org/licenses/agpl-3.0.en.html). That is exactly what we do.

Action 3: Neo4j Inc kept causal cluster communication encryption (Intra-cluster encryption) off by default. They then created a 'proprietary module' that turns it on.

Of course you can get intra-cluster encryption turned back on by purchasing a costly commercial package.

This move was referenced in the 3.3.0 release changelog (https://neo4j.com/release-notes/neo4j-3-3-0/). They justified this change with the following blurb:

```
Neo4j Enterprise Edition binaries now include new proprietary
add-ons. Intra-cluster encryption is the first of these.
Consequently Neo4j Enterprise Edition can no longer be
distributed under a dual license but the source is still
available under AGPLv3.
```

Of course Neo4j Enterprise can still be distributed under the AGPLv3 license (https://www.gnu.org/licenses/agpl-3.0.en.html). Simply provide a binary download without the 'proprietary add-ons' that turn on intra-cluster encryption. The Neo4j Enterprise binaries we make available to the public are proof that this can be done.

I believe that security critical components of Neo4j should remain open source, security by obscurity has proven not to be a good strategy in the past. Currently, the security components of Neo4j Enterprise are still open source. In the case of intra-cluster encryption (causal clustering) - it is just not initialized.

Right now the only difference between the paid Neo4j Enterprise (commercial) binary and Neo4j Enterprise (open source) binary (we compile from source) is that intra-cluster encryption is still off by default in the AGPLv3 version.

We turn it back on for our federal customers via a new component in our FISMA framework, which will be available on github for everyone to use soon.

How many of you are actually using causal clustering in production? Well - if you upgrade to 3.3.0 and don't turn it back on yourself , you may be a little less secure assuming you aren't using encrypted tunnels / vpn, etc between your cluster nodes.

Look for yourself:

3.2 release code (https://github.com/neo4j/neo4j/blob/3.2/enterprise/causal-clustering/src/main/java/org/neo4j/causalclustering/discovery/HazelcastClientConnector.java) : The sslPolicy initialized in the code.

```
HazelcastClientConnector( Config config, LogProvider logProvider, SslPolicy sslPolicy,
            HostnameResolver hostnameResolver )
    {
        this.config = config;
        this.logProvider = logProvider;
        this.sslPolicy = sslPolicy;
        this.hostnameResolver = hostnameResolver;
    }
```

3.3 release code (https://github.com/neo4j/neo4j/blob/3.3/enterprise/causal-clustering/src/main/java/org/neo4j/causalclustering/discovery/HazelcastClientConnector.java) : The sslPolicy initialization has disappeared.

```
    HazelcastClientConnector( Config config, LogProvider logProvider, HostnameResolver
hostnameResolver )
        {
            this.config = config;
            this.logProvider = logProvider;
            this.hostnameResolver = hostnameResolver;
        }
```

These three actions effectively made it impossible to get Neo4j Enterprise binaries with the open source AGPLv3 license (https://www.gnu.org/licenses/agpl-3.0.en.html) from Neo4j Inc starting with the 3.3.0 release.

As a consulting company offering software development and support for Neo4j Enterprise open source licenses to the US federal government, we have been building the binaries ourselves for some time.

As part of the Neo4j open source community, we've decided to absorb the hosting costs and make these distributions available to the general public, not just US federal agencies. We've setup a distribution site that can be used to download Neo4j Enterprise directly, or use use with docker compose.

We will have docker images up as well complete with the AGPLv3 (https://www.gnu.org/licenses/agpl-3.0.en.html) licensed packages.

We will also have the FISMA framework modules on GitHub soon, one of which turns back on intra-cluster encryption.

You can download the Neo4j Enterprise binaries with the open source license from our website at https://igovsol.com/downloads.html (https://igovsol.com/downloads.html).

We compile and package these using the source code from the official Neo4j GitHub repositories.

Federal agencies should email us at support@igovsol.com (mailto:support@igovsol.com) to get their AWS GovCloud download links which should be whitelisted for most agencies.

If you would were not aware that Neo4j Enterprise is open source just like it's sibling 'Neo4j Community Edition', you can learn more here (https://igovsol.com/downloads.html#neo4j-os-faqs).

If you are not happy with Neo4j Inc's behavior, then please reach out to Neo4j Inc and voice your concerns.

Feel free to contact me directly via email at jmsuhy@igovsol.com (mailto:jmsuhy@igovsol.com) if you have questions, comments, or just want to talk about Neo4j in general. We are always available.

()

Comment on Twitter (https://twitter.com/share?text=Neo4j%203.3.0%20is%20out%2C%20but%20where%20are%20the%20open%20source%20

(https://blog.igovsol.com/rss)

(https://blog.igc

John Mark

(https://blog.igovsol.com/author/jmsuhy/)

Senior software developer and enterprise architect with a focus on introducing innovative open source technologies into the US federal government.

Alexandria, VA

igovsol.com (https://igovsol.com)

EXHIBIT 10

different between neo4j enterprise and neo4j community for windows?

Asked 5 years, 5 months ago Active 1 year, 8 months ago Viewed 3k times

4

I've just started to learn the Neo4j graphs db. I have a question:

What is the difference between neo4j enterprise and neo4j community for windows?

neo4j

edited Mar 11 '14 at 8:49
Philipp
51.4k 8 86 124

asked Mar 10 '14 at 12:26
user3401678
36 2 4

2 Answers

6

You can find a list of differences on [the price comparison overview](#).

Features the Open Source version lacks are:

- High-Performance Cache
- Clustering
- Online Backup
- Advanced Monitoring

The paid licenses also come with a support contract (you can ask for help from people who will not downvote, edit or close your questions).

answered Mar 11 '14 at 8:52
Philipp
51.4k 8 86 124

2

Neo4j Enterprise just has more 'enterprise features' such as clustering and additional security for example. The comparison link the other poster provided is good to see the differences between enterprise and community server but it does not mention that Neo4j Enterprise is also free under it's open source license! I would just focus on Neo4j server, not the new 'platform' they are now pushing.

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You can download Neo4j Enterprise versions before 3.3.0 from the neo4j distribution site below. (3.2.8 is the last version that includes the AGPL license on their distribution site.)

http://dist.neo4j.org/neo4j-enterprise-3.2.8-windows.zip

OR

If you want to use the newest free Neo4j Enterprise edition (currently 3.3.1 as of today) then you can download the free open source binaries we package from source for our government clients at https://igovsol.com/downloads.html

Once you download the zip file to the following to get started. (Assuming you have JAVA setup on your windows machine.)

https://neo4j.com/docs/operations-manual/current/installation/windows/

1) Right-click the downloaded file, click Extract All. Change directory to top-level extracted directory.

2) Run bin\neo4j console

3) Stop the server by typing Ctrl-C in the console.

The enterprise package is 100% free under it's open source AGPL license.

Unzip the package you download and you can verify it by looking at the LICENSE.txt

If you are curious about learning why you can't get the free AGPL binaries after 3.3.0 - checkout a blog post I wrote at https://blog.igovsol.com/2017/11/14/Neo4j-330-is-out-but-where-are-the-open-source-enterprise-binaries.html

answered Dec 5 '17 at 23:48
John Mark
225 1 5

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EXHIBIT 11

Neo4j replication alternative to Neo4j Enterprise edition?

Asked 6 years, 2 months ago Active 6 months ago Viewed 1k times

8

It seems Neo4J High Availability is only available for the Enterprise edition which is paid- is there another alternative to achieve replication without that module? (i.e. without cost). Thanks for any help!

graph nosql neo4j

edited Mar 20 '14 at 15:49

tstorms
4,377 1 19 46

asked Jun 23 '13 at 15:31

DevD
616 1 8 19

1 It's not paid - it is OSS and licensed under the AGPL. How you are you using it? – Peter Neubauer Jun 24 '13 at 16:17

Actually i am using it as a datastore for a mobile app which would not be opensource, basically for arriving at different levels in people relationships. So i guess it comes under commercial licensing as per Neo4j licensing protocol. Please correct me if i am wrong. Thanks! – DevD Jun 25 '13 at 5:09

there is no such thing like "HA without cost"s. If you implement HA/replication on your own, you have high internal costs. If you rely on existing solutions you'll have some external costs. – Stefan Armbruster Jun 25 '13 at 6:23

Thanks Stefan. What tools(opensource) can i use to implement the HA/replication on my own to get started with. Can you please guide me, i am just a novice. – DevD Jun 25 '13 at 8:38

have you seen orientdb ? It is free and achieves high availability by using hazelcast – Nulik Jul 21 '13 at 20:44

2 Answers

3

✓

Update:

This answer has changed. Neo4j is now open core, so the Enterprise code is no longer dual-licensed - only the commercial license option remains.

You can find more details here: https://neo4j.com/open-core-and-neo4j/

Original Answer:

Enterprise is available as quid-pro-quo - if you put your code out under an open source license, then you get access to the open source Neo4j Enterprise free of charge. However, if you are closed

By using our site, you acknowledge that you have read and understand our Cookie Policy, Privacy Policy, and our Terms of Service.

If your application is open-source as you mention, then you are free to use Neo4j Enterprise without paying for it, simply download it at neo4j.org.

edited Feb 21 at 13:47

answered Apr 7 '14 at 10:16

Jacob Davis-Hansson
2,252 14 22

Yes i saw this some time back on the neo4j website....It wasnt there earlier so i had raised a query. but Thanks for the same! – DevD Apr 7 '14 at 11:18

Lol, sorry, I had the wrong tab open, didn't see how old this question was. Sorry about that. Thanks for the "answered" anyway :) – Jacob Davis-Hansson Apr 7 '14 at 11:22

@JacobDavis-Hansson any idea how to get/build the AGPL for version > 3.2 . They stopped packaging enterprise version now with them. – Himanshu Jain Oct 24 '18 at 21:07

How to use AGPL for veersion 3.5? Is it necessary to make our code public? By code you mean the database as well as queries? – pragya18nsit Feb 20 at 7:59

@pragya18nsit I'm afraid this answer was out of date, the licensing has changed since I wrote it. I've updated the answer to reflect the current state. – Jacob Davis-Hansson Feb 21 at 13:48

0

Actually Neo4j Enterprise is free under the open source AGPLv3 license.

Neo4j Inc can't modify the terms and still call it AGPL.

If you use Neo4j Enterprise as a server (like most people do) and communicate with it via its REST API or any of the official BOLT drivers then you never trigger AGPL's copyleft requirements.

In other words - the software that connects to it does not have to be open sourced.

You can download Neo4j Enterprise open source licensed binaries up to version 3.2.x from dist.neo4.org. The links for the windows and unix packages are below. (Replace the version number for specific versions)

http://dist.neo4j.org/neo4j-enterprise-3.2.8-windows.zip

http://dist.neo4j.org/neo4j-enterprise-3.2.8-unix.tar.gz

If you want Neo4j Enterprise 3.3.0 and on under it's free open source license, then you can build them from source like we do for our US government clients, or just grab them from our free distribution site.

Check out the blog post if you want to understand why this has happened.

https://blog.igovsol.com/2017/11/14/Neo4j-330-is-out-but-where-are-the-open-source-enterprise-binaries.html

answered Dec 5 '17 at 23:59

By using our site, you acknowledge that you have read and understand our Cookie Policy, Privacy Policy, and our Terms of Service.

You're thinking of the GPL, the Affero GPL explicitly exists to cover the over-the-network loophole you mention. See stackoverflow.com/questions/2127246/… or the first sentence in the license preamble here: gnu.org/licenses/agpl-3.0.en.html – Jacob Davis-Hansson Dec 6 '17 at 13:24

1 I am actually talking about AGPL, not GPL. AGPL does address the 'distribution' loophole that GPL does not have. However, you have to remember that we are talking about 'distribution' of a 'derivative work'. Neo4j Enterprise is run as a server or cluster of servers in an enterprise architecture. You only interact with it via the REST API or the official bolt drivers, all of which are Apache licensed. Any software communicating with it does not trigger GPL's copy-left requirements and does not have to be open sourced. – John Mark Dec 6 '17 at 22:49

1 MongoDB has a post on AGPL which describes it great: mongodb.com/blog/post/the-agpl "Note however that it is NOT required that applications using mongo be published. " – John Mark Dec 6 '17 at 22:53

1 Finally, Here is an analogy that may make sense. Imagine you develop a new proprietary web browser. If someone uses your browser to go to a website who's content is AGPL licensed, this interaction does trigger AGPL's copyleft requirements requiring you to release the code of your propriatary browser. Also - if you think of open source apps like drupal, then that is a good example of why AGPL is here. I hope this all helps! – John Mark Dec 6 '17 at 22:54

Just an extract of the readme on the github repo of neo4j : "The Enterprise edition is available under the AGPLv3 license for open source projects otherwise under a commercial license" – logisima Dec 6 '17 at 23:17

@JohnMark, this is getting somewhat far into legal advice, which I'm not in a place to give. I'll make two notes and leave this at that: One, your browser analogy is true, but not because the AGPL allows that, but because accessing a public website does not constitute agreeing to a contract you don't know about until you've downloaded it, for obvious reasons. – Jacob Davis-Hansson Dec 7 '17 at 0:14

Two, the Linux network stack is open source as well, just like the Mongo drivers are; if the AGPL software could be nullified by accessing it via a layer with another license it would serve no purpose; when you access an AGPL system via the Linux TCP/IP stack, you agree to *both* licenses, not just the one you are linking into your program. – Jacob Davis-Hansson Dec 7 '17 at 0:17

1 I should point out that I am not a lawyer either. We do work with very good lawyers that help us on topics such as this. I believe the linux kernel is GPL not AGPL. The TCP/IP stack would most likely be in the kernel meaning your example may not be the best. There is a reason mongodb made it's official drivers apache licensed and not AGPL. (Mongodb server is AGPL just like Neo4j Enterprise). Just an FYI, my expertise on this subject comes directly from my involvement of AGPL licenses in the US Federal government. I would be happy to chat about it in detail anytime if you message me. – John Mark Dec 7 '17 at 0:51

@logisima - regarding the readme in github. I have a blog post coming out that touches on this behavior and AGPL. It's great at causing confusion though! They could also add that their software can only be used during full moons. The fact is AGPL comes from the free software foundation. You can not add or modify terms and still call it AGPL. But my post will touch on all sorts of confusion on this subject because of unclear statements such as that one. In my post I will show why this statement is invalid for the most common use cases of Neo4j. – John Mark Dec 7 '17 at 1:00

@JohnMark can you provide more details as to how to build the enterprise version from source for the newer versions. – Himanshu Jain Oct 24 '18 at 21:09

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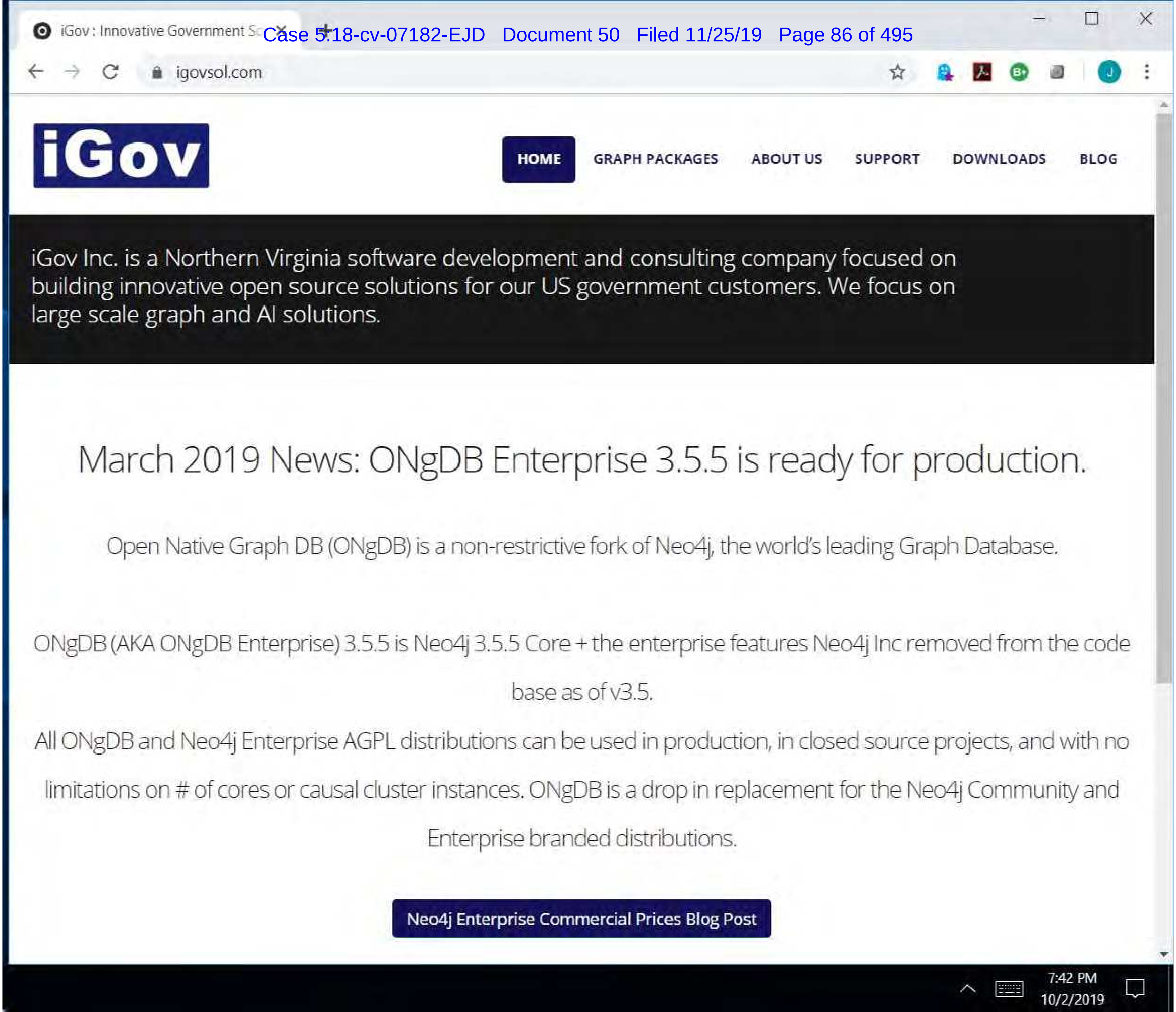
EXHIBIT 12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DOWNLOADS
BLOG
7:42 PM
10/2/2019

iGov Inc. is a Northern Virginia software development and consulting company focused on building innovative open source solutions for our US government customers. We focus on large scale graph and AI solutions.

March 2019 News: ONgDB Enterprise 3.5.5 is ready for production.

Open Native Graph DB (ONgDB) is a non-restrictive fork of Neo4j, the world's leading Graph Database.

ONgDB (AKA ONgDB Enterprise) 3.5.5 is Neo4j 3.5.5 Core + the enterprise features Neo4j Inc removed from the code base as of v3.5.

All ONgDB and Neo4j Enterprise AGPL distributions can be used in production, in closed source projects, and with no limitations on # of cores or causal cluster instances. ONgDB is a drop in replacement for the Neo4j Community and Enterprise branded distributions.

Neo4j Enterprise Commercial Prices Blog Post

EXHIBIT 13

March 2019 : ONgDB Enterprise 3.5.3 (Neo4j Core 3.5.3 + Enterprise Code) is now available.

Open Native Graph DB (ONgDB) is a non-restrictive fork of Neo4j managed by the Non profit Graph Foundation. ONgDB is 100% free and open, and there are no limitations on instances in clusters, cores, etc!

It is a drop in replacement for any Neo4j Enterprise (or community) distribution of the same version number.

Learn More about ONgDB

ABOUT GRAPHSTACK DOWNLOADS

About GraphStack

GraphStack was created and is run by iGov Inc. We have no relationship with Neo4j Inc, the company who created and open sourced Neo4j.

What is GraphStack?

GraphStack is a development suite that allows teams to build large scale graph apps.

More information coming soon...

Who is GraphStack for?

GraphStack is for anyone who had adopted Neo4j and plans on building a large scale graph solution with Neo4j Enterprise / ONgDB Enterprise, Elasticsearch, Microservices, and more.

Downloads

Below are Open Native Graph Database (ONgDB) Enterprise distributions.

You can access the source code via the Graphfoundation GitHub Site.

If you want an older Neo4j Enterprise open source distribution not found on the site, please email info☒graphstack.io and tell us what version you would like. We are happy to package it for you then make it available on this site for everyone to benefit from.

ONgDB Enterprise 3.5.3

Drop in replacement for Neo4j Core and Enterprise 3.5.3. AGPLv3 Open Source License, no limitations on causal cluster instances, cores, or production usage.

March 2019 Neo4j's Release Notes | Neo4j's Whats New Page

Mac/Linux	ongdb-enterprise-3.5.3-unix.tar.gz
Windows 64 bit	ongdb-enterprise-3.5.3-windows.zip
Windows 32 bit	ongdb-enterprise-3.5.3-windows.zip
Docker Image	ONgDB 3.5.3 Enterprise Docker Hub

```
docker run \
       --publish=7474:7474 --publish=7687:7687 \
       --volume=$HOME/neo4j/data:/data \
       graphfoundation/ongdb:3.5

Go to:  http://localhost:7474
```

ONgDB Enterprise 3.4.12

AGPLv3 Open Source License, no limitations on causal cluster instances, cores, or production usage.

October 14th, 2018 Neo4j's Release Notes | Neo4j's Whats New Page

Mac/Linux	ongdb-enterprise-3.4.12-unix.tar.gz
Windows 64 bit	ongdb-enterprise-3.4.12-windows.zip
Windows 32 bit	ongdb-enterprise-3.4.12-windows.zip
Docker Image	ONgDB 3.4.12 Enterprise Docker Hub

```
docker run \
       --publish=7474:7474 --publish=7687:7687 \
       --volume=$HOME/neo4j/data:/data \
       graphfoundation/ongdb:3.4

Go to:  http://localhost:7474
```

About Us

iGov Inc is the company behind GraphStack.

iGov Inc offers production support packages for Neo4j / ONgDB Enterprise open source distributions for US government agencies.

iGov Inc

GitHub

Docker Hub

Facebook

Twitter

info✉igovsol.com

iGov Inc and GraphStack has no relationship with Neo4j Inc, the innovative software company who created Neo4j.

EXHIBIT 14

4 1

Philip Rathle @prathle · Sep 23

Replying to @gwenshap

Community Edition is GPLv3.

Drivers are Apache 2.0. The Kafka adapter is Apache 2.0:

confluent.io/blog/kafka-con…

Enterprise Edition is commercial = paid. But free for startups, education, development (via Neo4j Browser). More entry-level modalities on their way soon…

All About the Kafka Connect Neo4j Sink Plugin | C…
We've been using the work we did for the Kafka sink – Neo4j extension and have made it available via remote connections over our binary bolt protocol. So you can
confluent.io

1 3

John Mark Suhy @jmsuhy · Sep 25

You can use the GraphFoundation's fork called Open Native Graph Database (ONgDB). It adds the enterprise code Neo removed back on top of Neo4j core. 3.5.11 is ready to go, it should be out in the next few days. Carefully read the terms for the 'free' offerings Neo4j mentions!

1

John Mark Suhy @jmsuhy · Sep 25

Replying to @gwenshap

Luckily the drivers are not AGPL, if they were - code/apps using the drivers could fall under AGPL.
Also, check this blog post out - it is the tip of an iceberg but may be of interest to you..

Neo4j 3.3.0 is out, but where are the open source e…
Neo4j Enterprise is still open source under it's AGPLv3 license. However you may have noticed that you can no longer build the enterprise package binary from the so…
blog.igovsol.com

1

M. David Allen @mdavidallen · Sep 23

EXHIBIT 15

21 2 12

Gwen (Chen) Shapira @gwenshap · Sep 22

I've been corrected that while Neo4j itself is AGPL, the drivers are Apache V2. So we can include the drivers in ASF projects and have users bring their own DB. Not super friendly, but some projects do it.

4 1

Philip Rathle @prathle · Sep 23

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Drivers are Apache 2.0. The Kafka adapter is Apache 2.0:

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We've been using the work we did for the Kafka sink – Neo4j extension and have made it available via remote connections over our binary bolt protocol. So you can
confluent.io

1 3

John Mark Suhy
@jmsuhy

Follow

Replying to @prathle @gwenshap

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12:39 AM - 25 Sep 2019

1 Like

21 2 12

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confluent.io/blog/kafka-con...

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1 3

John Mark Smuhy

@jmsuhy

Follow

Replying to @prathle @gwenshap

You can use the GraphFoundation's fork called Open Native Graph Database (ONgDB). It adds the enterprise code Neo removed back on top of Neo4j core. 3.5.11 is ready to go, it should be out in the next few days. Carefully read the terms for the 'free' offerings Neo4j mentions!

12:39 AM - 25 Sep 2019

1 Like

EXHIBIT 16

2

John Mark Suhy
@jmsuhy

Follow

Replying to @chpanto @akchux @neo4j

If you ever want to use causal clustering while staying 100% open source, you can do so with #ONgDB
(Neo4j core + enterprise features they removed when they closed Neo4j Enterprise edition at 3.5).
Just ensure you use the same version number as your current Neo4j version.

9:39 AM - 23 Feb 2019

1 Like

2 1

John Mark Suhy @jmsuhy · Feb 23
Replying to @jmsuhy @chpanto and 2 others

Just to be clear - #ONgDB is a free and open fork of Neo4j managed by the GraphFoundation. It merges in the neo4j core code for each release.

graphfoundation/ongdb
ONgDB (Open Native Graph DB) - Neo4j fork with enterprise code base. ONgDB keeps in sync with the Neo4j github repo. - graphfoundation/ongdb
github.com

1 1

Cesar Pantoja, PhD @chpanto · Feb 24
Great! We'll have a look!

John Mark Suhy @jmsuhy · Feb 23
Replying to @jmsuhy @chpanto and 2 others

see

EXHIBIT 17

Neo4j Desktop vs Neo4j Server

Neo4j Graph Platform

---

stephanie (Stephanie) #1 November 16, 2018, 7:31pm

Do the terms of use for "neo4j Desktop" apply to the ONGDB server which I downloaded under AGPLv3 license? I read the Desktop terms carefully and they refer everywhere to "neo4j Desktop software". Has anybody encountered this issue? I am feeling really stupid for not thinking this through before downloading the Desktop Software, especially as database authentication keeps failing. Before I spend any more time troubleshooting, could someone indicate any features of Desktop that are really worth it (other than UI)? I am planning production, so the license is important to me. Thank you!

---

andrew.bowman (Andrew Bowman) #2 November 16, 2018, 10:47pm

Hi Stephanie,

You may want to review our **licensing page**. In particular, for Neo4j Desktop:

> Neo4j Desktop is the new mission control center for Developers. It's free with registration, and it includes a **free** development license for Enterprise Edition **allowing you to use Neo4j Enterprise on your local desktop for developing applications** .

Basically it's for local development only, Neo4j Desktop isn't intended or licensed for deployment or usage as a server version (we have the server versions of Neo4j Community and Enterprise for that instead). It can freely be used as a client to connect to a separate server deployment, however.

You may want to review the rest of the licensing page, as there are various scenarios which will allow free Neo4j Enterprise usage (see the FAQ for details).

---

stephanie (Stephanie) #3 November 17, 2018, 7:27pm

Thanks! I will try to get the Desktop version working a bit longer before I entirely give up!

EXHIBIT 18

Loading large cypher file in Neo4J

Asked 7 months ago Active 7 months ago Viewed 196 times

0

I'm having some difficulty loading a Cypher file into Neo4J in Windows 10. The file in question is a 175 Mb .cql file filled with more than a million lines of nodes and edges (separated by semicolons) in the Cypher language -- CREATE [node], that sort of thing. For smaller items, I have been using an APOC command in the web browser:

```
call apoc.cypher.runFile('file:///<file path>')
```

but this is too slow for a million+ query file. I've created indexes for the nodes, and am currently running it through a command:

```
neo4j-shell -file <file path> -path localhost
```

but this is still slow. I was wondering, is there any way to speed up the intake?

Also, note that I am using an recent ONGDB build, rather than straight Neo4J; I do not believe this will make any substantial difference.

performance neo4j cypher

edited Jan 16 at 20:14

asked Jan 16 at 19:45
tq343
45 ● 8

2 Answers

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2

If you are ingesting into a new neo4j DB, you should consider refactoring the data out of it and using the import command of neo4j-admin tool to efficiently ingest the data.

If you are ingesting into an existing DB, you should consider refactoring the data and logic out of the CQL file and using LOAD CSV.

answered Jan 16 at 20:50

cybersam
45.3k ● 5 ● 35 ● 58

1

I ended up ingesting it using cypher-shell. It's still slow, but at least it does finish. Using it requires one to first open a Neo4J console then, in a second command line, use:

```
type <filepath>\data.cql | bin\cypher-shell.bat -a localhost -u <user> -p <password> --
fail-at-end
```

✓

This works for Windows 10, although it does take a while.

answered Jan 22 at 14:56

tq343
45 ● 8

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EXHIBIT 19

Errors while building ONgDB

Asked 7 months ago Viewed 34 times

0

Github Soruce: https://github.com/GraphFoundation/ongdb/tree/3.2.3

> Open Native Graph DB (ONgDB) is a non-restrictive fork of Neo4j, the world's leading Graph Database. It is a high performance graph store with all the features expected of a mature and robust database, like a friendly query language, ACID transactions and high availability clustering. The programmer works with a flexible network structure of nodes and relationships rather than static tables — yet enjoys all the benefits of enterprise-quality database. For many applications, ONgDB offers orders of magnitude performance benefits compared to relational DBs.

I did a cd to `ongdb-3.2.3/enterprise/neo4j-enterprise` and did a mvn install but its failing

```
sudo mvn clean install -Dlicense.skip=true -Dmaven.test.skip=true -e -U
[INFO] Error stacktraces are turned on.
[INFO] Scanning for projects...
[WARNING]
[WARNING] Some problems were encountered while building the effective model for
org.neo4j:neo4j-enterprise:jar:3.2.3-SNAPSHOT
[WARNING] Reporting configuration should be done in <reporting> section, not in maven-
site-plugin <configuration> as reportPlugins parameter.
[WARNING]
[WARNING] It is highly recommended to fix these problems because they threaten the
stability of your build.
[WARNING]
[WARNING] For this reason, future Maven versions might no longer support building such
malformed projects.
[WARNING]
[INFO]
[INFO] ------------------------------------------------------------------------
[INFO] Building Neo4j - Enterprise 3.2.3-SNAPSHOT
[INFO] ------------------------------------------------------------------------
Downloading from central:
...A bunch of downloads...

[INFO] ------------------------------------------------------------------------
[INFO] BUILD FAILURE
[INFO] ------------------------------------------------------------------------
[INFO] Total time: 01:03 min
[INFO] Finished at: 2019-02-13T15:07:11+05:30
[INFO] Final Memory: 16M/226M
[INFO] ------------------------------------------------------------------------
[ERROR] Failed to execute goal on project neo4j-enterprise: Could not resolve
dependencies for project org.neo4j:neo4j-enterprise:jar:3.2.3-SNAPSHOT: The following
artifacts could not be resolved: org.neo4j:neo4j:jar:3.2.3-SNAPSHOT, org.neo4j:neo4j-
query-logging:jar:3.2.3-SNAPSHOT, org.neo4j:neo4j-com:jar:3.2.3-SNAPSHOT,
org.neo4j:neo4j-backup:jar:3.2.3-SNAPSHOT, org.neo4j:neo4j-ha:jar:3.2.3-SNAPSHOT,
org.neo4j:neo4j-causal-clustering:jar:3.2.3-SNAPSHOT, org.neo4j:neo4j-metrics:jar:3.2.3-
SNAPSHOT, org.neo4j:neo4j-management:jar:3.2.3-SNAPSHOT, org.neo4j:neo4j-security-
enterprise:jar:3.2.3-SNAPSHOT, org.neo4j:neo4j:jar:tests:3.2.3-SNAPSHOT,
```

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```
(http://m2.neo4j.org/content/repositories/snapshots/) -> [Help 1]
org.apache.maven.lifecycle.LifecycleExecutionException: Failed to execute goal on
project neo4j-enterprise: Could not resolve dependencies for project org.neo4j:neo4j-
enterprise:jar:3.2.3-SNAPSHOT: The following artifacts could not be resolved:
org.neo4j:neo4j:jar:3.2.3-SNAPSHOT, org.neo4j:neo4j-query-logging:jar:3.2.3-SNAPSHOT,
org.neo4j:neo4j-com:jar:3.2.3-SNAPSHOT, org.neo4j:neo4j-backup:jar:3.2.3-SNAPSHOT,
org.neo4j:neo4j-ha:jar:3.2.3-SNAPSHOT, org.neo4j:neo4j-causal-clustering:jar:3.2.3-
SNAPSHOT, org.neo4j:neo4j-metrics:jar:3.2.3-SNAPSHOT, org.neo4j:neo4j-
management:jar:3.2.3-SNAPSHOT, org.neo4j:neo4j-security-enterprise:jar:3.2.3-SNAPSHOT,
org.neo4j:neo4j:jar:tests:3.2.3-SNAPSHOT, org.neo4j:neo4j-ha:jar:tests:3.2.3-SNAPSHOT,
org.neo4j:neo4j-cluster:jar:tests:3.2.3-SNAPSHOT, org.neo4j:neo4j-enterprise-
kernel:jar:tests:3.2.3-SNAPSHOT, org.neo4j:neo4j-consistency-check:jar:tests:3.2.3-
SNAPSHOT: Could not find artifact org.neo4j:neo4j:jar:3.2.3-SNAPSHOT in neo4j-snapshot-
repository (http://m2.neo4j.org/content/repositories/snapshots/)
    at org.apache.maven.lifecycle.internal.LifecycleDependencyResolver.getDependencies
(LifecycleDependencyResolver.java:249)
    at
org.apache.maven.lifecycle.internal.LifecycleDependencyResolver.resolveProjectDependencies
 (LifecycleDependencyResolver.java:145)
    at org.apache.maven.lifecycle.internal.MojoExecutor.ensureDependenciesAreResolved
(MojoExecutor.java:246)
    at org.apache.maven.lifecycle.internal.MojoExecutor.execute (MojoExecutor.java:200)
    at org.apache.maven.lifecycle.internal.MojoExecutor.execute (MojoExecutor.java:154)
    at org.apache.maven.lifecycle.internal.MojoExecutor.execute (MojoExecutor.java:146)
    at org.apache.maven.lifecycle.internal.LifecycleModuleBuilder.buildProject
(LifecycleModuleBuilder.java:117)
    at org.apache.maven.lifecycle.internal.LifecycleModuleBuilder.buildProject
(LifecycleModuleBuilder.java:81)
    at
org.apache.maven.lifecycle.internal.builder.singlethreaded.SingleThreadedBuilder.build
(SingleThreadedBuilder.java:51)
    at org.apache.maven.lifecycle.internal.LifecycleStarter.execute
(LifecycleStarter.java:128)
    at org.apache.maven.DefaultMaven.doExecute (DefaultMaven.java:309)
    at org.apache.maven.DefaultMaven.doExecute (DefaultMaven.java:194)
    at org.apache.maven.DefaultMaven.execute (DefaultMaven.java:107)
    at org.apache.maven.cli.MavenCli.execute (MavenCli.java:955)
    at org.apache.maven.cli.MavenCli.doMain (MavenCli.java:290)
    at org.apache.maven.cli.MavenCli.main (MavenCli.java:194)
    at sun.reflect.NativeMethodAccessorImpl.invoke0 (Native Method)
    at sun.reflect.NativeMethodAccessorImpl.invoke (NativeMethodAccessorImpl.java:62)
    at sun.reflect.DelegatingMethodAccessorImpl.invoke
(DelegatingMethodAccessorImpl.java:43)
    at java.lang.reflect.Method.invoke (Method.java:498)
    at org.codehaus.plexus.classworlds.launcher.Launcher.launchEnhanced
(Launcher.java:289)
    at org.codehaus.plexus.classworlds.launcher.Launcher.launch (Launcher.java:229)
    at org.codehaus.plexus.classworlds.launcher.Launcher.mainWithExitCode
(Launcher.java:415)
    at org.codehaus.plexus.classworlds.launcher.Launcher.main (Launcher.java:356)
Caused by: org.apache.maven.project.DependencyResolutionException: Could not resolve
dependencies for project org.neo4j:neo4j-enterprise:jar:3.2.3-SNAPSHOT: The following
artifacts could not be resolved: org.neo4j:neo4j:jar:3.2.3-SNAPSHOT, org.neo4j:neo4j-
query-logging:jar:3.2.3-SNAPSHOT, org.neo4j:neo4j-com:jar:3.2.3-SNAPSHOT,
org.neo4j:neo4j-backup:jar:3.2.3-SNAPSHOT, org.neo4j:neo4j-ha:jar:3.2.3-SNAPSHOT,
org.neo4j:neo4j-causal-clustering:jar:3.2.3-SNAPSHOT, org.neo4j:neo4j-metrics:jar:3.2.3-
SNAPSHOT, org.neo4j:neo4j-management:jar:3.2.3-SNAPSHOT, org.neo4j:neo4j-security-
enterprise:jar:3.2.3-SNAPSHOT, org.neo4j:neo4j:jar:tests:3.2.3-SNAPSHOT,
org.neo4j:neo4j-ha:jar:tests:3.2.3-SNAPSHOT, org.neo4j:neo4j-cluster:jar:tests:3.2.3-
SNAPSHOT, org.neo4j:neo4j-enterprise-kernel:jar:tests:3.2.3-SNAPSHOT, org.neo4j:neo4j-
```

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```
    at org.apache.maven.lifecycle.internal.LifecycleDependencyResolver.getDependencies
(LifecycleDependencyResolver.java:223)
    at
org.apache.maven.lifecycle.internal.LifecycleDependencyResolver.resolveProjectDependencies
 (LifecycleDependencyResolver.java:145)
    at org.apache.maven.lifecycle.internal.MojoExecutor.ensureDependenciesAreResolved
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    at org.apache.maven.lifecycle.internal.MojoExecutor.execute (MojoExecutor.java:200)
    at org.apache.maven.lifecycle.internal.MojoExecutor.execute (MojoExecutor.java:154)
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(LifecycleModuleBuilder.java:81)
    at
org.apache.maven.lifecycle.internal.builder.singlethreaded.SingleThreadedBuilder.build
(SingleThreadedBuilder.java:51)
    at org.apache.maven.lifecycle.internal.LifecycleStarter.execute
(LifecycleStarter.java:128)
    at org.apache.maven.DefaultMaven.doExecute (DefaultMaven.java:309)
    at org.apache.maven.DefaultMaven.doExecute (DefaultMaven.java:194)
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    at org.apache.maven.cli.MavenCli.execute (MavenCli.java:955)
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    at sun.reflect.NativeMethodAccessorImpl.invoke0 (Native Method)
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(DelegatingMethodAccessorImpl.java:43)
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    at org.codehaus.plexus.classworlds.launcher.Launcher.main (Launcher.java:356)
Caused by: org.eclipse.aether.resolution.DependencyResolutionException: The following
artifacts could not be resolved: org.neo4j:neo4j:jar:3.2.3-SNAPSHOT, org.neo4j:neo4j-
query-logging:jar:3.2.3-SNAPSHOT, org.neo4j:neo4j-com:jar:3.2.3-SNAPSHOT,
org.neo4j:neo4j-backup:jar:3.2.3-SNAPSHOT, org.neo4j:neo4j-ha:jar:3.2.3-SNAPSHOT,
org.neo4j:neo4j-causal-clustering:jar:3.2.3-SNAPSHOT, org.neo4j:neo4j-metrics:jar:3.2.3-
SNAPSHOT, org.neo4j:neo4j-management:jar:3.2.3-SNAPSHOT, org.neo4j:neo4j-security-
enterprise:jar:3.2.3-SNAPSHOT, org.neo4j:neo4j:jar:tests:3.2.3-SNAPSHOT,
org.neo4j:neo4j-ha:jar:tests:3.2.3-SNAPSHOT, org.neo4j:neo4j-cluster:jar:tests:3.2.3-
SNAPSHOT, org.neo4j:neo4j-enterprise-kernel:jar:tests:3.2.3-SNAPSHOT, org.neo4j:neo4j-
consistency-check:jar:tests:3.2.3-SNAPSHOT: Could not find artifact
org.neo4j:neo4j:jar:3.2.3-SNAPSHOT in neo4j-snapshot-repository
(http://m2.neo4j.org/content/repositories/snapshots/)
    at org.eclipse.aether.internal.impl.DefaultRepositorySystem.resolveDependencies
(DefaultRepositorySystem.java:355)
    at org.apache.maven.project.DefaultProjectDependenciesResolver.resolve
(DefaultProjectDependenciesResolver.java:202)
    at org.apache.maven.lifecycle.internal.LifecycleDependencyResolver.getDependencies
(LifecycleDependencyResolver.java:223)
    at
org.apache.maven.lifecycle.internal.LifecycleDependencyResolver.resolveProjectDependencies
 (LifecycleDependencyResolver.java:145)
    at org.apache.maven.lifecycle.internal.MojoExecutor.ensureDependenciesAreResolved
(MojoExecutor.java:246)
    at org.apache.maven.lifecycle.internal.MojoExecutor.execute (MojoExecutor.java:200)
```

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```
(LifecycleModuleBuilder.java:81)
    at
org.apache.maven.lifecycle.internal.builder.singlethreaded.SingleThreadedBuilder.build
(SingleThreadedBuilder.java:51)
    at org.apache.maven.lifecycle.internal.LifecycleStarter.execute
(LifecycleStarter.java:128)
    at org.apache.maven.DefaultMaven.doExecute (DefaultMaven.java:309)
    at org.apache.maven.DefaultMaven.doExecute (DefaultMaven.java:194)
    at org.apache.maven.DefaultMaven.execute (DefaultMaven.java:107)
    at org.apache.maven.cli.MavenCli.execute (MavenCli.java:955)
    at org.apache.maven.cli.MavenCli.doMain (MavenCli.java:290)
    at org.apache.maven.cli.MavenCli.main (MavenCli.java:194)
    at sun.reflect.NativeMethodAccessorImpl.invoke0 (Native Method)
    at sun.reflect.NativeMethodAccessorImpl.invoke (NativeMethodAccessorImpl.java:62)
    at sun.reflect.DelegatingMethodAccessorImpl.invoke
(DelegatingMethodAccessorImpl.java:43)
    at java.lang.reflect.Method.invoke (Method.java:498)
    at org.codehaus.plexus.classworlds.launcher.Launcher.launchEnhanced
(Launcher.java:289)
    at org.codehaus.plexus.classworlds.launcher.Launcher.launch (Launcher.java:229)
    at org.codehaus.plexus.classworlds.launcher.Launcher.mainWithExitCode
(Launcher.java:415)
    at org.codehaus.plexus.classworlds.launcher.Launcher.main (Launcher.java:356)
Caused by: org.eclipse.aether.resolution.ArtifactResolutionException: The following
artifacts could not be resolved: org.neo4j:neo4j:jar:3.2.3-SNAPSHOT, org.neo4j:neo4j-
query-logging:jar:3.2.3-SNAPSHOT, org.neo4j:neo4j-com:jar:3.2.3-SNAPSHOT,
org.neo4j:neo4j-backup:jar:3.2.3-SNAPSHOT, org.neo4j:neo4j-ha:jar:3.2.3-SNAPSHOT,
org.neo4j:neo4j-causal-clustering:jar:3.2.3-SNAPSHOT, org.neo4j:neo4j-metrics:jar:3.2.3-
SNAPSHOT, org.neo4j:neo4j-management:jar:3.2.3-SNAPSHOT, org.neo4j:neo4j-security-
enterprise:jar:3.2.3-SNAPSHOT, org.neo4j:neo4j:jar:tests:3.2.3-SNAPSHOT,
org.neo4j:neo4j-ha:jar:tests:3.2.3-SNAPSHOT, org.neo4j:neo4j-cluster:jar:tests:3.2.3-
SNAPSHOT, org.neo4j:neo4j-enterprise-kernel:jar:tests:3.2.3-SNAPSHOT, org.neo4j:neo4j-
consistency-check:jar:tests:3.2.3-SNAPSHOT: Could not find artifact
org.neo4j:neo4j:jar:3.2.3-SNAPSHOT in neo4j-snapshot-repository
(http://m2.neo4j.org/content/repositories/snapshots/)
    at org.eclipse.aether.internal.impl.DefaultArtifactResolver.resolve
(DefaultArtifactResolver.java:422)
    at org.eclipse.aether.internal.impl.DefaultArtifactResolver.resolveArtifacts
(DefaultArtifactResolver.java:224)
    at org.eclipse.aether.internal.impl.DefaultRepositorySystem.resolveDependencies
(DefaultRepositorySystem.java:338)
    at org.apache.maven.project.DefaultProjectDependenciesResolver.resolve
(DefaultProjectDependenciesResolver.java:202)
    at org.apache.maven.lifecycle.internal.LifecycleDependencyResolver.getDependencies
(LifecycleDependencyResolver.java:223)
    at
org.apache.maven.lifecycle.internal.LifecycleDependencyResolver.resolveProjectDependencies
 (LifecycleDependencyResolver.java:145)
    at org.apache.maven.lifecycle.internal.MojoExecutor.ensureDependenciesAreResolved
(MojoExecutor.java:246)
    at org.apache.maven.lifecycle.internal.MojoExecutor.execute (MojoExecutor.java:200)
    at org.apache.maven.lifecycle.internal.MojoExecutor.execute (MojoExecutor.java:154)
    at org.apache.maven.lifecycle.internal.MojoExecutor.execute (MojoExecutor.java:146)
    at org.apache.maven.lifecycle.internal.LifecycleModuleBuilder.buildProject
(LifecycleModuleBuilder.java:117)
    at org.apache.maven.lifecycle.internal.LifecycleModuleBuilder.buildProject
(LifecycleModuleBuilder.java:81)
    at
org.apache.maven.lifecycle.internal.builder.singlethreaded.SingleThreadedBuilder.build
(SingleThreadedBuilder.java:51)
```

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```
    at org.apache.maven.cli.MavenCli.execute (MavenCli.java:955)
    at org.apache.maven.cli.MavenCli.doMain (MavenCli.java:290)
    at org.apache.maven.cli.MavenCli.main (MavenCli.java:194)
    at sun.reflect.NativeMethodAccessorImpl.invoke0 (Native Method)
    at sun.reflect.NativeMethodAccessorImpl.invoke (NativeMethodAccessorImpl.java:62)
    at sun.reflect.DelegatingMethodAccessorImpl.invoke
(DelegatingMethodAccessorImpl.java:43)
    at java.lang.reflect.Method.invoke (Method.java:498)
    at org.codehaus.plexus.classworlds.launcher.Launcher.launchEnhanced
(Launcher.java:289)
    at org.codehaus.plexus.classworlds.launcher.Launcher.launch (Launcher.java:229)
    at org.codehaus.plexus.classworlds.launcher.Launcher.mainWithExitCode
(Launcher.java:415)
    at org.codehaus.plexus.classworlds.launcher.Launcher.main (Launcher.java:356)
Caused by: org.eclipse.aether.transfer.ArtifactNotFoundException: Could not find
artifact org.neo4j:neo4j:jar:3.2.3-SNAPSHOT in neo4j-snapshot-repository
(http://m2.neo4j.org/content/repositories/snapshots/)
    at org.eclipse.aether.connector.basic.ArtifactTransportListener.transferFailed
(ArtifactTransportListener.java:48)
    at org.eclipse.aether.connector.basic.BasicRepositoryConnector$TaskRunner.run
(BasicRepositoryConnector.java:365)
    at org.eclipse.aether.util.concurrency.RunnableErrorForwarder$1.run
(RunnableErrorForwarder.java:75)
    at java.util.concurrent.ThreadPoolExecutor.runWorker (ThreadPoolExecutor.java:1149)
    at java.util.concurrent.ThreadPoolExecutor$Worker.run (ThreadPoolExecutor.java:624)
    at java.lang.Thread.run (Thread.java:748)
[ERROR]
[ERROR] Re-run Maven using the -X switch to enable full debug logging.
[ERROR]
[ERROR] For more information about the errors and possible solutions, please read the
following articles:
[ERROR] [Help 1]
http://cwiki.apache.org/confluence/display/MAVEN/DependencyResolutionException
```

maven

asked Feb 13 at 10:22

Srinath Ganesh

1,174 14 32

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EXHIBIT 20

Gremlin-server not starting with ongdb

Asked 7 months ago Viewed 92 times

0

I am trying to start the Gremlin server with ONgDB. I am using Gremlin Server (v3.4.0) and ONgDB (v3.2.3). Following the conf changes, I made

neo4j-empty.properties

```
gremlin.graph=org.apache.tinkerpop.gremlin.neo4j.structure.Neo4jGraph
gremlin.neo4j.directory=/home/rgupta/Documents/Gremlin-db/neo4j.server1
gremlin.neo4j.conf.ha.server_id=1
gremlin.neo4j.conf.ha.initial_hosts=localhost:5001\,localhost:5002\,localhost:5003
gremlin.neo4j.conf.ha.host.coordination=localhost:5001
gremlin.neo4j.conf.ha.host.data=localhost:6001
```

gremlin-server-neo4j.yaml

```
host: localhost
port: 8182
scriptEvaluationTimeout: 30000
channelizer: org.apache.tinkerpop.gremlin.server.channel.WebSocketChannelizer
graphs: {
  graph: conf/neo4j-empty.properties}
scriptEngines: {
  gremlin-groovy: {
    plugins: { org.apache.tinkerpop.gremlin.server.jsr223.GremlinServerGremlinPlugin:
{},
               org.apache.tinkerpop.gremlin.neo4j.jsr223.Neo4jGremlinPlugin: {},
               org.apache.tinkerpop.gremlin.jsr223.ImportGremlinPlugin: {classImports:
[java.lang.Math], methodImports: [java.lang.Math#*]},
               org.apache.tinkerpop.gremlin.jsr223.ScriptFileGremlinPlugin: {files:
[scripts/empty-sample.groovy]}}}}
serializers:
  - { className: org.apache.tinkerpop.gremlin.driver.ser.GryoMessageSerializerV3d0,
config: { ioRegistries:
[org.apache.tinkerpop.gremlin.tinkergraph.structure.TinkerIoRegistryV3d0] }}
# application/vnd.gremlin-v3.0+gryo
  - { className: org.apache.tinkerpop.gremlin.driver.ser.GryoMessageSerializerV3d0,
config: { serializeResultToString: true }}
# application/vnd.gremlin-v3.0+gryo-stringd
  - { className: org.apache.tinkerpop.gremlin.driver.ser.GraphSONMessageSerializerV3d0,
config: { ioRegistries:
[org.apache.tinkerpop.gremlin.tinkergraph.structure.TinkerIoRegistryV3d0] }}        #
application/json
  - { className: org.apache.tinkerpop.gremlin.driver.ser.GraphBinaryMessageSerializerV1
}
# application/vnd.graphbinary-v1.0
processors:
  - { className: org.apache.tinkerpop.gremlin.server.op.session.SessionOpProcessor,
config: { sessionTimeout: 28800000 }}
  - { className: org.apache.tinkerpop.gremlin.server.op.traversal.TraversalOpProcessor,
config: { cacheExpirationTime: 600000, cacheMaxSize: 1000 }}
metrics: {
```

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```
  slf4jReporter: {enabled: true, interval: 180000}}
strictTransactionManagement: false
idleConnectionTimeout: 0
keepAliveInterval: 0
maxInitialLineLength: 4096
maxHeaderSize: 8192
maxChunkSize: 8192
maxContentLength: 65536
maxAccumulationBufferComponents: 1024
resultIterationBatchSize: 64
writeBufferLowWaterMark: 32768
writeBufferHighWaterMark: 65536
ssl: {
  enabled: false}
```

At the time of running the gremlin server, I get the following error:

```
[INFO] GremlinServer - 3.4.0
         \,,,/
         (o o)
-----oOOo-(3)-oOOo-----

[INFO] GremlinServer - Configuring Gremlin Server from conf/gremlin-server-neo4j.yaml
[INFO] MetricManager - Configured Metrics ConsoleReporter configured with report
interval=180000ms
[INFO] MetricManager - Configured Metrics CsvReporter configured with report
interval=180000ms to fileName=/tmp/gremlin-server-metrics.csv
[INFO] MetricManager - Configured Metrics JmxReporter configured with domain= and
agentId=
[INFO] MetricManager - Configured Metrics Slf4jReporter configured with
interval=180000ms and
loggerName=org.apache.tinkerpop.gremlin.server.Settings$Slf4jReporterMetrics
[WARN] DefaultGraphManager - Graph [graph] configured at [conf/neo4j-empty.properties]
could not be instantiated and will not be available in Gremlin Server.  GraphFactory
message: GraphFactory could not find
[org.apache.tinkerpop.gremlin.neo4j.structure.Neo4jGraph] - Ensure that the jar is in
the classpath
java.lang.RuntimeException: GraphFactory could not find
[org.apache.tinkerpop.gremlin.neo4j.structure.Neo4jGraph] - Ensure that the jar is in
the classpath
    at
org.apache.tinkerpop.gremlin.structure.util.GraphFactory.open(GraphFactory.java:63)
    at
org.apache.tinkerpop.gremlin.structure.util.GraphFactory.open(GraphFactory.java:104)
    at
org.apache.tinkerpop.gremlin.server.util.DefaultGraphManager.lambda$new$0(DefaultGraphMana

    at java.util.LinkedHashMap$LinkedEntrySet.forEach(LinkedHashMap.java:671)
    at org.apache.tinkerpop.gremlin.server.util.DefaultGraphManager.<init>
(DefaultGraphManager.java:55)
    at sun.reflect.NativeConstructorAccessorImpl.newInstance0(Native Method)
    at
sun.reflect.NativeConstructorAccessorImpl.newInstance(NativeConstructorAccessorImpl.java:6

    at
sun.reflect.DelegatingConstructorAccessorImpl.newInstance(DelegatingConstructorAccessorImp

    at java.lang.reflect.Constructor.newInstance(Constructor.java:423)
    at org.apache.tinkerpop.gremlin.server.util.ServerGremlinExecutor.<init>
```

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```
[INFO] ServerGremlinExecutor - Initialized Gremlin thread pool.  Threads in pool named
with pattern gremlin-*
Exception in thread "main" java.lang.IllegalStateException:
java.lang.ClassNotFoundException:
org.apache.tinkerpop.gremlin.neo4j.jsr223.Neo4jGremlinPlugin
    at
org.apache.tinkerpop.gremlin.groovy.engine.GremlinExecutor.initializeGremlinScriptEngineMa

    at org.apache.tinkerpop.gremlin.groovy.engine.GremlinExecutor.<init>
(GremlinExecutor.java:108)
    at org.apache.tinkerpop.gremlin.groovy.engine.GremlinExecutor.<init>
(GremlinExecutor.java:77)
    at
org.apache.tinkerpop.gremlin.groovy.engine.GremlinExecutor$Builder.create(GremlinExecutor.

    at org.apache.tinkerpop.gremlin.server.util.ServerGremlinExecutor.<init>
(ServerGremlinExecutor.java:128)
    at org.apache.tinkerpop.gremlin.server.GremlinServer.<init>(GremlinServer.java:122)
    at org.apache.tinkerpop.gremlin.server.GremlinServer.<init>(GremlinServer.java:86)
    at org.apache.tinkerpop.gremlin.server.GremlinServer.main(GremlinServer.java:345)
Caused by: java.lang.ClassNotFoundException:
org.apache.tinkerpop.gremlin.neo4j.jsr223.Neo4jGremlinPlugin
    at java.net.URLClassLoader.findClass(URLClassLoader.java:381)
    at java.lang.ClassLoader.loadClass(ClassLoader.java:424)
    at sun.misc.Launcher$AppClassLoader.loadClass(Launcher.java:349)
    at java.lang.ClassLoader.loadClass(ClassLoader.java:357)
    at java.lang.Class.forName0(Native Method)
    at java.lang.Class.forName(Class.java:264)
    at
org.apache.tinkerpop.gremlin.groovy.engine.GremlinExecutor.initializeGremlinScriptEngineMa

    ... 7 more
[INFO] OpLoader - Adding the standard OpProcessor.
[INFO] OpLoader - Adding the session OpProcessor.
[INFO] OpLoader - Adding the traversal OpProcessor.
[INFO] GremlinServer - Shutting down OpProcessor[]
[INFO] GremlinServer - Shutting down OpProcessor[session]
[INFO] GremlinServer - Shutting down OpProcessor[traversal]
[INFO] GremlinServer - Shutting down thread pools.
Exception in thread "gremlin-server-shutdown" java.lang.NullPointerException
    at org.apache.tinkerpop.gremlin.server.GremlinServer.stop(GremlinServer.java:255)
    at
org.apache.tinkerpop.gremlin.server.GremlinServer.lambda$new$0(GremlinServer.java:103)
    at java.lang.Thread.run(Thread.java:748)
```

I also tried ONgdb (neo4j) with different gremlin server versions like v3.3.0 and v3.3.1

python neo4j gremlin-server

edited Feb 27 at 15:27
Radostin Nanov
132 1 5

asked Feb 21 at 8:41
Ravindra Gupta
368 1 20

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EXHIBIT 21

Unable to connect to Neo4J/ONgDB Browser when port forwarding

Asked 7 months ago Active 7 months ago Viewed 115 times

0

1

I am running the ONgDB container as per their Docker run command.
I have tested this locally on my laptop and it worked before, I was able to navigate to the graph browser and log in.

Now I am running this Graph in a server.
I did port forwarding to my laptop successfully, and am able to see ONgDB Browser in my laptop.
However I am unable to log in, I get the error: `ServiceUnavailable: WebSocket connection failure. Due to security constraints in your web browser, the reason for the failure is not available to this Neo4j Driver. Please use your browsers development console to determine the root cause of the failure. Common reasons inc...`

I found Neo4J article on how to resolve it.
I entered the ONgDB container filesystem and opened the .conf file, but there was no line to uncomment.
I tried to add the suggested line `dbms.connector.bolt.address=0.0.0.0:7687` but it does not work as well.

How can I enable ONgDB Docker container for remote access?

neo4j

asked Feb 18 at 4:10
cryanbhu
834 7 15

1 Answer

0

I figured out the problem, in Neo4J/ONgDB browser, it fills the database host with `localhost` by default.
You just have to fill it in with the server's IP there and it works.

Also, you can connect using a desktop Neo4J/ONgDB browser to a remote graph, its just like a database (RDBMS) where you can connect to it from a client running locally.

answered Feb 18 at 5:05
cryanbhu
834 7 15

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EXHIBIT 22

Unable to connect to Neo4J / ONgDB browser when port forwarding

Neo4j

I run the ONgDB container according to their Docker run command .
I have tested locally on my laptop and it worked before, I was able to navigate to the graphical browser and log in.

Now I am running this Graph on the server.
I successfully forwarded the port to my laptop and was able to see the ONgDB browser on my laptop. But I can't log in, I get the error: `ServiceUnavailable: WebSocket connection failure. Due to security constraints in your web browser, the reason for the failure is not available to this Neo4j Driver. Please use your browsers development console to determine the root cause of the failure. Common reasons inc...`

I found a Neo4J article on how to fix it .
I entered the ONgDB container filesystem and opened the .conf file, but there are no rows to uncomment.
I tried to add the suggested line `dbms.connector.bolt.address=0.0.0.0:7687` but it doesn't work.

How do I enable the ONgDB Docker container for remote access?

Author: cryanbhu source

Posted by: February 18, 2019

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Response 1

I figured out the problem, in the Neo4J / ONgDB browser, it `localhost` populates the database host by default.
You only need to fill it in the server's IP.

In addition, you can connect to remote graphics using the desktop Neo4J / ONgDB browser, which is like a database (RDBMS), which you can connect to from a locally running client.

Author: cryanbhu

Posted by: February 18, 2019

EXHIBIT 23

graphfoundation / **ongdb**

Updated the LICENSE.txt file to be pure AGPL as to not violate the fs…

…f copyright and to be in line with the AGPL license.

Browse files

3.5 3.5.9 … 3.5.3

John Mark Suhy committed on Mar 1

1 parent c90a39d commit c0b23b21e051fe12bd01a50d46ca3a7ad9e88374

Showing 29 changed files with **6,790 additions** and **6,962 deletions**.

Unified Split

661 🟩🟩🟩🟩🟩 LICENSE.txt

```
...  ...  @@ -0,0 +1,661 @@
+ GNU AFFERO GENERAL PUBLIC LICENSE
+   Version 3, 19 November 2007
+
+ Copyright (C) 2007 Free Software Foundation, Inc. <https://fsf.org/>
+ Everyone is permitted to copy and distribute verbatim copies
+ of this license document, but changing it is not allowed.
+
+ Preamble
+
+ The GNU Affero General Public License is a free, copyleft license for
+ software and other kinds of works, specifically designed to ensure
+ cooperation with the community in the case of network server software.
+
+ The licenses for most software and other practical works are designed
+ to take away your freedom to share and change the works.  By contrast,
+ our General Public Licenses are intended to guarantee your freedom to
+ share and change all versions of a program--to make sure it remains free
+ software for all its users.
+
+ When we speak of free software, we are referring to freedom, not
+ price.  Our General Public Licenses are designed to make sure that you
+ have the freedom to distribute copies of free software (and charge for
+ them if you wish), that you receive source code or can get it if you
+ want it, that you can change the software or use pieces of it in new
+ free programs, and that you know you can do these things.
+
+ Developers that use our General Public Licenses protect your rights
+ with two steps: (1) assert copyright on the software, and (2) offer
+ you this License which gives you legal permission to copy, distribute
+ and/or modify the software.
+
+ A secondary benefit of defending all users' freedom is that
+ improvements made in alternate versions of the program, if they
+ receive widespread use, become available for other developers to
+ incorporate.  Many developers of free software are heartened and
+ encouraged by the resulting cooperation.  However, in the case of
+ software used on network servers, this result may fail to come about.
+ The GNU General Public License permits making a modified version and
+ letting the public access it on a server without ever releasing its
+ source code to the public.
+
+ The GNU Affero General Public License is designed specifically to
+ ensure that, in such cases, the modified source code becomes available
+ to the community.  It requires the operator of a network server to
+ provide the source code of the modified version running there to the
+ users of that server.  Therefore, public use of a modified version, on
+ a publicly accessible server, gives the public access to the source
+ code of the modified version.
+
+ An older license, called the Affero General Public License and
+ published by Affero, was designed to accomplish similar goals.  This is
+ a different license, not a version of the Affero GPL, but Affero has
+ released a new version of the Affero GPL which permits relicensing under
+ this license.
+
+ The precise terms and conditions for copying, distribution and
+ modification follow.
+
+ TERMS AND CONDITIONS
+
+ 0. Definitions.
+
+ "This License" refers to version 3 of the GNU Affero General Public License.
+
+ "Copyright" also means copyright-like laws that apply to other kinds of
+ works, such as semiconductor masks.
+
+ "The Program" refers to any copyrightable work licensed under this
+ License.  Each licensee is addressed as "you".  "Licensees" and
+ "recipients" may be individuals or organizations.
+
+ To "modify" a work means to copy from or adapt all or part of the work
+ in a fashion requiring copyright permission, other than the making of an
+ exact copy.  The resulting work is called a "modified version" of the
+ earlier work or a work "based on" the earlier work.
+
+ A "covered work" means either the unmodified Program or a work based
+ on the Program.
+
+ To "propagate" a work means to do anything with it that, without
+ permission, would make you directly or secondarily liable for
+ infringement under applicable copyright law, except executing it on a
+ computer or modifying a private copy.  Propagation includes copying,
+ distribution (with or without modification), making available to the
+ public, and in some countries other activities as well.
+
+ To "convey" a work means any kind of propagation that enables other
+ parties to make or receive copies.  Mere interaction with a user through
+ a computer network, with no transfer of a copy, is not conveying.
+
+ An interactive user interface displays "Appropriate Legal Notices"
+ to the extent that it includes a convenient and prominently visible
+ feature that (1) displays an appropriate copyright notice, and (2)
+ tells the user that there is no warranty for the work (except to the
+ extent that warranties are provided), that licensees may convey the
+ work under this License, and how to view a copy of this License.  If
+ the interface presents a list of user commands or options, such as a
+ menu, a prominent item in the list meets this criterion.
+
+ 1. Source Code.
+
+ The "source code" for a work means the preferred form of the work
+ for making modifications to it.  "Object code" means any non-source
+ form of a work.
+
+ A "Standard Interface" means an interface that either is an official
+ standard defined by a recognized standards body, or, in the case of
+ interfaces specified for a particular programming language, one that
+ is widely used among developers working in that language.
+
+ The "System Libraries" of an executable work include anything, other
+ than the work as a whole, that (a) is included in the normal form of
+ packaging a Major Component, but which is not part of that Major
+ Component, and (b) serves only to enable use of the work with that
+ Major Component, or to implement a Standard Interface for which an
+ implementation is available to the public in source code form.  A
+ "Major Component", in this context, means a major essential component
+ (kernel, window system, and so on) of the specific operating system
+ (if any) on which the executable work runs, or a compiler used to
+ produce the work, or an object code interpreter used to run it.
+
+ The "Corresponding Source" for a work in object code form means all
+ the source code needed to generate, install, and (for an executable
+ work) run the object code and to modify the work, including scripts to
+ control those activities.  However, it does not include the work's
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+
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+
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+ in an aggregate does not cause this License to apply to the other
+ parts of the aggregate.
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+ 6. Conveying Non-Source Forms.
+
+ You may convey a covered work in object code form under the terms
+ of sections 4 and 5, provided that you also convey the
+ machine-readable Corresponding Source under the terms of this License,
+ in one of these ways:
+
+ a) Convey the object code in, or embodied in, a physical product
+ (including a physical distribution medium), accompanied by the
+ Corresponding Source fixed on a durable physical medium
+ customarily used for software interchange.
+
+ b) Convey the object code in, or embodied in, a physical product
+ (including a physical distribution medium), accompanied by a
+ written offer, valid for at least three years and valid for as
+ long as you offer spare parts or customer support for that product
+ model, to give anyone who possesses the object code either (1) a
+ copy of the Corresponding Source for all the software in the
+ product that is covered by this License, on a durable physical
+ medium customarily used for software interchange, for a price no
+ more than your reasonable cost of physically performing this
+ conveying of source, or (2) access to copy the
+ Corresponding Source from a network server at no charge.
+
+ c) Convey individual copies of the object code with a copy of the
+ written offer to provide the Corresponding Source.  This
+ alternative is allowed only occasionally and noncommercially, and
+ only if you received the object code with such an offer, in accord
+ with subsection 6b.
+
+ d) Convey the object code by offering access from a designated
+ place (gratis or for a charge), and offer equivalent access to the
+ Corresponding Source in the same way through the same place at no
+ further charge.  You need not require recipients to copy the
+ Corresponding Source along with the object code.  If the place to
+ copy the object code is a network server, the Corresponding Source
+ may be on a different server (operated by you or a third party)
+ that supports equivalent copying facilities, provided you maintain
+ clear directions next to the object code saying where to find the
+ Corresponding Source.  Regardless of what server hosts the
+ Corresponding Source, you remain obligated to ensure that it is
+ available for as long as needed to satisfy these requirements.
+
+ e) Convey the object code using peer-to-peer transmission, provided
+ you inform other peers where the object code and Corresponding
+ Source of the work are being offered to the general public at no
+ charge under subsection 6d.
+
+ A separable portion of the object code, whose source code is excluded
+ from the Corresponding Source as a System Library, need not be
+ included in conveying the object code work.
+
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+
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+ and execute modified versions of a covered work in that User Product from
+ a modified version of its Corresponding Source.  The information must
+ suffice to ensure that the continued functioning of the modified object
+ code is in no case prevented or interfered with solely because
+ modification has been made.
+
+ If you convey an object code work under this section in, or with, or
+ specifically for use in, a User Product, and the conveying occurs as
+ part of a transaction in which the right of possession and use of the
+ User Product is transferred to the recipient in perpetuity or for a
+ fixed term (regardless of how the transaction is characterized), the
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+ by the Installation Information.  But this requirement does not apply
+ if neither you nor any third party retains the ability to install
+ modified object code on the User Product (for example, the work has
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+
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-   An older license, called the Affero General Public License and
+ An older license, called the Affero General Public License and
  published by Affero, was designed to accomplish similar goals.  This is
  a different license, not a version of the Affero GPL, but Affero has
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  this license.

-   The precise terms and conditions for copying, distribution and
+ The precise terms and conditions for copying, distribution and
  modification follow.

-                        TERMS AND CONDITIONS
+ TERMS AND CONDITIONS
+
+ 0. Definitions.

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+ "Copyright" also means copyright-like laws that apply to other kinds of
+ works, such as semiconductor masks.

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+ To "modify" a work means to copy from or adapt all or part of the work
  in a fashion requiring copyright permission, other than the making of an
  exact copy.  The resulting work is called a "modified version" of the
  earlier work or a work "based on" the earlier work.

-   A "covered work" means either the unmodified Program or a work based
+ A "covered work" means either the unmodified Program or a work based
  on the Program.

-   To "propagate" a work means to do anything with it that, without
+ To "propagate" a work means to do anything with it that, without
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  public, and in some countries other activities as well.

-   To "convey" a work means any kind of propagation that enables other
+ To "convey" a work means any kind of propagation that enables other
  parties to make or receive copies.  Mere interaction with a user through
  a computer network, with no transfer of a copy, is not conveying.

-   An interactive user interface displays "Appropriate Legal Notices"
+ An interactive user interface displays "Appropriate Legal Notices"
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```
  to the extent that it includes a convenient and prominently visible
  feature that (1) displays an appropriate copyright notice, and (2)
  tells the user that there is no warranty for the work (except to the
  the interface presents a list of user commands or options, such as a
  menu, a prominent item in the list meets this criterion.

-   1. Source Code.
+ 1. Source Code.

-   The "source code" for a work means the preferred form of the work
+ The "source code" for a work means the preferred form of the work
  for making modifications to it.  "Object code" means any non-source
  form of a work.

-   A "Standard Interface" means an interface that either is an official
+ A "Standard Interface" means an interface that either is an official
  standard defined by a recognized standards body, or, in the case of
  interfaces specified for a particular programming language, one that
  is widely used among developers working in that language.

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+ The "System Libraries" of an executable work include anything, other
  than the work as a whole, that (a) is included in the normal form of
  packaging a Major Component, but which is not part of that Major
  Component, and (b) serves only to enable use of the work with that
  (if any) on which the executable work runs, or a compiler used to
  produce the work, or an object code interpreter used to run it.

-   The "Corresponding Source" for a work in object code form means all
+ The "Corresponding Source" for a work in object code form means all
  the source code needed to generate, install, and (for an executable
  work) run the object code and to modify the work, including scripts to
  control those activities.  However, it does not include the work's
  such as by intimate data communication or control flow between those
  subprograms and other parts of the work.

-   The Corresponding Source need not include anything that users
+ The Corresponding Source need not include anything that users
  can regenerate automatically from other parts of the Corresponding
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+ The Corresponding Source for a work in source code form is that
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+ You may make, run and propagate covered works that you do not
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+ Conveying under any other circumstances is permitted solely under
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+ No covered work shall be deemed part of an effective technological
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+ 4. Conveying Verbatim Copies.

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+ You may charge any price or no price for each copy that you convey,
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+ 5. Conveying Modified Source Versions.

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+ You may convey a work based on the Program, or the modifications to
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  terms of section 4, provided that you also meet all of these conditions:

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-     it, and giving a relevant date.
+ a) The work must carry prominent notices stating that you modified
+ it, and giving a relevant date.

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-     released under this License and any conditions added under section
-     7.  This requirement modifies the requirement in section 4 to
-     "keep intact all notices".
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+ released under this License and any conditions added under section
+ 7.  This requirement modifies the requirement in section 4 to
+ "keep intact all notices".
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-     d) If the work has interactive user interfaces, each must display
-     Appropriate Legal Notices; however, if the Program has interactive
-     interfaces that do not display Appropriate Legal Notices, your
-     work need not make them do so.
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+ A compilation of a covered work with other separate and independent
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  in an aggregate does not cause this License to apply to the other
  parts of the aggregate.

-   6. Conveying Non-Source Forms.
+ 6. Conveying Non-Source Forms.

-   You may convey a covered work in object code form under the terms
+ You may convey a covered work in object code form under the terms
  of sections 4 and 5, provided that you also convey the
  machine-readable Corresponding Source under the terms of this License,
  in one of these ways:

-     a) Convey the object code in, or embodied in, a physical product
-     (including a physical distribution medium), accompanied by the
-     Corresponding Source fixed on a durable physical medium
-     customarily used for software interchange.
-
-     b) Convey the object code in, or embodied in, a physical product
-     (including a physical distribution medium), accompanied by a
-     written offer, valid for at least three years and valid for as
-     long as you offer spare parts or customer support for that product
-     model, to give anyone who possesses the object code either (1) a
-     copy of the Corresponding Source for all the software in the
-     product that is covered by this License, on a durable physical
-     medium customarily used for software interchange, for a price no
-     more than your reasonable cost of physically performing this
-     conveying of source, or (2) access to copy the
-     Corresponding Source from a network server at no charge.
-
-     c) Convey individual copies of the object code with a copy of the
-     written offer to provide the Corresponding Source.  This
-     alternative is allowed only occasionally and noncommercially, and
-     only if you received the object code with such an offer, in accord
-     with subsection 6b.
-
-     d) Convey the object code by offering access from a designated
-     place (gratis or for a charge), and offer equivalent access to the
-     Corresponding Source in the same way through the same place at no
-     further charge.  You need not require recipients to copy the
-     Corresponding Source along with the object code.  If the place to
-     copy the object code is a network server, the Corresponding Source
-     may be on a different server (operated by you or a third party)
-     that supports equivalent copying facilities, provided you maintain
-     clear directions next to the object code saying where to find the
-     Corresponding Source.  Regardless of what server hosts the
-     Corresponding Source, you remain obligated to ensure that it is
-     available for as long as needed to satisfy these requirements.
-
-     e) Convey the object code using peer-to-peer transmission, provided
-     you inform other peers where the object code and Corresponding
-     Source of the work are being offered to the general public at no
-     charge under subsection 6d.
-
-   A separable portion of the object code, whose source code is excluded
+ a) Convey the object code in, or embodied in, a physical product
+ (including a physical distribution medium), accompanied by the
+ Corresponding Source fixed on a durable physical medium
+ customarily used for software interchange.
+
+ b) Convey the object code in, or embodied in, a physical product
+ (including a physical distribution medium), accompanied by a
+ written offer, valid for at least three years and valid for as
+ long as you offer spare parts or customer support for that product
+ model, to give anyone who possesses the object code either (1) a
+ copy of the Corresponding Source for all the software in the
+ product that is covered by this License, on a durable physical
+ medium customarily used for software interchange, for a price no
+ more than your reasonable cost of physically performing this
+ conveying of source, or (2) access to copy the
+ Corresponding Source from a network server at no charge.
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+ charge under subsection 6d.
+
+ A separable portion of the object code, whose source code is excluded
```

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  from the Corresponding Source as a System Library, need not be
  included in conveying the object code work.

-  A "User Product" is either (1) a "consumer product", which means any
+ A "User Product" is either (1) a "consumer product", which means any
  tangible personal property which is normally used for personal, family,
  or household purposes, or (2) anything designed or sold for incorporation
  into a dwelling.  In determining whether a product is a consumer product,
  commercial, industrial or non-consumer uses, unless such uses represent
  the only significant mode of use of the product.

-  "Installation Information" for a User Product means any methods,
+ "Installation Information" for a User Product means any methods,
  procedures, authorization keys, or other information required to install
  and execute modified versions of a covered work in that User Product from
  a modified version of its Corresponding Source.  The information must
  suffice to ensure that the continued functioning of the modified object
  code is in no case prevented or interfered with solely because
  modification has been made.

-  If you convey an object code work under this section in, or with, or
+ If you convey an object code work under this section in, or with, or
  specifically for use in, a User Product, and the conveying occurs as
  part of a transaction in which the right of possession and use of the
  User Product is transferred to the recipient in perpetuity or for a
  modified object code on the User Product (for example, the work has
  been installed in ROM).

-  The requirement to provide Installation Information does not include a
+ The requirement to provide Installation Information does not include a
  requirement to continue to provide support service, warranty, or updates
  for a work that has been modified or installed by the recipient, or for
  the User Product in which it has been modified or installed.  Access to a
  network may be denied when the modification itself materially and
  adversely affects the operation of the network or violates the rules and
  protocols for communication across the network.

-  Corresponding Source conveyed, and Installation Information provided,
+ Corresponding Source conveyed, and Installation Information provided,
  in accord with this section must be in a format that is publicly
  documented (and with an implementation available to the public in
  source code form), and must require no special password or key for
  unpacking, reading or copying.

-  7. Additional Terms.
+ 7. Additional Terms.

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+
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+ 8. Termination.

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+ An "entity transaction" is a transaction transferring control of an
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-   17. Interpretation of Sections 15 and 16.
+ 17. Interpretation of Sections 15 and 16.

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+ If your software can interact with users remotely through a computer
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  of the code.  There are many ways you could offer source, and different
  solutions will be better for different programs; see section 13 for the
  specific requirements.
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+ A "covered work" means either the unmodified Program or a work based
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+ An interactive user interface displays "Appropriate Legal Notices"
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-   1. Source Code.
+ 1. Source Code.
  
-   The "source code" for a work means the preferred form of the work
+ The "source code" for a work means the preferred form of the work
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+ A "Standard Interface" means an interface that either is an official
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```

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+ The "Corresponding Source" for a work in object code form means all
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+ The Corresponding Source need not include anything that users
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+ 3. Protecting Users' Legal Rights From Anti-Circumvention Law.

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+ 4. Conveying Verbatim Copies.

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+ a) The work must carry prominent notices stating that you modified
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+ 6. Conveying Non-Source Forms.

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-
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-     product that is covered by this License, on a durable physical
-     medium customarily used for software interchange, for a price no
-     more than your reasonable cost of physically performing this
-     conveying of source, or (2) access to copy the
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-
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-     that supports equivalent copying facilities, provided you maintain
-     clear directions next to the object code saying where to find the
-     Corresponding Source.  Regardless of what server hosts the
-     Corresponding Source, you remain obligated to ensure that it is
-     available for as long as needed to satisfy these requirements.
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-     e) Convey the object code using peer-to-peer transmission, provided
-     you inform other peers where the object code and Corresponding
-     Source of the work are being offered to the general public at no
-     charge under subsection 6d.
-
-   A separable portion of the object code, whose source code is excluded
+ a) Convey the object code in, or embodied in, a physical product
+ (including a physical distribution medium), accompanied by the
+ Corresponding Source fixed on a durable physical medium
+ customarily used for software interchange.
+
+ b) Convey the object code in, or embodied in, a physical product
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+ (including a physical distribution medium), accompanied by a
+ written offer, valid for at least three years and valid for as
+ long as you offer spare parts or customer support for that product
+ model, to give anyone who possesses the object code either (1) a
+ copy of the Corresponding Source for all the software in the
+ product that is covered by this License, on a durable physical
+ medium customarily used for software interchange, for a price no
+ more than your reasonable cost of physically performing this
+ conveying of source, or (2) access to copy the
+ Corresponding Source from a network server at no charge.
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+ c) Convey individual copies of the object code with a copy of the
+ written offer to provide the Corresponding Source.  This
+ alternative is allowed only occasionally and noncommercially, and
+ only if you received the object code with such an offer, in accord
+ with subsection 6b.
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+ d) Convey the object code by offering access from a designated
+ place (gratis or for a charge), and offer equivalent access to the
+ Corresponding Source in the same way through the same place at no
+ further charge.  You need not require recipients to copy the
+ Corresponding Source along with the object code.  If the place to
+ copy the object code is a network server, the Corresponding Source
+ may be on a different server (operated by you or a third party)
+ that supports equivalent copying facilities, provided you maintain
+ clear directions next to the object code saying where to find the
+ Corresponding Source.  Regardless of what server hosts the
+ Corresponding Source, you remain obligated to ensure that it is
+ available for as long as needed to satisfy these requirements.
+
+ e) Convey the object code using peer-to-peer transmission, provided
+ you inform other peers where the object code and Corresponding
+ Source of the work are being offered to the general public at no
+ charge under subsection 6d.
+
+ A separable portion of the object code, whose source code is excluded
  from the Corresponding Source as a System Library, need not be
  included in conveying the object code work.

-   A "User Product" is either (1) a "consumer product", which means any
+ A "User Product" is either (1) a "consumer product", which means any
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+ "Installation Information" for a User Product means any methods,
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+Corresponding Source conveyed, and Installation Information provided,
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+ 5. Conveying Modified Source Versions.

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-     7.  This requirement modifies the requirement in section 4 to
-     "keep intact all notices".
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+ 6. Conveying Non-Source Forms.

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-
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-
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-     only if you received the object code with such an offer, in accord
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-     charge under subsection 6d.
-
-   A separable portion of the object code, whose source code is excluded
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486 🟩🟩🟥🟥⬜ enterprise/cluster/LICENSE.txt

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@@ -1,51 +1,35 @@
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-                             Preamble
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-   A secondary benefit of defending all users' freedom is that
+ A secondary benefit of defending all users' freedom is that
  improvements made in alternate versions of the program, if they
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  letting the public access it on a server without ever releasing its
  source code to the public.

-   The GNU Affero General Public License is designed specifically to
+ The GNU Affero General Public License is designed specifically to
  ensure that, in such cases, the modified source code becomes available
  to the community.  It requires the operator of a network server to
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  a publicly accessible server, gives the public access to the source
  code of the modified version.

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+ An older license, called the Affero General Public License and
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+ The precise terms and conditions for copying, distribution and
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-   0. Definitions.
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+ To "modify" a work means to copy from or adapt all or part of the work
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-   A "covered work" means either the unmodified Program or a work based
+ A "covered work" means either the unmodified Program or a work based
  on the Program.

-   To "propagate" a work means to do anything with it that, without
+ To "propagate" a work means to do anything with it that, without
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+ To "convey" a work means any kind of propagation that enables other
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-   An interactive user interface displays "Appropriate Legal Notices"
+ An interactive user interface displays "Appropriate Legal Notices"
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  tells the user that there is no warranty for the work (except to the
  the interface presents a list of user commands or options, such as a
  menu, a prominent item in the list meets this criterion.

-   1. Source Code.
+ 1. Source Code.

-   The "source code" for a work means the preferred form of the work
+ The "source code" for a work means the preferred form of the work
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-   A "Standard Interface" means an interface that either is an official
+ A "Standard Interface" means an interface that either is an official
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+ The "System Libraries" of an executable work include anything, other
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  (if any) on which the executable work runs, or a compiler used to
  produce the work, or an object code interpreter used to run it.

-   The "Corresponding Source" for a work in object code form means all
+ The "Corresponding Source" for a work in object code form means all
  the source code needed to generate, install, and (for an executable
  work) run the object code and to modify the work, including scripts to
  control those activities.  However, it does not include the work's
  such as by intimate data communication or control flow between those
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-   The Corresponding Source need not include anything that users
+ The Corresponding Source need not include anything that users
  can regenerate automatically from other parts of the Corresponding
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-   The Corresponding Source for a work in source code form is that
+ The Corresponding Source for a work in source code form is that
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+ No covered work shall be deemed part of an effective technological
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+ 4. Conveying Verbatim Copies.

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+ You may charge any price or no price for each copy that you convey,
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-   5. Conveying Modified Source Versions.
+ 5. Conveying Modified Source Versions.

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+ You may convey a work based on the Program, or the modifications to
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-     it, and giving a relevant date.
+ a) The work must carry prominent notices stating that you modified
+ it, and giving a relevant date.

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-     released under this License and any conditions added under section
-     7.  This requirement modifies the requirement in section 4 to
-     "keep intact all notices".
+ b) The work must carry prominent notices stating that it is
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-     d) If the work has interactive user interfaces, each must display
-     Appropriate Legal Notices; however, if the Program has interactive
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-     interfaces that do not display Appropriate Legal Notices, your
-     work need not make them do so.
+ d) If the work has interactive user interfaces, each must display
+ Appropriate Legal Notices; however, if the Program has interactive
+ interfaces that do not display Appropriate Legal Notices, your
+ work need not make them do so.

-   A compilation of a covered work with other separate and independent
+ A compilation of a covered work with other separate and independent
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  in an aggregate does not cause this License to apply to the other
  parts of the aggregate.

-   6. Conveying Non-Source Forms.
+ 6. Conveying Non-Source Forms.

-   You may convey a covered work in object code form under the terms
+ You may convey a covered work in object code form under the terms
  of sections 4 and 5, provided that you also convey the
  machine-readable Corresponding Source under the terms of this License,
  in one of these ways:

-     a) Convey the object code in, or embodied in, a physical product
-     (including a physical distribution medium), accompanied by the
-     Corresponding Source fixed on a durable physical medium
-     customarily used for software interchange.
-
-     b) Convey the object code in, or embodied in, a physical product
-     (including a physical distribution medium), accompanied by a
-     written offer, valid for at least three years and valid for as
-     long as you offer spare parts or customer support for that product
-     model, to give anyone who possesses the object code either (1) a
-     copy of the Corresponding Source for all the software in the
-     product that is covered by this License, on a durable physical
-     medium customarily used for software interchange, for a price no
-     more than your reasonable cost of physically performing this
-     conveying of source, or (2) access to copy the
-     Corresponding Source from a network server at no charge.
-
-     c) Convey individual copies of the object code with a copy of the
-     written offer to provide the Corresponding Source.  This
-     alternative is allowed only occasionally and noncommercially, and
-     only if you received the object code with such an offer, in accord
-     with subsection 6b.
-
-     d) Convey the object code by offering access from a designated
-     place (gratis or for a charge), and offer equivalent access to the
-     Corresponding Source in the same way through the same place at no
-     further charge.  You need not require recipients to copy the
-     Corresponding Source along with the object code.  If the place to
-     copy the object code is a network server, the Corresponding Source
-     may be on a different server (operated by you or a third party)
-     that supports equivalent copying facilities, provided you maintain
-     clear directions next to the object code saying where to find the
-     Corresponding Source.  Regardless of what server hosts the
-     Corresponding Source, you remain obligated to ensure that it is
-     available for as long as needed to satisfy these requirements.
-
-     e) Convey the object code using peer-to-peer transmission, provided
-     you inform other peers where the object code and Corresponding
-     Source of the work are being offered to the general public at no
-     charge under subsection 6d.
- 
-   A separable portion of the object code, whose source code is excluded
+ a) Convey the object code in, or embodied in, a physical product
+ (including a physical distribution medium), accompanied by the
+ Corresponding Source fixed on a durable physical medium
+ customarily used for software interchange.
+ 
+ b) Convey the object code in, or embodied in, a physical product
+ (including a physical distribution medium), accompanied by a
+ written offer, valid for at least three years and valid for as
+ long as you offer spare parts or customer support for that product
+ model, to give anyone who possesses the object code either (1) a
+ copy of the Corresponding Source for all the software in the
+ product that is covered by this License, on a durable physical
+ medium customarily used for software interchange, for a price no
+ more than your reasonable cost of physically performing this
+ conveying of source, or (2) access to copy the
+ Corresponding Source from a network server at no charge.
+ 
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+ only if you received the object code with such an offer, in accord
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+ place (gratis or for a charge), and offer equivalent access to the
+ Corresponding Source in the same way through the same place at no
+ further charge.  You need not require recipients to copy the
+ Corresponding Source along with the object code.  If the place to
+ copy the object code is a network server, the Corresponding Source
+ may be on a different server (operated by you or a third party)
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+ you inform other peers where the object code and Corresponding
+ Source of the work are being offered to the general public at no
+ charge under subsection 6d.
+ 
+ A separable portion of the object code, whose source code is excluded
  from the Corresponding Source as a System Library, need not be
  included in conveying the object code work.

-   A "User Product" is either (1) a "consumer product", which means any
+ A "User Product" is either (1) a "consumer product", which means any
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  commercial, industrial or non-consumer uses, unless such uses represent
  the only significant mode of use of the product.

-   "Installation Information" for a User Product means any methods,
+ "Installation Information" for a User Product means any methods,
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  and execute modified versions of a covered work in that User Product from
  a modified version of its Corresponding Source.  The information must
  suffice to ensure that the continued functioning of the modified object
  code is in no case prevented or interfered with solely because
  modification has been made.

-   If you convey an object code work under this section in, or with, or
+ If you convey an object code work under this section in, or with, or
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  User Product is transferred to the recipient in perpetuity or for a
  modified object code on the User Product (for example, the work has
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-   The requirement to provide Installation Information does not include a
+ The requirement to provide Installation Information does not include a
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  network may be denied when the modification itself materially and
  adversely affects the operation of the network or violates the rules and
  protocols for communication across the network.

-   Corresponding Source conveyed, and Installation Information provided,
+ Corresponding Source conveyed, and Installation Information provided,
  in accord with this section must be in a format that is publicly
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+ 7. Additional Terms.

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+ 8. Termination.

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+ 10. Automatic Licensing of Downstream Recipients.

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+ 11. Patents.
 
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+
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-   A "Standard Interface" means an interface that either is an official
+ A "Standard Interface" means an interface that either is an official
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-   The "System Libraries" of an executable work include anything, other
+ The "System Libraries" of an executable work include anything, other
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  packaging a Major Component, but which is not part of that Major
  Component, and (b) serves only to enable use of the work with that
  (if any) on which the executable work runs, or a compiler used to
  produce the work, or an object code interpreter used to run it.

-   The "Corresponding Source" for a work in object code form means all
+ The "Corresponding Source" for a work in object code form means all
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  work) run the object code and to modify the work, including scripts to
  control those activities.  However, it does not include the work's
  such as by intimate data communication or control flow between those
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-   The Corresponding Source need not include anything that users
+ The Corresponding Source need not include anything that users
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+ 3. Protecting Users' Legal Rights From Anti-Circumvention Law.
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+ 4. Conveying Verbatim Copies.

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+ You may charge any price or no price for each copy that you convey,
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+ 5. Conveying Modified Source Versions.

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-     7.  This requirement modifies the requirement in section 4 to
-     "keep intact all notices".
+ b) The work must carry prominent notices stating that it is
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+ A compilation of a covered work with other separate and independent
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+ 6. Conveying Non-Source Forms.

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+ You may convey a covered work in object code form under the terms
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  machine-readable Corresponding Source under the terms of this License,
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-     (including a physical distribution medium), accompanied by the
-     Corresponding Source fixed on a durable physical medium
-     customarily used for software interchange.
-
-     b) Convey the object code in, or embodied in, a physical product
-     (including a physical distribution medium), accompanied by a
-     written offer, valid for at least three years and valid for as
-     long as you offer spare parts or customer support for that product
-     model, to give anyone who possesses the object code either (1) a
-     copy of the Corresponding Source for all the software in the
-     product that is covered by this License, on a durable physical
-     medium customarily used for software interchange, for a price no
-     more than your reasonable cost of physically performing this
-     conveying of source, or (2) access to copy the
-     Corresponding Source from a network server at no charge.
-
-     c) Convey individual copies of the object code with a copy of the
-     written offer to provide the Corresponding Source.  This
-     alternative is allowed only occasionally and noncommercially, and
-     only if you received the object code with such an offer, in accord
-     with subsection 6b.
-
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-     copy the object code is a network server, the Corresponding Source
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-     that supports equivalent copying facilities, provided you maintain
-     clear directions next to the object code saying where to find the
-     Corresponding Source.  Regardless of what server hosts the
-     Corresponding Source, you remain obligated to ensure that it is
-     available for as long as needed to satisfy these requirements.
-
-     e) Convey the object code using peer-to-peer transmission, provided
-     you inform other peers where the object code and Corresponding
-     Source of the work are being offered to the general public at no
-     charge under subsection 6d.
-
-   A separable portion of the object code, whose source code is excluded
+ a) Convey the object code in, or embodied in, a physical product
+ (including a physical distribution medium), accompanied by the
+ Corresponding Source fixed on a durable physical medium
+ customarily used for software interchange.
+
+ b) Convey the object code in, or embodied in, a physical product
+ (including a physical distribution medium), accompanied by a
+ written offer, valid for at least three years and valid for as
+ long as you offer spare parts or customer support for that product
+ model, to give anyone who possesses the object code either (1) a
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+ conveying of source, or (2) access to copy the
+ Corresponding Source from a network server at no charge.
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+ c) Convey individual copies of the object code with a copy of the
+ written offer to provide the Corresponding Source.  This
+ alternative is allowed only occasionally and noncommercially, and
+ only if you received the object code with such an offer, in accord
+ with subsection 6b.
+
+ d) Convey the object code by offering access from a designated
+ place (gratis or for a charge), and offer equivalent access to the
+ Corresponding Source in the same way through the same place at no
+ further charge.  You need not require recipients to copy the
+ Corresponding Source along with the object code.  If the place to
+ copy the object code is a network server, the Corresponding Source
+ may be on a different server (operated by you or a third party)
+ that supports equivalent copying facilities, provided you maintain
+ clear directions next to the object code saying where to find the
+ Corresponding Source.  Regardless of what server hosts the
+ Corresponding Source, you remain obligated to ensure that it is
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+
+ e) Convey the object code using peer-to-peer transmission, provided
+ you inform other peers where the object code and Corresponding
+ Source of the work are being offered to the general public at no
+ charge under subsection 6d.
+
+ A separable portion of the object code, whose source code is excluded
  from the Corresponding Source as a System Library, need not be
  included in conveying the object code work.

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+ A "User Product" is either (1) a "consumer product", which means any
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  into a dwelling.  In determining whether a product is a consumer product,
  commercial, industrial or non-consumer uses, unless such uses represent
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  the only significant mode of use of the product.

-   "Installation Information" for a User Product means any methods,
+ "Installation Information" for a User Product means any methods,
  procedures, authorization keys, or other information required to install
  and execute modified versions of a covered work in that User Product from
  a modified version of its Corresponding Source.  The information must
  suffice to ensure that the continued functioning of the modified object
  code is in no case prevented or interfered with solely because
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+ If you convey an object code work under this section in, or with, or
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  User Product is transferred to the recipient in perpetuity or for a
  modified object code on the User Product (for example, the work has
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-   The requirement to provide Installation Information does not include a
+ The requirement to provide Installation Information does not include a
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  for a work that has been modified or installed by the recipient, or for
  the User Product in which it has been modified or installed.  Access to a
  network may be denied when the modification itself materially and
  adversely affects the operation of the network or violates the rules and
  protocols for communication across the network.

-   Corresponding Source conveyed, and Installation Information provided,
+ Corresponding Source conveyed, and Installation Information provided,
  in accord with this section must be in a format that is publicly
  documented (and with an implementation available to the public in
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  unpacking, reading or copying.

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+ 7. Additional Terms.

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-   17. Interpretation of Sections 15 and 16.
+ 17. Interpretation of Sections 15 and 16.

-   If the disclaimer of warranty and limitation of liability provided
+ If the disclaimer of warranty and limitation of liability provided
  above cannot be given local legal effect according to their terms,
  reviewing courts shall apply local law that most closely approximates
  an absolute waiver of all civil liability in connection with the
  Program, unless a warranty or assumption of liability accompanies a
  copy of the Program in return for a fee.

-                        END OF TERMS AND CONDITIONS
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+ END OF TERMS AND CONDITIONS

-               How to Apply These Terms to Your New Programs
+ How to Apply These Terms to Your New Programs

-   If you develop a new program, and you want it to be of the greatest
+ If you develop a new program, and you want it to be of the greatest
  possible use to the public, the best way to achieve this is to make it
  free software which everyone can redistribute and change under these terms.

-   To do so, attach the following notices to the program.  It is safest
+ To do so, attach the following notices to the program.  It is safest
  to attach them to the start of each source file to most effectively
  state the exclusion of warranty; and each file should have at least
  the "copyright" line and a pointer to where the full notice is found.

-     <one line to give the program's name and a brief idea of what it does.>
-     Copyright (C) <year>  <name of author>
+ <one line to give the program's name and a brief idea of what it does.>
+ Copyright (C) <year>  <name of author>

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  Also add information on how to contact you by electronic and paper mail.

-   If your software can interact with users remotely through a computer
+ If your software can interact with users remotely through a computer
  network, you should also make sure that it provides a way for users to
  get its source.  For example, if your program is a web application, its
  interface could display a "Source" link that leads users to an archive
  of the code.  There are many ways you could offer source, and different
  solutions will be better for different programs; see section 13 for the
  specific requirements.

-   You should also get your employer (if you work as a programmer) or school,
+ You should also get your employer (if you work as a programmer) or school,
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-   A secondary benefit of defending all users' freedom is that
+ A secondary benefit of defending all users' freedom is that
  improvements made in alternate versions of the program, if they
  receive widespread use, become available for other developers to
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  letting the public access it on a server without ever releasing its
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-   The GNU Affero General Public License is designed specifically to
+ The GNU Affero General Public License is designed specifically to
  ensure that, in such cases, the modified source code becomes available
  to the community.  It requires the operator of a network server to
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  users of that server.  Therefore, public use of a modified version, on
  a publicly accessible server, gives the public access to the source
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  earlier work or a work "based on" the earlier work.

-  A "covered work" means either the unmodified Program or a work based
+ A "covered work" means either the unmodified Program or a work based
  on the Program.

-  To "propagate" a work means to do anything with it that, without
+ To "propagate" a work means to do anything with it that, without
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+ To "convey" a work means any kind of propagation that enables other
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+ An interactive user interface displays "Appropriate Legal Notices"
  to the extent that it includes a convenient and prominently visible
  feature that (1) displays an appropriate copyright notice, and (2)
  tells the user that there is no warranty for the work (except to the
  the interface presents a list of user commands or options, such as a
  menu, a prominent item in the list meets this criterion.

-  1. Source Code.
+ 1. Source Code.

-  The "source code" for a work means the preferred form of the work
+ The "source code" for a work means the preferred form of the work
  for making modifications to it.  "Object code" means any non-source
  form of a work.

-  A "Standard Interface" means an interface that either is an official
+ A "Standard Interface" means an interface that either is an official
  standard defined by a recognized standards body, or, in the case of
  interfaces specified for a particular programming language, one that
  is widely used among developers working in that language.

-  The "System Libraries" of an executable work include anything, other
+ The "System Libraries" of an executable work include anything, other
  than the work as a whole, that (a) is included in the normal form of
  packaging a Major Component, but which is not part of that Major
  Component, and (b) serves only to enable use of the work with that
  (if any) on which the executable work runs, or a compiler used to
  produce the work, or an object code interpreter used to run it.

-  The "Corresponding Source" for a work in object code form means all
+ The "Corresponding Source" for a work in object code form means all
  the source code needed to generate, install, and (for an executable
  work) run the object code and to modify the work, including scripts to
  control those activities.  However, it does not include the work's
  such as by intimate data communication or control flow between those
  subprograms and other parts of the work.

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-   The Corresponding Source need not include anything that users
+ The Corresponding Source need not include anything that users
  can regenerate automatically from other parts of the Corresponding
  Source.

-   The Corresponding Source for a work in source code form is that
+ The Corresponding Source for a work in source code form is that
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+ 2. Basic Permissions.

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+ Conveying under any other circumstances is permitted solely under
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  makes it unnecessary.

-   3. Protecting Users' Legal Rights From Anti-Circumvention Law.
+ 3. Protecting Users' Legal Rights From Anti-Circumvention Law.

-   No covered work shall be deemed part of an effective technological
+ No covered work shall be deemed part of an effective technological
  measure under any applicable law fulfilling obligations under article
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-   4. Conveying Verbatim Copies.
+ 4. Conveying Verbatim Copies.

-   You may convey verbatim copies of the Program's source code as you
+ You may convey verbatim copies of the Program's source code as you
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  keep intact all notices stating that this License and any
  non-permissive terms added in accord with section 7 apply to the code;
  keep intact all notices of the absence of any warranty; and give all
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+You may charge any price or no price for each copy that you convey,
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-  5. Conveying Modified Source Versions.
+5. Conveying Modified Source Versions.
 
-  You may convey a work based on the Program, or the modifications to
+You may convey a work based on the Program, or the modifications to
 produce it from the Program, in the form of source code under the
 terms of section 4, provided that you also meet all of these conditions:
 
-    a) The work must carry prominent notices stating that you modified
-    it, and giving a relevant date.
+a) The work must carry prominent notices stating that you modified
+it, and giving a relevant date.
 
-    b) The work must carry prominent notices stating that it is
-    released under this License and any conditions added under section
-    7.  This requirement modifies the requirement in section 4 to
-    "keep intact all notices".
+b) The work must carry prominent notices stating that it is
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+7.  This requirement modifies the requirement in section 4 to
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+c) You must license the entire work, as a whole, under this
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-    d) If the work has interactive user interfaces, each must display
-    Appropriate Legal Notices; however, if the Program has interactive
-    interfaces that do not display Appropriate Legal Notices, your
-    work need not make them do so.
+d) If the work has interactive user interfaces, each must display
+Appropriate Legal Notices; however, if the Program has interactive
+interfaces that do not display Appropriate Legal Notices, your
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+A compilation of a covered work with other separate and independent
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 in an aggregate does not cause this License to apply to the other
 parts of the aggregate.
 
-  6. Conveying Non-Source Forms.
+6. Conveying Non-Source Forms.
 
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-   You may convey a covered work in object code form under the terms
+ You may convey a covered work in object code form under the terms
  of sections 4 and 5, provided that you also convey the
  machine-readable Corresponding Source under the terms of this License,
  in one of these ways:
 
-     a) Convey the object code in, or embodied in, a physical product
-     (including a physical distribution medium), accompanied by the
-     Corresponding Source fixed on a durable physical medium
-     customarily used for software interchange.
-
-     b) Convey the object code in, or embodied in, a physical product
-     (including a physical distribution medium), accompanied by a
-     written offer, valid for at least three years and valid for as
-     long as you offer spare parts or customer support for that product
-     model, to give anyone who possesses the object code either (1) a
-     copy of the Corresponding Source for all the software in the
-     product that is covered by this License, on a durable physical
-     medium customarily used for software interchange, for a price no
-     more than your reasonable cost of physically performing this
-     conveying of source, or (2) access to copy the
-     Corresponding Source from a network server at no charge.
-
-     c) Convey individual copies of the object code with a copy of the
-     written offer to provide the Corresponding Source.  This
-     alternative is allowed only occasionally and noncommercially, and
-     only if you received the object code with such an offer, in accord
-     with subsection 6b.
-
-     d) Convey the object code by offering access from a designated
-     place (gratis or for a charge), and offer equivalent access to the
-     Corresponding Source in the same way through the same place at no
-     further charge.  You need not require recipients to copy the
-     Corresponding Source along with the object code.  If the place to
-     copy the object code is a network server, the Corresponding Source
-     may be on a different server (operated by you or a third party)
-     that supports equivalent copying facilities, provided you maintain
-     clear directions next to the object code saying where to find the
-     Corresponding Source.  Regardless of what server hosts the
-     Corresponding Source, you remain obligated to ensure that it is
-     available for as long as needed to satisfy these requirements.
-
-     e) Convey the object code using peer-to-peer transmission, provided
-     you inform other peers where the object code and Corresponding
-     Source of the work are being offered to the general public at no
-     charge under subsection 6d.
-
-   A separable portion of the object code, whose source code is excluded
+ a) Convey the object code in, or embodied in, a physical product
+ (including a physical distribution medium), accompanied by the
+ Corresponding Source fixed on a durable physical medium
+ customarily used for software interchange.
+
+ b) Convey the object code in, or embodied in, a physical product
+ (including a physical distribution medium), accompanied by a
+ written offer, valid for at least three years and valid for as
+ long as you offer spare parts or customer support for that product
+ model, to give anyone who possesses the object code either (1) a
+ copy of the Corresponding Source for all the software in the
+ product that is covered by this License, on a durable physical
+ medium customarily used for software interchange, for a price no
+ more than your reasonable cost of physically performing this
+ conveying of source, or (2) access to copy the
+ Corresponding Source from a network server at no charge.
+
+ c) Convey individual copies of the object code with a copy of the
+ written offer to provide the Corresponding Source.  This
+ alternative is allowed only occasionally and noncommercially, and
+ only if you received the object code with such an offer, in accord
+ with subsection 6b.
+
+ d) Convey the object code by offering access from a designated
+ place (gratis or for a charge), and offer equivalent access to the
+ Corresponding Source in the same way through the same place at no
+ further charge.  You need not require recipients to copy the
+ Corresponding Source along with the object code.  If the place to
+ copy the object code is a network server, the Corresponding Source
+ may be on a different server (operated by you or a third party)
+ that supports equivalent copying facilities, provided you maintain
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+ Corresponding Source.  Regardless of what server hosts the
+ Corresponding Source, you remain obligated to ensure that it is
+ available for as long as needed to satisfy these requirements.
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+ e) Convey the object code using peer-to-peer transmission, provided
+ you inform other peers where the object code and Corresponding
+ Source of the work are being offered to the general public at no
+ charge under subsection 6d.
+
+ A separable portion of the object code, whose source code is excluded
  from the Corresponding Source as a System Library, need not be
  included in conveying the object code work.

-   A "User Product" is either (1) a "consumer product", which means any
+ A "User Product" is either (1) a "consumer product", which means any
  tangible personal property which is normally used for personal, family,
  or household purposes, or (2) anything designed or sold for incorporation
  into a dwelling.  In determining whether a product is a consumer product,
  commercial, industrial or non-consumer uses, unless such uses represent
  the only significant mode of use of the product.

-   "Installation Information" for a User Product means any methods,
+ "Installation Information" for a User Product means any methods,
  procedures, authorization keys, or other information required to install
  and execute modified versions of a covered work in that User Product from
  a modified version of its Corresponding Source.  The information must
  suffice to ensure that the continued functioning of the modified object
  code is in no case prevented or interfered with solely because
  modification has been made.

-   If you convey an object code work under this section in, or with, or
+ If you convey an object code work under this section in, or with, or
  specifically for use in, a User Product, and the conveying occurs as
  part of a transaction in which the right of possession and use of the
  User Product is transferred to the recipient in perpetuity or for a
  modified object code on the User Product (for example, the work has
  been installed in ROM).

-   The requirement to provide Installation Information does not include a
+ The requirement to provide Installation Information does not include a
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  for a work that has been modified or installed by the recipient, or for
  the User Product in which it has been modified or installed.  Access to a
  network may be denied when the modification itself materially and
  adversely affects the operation of the network or violates the rules and
  protocols for communication across the network.
```

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-   Corresponding Source conveyed, and Installation Information provided,
+ Corresponding Source conveyed, and Installation Information provided,
  in accord with this section must be in a format that is publicly
  documented (and with an implementation available to the public in
  source code form), and must require no special password or key for
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+ 7. Additional Terms.

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-   8. Termination.
+ 8. Termination.

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  and/or modify the software.

-   A secondary benefit of defending all users' freedom is that
+ A secondary benefit of defending all users' freedom is that
  improvements made in alternate versions of the program, if they
  receive widespread use, become available for other developers to
  incorporate.  Many developers of free software are heartened and
  letting the public access it on a server without ever releasing its
  source code to the public.

-   The GNU Affero General Public License is designed specifically to
+ The GNU Affero General Public License is designed specifically to
  ensure that, in such cases, the modified source code becomes available
  to the community.  It requires the operator of a network server to
  provide the source code of the modified version running there to the
  users of that server.  Therefore, public use of a modified version, on
  a publicly accessible server, gives the public access to the source
  code of the modified version.

-   An older license, called the Affero General Public License and
+ An older license, called the Affero General Public License and
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+ The precise terms and conditions for copying, distribution and
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-                        TERMS AND CONDITIONS
+ TERMS AND CONDITIONS
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+ 0. Definitions.

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+ works, such as semiconductor masks.

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+ To "modify" a work means to copy from or adapt all or part of the work
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  earlier work or a work "based on" the earlier work.

-   A "covered work" means either the unmodified Program or a work based
+ A "covered work" means either the unmodified Program or a work based
  on the Program.

-   To "propagate" a work means to do anything with it that, without
+ To "propagate" a work means to do anything with it that, without
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+ To "convey" a work means any kind of propagation that enables other
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  a computer network, with no transfer of a copy, is not conveying.

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+ An interactive user interface displays "Appropriate Legal Notices"
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  tells the user that there is no warranty for the work (except to the
  the interface presents a list of user commands or options, such as a
  menu, a prominent item in the list meets this criterion.

-   1. Source Code.
+ 1. Source Code.

-   The "source code" for a work means the preferred form of the work
+ The "source code" for a work means the preferred form of the work
  for making modifications to it.  "Object code" means any non-source
  form of a work.

-   A "Standard Interface" means an interface that either is an official
+ A "Standard Interface" means an interface that either is an official
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+ The "System Libraries" of an executable work include anything, other
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  packaging a Major Component, but which is not part of that Major
  Component, and (b) serves only to enable use of the work with that
  (if any) on which the executable work runs, or a compiler used to
  produce the work, or an object code interpreter used to run it.
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-   The "Corresponding Source" for a work in object code form means all
+ The "Corresponding Source" for a work in object code form means all
  the source code needed to generate, install, and (for an executable
  work) run the object code and to modify the work, including scripts to
  control those activities.  However, it does not include the work's
  such as by intimate data communication or control flow between those
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-   The Corresponding Source need not include anything that users
+ The Corresponding Source need not include anything that users
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+ The Corresponding Source for a work in source code form is that
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-   4. Conveying Verbatim Copies.
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+ 4. Conveying Verbatim Copies.

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+ You may charge any price or no price for each copy that you convey,
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-     it, and giving a relevant date.
+ a) The work must carry prominent notices stating that you modified
+ it, and giving a relevant date.

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-     7.  This requirement modifies the requirement in section 4 to
-     "keep intact all notices".
+ b) The work must carry prominent notices stating that it is
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-     d) If the work has interactive user interfaces, each must display
-     Appropriate Legal Notices; however, if the Program has interactive
-     interfaces that do not display Appropriate Legal Notices, your
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-   A compilation of a covered work with other separate and independent
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-   6. Conveying Non-Source Forms.
+ 6. Conveying Non-Source Forms.

-   You may convey a covered work in object code form under the terms
+ You may convey a covered work in object code form under the terms
  of sections 4 and 5, provided that you also convey the
  machine-readable Corresponding Source under the terms of this License,
  in one of these ways:

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-     (including a physical distribution medium), accompanied by the
-     Corresponding Source fixed on a durable physical medium
-     customarily used for software interchange.
-
-     b) Convey the object code in, or embodied in, a physical product
-     (including a physical distribution medium), accompanied by a
-     written offer, valid for at least three years and valid for as
-     long as you offer spare parts or customer support for that product
-     model, to give anyone who possesses the object code either (1) a
-     copy of the Corresponding Source for all the software in the
-     product that is covered by this License, on a durable physical
-     medium customarily used for software interchange, for a price no
-     more than your reasonable cost of physically performing this
-     conveying of source, or (2) access to copy the
-     Corresponding Source from a network server at no charge.
-
-     c) Convey individual copies of the object code with a copy of the
-     written offer to provide the Corresponding Source.  This
-     alternative is allowed only occasionally and noncommercially, and
-     only if you received the object code with such an offer, in accord
-     with subsection 6b.
-
-     d) Convey the object code by offering access from a designated
-     place (gratis or for a charge), and offer equivalent access to the
-     Corresponding Source in the same way through the same place at no
-     further charge.  You need not require recipients to copy the
-     Corresponding Source along with the object code.  If the place to
-     copy the object code is a network server, the Corresponding Source
-     may be on a different server (operated by you or a third party)
-     that supports equivalent copying facilities, provided you maintain
-     clear directions next to the object code saying where to find the
-     Corresponding Source.  Regardless of what server hosts the
-     Corresponding Source, you remain obligated to ensure that it is
-     available for as long as needed to satisfy these requirements.
-
-     e) Convey the object code using peer-to-peer transmission, provided
-     you inform other peers where the object code and Corresponding
-     Source of the work are being offered to the general public at no
-     charge under subsection 6d.
-
-   A separable portion of the object code, whose source code is excluded
+ a) Convey the object code in, or embodied in, a physical product
+ (including a physical distribution medium), accompanied by the
+ Corresponding Source fixed on a durable physical medium
+ customarily used for software interchange.
+
+ b) Convey the object code in, or embodied in, a physical product
+ (including a physical distribution medium), accompanied by a
+ written offer, valid for at least three years and valid for as
+ long as you offer spare parts or customer support for that product
+ model, to give anyone who possesses the object code either (1) a
+ copy of the Corresponding Source for all the software in the
+ product that is covered by this License, on a durable physical
+ medium customarily used for software interchange, for a price no
+ more than your reasonable cost of physically performing this
+ conveying of source, or (2) access to copy the
+ Corresponding Source from a network server at no charge.
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+ Corresponding Source along with the object code.  If the place to
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+ Source of the work are being offered to the general public at no
+ charge under subsection 6d.
+
+ A separable portion of the object code, whose source code is excluded
  from the Corresponding Source as a System Library, need not be
  included in conveying the object code work.

-   A "User Product" is either (1) a "consumer product", which means any
+ A "User Product" is either (1) a "consumer product", which means any
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  or household purposes, or (2) anything designed or sold for incorporation
  into a dwelling.  In determining whether a product is a consumer product,
  commercial, industrial or non-consumer uses, unless such uses represent
  the only significant mode of use of the product.

-   "Installation Information" for a User Product means any methods,
+ "Installation Information" for a User Product means any methods,
  procedures, authorization keys, or other information required to install
  and execute modified versions of a covered work in that User Product from
  a modified version of its Corresponding Source.  The information must
  suffice to ensure that the continued functioning of the modified object
  code is in no case prevented or interfered with solely because
  modification has been made.

-   If you convey an object code work under this section in, or with, or
+ If you convey an object code work under this section in, or with, or
  specifically for use in, a User Product, and the conveying occurs as
  part of a transaction in which the right of possession and use of the
  User Product is transferred to the recipient in perpetuity or for a
  modified object code on the User Product (for example, the work has
  been installed in ROM).
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-   The requirement to provide Installation Information does not include a
+ The requirement to provide Installation Information does not include a
  requirement to continue to provide support service, warranty, or updates
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  the User Product in which it has been modified or installed.  Access to a
  network may be denied when the modification itself materially and
  adversely affects the operation of the network or violates the rules and
  protocols for communication across the network.

-   Corresponding Source conveyed, and Installation Information provided,
+ Corresponding Source conveyed, and Installation Information provided,
  in accord with this section must be in a format that is publicly
  documented (and with an implementation available to the public in
  source code form), and must require no special password or key for
  unpacking, reading or copying.

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+ 7. Additional Terms.

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+ 1. Source Code.

-   The "source code" for a work means the preferred form of the work
+ The "source code" for a work means the preferred form of the work
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+ A "Standard Interface" means an interface that either is an official
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+ The Corresponding Source need not include anything that users
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+ 5. Conveying Modified Source Versions.

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+ a) The work must carry prominent notices stating that you modified
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+ 6. Conveying Non-Source Forms.

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-   A separable portion of the object code, whose source code is excluded
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+ medium customarily used for software interchange, for a price no
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+ conveying of source, or (2) access to copy the
+ Corresponding Source from a network server at no charge.
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+ may be on a different server (operated by you or a third party)
+ that supports equivalent copying facilities, provided you maintain
+ clear directions next to the object code saying where to find the
+ Corresponding Source.  Regardless of what server hosts the
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+ available for as long as needed to satisfy these requirements.
+
+ e) Convey the object code using peer-to-peer transmission, provided
+ you inform other peers where the object code and Corresponding
+ Source of the work are being offered to the general public at no
+ charge under subsection 6d.
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+ A separable portion of the object code, whose source code is excluded
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+ Corresponding Source conveyed, and Installation Information provided,
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486 enterprise/cypher/slotted-runtime/LICENSE.txt

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+ A secondary benefit of defending all users' freedom is that
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-   A "covered work" means either the unmodified Program or a work based
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+ A "covered work" means either the unmodified Program or a work based
  on the Program.

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+ An interactive user interface displays "Appropriate Legal Notices"
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+ 1. Source Code.

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+ The "source code" for a work means the preferred form of the work
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+ A "Standard Interface" means an interface that either is an official
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+ The "System Libraries" of an executable work include anything, other
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-   The "Corresponding Source" for a work in object code form means all
+ The "Corresponding Source" for a work in object code form means all
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-   The Corresponding Source need not include anything that users
+ The Corresponding Source need not include anything that users
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-   The Corresponding Source for a work in source code form is that
+ The Corresponding Source for a work in source code form is that
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+ 4. Conveying Verbatim Copies.

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+ You may charge any price or no price for each copy that you convey,
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-   5. Conveying Modified Source Versions.
+ 5. Conveying Modified Source Versions.

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-     it, and giving a relevant date.
+ a) The work must carry prominent notices stating that you modified
+ it, and giving a relevant date.

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-     7.  This requirement modifies the requirement in section 4 to
-     "keep intact all notices".
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-     Appropriate Legal Notices; however, if the Program has interactive
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+ A compilation of a covered work with other separate and independent
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  in an aggregate does not cause this License to apply to the other
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-   6. Conveying Non-Source Forms.
+ 6. Conveying Non-Source Forms.

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+ You may convey a covered work in object code form under the terms
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  machine-readable Corresponding Source under the terms of this License,
  in one of these ways:

-     a) Convey the object code in, or embodied in, a physical product
-     (including a physical distribution medium), accompanied by the
-     Corresponding Source fixed on a durable physical medium
```

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-     customarily used for software interchange.
-
-     b) Convey the object code in, or embodied in, a physical product
-     (including a physical distribution medium), accompanied by a
-     written offer, valid for at least three years and valid for as
-     long as you offer spare parts or customer support for that product
-     model, to give anyone who possesses the object code either (1) a
-     copy of the Corresponding Source for all the software in the
-     product that is covered by this License, on a durable physical
-     medium customarily used for software interchange, for a price no
-     more than your reasonable cost of physically performing this
-     conveying of source, or (2) access to copy the
-     Corresponding Source from a network server at no charge.
-
-     c) Convey individual copies of the object code with a copy of the
-     written offer to provide the Corresponding Source.  This
-     alternative is allowed only occasionally and noncommercially, and
-     only if you received the object code with such an offer, in accord
-     with subsection 6b.
-
-     d) Convey the object code by offering access from a designated
-     place (gratis or for a charge), and offer equivalent access to the
-     Corresponding Source in the same way through the same place at no
-     further charge.  You need not require recipients to copy the
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-     copy the object code is a network server, the Corresponding Source
-     may be on a different server (operated by you or a third party)
-     that supports equivalent copying facilities, provided you maintain
-     clear directions next to the object code saying where to find the
-     Corresponding Source.  Regardless of what server hosts the
-     Corresponding Source, you remain obligated to ensure that it is
-     available for as long as needed to satisfy these requirements.
-
-     e) Convey the object code using peer-to-peer transmission, provided
-     you inform other peers where the object code and Corresponding
-     Source of the work are being offered to the general public at no
-     charge under subsection 6d.
-
-   A separable portion of the object code, whose source code is excluded
+ a) Convey the object code in, or embodied in, a physical product
+ (including a physical distribution medium), accompanied by the
+ Corresponding Source fixed on a durable physical medium
+ customarily used for software interchange.
+
+ b) Convey the object code in, or embodied in, a physical product
+ (including a physical distribution medium), accompanied by a
+ written offer, valid for at least three years and valid for as
+ long as you offer spare parts or customer support for that product
+ model, to give anyone who possesses the object code either (1) a
+ copy of the Corresponding Source for all the software in the
+ product that is covered by this License, on a durable physical
+ medium customarily used for software interchange, for a price no
+ more than your reasonable cost of physically performing this
+ conveying of source, or (2) access to copy the
+ Corresponding Source from a network server at no charge.
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+ place (gratis or for a charge), and offer equivalent access to the
+ Corresponding Source in the same way through the same place at no
+ further charge.  You need not require recipients to copy the
+ Corresponding Source along with the object code.  If the place to
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+ you inform other peers where the object code and Corresponding
+ Source of the work are being offered to the general public at no
+ charge under subsection 6d.
+
+ A separable portion of the object code, whose source code is excluded
  from the Corresponding Source as a System Library, need not be
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+ A "User Product" is either (1) a "consumer product", which means any
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+ "Installation Information" for a User Product means any methods,
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  suffice to ensure that the continued functioning of the modified object
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-   If you convey an object code work under this section in, or with, or
+ If you convey an object code work under this section in, or with, or
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-   The requirement to provide Installation Information does not include a
+ The requirement to provide Installation Information does not include a
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+ Corresponding Source conveyed, and Installation Information provided,
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+ 7. Additional Terms.

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+ 8. Termination.

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+ 10. Automatic Licensing of Downstream Recipients.

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+ 11. Patents.

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  a computer network, with no transfer of a copy, is not conveying.

-  An interactive user interface displays "Appropriate Legal Notices"
+ An interactive user interface displays "Appropriate Legal Notices"
  to the extent that it includes a convenient and prominently visible
  feature that (1) displays an appropriate copyright notice, and (2)
  tells the user that there is no warranty for the work (except to the
  the interface presents a list of user commands or options, such as a
  menu, a prominent item in the list meets this criterion.

-  1. Source Code.
+ 1. Source Code.

-  The "source code" for a work means the preferred form of the work
+ The "source code" for a work means the preferred form of the work
  for making modifications to it.  "Object code" means any non-source
  form of a work.

-  A "Standard Interface" means an interface that either is an official
+ A "Standard Interface" means an interface that either is an official
  standard defined by a recognized standards body, or, in the case of
  interfaces specified for a particular programming language, one that
  is widely used among developers working in that language.

-  The "System Libraries" of an executable work include anything, other
+ The "System Libraries" of an executable work include anything, other
  than the work as a whole, that (a) is included in the normal form of
  packaging a Major Component, but which is not part of that Major
  Component, and (b) serves only to enable use of the work with that
  (if any) on which the executable work runs, or a compiler used to
  produce the work, or an object code interpreter used to run it.

-  The "Corresponding Source" for a work in object code form means all
+ The "Corresponding Source" for a work in object code form means all
  the source code needed to generate, install, and (for an executable
  work) run the object code and to modify the work, including scripts to
  control those activities.  However, it does not include the work's
  such as by intimate data communication or control flow between those
  subprograms and other parts of the work.

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-   The Corresponding Source need not include anything that users
+ The Corresponding Source need not include anything that users
  can regenerate automatically from other parts of the Corresponding
  Source.

-   The Corresponding Source for a work in source code form is that
+ The Corresponding Source for a work in source code form is that
  same work.

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+ 2. Basic Permissions.

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-   Conveying under any other circumstances is permitted solely under
+ Conveying under any other circumstances is permitted solely under
  the conditions stated below.  Sublicensing is not allowed; section 10
  makes it unnecessary.

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+ 3. Protecting Users' Legal Rights From Anti-Circumvention Law.

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+ No covered work shall be deemed part of an effective technological
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  technological measures.

-   4. Conveying Verbatim Copies.
+ 4. Conveying Verbatim Copies.

-   You may convey verbatim copies of the Program's source code as you
+ You may convey verbatim copies of the Program's source code as you
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  keep intact all notices of the absence of any warranty; and give all
  recipients a copy of this License along with the Program.

-   You may charge any price or no price for each copy that you convey,
+ You may charge any price or no price for each copy that you convey,
  and you may offer support or warranty protection for a fee.

-   5. Conveying Modified Source Versions.
+ 5. Conveying Modified Source Versions.

-   You may convey a work based on the Program, or the modifications to
+ You may convey a work based on the Program, or the modifications to
  produce it from the Program, in the form of source code under the
  terms of section 4, provided that you also meet all of these conditions:

-     a) The work must carry prominent notices stating that you modified
-     it, and giving a relevant date.
+ a) The work must carry prominent notices stating that you modified
+ it, and giving a relevant date.

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-     released under this License and any conditions added under section
-     7.  This requirement modifies the requirement in section 4 to
-     "keep intact all notices".
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+ released under this License and any conditions added under section
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+ "keep intact all notices".

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-     d) If the work has interactive user interfaces, each must display
-     Appropriate Legal Notices; however, if the Program has interactive
-     interfaces that do not display Appropriate Legal Notices, your
-     work need not make them do so.
+ d) If the work has interactive user interfaces, each must display
+ Appropriate Legal Notices; however, if the Program has interactive
+ interfaces that do not display Appropriate Legal Notices, your
+ work need not make them do so.

-   A compilation of a covered work with other separate and independent
+ A compilation of a covered work with other separate and independent
  works, which are not by their nature extensions of the covered work,
  and which are not combined with it such as to form a larger program,
  in or on a volume of a storage or distribution medium, is called an
  in an aggregate does not cause this License to apply to the other
  parts of the aggregate.

-   6. Conveying Non-Source Forms.
+ 6. Conveying Non-Source Forms.

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-   You may convey a covered work in object code form under the terms
+ You may convey a covered work in object code form under the terms
  of sections 4 and 5, provided that you also convey the
  machine-readable Corresponding Source under the terms of this License,
  in one of these ways:

-     a) Convey the object code in, or embodied in, a physical product
-     (including a physical distribution medium), accompanied by the
-     Corresponding Source fixed on a durable physical medium
-     customarily used for software interchange.
- 
-     b) Convey the object code in, or embodied in, a physical product
-     (including a physical distribution medium), accompanied by a
-     written offer, valid for at least three years and valid for as
-     long as you offer spare parts or customer support for that product
-     model, to give anyone who possesses the object code either (1) a
-     copy of the Corresponding Source for all the software in the
-     product that is covered by this License, on a durable physical
-     medium customarily used for software interchange, for a price no
-     more than your reasonable cost of physically performing this
-     conveying of source, or (2) access to copy the
-     Corresponding Source from a network server at no charge.
- 
-     c) Convey individual copies of the object code with a copy of the
-     written offer to provide the Corresponding Source.  This
-     alternative is allowed only occasionally and noncommercially, and
-     only if you received the object code with such an offer, in accord
-     with subsection 6b.
- 
-     d) Convey the object code by offering access from a designated
-     place (gratis or for a charge), and offer equivalent access to the
-     Corresponding Source in the same way through the same place at no
-     further charge.  You need not require recipients to copy the
-     Corresponding Source along with the object code.  If the place to
-     copy the object code is a network server, the Corresponding Source
-     may be on a different server (operated by you or a third party)
-     that supports equivalent copying facilities, provided you maintain
-     clear directions next to the object code saying where to find the
-     Corresponding Source.  Regardless of what server hosts the
-     Corresponding Source, you remain obligated to ensure that it is
-     available for as long as needed to satisfy these requirements.
- 
-     e) Convey the object code using peer-to-peer transmission, provided
-     you inform other peers where the object code and Corresponding
-     Source of the work are being offered to the general public at no
-     charge under subsection 6d.
- 
-   A separable portion of the object code, whose source code is excluded
+ a) Convey the object code in, or embodied in, a physical product
+ (including a physical distribution medium), accompanied by the
+ Corresponding Source fixed on a durable physical medium
+ customarily used for software interchange.
+ 
+ b) Convey the object code in, or embodied in, a physical product
+ (including a physical distribution medium), accompanied by a
+ written offer, valid for at least three years and valid for as
+ long as you offer spare parts or customer support for that product
+ model, to give anyone who possesses the object code either (1) a
+ copy of the Corresponding Source for all the software in the
+ product that is covered by this License, on a durable physical
+ medium customarily used for software interchange, for a price no
+ more than your reasonable cost of physically performing this
+ conveying of source, or (2) access to copy the
+ Corresponding Source from a network server at no charge.
+
+ c) Convey individual copies of the object code with a copy of the
+ written offer to provide the Corresponding Source.  This
+ alternative is allowed only occasionally and noncommercially, and
+ only if you received the object code with such an offer, in accord
+ with subsection 6b.
+
+ d) Convey the object code by offering access from a designated
+ place (gratis or for a charge), and offer equivalent access to the
+ Corresponding Source in the same way through the same place at no
+ further charge.  You need not require recipients to copy the
+ Corresponding Source along with the object code.  If the place to
+ copy the object code is a network server, the Corresponding Source
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+ clear directions next to the object code saying where to find the
+ Corresponding Source.  Regardless of what server hosts the
+ Corresponding Source, you remain obligated to ensure that it is
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+
+ e) Convey the object code using peer-to-peer transmission, provided
+ you inform other peers where the object code and Corresponding
+ Source of the work are being offered to the general public at no
+ charge under subsection 6d.
+
+ A separable portion of the object code, whose source code is excluded
  from the Corresponding Source as a System Library, need not be
  included in conveying the object code work.

-   A "User Product" is either (1) a "consumer product", which means any
+ A "User Product" is either (1) a "consumer product", which means any
  tangible personal property which is normally used for personal, family,
  or household purposes, or (2) anything designed or sold for incorporation
  into a dwelling.  In determining whether a product is a consumer product,
  commercial, industrial or non-consumer uses, unless such uses represent
  the only significant mode of use of the product.

-   "Installation Information" for a User Product means any methods,
+ "Installation Information" for a User Product means any methods,
  procedures, authorization keys, or other information required to install
  and execute modified versions of a covered work in that User Product from
  a modified version of its Corresponding Source.  The information must
  suffice to ensure that the continued functioning of the modified object
  code is in no case prevented or interfered with solely because
  modification has been made.

-   If you convey an object code work under this section in, or with, or
+ If you convey an object code work under this section in, or with, or
  specifically for use in, a User Product, and the conveying occurs as
  part of a transaction in which the right of possession and use of the
  User Product is transferred to the recipient in perpetuity or for a
  modified object code on the User Product (for example, the work has
  been installed in ROM).

-   The requirement to provide Installation Information does not include a
+ The requirement to provide Installation Information does not include a
  requirement to continue to provide support service, warranty, or updates
  for a work that has been modified or installed by the recipient, or for
  the User Product in which it has been modified or installed.  Access to a
  network may be denied when the modification itself materially and
  adversely affects the operation of the network or violates the rules and
  protocols for communication across the network.
```

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-   Corresponding Source conveyed, and Installation Information provided,
+ Corresponding Source conveyed, and Installation Information provided,
  in accord with this section must be in a format that is publicly
  documented (and with an implementation available to the public in
  source code form), and must require no special password or key for
  unpacking, reading or copying.

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+ 7. Additional Terms.

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+ 17. Interpretation of Sections 15 and 16.

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+ How to Apply These Terms to Your New Programs

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+ If you develop a new program, and you want it to be of the greatest
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+ To do so, attach the following notices to the program.  It is safest
  to attach them to the start of each source file to most effectively
  state the exclusion of warranty; and each file should have at least
  the "copyright" line and a pointer to where the full notice is found.

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+ If your software can interact with users remotely through a computer
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  get its source.  For example, if your program is a web application, its
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  of the code.  There are many ways you could offer source, and different
  solutions will be better for different programs; see section 13 for the
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```

486 🟩🟩🟥🟥 enterprise/kernel/LICENSE.txt

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+ A secondary benefit of defending all users' freedom is that
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  letting the public access it on a server without ever releasing its
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+ The GNU Affero General Public License is designed specifically to
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+ A "covered work" means either the unmodified Program or a work based
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+ To "convey" a work means any kind of propagation that enables other
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-   An interactive user interface displays "Appropriate Legal Notices"
+ An interactive user interface displays "Appropriate Legal Notices"
```

```diff
  to the extent that it includes a convenient and prominently visible
  feature that (1) displays an appropriate copyright notice, and (2)
  tells the user that there is no warranty for the work (except to the
  the interface presents a list of user commands or options, such as a
  menu, a prominent item in the list meets this criterion.

-   1. Source Code.
+ 1. Source Code.

-   The "source code" for a work means the preferred form of the work
+ The "source code" for a work means the preferred form of the work
  for making modifications to it.  "Object code" means any non-source
  form of a work.

-   A "Standard Interface" means an interface that either is an official
+ A "Standard Interface" means an interface that either is an official
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+ The "System Libraries" of an executable work include anything, other
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  (if any) on which the executable work runs, or a compiler used to
  produce the work, or an object code interpreter used to run it.

-   The "Corresponding Source" for a work in object code form means all
+ The "Corresponding Source" for a work in object code form means all
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  work) run the object code and to modify the work, including scripts to
  control those activities.  However, it does not include the work's
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  subprograms and other parts of the work.

-   The Corresponding Source need not include anything that users
+ The Corresponding Source need not include anything that users
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+ The Corresponding Source for a work in source code form is that
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+ No covered work shall be deemed part of an effective technological
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+ 4. Conveying Verbatim Copies.

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+ You may charge any price or no price for each copy that you convey,
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+ 5. Conveying Modified Source Versions.

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+ You may convey a work based on the Program, or the modifications to
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+ a) The work must carry prominent notices stating that you modified
+ it, and giving a relevant date.

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-     7.  This requirement modifies the requirement in section 4 to
-     "keep intact all notices".
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+ A compilation of a covered work with other separate and independent
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+ 6. Conveying Non-Source Forms.

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+ You may convey a covered work in object code form under the terms
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-     (including a physical distribution medium), accompanied by the
-     Corresponding Source fixed on a durable physical medium
-     customarily used for software interchange.
-
-     b) Convey the object code in, or embodied in, a physical product
-     (including a physical distribution medium), accompanied by a
-     written offer, valid for at least three years and valid for as
-     long as you offer spare parts or customer support for that product
-     model, to give anyone who possesses the object code either (1) a
-     copy of the Corresponding Source for all the software in the
-     product that is covered by this License, on a durable physical
-     medium customarily used for software interchange, for a price no
-     more than your reasonable cost of physically performing this
-     conveying of source, or (2) access to copy the
-     Corresponding Source from a network server at no charge.
-
-     c) Convey individual copies of the object code with a copy of the
-     written offer to provide the Corresponding Source.  This
-     alternative is allowed only occasionally and noncommercially, and
-     only if you received the object code with such an offer, in accord
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-
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-     that supports equivalent copying facilities, provided you maintain
-     clear directions next to the object code saying where to find the
-     Corresponding Source.  Regardless of what server hosts the
-     Corresponding Source, you remain obligated to ensure that it is
-     available for as long as needed to satisfy these requirements.
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-     e) Convey the object code using peer-to-peer transmission, provided
-     you inform other peers where the object code and Corresponding
-     Source of the work are being offered to the general public at no
-     charge under subsection 6d.
-
-   A separable portion of the object code, whose source code is excluded
+ a) Convey the object code in, or embodied in, a physical product
+ (including a physical distribution medium), accompanied by the
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+ customarily used for software interchange.
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+ b) Convey the object code in, or embodied in, a physical product
+ (including a physical distribution medium), accompanied by a
+ written offer, valid for at least three years and valid for as
+ long as you offer spare parts or customer support for that product
+ model, to give anyone who possesses the object code either (1) a
+ copy of the Corresponding Source for all the software in the
+ product that is covered by this License, on a durable physical
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+ more than your reasonable cost of physically performing this
+ conveying of source, or (2) access to copy the
+ Corresponding Source from a network server at no charge.
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+ charge under subsection 6d.
+
+ A separable portion of the object code, whose source code is excluded
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  from the Corresponding Source as a System Library, need not be
  included in conveying the object code work.

-  A "User Product" is either (1) a "consumer product", which means any
+ A "User Product" is either (1) a "consumer product", which means any
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+ "Installation Information" for a User Product means any methods,
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+ If you convey an object code work under this section in, or with, or
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-  The requirement to provide Installation Information does not include a
+ The requirement to provide Installation Information does not include a
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+ Corresponding Source conveyed, and Installation Information provided,
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+ 7. Additional Terms.

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+ Appropriate Legal Notices; however, if the Program has interactive
+ interfaces that do not display Appropriate Legal Notices, your
+ work need not make them do so.

-   A compilation of a covered work with other separate and independent
+ A compilation of a covered work with other separate and independent
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  works, which are not by their nature extensions of the covered work,
  and which are not combined with it such as to form a larger program,
  in or on a volume of a storage or distribution medium, is called an
  in an aggregate does not cause this License to apply to the other
  parts of the aggregate.

-   6. Conveying Non-Source Forms.
+ 6. Conveying Non-Source Forms.

-   You may convey a covered work in object code form under the terms
+ You may convey a covered work in object code form under the terms
  of sections 4 and 5, provided that you also convey the
  machine-readable Corresponding Source under the terms of this License,
  in one of these ways:

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-     (including a physical distribution medium), accompanied by the
-     Corresponding Source fixed on a durable physical medium
-     customarily used for software interchange.
-
-     b) Convey the object code in, or embodied in, a physical product
-     (including a physical distribution medium), accompanied by a
-     written offer, valid for at least three years and valid for as
-     long as you offer spare parts or customer support for that product
-     model, to give anyone who possesses the object code either (1) a
-     copy of the Corresponding Source for all the software in the
-     product that is covered by this License, on a durable physical
-     medium customarily used for software interchange, for a price no
-     more than your reasonable cost of physically performing this
-     conveying of source, or (2) access to copy the
-     Corresponding Source from a network server at no charge.
-
-     c) Convey individual copies of the object code with a copy of the
-     written offer to provide the Corresponding Source.  This
-     alternative is allowed only occasionally and noncommercially, and
-     only if you received the object code with such an offer, in accord
-     with subsection 6b.
-
-     d) Convey the object code by offering access from a designated
-     place (gratis or for a charge), and offer equivalent access to the
-     Corresponding Source in the same way through the same place at no
-     further charge.  You need not require recipients to copy the
-     Corresponding Source along with the object code.  If the place to
-     copy the object code is a network server, the Corresponding Source
-     may be on a different server (operated by you or a third party)
-     that supports equivalent copying facilities, provided you maintain
-     clear directions next to the object code saying where to find the
-     Corresponding Source.  Regardless of what server hosts the
-     Corresponding Source, you remain obligated to ensure that it is
-     available for as long as needed to satisfy these requirements.
-
-     e) Convey the object code using peer-to-peer transmission, provided
-     you inform other peers where the object code and Corresponding
-     Source of the work are being offered to the general public at no
-     charge under subsection 6d.
-
-   A separable portion of the object code, whose source code is excluded
+ a) Convey the object code in, or embodied in, a physical product
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+ b) Convey the object code in, or embodied in, a physical product
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+ long as you offer spare parts or customer support for that product
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+ conveying of source, or (2) access to copy the
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+ c) Convey individual copies of the object code with a copy of the
+ written offer to provide the Corresponding Source.  This
+ alternative is allowed only occasionally and noncommercially, and
+ only if you received the object code with such an offer, in accord
+ with subsection 6b.
+
+ d) Convey the object code by offering access from a designated
+ place (gratis or for a charge), and offer equivalent access to the
+ Corresponding Source in the same way through the same place at no
+ further charge.  You need not require recipients to copy the
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+ Source of the work are being offered to the general public at no
+ charge under subsection 6d.
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+ A separable portion of the object code, whose source code is excluded
  from the Corresponding Source as a System Library, need not be
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-   "Installation Information" for a User Product means any methods,
+ "Installation Information" for a User Product means any methods,
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  suffice to ensure that the continued functioning of the modified object
  code is in no case prevented or interfered with solely because
  modification has been made.

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  modified object code on the User Product (for example, the work has
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     317  + The requirement to provide Installation Information does not include a
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341  324
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     325  + Corresponding Source conveyed, and Installation Information provided,
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-                             Preamble
-
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- for software and other kinds of works, specifically designed to ensure
+ The GNU Affero General Public License is a free, copyleft license for
+ software and other kinds of works, specifically designed to ensure
  cooperation with the community in the case of network server software.

-   The licenses for most software and other practical works are
- designed to take away your freedom to share and change the works.  By
- contrast, our General Public Licenses are intended to guarantee your
- freedom to share and change all versions of a program--to make sure it
- remains free software for all its users.
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+ When we speak of free software, we are referring to freedom, not
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-   A secondary benefit of defending all users' freedom is that
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  improvements made in alternate versions of the program, if they
  receive widespread use, become available for other developers to
  incorporate.  Many developers of free software are heartened and
  letting the public access it on a server without ever releasing its
  source code to the public.

-   The GNU Affero General Public License is designed specifically to
+ The GNU Affero General Public License is designed specifically to
  ensure that, in such cases, the modified source code becomes available
  to the community.  It requires the operator of a network server to
  provide the source code of the modified version running there to the
  users of that server.  Therefore, public use of a modified version, on
  a publicly accessible server, gives the public access to the source
  code of the modified version.

-   An older license, called the Affero General Public License and
+ An older license, called the Affero General Public License and
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+ The precise terms and conditions for copying, distribution and
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+ To "modify" a work means to copy from or adapt all or part of the work
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  earlier work or a work "based on" the earlier work.

-   A "covered work" means either the unmodified Program or a work based
+ A "covered work" means either the unmodified Program or a work based
  on the Program.

-   To "propagate" a work means to do anything with it that, without
+ To "propagate" a work means to do anything with it that, without
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+ To "convey" a work means any kind of propagation that enables other
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+ An interactive user interface displays "Appropriate Legal Notices"
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  the interface presents a list of user commands or options, such as a
  menu, a prominent item in the list meets this criterion.

-   1. Source Code.
+ 1. Source Code.

-   The "source code" for a work means the preferred form of the work
+ The "source code" for a work means the preferred form of the work
  for making modifications to it.  "Object code" means any non-source
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-   A "Standard Interface" means an interface that either is an official
+ A "Standard Interface" means an interface that either is an official
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+ The "System Libraries" of an executable work include anything, other
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  produce the work, or an object code interpreter used to run it.

-   The "Corresponding Source" for a work in object code form means all
+ The "Corresponding Source" for a work in object code form means all
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  work) run the object code and to modify the work, including scripts to
  control those activities.  However, it does not include the work's
  such as by intimate data communication or control flow between those
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-   The Corresponding Source need not include anything that users
+ The Corresponding Source need not include anything that users
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+ The Corresponding Source for a work in source code form is that
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+ You may charge any price or no price for each copy that you convey,
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+ 5. Conveying Modified Source Versions.

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+ You may convey a work based on the Program, or the modifications to
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  terms of section 4, provided that you also meet all of these conditions:

-     a) The work must carry prominent notices stating that you modified
-     it, and giving a relevant date.
+ a) The work must carry prominent notices stating that you modified
+ it, and giving a relevant date.
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-     b) The work must carry prominent notices stating that it is
-     released under this License and any conditions added under section
-     7.  This requirement modifies the requirement in section 4 to
-     "keep intact all notices".
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+ released under this License and any conditions added under section
+ 7.  This requirement modifies the requirement in section 4 to
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-     Appropriate Legal Notices; however, if the Program has interactive
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-   A compilation of a covered work with other separate and independent
+ A compilation of a covered work with other separate and independent
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  in an aggregate does not cause this License to apply to the other
  parts of the aggregate.
 
-   6. Conveying Non-Source Forms.
+ 6. Conveying Non-Source Forms.
 
-   You may convey a covered work in object code form under the terms
+ You may convey a covered work in object code form under the terms
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-     a) Convey the object code in, or embodied in, a physical product
-     (including a physical distribution medium), accompanied by the
-     Corresponding Source fixed on a durable physical medium
-     customarily used for software interchange.
-
-     b) Convey the object code in, or embodied in, a physical product
-     (including a physical distribution medium), accompanied by a
-     written offer, valid for at least three years and valid for as
-     long as you offer spare parts or customer support for that product
-     model, to give anyone who possesses the object code either (1) a
-     copy of the Corresponding Source for all the software in the
-     product that is covered by this License, on a durable physical
-       medium customarily used for software interchange, for a price no
-       more than your reasonable cost of physically performing this
-       conveying of source, or (2) access to copy the
-       Corresponding Source from a network server at no charge.
-
-       c) Convey individual copies of the object code with a copy of the
-       written offer to provide the Corresponding Source.  This
-       alternative is allowed only occasionally and noncommercially, and
-       only if you received the object code with such an offer, in accord
-       with subsection 6b.
-
-       d) Convey the object code by offering access from a designated
-       place (gratis or for a charge), and offer equivalent access to the
-       Corresponding Source in the same way through the same place at no
-       further charge.  You need not require recipients to copy the
-       Corresponding Source along with the object code.  If the place to
-       copy the object code is a network server, the Corresponding Source
-       may be on a different server (operated by you or a third party)
-       that supports equivalent copying facilities, provided you maintain
-       clear directions next to the object code saying where to find the
-       Corresponding Source.  Regardless of what server hosts the
-       Corresponding Source, you remain obligated to ensure that it is
-       available for as long as needed to satisfy these requirements.
-
-       e) Convey the object code using peer-to-peer transmission, provided
-       you inform other peers where the object code and Corresponding
-       Source of the work are being offered to the general public at no
-       charge under subsection 6d.
-
-     A separable portion of the object code, whose source code is excluded
+ a) Convey the object code in, or embodied in, a physical product
+ (including a physical distribution medium), accompanied by the
+ Corresponding Source fixed on a durable physical medium
+ customarily used for software interchange.
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+ b) Convey the object code in, or embodied in, a physical product
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+ model, to give anyone who possesses the object code either (1) a
+ copy of the Corresponding Source for all the software in the
+ product that is covered by this License, on a durable physical
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+ available for as long as needed to satisfy these requirements.
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+ e) Convey the object code using peer-to-peer transmission, provided
+ you inform other peers where the object code and Corresponding
+ Source of the work are being offered to the general public at no
+ charge under subsection 6d.
+
+ A separable portion of the object code, whose source code is excluded
  from the Corresponding Source as a System Library, need not be
  included in conveying the object code work.

-   A "User Product" is either (1) a "consumer product", which means any
+ A "User Product" is either (1) a "consumer product", which means any
  tangible personal property which is normally used for personal, family,
  or household purposes, or (2) anything designed or sold for incorporation
  into a dwelling.  In determining whether a product is a consumer product,
  commercial, industrial or non-consumer uses, unless such uses represent
  the only significant mode of use of the product.

-   "Installation Information" for a User Product means any methods,
+ "Installation Information" for a User Product means any methods,
  procedures, authorization keys, or other information required to install
  and execute modified versions of a covered work in that User Product from
  a modified version of its Corresponding Source.  The information must
  suffice to ensure that the continued functioning of the modified object
  code is in no case prevented or interfered with solely because
  modification has been made.

-   If you convey an object code work under this section in, or with, or
+ If you convey an object code work under this section in, or with, or
  specifically for use in, a User Product, and the conveying occurs as
  part of a transaction in which the right of possession and use of the
  User Product is transferred to the recipient in perpetuity or for a
  modified object code on the User Product (for example, the work has
  been installed in ROM).

-   The requirement to provide Installation Information does not include a
+ The requirement to provide Installation Information does not include a
  requirement to continue to provide support service, warranty, or updates
  for a work that has been modified or installed by the recipient, or for
  the User Product in which it has been modified or installed.  Access to a
  network may be denied when the modification itself materially and
  adversely affects the operation of the network or violates the rules and
  protocols for communication across the network.

-   Corresponding Source conveyed, and Installation Information provided,
+ Corresponding Source conveyed, and Installation Information provided,
  in accord with this section must be in a format that is publicly
  documented (and with an implementation available to the public in
  source code form), and must require no special password or key for
  unpacking, reading or copying.

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+ 7. Additional Terms.

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+ 8. Termination.

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+ A "covered work" means either the unmodified Program or a work based
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+ The "source code" for a work means the preferred form of the work
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-   A separable portion of the object code, whose source code is excluded
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+ c) Convey individual copies of the object code with a copy of the
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+ Corresponding Source in the same way through the same place at no
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+ you inform other peers where the object code and Corresponding
+ Source of the work are being offered to the general public at no
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+ 4. Conveying Verbatim Copies.

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+ You may charge any price or no price for each copy that you convey,
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+ 5. Conveying Modified Source Versions.

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+ a) The work must carry prominent notices stating that you modified
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-     7.  This requirement modifies the requirement in section 4 to
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+ 6. Conveying Non-Source Forms.

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+ You may convey a covered work in object code form under the terms
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-     customarily used for software interchange.
- 
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-     product that is covered by this License, on a durable physical
-     medium customarily used for software interchange, for a price no
-     more than your reasonable cost of physically performing this
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- 
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- 
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-     Corresponding Source, you remain obligated to ensure that it is
-     available for as long as needed to satisfy these requirements.
- 
-     e) Convey the object code using peer-to-peer transmission, provided
-     you inform other peers where the object code and Corresponding
-     Source of the work are being offered to the general public at no
-     charge under subsection 6d.
- 
-   A separable portion of the object code, whose source code is excluded
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+ you inform other peers where the object code and Corresponding
+ Source of the work are being offered to the general public at no
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+ A "User Product" is either (1) a "consumer product", which means any
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+ "Installation Information" for a User Product means any methods,
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  suffice to ensure that the continued functioning of the modified object
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+ If you convey an object code work under this section in, or with, or
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+ The requirement to provide Installation Information does not include a
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+ Corresponding Source conveyed, and Installation Information provided,
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+ 7. Additional Terms.

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+ If your software can interact with users remotely through a computer
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-   A "covered work" means either the unmodified Program or a work based
+ A "covered work" means either the unmodified Program or a work based
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+ An interactive user interface displays "Appropriate Legal Notices"
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  the interface presents a list of user commands or options, such as a
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-   1. Source Code.
+ 1. Source Code.

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-  The "source code" for a work means the preferred form of the work
+ The "source code" for a work means the preferred form of the work
  for making modifications to it.  "Object code" means any non-source
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+ A "Standard Interface" means an interface that either is an official
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+ The "Corresponding Source" for a work in object code form means all
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+ The Corresponding Source need not include anything that users
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+ 5. Conveying Modified Source Versions.

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+ a) The work must carry prominent notices stating that you modified
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-   6. Conveying Non-Source Forms.
+ 6. Conveying Non-Source Forms.

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+ You may convey a covered work in object code form under the terms
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  machine-readable Corresponding Source under the terms of this License,
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-     (including a physical distribution medium), accompanied by the
-     Corresponding Source fixed on a durable physical medium
-     customarily used for software interchange.
-
-     b) Convey the object code in, or embodied in, a physical product
-     (including a physical distribution medium), accompanied by a
-     written offer, valid for at least three years and valid for as
-     long as you offer spare parts or customer support for that product
-     model, to give anyone who possesses the object code either (1) a
-     copy of the Corresponding Source for all the software in the
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-     medium customarily used for software interchange, for a price no
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-
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-     written offer to provide the Corresponding Source.  This
-     alternative is allowed only occasionally and noncommercially, and
-     only if you received the object code with such an offer, in accord
-     with subsection 6b.
-
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-     clear directions next to the object code saying where to find the
-     Corresponding Source.  Regardless of what server hosts the
-     Corresponding Source, you remain obligated to ensure that it is
-     available for as long as needed to satisfy these requirements.
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-     e) Convey the object code using peer-to-peer transmission, provided
-     you inform other peers where the object code and Corresponding
-     Source of the work are being offered to the general public at no
-     charge under subsection 6d.
- 
-   A separable portion of the object code, whose source code is excluded
+ a) Convey the object code in, or embodied in, a physical product
+ (including a physical distribution medium), accompanied by the
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+ b) Convey the object code in, or embodied in, a physical product
+ (including a physical distribution medium), accompanied by a
+ written offer, valid for at least three years and valid for as
+ long as you offer spare parts or customer support for that product
+ model, to give anyone who possesses the object code either (1) a
+ copy of the Corresponding Source for all the software in the
+ product that is covered by this License, on a durable physical
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+ more than your reasonable cost of physically performing this
+ conveying of source, or (2) access to copy the
+ Corresponding Source from a network server at no charge.
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+ you inform other peers where the object code and Corresponding
+ Source of the work are being offered to the general public at no
+ charge under subsection 6d.
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+ A separable portion of the object code, whose source code is excluded
  from the Corresponding Source as a System Library, need not be
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-     that supports equivalent copying facilities, provided you maintain
-     clear directions next to the object code saying where to find the
-     Corresponding Source.  Regardless of what server hosts the
-     Corresponding Source, you remain obligated to ensure that it is
-     available for as long as needed to satisfy these requirements.
-
-     e) Convey the object code using peer-to-peer transmission, provided
-     you inform other peers where the object code and Corresponding
-     Source of the work are being offered to the general public at no
-     charge under subsection 6d.
-
-   A separable portion of the object code, whose source code is excluded
+ a) Convey the object code in, or embodied in, a physical product
+ (including a physical distribution medium), accompanied by the
+ Corresponding Source fixed on a durable physical medium
+ customarily used for software interchange.
+
+ b) Convey the object code in, or embodied in, a physical product
+ (including a physical distribution medium), accompanied by a
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+ long as you offer spare parts or customer support for that product
+ model, to give anyone who possesses the object code either (1) a
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+ Corresponding Source from a network server at no charge.
+
+ c) Convey individual copies of the object code with a copy of the
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+ alternative is allowed only occasionally and noncommercially, and
+ only if you received the object code with such an offer, in accord
+ with subsection 6b.
+
+ d) Convey the object code by offering access from a designated
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+ Corresponding Source in the same way through the same place at no
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+ A separable portion of the object code, whose source code is excluded
  from the Corresponding Source as a System Library, need not be
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+ works, such as semiconductor masks.

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- of works, such as semiconductor masks.
-
-   "The Program" refers to any copyrightable work licensed under this
+ "The Program" refers to any copyrightable work licensed under this
  License.  Each licensee is addressed as "you".  "Licensees" and
  "recipients" may be individuals or organizations.

-   To "modify" a work means to copy from or adapt all or part of the work
+ To "modify" a work means to copy from or adapt all or part of the work
  in a fashion requiring copyright permission, other than the making of an
  exact copy.  The resulting work is called a "modified version" of the
  earlier work or a work "based on" the earlier work.

-   A "covered work" means either the unmodified Program or a work based
+ A "covered work" means either the unmodified Program or a work based
  on the Program.

-   To "propagate" a work means to do anything with it that, without
+ To "propagate" a work means to do anything with it that, without
  permission, would make you directly or secondarily liable for
  infringement under applicable copyright law, except executing it on a
  computer or modifying a private copy.  Propagation includes copying,
  distribution (with or without modification), making available to the
  public, and in some countries other activities as well.

-   To "convey" a work means any kind of propagation that enables other
+ To "convey" a work means any kind of propagation that enables other
  parties to make or receive copies.  Mere interaction with a user through
  a computer network, with no transfer of a copy, is not conveying.

-   An interactive user interface displays "Appropriate Legal Notices"
+ An interactive user interface displays "Appropriate Legal Notices"
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```
  to the extent that it includes a convenient and prominently visible
  feature that (1) displays an appropriate copyright notice, and (2)
  tells the user that there is no warranty for the work (except to the
  the interface presents a list of user commands or options, such as a
  menu, a prominent item in the list meets this criterion.

-   1. Source Code.
+ 1. Source Code.

-   The "source code" for a work means the preferred form of the work
+ The "source code" for a work means the preferred form of the work
  for making modifications to it.  "Object code" means any non-source
  form of a work.

-   A "Standard Interface" means an interface that either is an official
+ A "Standard Interface" means an interface that either is an official
  standard defined by a recognized standards body, or, in the case of
  interfaces specified for a particular programming language, one that
  is widely used among developers working in that language.

-   The "System Libraries" of an executable work include anything, other
+ The "System Libraries" of an executable work include anything, other
  than the work as a whole, that (a) is included in the normal form of
  packaging a Major Component, but which is not part of that Major
  Component, and (b) serves only to enable use of the work with that
  (if any) on which the executable work runs, or a compiler used to
  produce the work, or an object code interpreter used to run it.

-   The "Corresponding Source" for a work in object code form means all
+ The "Corresponding Source" for a work in object code form means all
  the source code needed to generate, install, and (for an executable
  work) run the object code and to modify the work, including scripts to
  control those activities.  However, it does not include the work's
  such as by intimate data communication or control flow between those
  subprograms and other parts of the work.

-   The Corresponding Source need not include anything that users
+ The Corresponding Source need not include anything that users
  can regenerate automatically from other parts of the Corresponding
  Source.

-   The Corresponding Source for a work in source code form is that
+ The Corresponding Source for a work in source code form is that
  same work.

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+ 2. Basic Permissions.

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+ All rights granted under this License are granted for the term of
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  content, constitutes a covered work.  This License acknowledges your
  rights of fair use or other equivalent, as provided by copyright law.

-   You may make, run and propagate covered works that you do not
+ You may make, run and propagate covered works that you do not
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  in force.  You may convey covered works to others for the sole purpose
  of having them make modifications exclusively for you, or provide you
  and control, on terms that prohibit them from making any copies of
  your copyrighted material outside their relationship with you.

-   Conveying under any other circumstances is permitted solely under
+ Conveying under any other circumstances is permitted solely under
  the conditions stated below.  Sublicensing is not allowed; section 10
  makes it unnecessary.

-   3. Protecting Users' Legal Rights From Anti-Circumvention Law.
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-   No covered work shall be deemed part of an effective technological
+ No covered work shall be deemed part of an effective technological
  measure under any applicable law fulfilling obligations under article
  11 of the WIPO copyright treaty adopted on 20 December 1996, or
  similar laws prohibiting or restricting circumvention of such
  measures.

-   When you convey a covered work, you waive any legal power to forbid
+ When you convey a covered work, you waive any legal power to forbid
  circumvention of technological measures to the extent such circumvention
  is effected by exercising rights under this License with respect to
  the covered work, and you disclaim any intention to limit operation or
  modification of the work as a means of enforcing, against the work's
  users, your or third parties' legal rights to forbid circumvention of
  technological measures.

-   4. Conveying Verbatim Copies.
+ 4. Conveying Verbatim Copies.

-   You may convey verbatim copies of the Program's source code as you
+ You may convey verbatim copies of the Program's source code as you
  receive it, in any medium, provided that you conspicuously and
  appropriately publish on each copy an appropriate copyright notice;
  keep intact all notices stating that this License and any
  non-permissive terms added in accord with section 7 apply to the code;
  keep intact all notices of the absence of any warranty; and give all
  recipients a copy of this License along with the Program.

-   You may charge any price or no price for each copy that you convey,
+ You may charge any price or no price for each copy that you convey,
  and you may offer support or warranty protection for a fee.

-   5. Conveying Modified Source Versions.
+ 5. Conveying Modified Source Versions.

-   You may convey a work based on the Program, or the modifications to
+ You may convey a work based on the Program, or the modifications to
  produce it from the Program, in the form of source code under the
  terms of section 4, provided that you also meet all of these conditions:

-     a) The work must carry prominent notices stating that you modified
-     it, and giving a relevant date.
+ a) The work must carry prominent notices stating that you modified
+ it, and giving a relevant date.

-     b) The work must carry prominent notices stating that it is
-     released under this License and any conditions added under section
-     7.  This requirement modifies the requirement in section 4 to
-     "keep intact all notices".
+ b) The work must carry prominent notices stating that it is
+ released under this License and any conditions added under section
+ 7.  This requirement modifies the requirement in section 4 to
+ "keep intact all notices".
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-     c) You must license the entire work, as a whole, under this
-     License to anyone who comes into possession of a copy.  This
-     License will therefore apply, along with any applicable section 7
-     additional terms, to the whole of the work, and all its parts,
-     regardless of how they are packaged.  This License gives no
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-     invalidate such permission if you have separately received it.
+ c) You must license the entire work, as a whole, under this
+ License to anyone who comes into possession of a copy.  This
+ License will therefore apply, along with any applicable section 7
+ additional terms, to the whole of the work, and all its parts,
+ regardless of how they are packaged.  This License gives no
+ permission to license the work in any other way, but it does not
+ invalidate such permission if you have separately received it.

-     d) If the work has interactive user interfaces, each must display
-     Appropriate Legal Notices; however, if the Program has interactive
-     interfaces that do not display Appropriate Legal Notices, your
-     work need not make them do so.
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+ Appropriate Legal Notices; however, if the Program has interactive
+ interfaces that do not display Appropriate Legal Notices, your
+ work need not make them do so.

-   A compilation of a covered work with other separate and independent
+ A compilation of a covered work with other separate and independent
  works, which are not by their nature extensions of the covered work,
  and which are not combined with it such as to form a larger program,
  in or on a volume of a storage or distribution medium, is called an
  in an aggregate does not cause this License to apply to the other
  parts of the aggregate.

-   6. Conveying Non-Source Forms.
+ 6. Conveying Non-Source Forms.

-   You may convey a covered work in object code form under the terms
+ You may convey a covered work in object code form under the terms
  of sections 4 and 5, provided that you also convey the
  machine-readable Corresponding Source under the terms of this License,
  in one of these ways:

-     a) Convey the object code in, or embodied in, a physical product
-     (including a physical distribution medium), accompanied by the
-     Corresponding Source fixed on a durable physical medium
-     customarily used for software interchange.
-
-     b) Convey the object code in, or embodied in, a physical product
-     (including a physical distribution medium), accompanied by a
-     written offer, valid for at least three years and valid for as
-     long as you offer spare parts or customer support for that product
-     model, to give anyone who possesses the object code either (1) a
-     copy of the Corresponding Source for all the software in the
-     product that is covered by this License, on a durable physical
-     medium customarily used for software interchange, for a price no
-     more than your reasonable cost of physically performing this
-     conveying of source, or (2) access to copy the
-     Corresponding Source from a network server at no charge.
-
-     c) Convey individual copies of the object code with a copy of the
-     written offer to provide the Corresponding Source.  This
-     alternative is allowed only occasionally and noncommercially, and
-     only if you received the object code with such an offer, in accord
-     with subsection 6b.
-
-     d) Convey the object code by offering access from a designated
-     place (gratis or for a charge), and offer equivalent access to the
-     Corresponding Source in the same way through the same place at no
-     further charge.  You need not require recipients to copy the
-     Corresponding Source along with the object code.  If the place to
-     copy the object code is a network server, the Corresponding Source
-     may be on a different server (operated by you or a third party)
-     that supports equivalent copying facilities, provided you maintain
-     clear directions next to the object code saying where to find the
-     Corresponding Source.  Regardless of what server hosts the
-     Corresponding Source, you remain obligated to ensure that it is
-     available for as long as needed to satisfy these requirements.
-
-     e) Convey the object code using peer-to-peer transmission, provided
-     you inform other peers where the object code and Corresponding
-     Source of the work are being offered to the general public at no
-     charge under subsection 6d.
-
-   A separable portion of the object code, whose source code is excluded
+ a) Convey the object code in, or embodied in, a physical product
+ (including a physical distribution medium), accompanied by the
+ Corresponding Source fixed on a durable physical medium
+ customarily used for software interchange.
+
+ b) Convey the object code in, or embodied in, a physical product
+ (including a physical distribution medium), accompanied by a
+ written offer, valid for at least three years and valid for as
+ long as you offer spare parts or customer support for that product
+ model, to give anyone who possesses the object code either (1) a
+ copy of the Corresponding Source for all the software in the
+ product that is covered by this License, on a durable physical
+ medium customarily used for software interchange, for a price no
+ more than your reasonable cost of physically performing this
+ conveying of source, or (2) access to copy the
+ Corresponding Source from a network server at no charge.
+
+ c) Convey individual copies of the object code with a copy of the
+ written offer to provide the Corresponding Source.  This
+ alternative is allowed only occasionally and noncommercially, and
+ only if you received the object code with such an offer, in accord
+ with subsection 6b.
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+ d) Convey the object code by offering access from a designated
+ place (gratis or for a charge), and offer equivalent access to the
+ Corresponding Source in the same way through the same place at no
+ further charge.  You need not require recipients to copy the
+ Corresponding Source along with the object code.  If the place to
+ copy the object code is a network server, the Corresponding Source
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+ Source of the work are being offered to the general public at no
+ charge under subsection 6d.
+
+ A separable portion of the object code, whose source code is excluded
```

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  from the Corresponding Source as a System Library, need not be
  included in conveying the object code work.

-   A "User Product" is either (1) a "consumer product", which means any
+ A "User Product" is either (1) a "consumer product", which means any
  tangible personal property which is normally used for personal, family,
  or household purposes, or (2) anything designed or sold for incorporation
  into a dwelling.  In determining whether a product is a consumer product,
  commercial, industrial or non-consumer uses, unless such uses represent
  the only significant mode of use of the product.

-   "Installation Information" for a User Product means any methods,
+ "Installation Information" for a User Product means any methods,
  procedures, authorization keys, or other information required to install
  and execute modified versions of a covered work in that User Product from
  a modified version of its Corresponding Source.  The information must
  suffice to ensure that the continued functioning of the modified object
  code is in no case prevented or interfered with solely because
  modification has been made.

-   If you convey an object code work under this section in, or with, or
+ If you convey an object code work under this section in, or with, or
  specifically for use in, a User Product, and the conveying occurs as
  part of a transaction in which the right of possession and use of the
  User Product is transferred to the recipient in perpetuity or for a
  modified object code on the User Product (for example, the work has
  been installed in ROM).

-   The requirement to provide Installation Information does not include a
+ The requirement to provide Installation Information does not include a
  requirement to continue to provide support service, warranty, or updates
  for a work that has been modified or installed by the recipient, or for
  the User Product in which it has been modified or installed.  Access to a
  network may be denied when the modification itself materially and
  adversely affects the operation of the network or violates the rules and
  protocols for communication across the network.

-   Corresponding Source conveyed, and Installation Information provided,
+ Corresponding Source conveyed, and Installation Information provided,
  in accord with this section must be in a format that is publicly
  documented (and with an implementation available to the public in
  source code form), and must require no special password or key for
  unpacking, reading or copying.

-   7. Additional Terms.
+ 7. Additional Terms.

-   "Additional permissions" are terms that supplement the terms of this
+ "Additional permissions" are terms that supplement the terms of this
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-   When you convey a copy of a covered work, you may at your option
+ When you convey a copy of a covered work, you may at your option
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  removal in certain cases when you modify the work.)  You may place
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+ All other non-permissive additional terms are considered "further
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+
+ If you add terms to a covered work in accord with this section, you
  must place, in the relevant source files, a statement of the
  additional terms that apply to those files, or a notice indicating
  where to find the applicable terms.

-  Additional terms, permissive or non-permissive, may be stated in the
+ Additional terms, permissive or non-permissive, may be stated in the
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-  8. Termination.
+ 8. Termination.

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+ You may not propagate or modify a covered work except as expressly
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+ 10. Automatic Licensing of Downstream Recipients.

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  propagate that work, subject to this License.  You are not responsible
  for enforcing compliance by third parties with this License.
```

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-   An "entity transaction" is a transaction transferring control of an
+ An "entity transaction" is a transaction transferring control of an
  organization, or substantially all assets of one, or subdividing an
  organization, or merging organizations.  If propagation of a covered
  work results from an entity transaction, each party to that
  Corresponding Source of the work from the predecessor in interest, if
  the predecessor has it or can get it with reasonable efforts.
 
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+ 11. Patents.
 
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  party means to make such an agreement or commitment not to enforce a
  patent against the party.
 
-   If you convey a covered work, knowingly relying on a patent license,
+ If you convey a covered work, knowingly relying on a patent license,
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  publicly available network server or other readily accessible means,
  in a country, would infringe one or more identifiable patents in that
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-   If, pursuant to or in connection with a single transaction or
+ If, pursuant to or in connection with a single transaction or
  arrangement, you convey, or propagate by procuring conveyance of, a
  covered work, and grant a patent license to some of the parties
  receiving the covered work authorizing them to use, propagate, modify
  or convey a specific copy of the covered work, then the patent license
  you grant is automatically extended to all recipients of the covered
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```diff
524 507      work and works based on it.
525 508
526        -   A patent license is "discriminatory" if it does not include within
    509    + A patent license is "discriminatory" if it does not include within
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    528    + 12. No Surrender of Others' Freedom.
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    542    + Notwithstanding any other provision of this License, if you modify the
560 543      Program, your modified version must prominently offer all users
561 544      interacting with it remotely through a computer network (if your version
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569 552
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-   17. Interpretation of Sections 15 and 16.
+ 17. Interpretation of Sections 15 and 16.

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+ If the disclaimer of warranty and limitation of liability provided
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+ To do so, attach the following notices to the program.  It is safest
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+ If your software can interact with users remotely through a computer
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  interface could display a "Source" link that leads users to an archive
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  solutions will be better for different programs; see section 13 for the
  specific requirements.
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+ A secondary benefit of defending all users' freedom is that
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+ The GNU Affero General Public License is designed specifically to
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-   0. Definitions.
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+ "Copyright" also means copyright-like laws that apply to other kinds of
+ works, such as semiconductor masks.
 
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-   A "covered work" means either the unmodified Program or a work based
+ A "covered work" means either the unmodified Program or a work based
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+ An interactive user interface displays "Appropriate Legal Notices"
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-   1. Source Code.
+ 1. Source Code.
 
-   The "source code" for a work means the preferred form of the work
+ The "source code" for a work means the preferred form of the work
  for making modifications to it.  "Object code" means any non-source
  form of a work.
 
-   A "Standard Interface" means an interface that either is an official
+ A "Standard Interface" means an interface that either is an official
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+ The "System Libraries" of an executable work include anything, other
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  (if any) on which the executable work runs, or a compiler used to
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```

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-  The "Corresponding Source" for a work in object code form means all
+ The "Corresponding Source" for a work in object code form means all
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+ The Corresponding Source need not include anything that users
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+ 4. Conveying Verbatim Copies.

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+ 5. Conveying Modified Source Versions.

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+ a) The work must carry prominent notices stating that you modified
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+6. Conveying Non-Source Forms.
 
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-    Corresponding Source.  Regardless of what server hosts the
-    Corresponding Source, you remain obligated to ensure that it is
-    available for as long as needed to satisfy these requirements.
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-    e) Convey the object code using peer-to-peer transmission, provided
-    you inform other peers where the object code and Corresponding
-    Source of the work are being offered to the general public at no
-    charge under subsection 6d.
-
-  A separable portion of the object code, whose source code is excluded
+a) Convey the object code in, or embodied in, a physical product
+(including a physical distribution medium), accompanied by the
+Corresponding Source fixed on a durable physical medium
+customarily used for software interchange.
+
+b) Convey the object code in, or embodied in, a physical product
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+ (including a physical distribution medium), accompanied by a
+ written offer, valid for at least three years and valid for as
+ long as you offer spare parts or customer support for that product
+ model, to give anyone who possesses the object code either (1) a
+ copy of the Corresponding Source for all the software in the
+ product that is covered by this License, on a durable physical
+ medium customarily used for software interchange, for a price no
+ more than your reasonable cost of physically performing this
+ conveying of source, or (2) access to copy the
+ Corresponding Source from a network server at no charge.
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+ c) Convey individual copies of the object code with a copy of the
+ written offer to provide the Corresponding Source.  This
+ alternative is allowed only occasionally and noncommercially, and
+ only if you received the object code with such an offer, in accord
+ with subsection 6b.
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+ d) Convey the object code by offering access from a designated
+ place (gratis or for a charge), and offer equivalent access to the
+ Corresponding Source in the same way through the same place at no
+ further charge.  You need not require recipients to copy the
+ Corresponding Source along with the object code.  If the place to
+ copy the object code is a network server, the Corresponding Source
+ may be on a different server (operated by you or a third party)
+ that supports equivalent copying facilities, provided you maintain
+ clear directions next to the object code saying where to find the
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+ available for as long as needed to satisfy these requirements.
+
+ e) Convey the object code using peer-to-peer transmission, provided
+ you inform other peers where the object code and Corresponding
+ Source of the work are being offered to the general public at no
+ charge under subsection 6d.
+
+ A separable portion of the object code, whose source code is excluded
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-   A "User Product" is either (1) a "consumer product", which means any
+ A "User Product" is either (1) a "consumer product", which means any
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+  7. Additional Terms.

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+ You may convey a work based on the Program, or the modifications to
  produce it from the Program, in the form of source code under the
  terms of section 4, provided that you also meet all of these conditions:

-     a) The work must carry prominent notices stating that you modified
-     it, and giving a relevant date.
+ a) The work must carry prominent notices stating that you modified
+ it, and giving a relevant date.
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-     b) The work must carry prominent notices stating that it is
-     released under this License and any conditions added under section
-     7.  This requirement modifies the requirement in section 4 to
-     "keep intact all notices".
+ b) The work must carry prominent notices stating that it is
+ released under this License and any conditions added under section
+ 7.  This requirement modifies the requirement in section 4 to
+ "keep intact all notices".

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-     License will therefore apply, along with any applicable section 7
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-     d) If the work has interactive user interfaces, each must display
-     Appropriate Legal Notices; however, if the Program has interactive
-     interfaces that do not display Appropriate Legal Notices, your
-     work need not make them do so.
+ d) If the work has interactive user interfaces, each must display
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-   A compilation of a covered work with other separate and independent
+ A compilation of a covered work with other separate and independent
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  and which are not combined with it such as to form a larger program,
  in or on a volume of a storage or distribution medium, is called an
  in an aggregate does not cause this License to apply to the other
  parts of the aggregate.

-   6. Conveying Non-Source Forms.
+ 6. Conveying Non-Source Forms.

-   You may convey a covered work in object code form under the terms
+ You may convey a covered work in object code form under the terms
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  machine-readable Corresponding Source under the terms of this License,
  in one of these ways:

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-     (including a physical distribution medium), accompanied by the
-     Corresponding Source fixed on a durable physical medium
-     customarily used for software interchange.
-
-     b) Convey the object code in, or embodied in, a physical product
-     (including a physical distribution medium), accompanied by a
-     written offer, valid for at least three years and valid for as
-     long as you offer spare parts or customer support for that product
-     model, to give anyone who possesses the object code either (1) a
-     copy of the Corresponding Source for all the software in the
-     product that is covered by this License, on a durable physical
-     medium customarily used for software interchange, for a price no
-     more than your reasonable cost of physically performing this
-     conveying of source, or (2) access to copy the
-     Corresponding Source from a network server at no charge.
-
-     c) Convey individual copies of the object code with a copy of the
-     written offer to provide the Corresponding Source.  This
-     alternative is allowed only occasionally and noncommercially, and
-     only if you received the object code with such an offer, in accord
-     with subsection 6b.
-
-     d) Convey the object code by offering access from a designated
-     place (gratis or for a charge), and offer equivalent access to the
-     Corresponding Source in the same way through the same place at no
-     further charge.  You need not require recipients to copy the
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-     copy the object code is a network server, the Corresponding Source
-     may be on a different server (operated by you or a third party)
-     that supports equivalent copying facilities, provided you maintain
-     clear directions next to the object code saying where to find the
-     Corresponding Source.  Regardless of what server hosts the
-     Corresponding Source, you remain obligated to ensure that it is
-     available for as long as needed to satisfy these requirements.
-
-     e) Convey the object code using peer-to-peer transmission, provided
-     you inform other peers where the object code and Corresponding
-     Source of the work are being offered to the general public at no
-     charge under subsection 6d.
-
-   A separable portion of the object code, whose source code is excluded
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+ (including a physical distribution medium), accompanied by the
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+ b) Convey the object code in, or embodied in, a physical product
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+ written offer, valid for at least three years and valid for as
+ long as you offer spare parts or customer support for that product
+ model, to give anyone who possesses the object code either (1) a
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+ more than your reasonable cost of physically performing this
+ conveying of source, or (2) access to copy the
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+ c) Convey individual copies of the object code with a copy of the
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+ only if you received the object code with such an offer, in accord
+ with subsection 6b.
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+ d) Convey the object code by offering access from a designated
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+ Corresponding Source in the same way through the same place at no
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+ may be on a different server (operated by you or a third party)
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+ Corresponding Source, you remain obligated to ensure that it is
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+ e) Convey the object code using peer-to-peer transmission, provided
+ you inform other peers where the object code and Corresponding
+ Source of the work are being offered to the general public at no
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+ A separable portion of the object code, whose source code is excluded
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+ A "User Product" is either (1) a "consumer product", which means any
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+ "Installation Information" for a User Product means any methods,
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+ Corresponding Source conveyed, and Installation Information provided,
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+   Version 3, 19 November 2007

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-                             Preamble
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- for software and other kinds of works, specifically designed to ensure
+ The GNU Affero General Public License is a free, copyleft license for
+ software and other kinds of works, specifically designed to ensure
  cooperation with the community in the case of network server software.

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-   A secondary benefit of defending all users' freedom is that
+ A secondary benefit of defending all users' freedom is that
  improvements made in alternate versions of the program, if they
  receive widespread use, become available for other developers to
  incorporate.  Many developers of free software are heartened and
  letting the public access it on a server without ever releasing its
  source code to the public.

-   The GNU Affero General Public License is designed specifically to
+ The GNU Affero General Public License is designed specifically to
  ensure that, in such cases, the modified source code becomes available
  to the community.  It requires the operator of a network server to
  provide the source code of the modified version running there to the
  users of that server.  Therefore, public use of a modified version, on
  a publicly accessible server, gives the public access to the source
  code of the modified version.

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+ TERMS AND CONDITIONS

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+ To "modify" a work means to copy from or adapt all or part of the work
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  earlier work or a work "based on" the earlier work.

-  A "covered work" means either the unmodified Program or a work based
+ A "covered work" means either the unmodified Program or a work based
  on the Program.

-  To "propagate" a work means to do anything with it that, without
+ To "propagate" a work means to do anything with it that, without
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+ To "convey" a work means any kind of propagation that enables other
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+ An interactive user interface displays "Appropriate Legal Notices"
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  the interface presents a list of user commands or options, such as a
  menu, a prominent item in the list meets this criterion.

-  1. Source Code.
+ 1. Source Code.

-  The "source code" for a work means the preferred form of the work
+ The "source code" for a work means the preferred form of the work
  for making modifications to it.  "Object code" means any non-source
  form of a work.

-  A "Standard Interface" means an interface that either is an official
+ A "Standard Interface" means an interface that either is an official
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+ The "System Libraries" of an executable work include anything, other
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  Component, and (b) serves only to enable use of the work with that
  (if any) on which the executable work runs, or a compiler used to
  produce the work, or an object code interpreter used to run it.

-  The "Corresponding Source" for a work in object code form means all
+ The "Corresponding Source" for a work in object code form means all
  the source code needed to generate, install, and (for an executable
  work) run the object code and to modify the work, including scripts to
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  such as by intimate data communication or control flow between those
  subprograms and other parts of the work.
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-   The Corresponding Source need not include anything that users
+ The Corresponding Source need not include anything that users
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+ The Corresponding Source for a work in source code form is that
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+ 4. Conveying Verbatim Copies.

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+ You may charge any price or no price for each copy that you convey,
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+ 5. Conveying Modified Source Versions.

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+ You may convey a work based on the Program, or the modifications to
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  terms of section 4, provided that you also meet all of these conditions:

-     a) The work must carry prominent notices stating that you modified
-     it, and giving a relevant date.
+ a) The work must carry prominent notices stating that you modified
+ it, and giving a relevant date.

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-     released under this License and any conditions added under section
-     7.  This requirement modifies the requirement in section 4 to
-     "keep intact all notices".
+ b) The work must carry prominent notices stating that it is
+ released under this License and any conditions added under section
+ 7.  This requirement modifies the requirement in section 4 to
+ "keep intact all notices".

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-     Appropriate Legal Notices; however, if the Program has interactive
-     interfaces that do not display Appropriate Legal Notices, your
-     work need not make them do so.
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-   A compilation of a covered work with other separate and independent
+ A compilation of a covered work with other separate and independent
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  in an aggregate does not cause this License to apply to the other
  parts of the aggregate.

-   6. Conveying Non-Source Forms.
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-  You may convey a covered work in object code form under the terms
+ You may convey a covered work in object code form under the terms
 of sections 4 and 5, provided that you also convey the
 machine-readable Corresponding Source under the terms of this License,
 in one of these ways:
 
-    a) Convey the object code in, or embodied in, a physical product
-    (including a physical distribution medium), accompanied by the
-    Corresponding Source fixed on a durable physical medium
-    customarily used for software interchange.
-
-    b) Convey the object code in, or embodied in, a physical product
-    (including a physical distribution medium), accompanied by a
-    written offer, valid for at least three years and valid for as
-    long as you offer spare parts or customer support for that product
-    model, to give anyone who possesses the object code either (1) a
-    copy of the Corresponding Source for all the software in the
-    product that is covered by this License, on a durable physical
-    medium customarily used for software interchange, for a price no
-    more than your reasonable cost of physically performing this
-    conveying of source, or (2) access to copy the
-    Corresponding Source from a network server at no charge.
-
-    c) Convey individual copies of the object code with a copy of the
-    written offer to provide the Corresponding Source.  This
-    alternative is allowed only occasionally and noncommercially, and
-    only if you received the object code with such an offer, in accord
-    with subsection 6b.
-
-    d) Convey the object code by offering access from a designated
-    place (gratis or for a charge), and offer equivalent access to the
-    Corresponding Source in the same way through the same place at no
-    further charge.  You need not require recipients to copy the
-    Corresponding Source along with the object code.  If the place to
-    copy the object code is a network server, the Corresponding Source
-    may be on a different server (operated by you or a third party)
-    that supports equivalent copying facilities, provided you maintain
-    clear directions next to the object code saying where to find the
-    Corresponding Source.  Regardless of what server hosts the
-    Corresponding Source, you remain obligated to ensure that it is
-    available for as long as needed to satisfy these requirements.
-
-    e) Convey the object code using peer-to-peer transmission, provided
-    you inform other peers where the object code and Corresponding
-    Source of the work are being offered to the general public at no
-    charge under subsection 6d.
-
-  A separable portion of the object code, whose source code is excluded
+ a) Convey the object code in, or embodied in, a physical product
+ (including a physical distribution medium), accompanied by the
+ Corresponding Source fixed on a durable physical medium
+ customarily used for software interchange.
+
+ b) Convey the object code in, or embodied in, a physical product
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+ model, to give anyone who possesses the object code either (1) a
+ copy of the Corresponding Source for all the software in the
+ product that is covered by this License, on a durable physical
+ medium customarily used for software interchange, for a price no
+ more than your reasonable cost of physically performing this
+ conveying of source, or (2) access to copy the
+ Corresponding Source from a network server at no charge.
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+ Corresponding Source in the same way through the same place at no
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+ you inform other peers where the object code and Corresponding
+ Source of the work are being offered to the general public at no
+ charge under subsection 6d.
+
+ A separable portion of the object code, whose source code is excluded
  from the Corresponding Source as a System Library, need not be
  included in conveying the object code work.

- A "User Product" is either (1) a "consumer product", which means any
+ A "User Product" is either (1) a "consumer product", which means any
  tangible personal property which is normally used for personal, family,
  or household purposes, or (2) anything designed or sold for incorporation
  into a dwelling.  In determining whether a product is a consumer product,
  commercial, industrial or non-consumer uses, unless such uses represent
  the only significant mode of use of the product.

- "Installation Information" for a User Product means any methods,
+ "Installation Information" for a User Product means any methods,
  procedures, authorization keys, or other information required to install
  and execute modified versions of a covered work in that User Product from
  a modified version of its Corresponding Source.  The information must
  suffice to ensure that the continued functioning of the modified object
  code is in no case prevented or interfered with solely because
  modification has been made.

- If you convey an object code work under this section in, or with, or
+ If you convey an object code work under this section in, or with, or
  specifically for use in, a User Product, and the conveying occurs as
  part of a transaction in which the right of possession and use of the
  User Product is transferred to the recipient in perpetuity or for a
  modified object code on the User Product (for example, the work has
  been installed in ROM).

- The requirement to provide Installation Information does not include a
+ The requirement to provide Installation Information does not include a
  requirement to continue to provide support service, warranty, or updates
  for a work that has been modified or installed by the recipient, or for
  the User Product in which it has been modified or installed.  Access to a
  network may be denied when the modification itself materially and
  adversely affects the operation of the network or violates the rules and
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   protocols for communication across the network.

-   Corresponding Source conveyed, and Installation Information provided,
+ Corresponding Source conveyed, and Installation Information provided,
  in accord with this section must be in a format that is publicly
  documented (and with an implementation available to the public in
  source code form), and must require no special password or key for
  unpacking, reading or copying.

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+ 4. Conveying Verbatim Copies.

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+ You may charge any price or no price for each copy that you convey,
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+ 5. Conveying Modified Source Versions.

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+ You may convey a work based on the Program, or the modifications to
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-     it, and giving a relevant date.
+ a) The work must carry prominent notices stating that you modified
+ it, and giving a relevant date.

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-     released under this License and any conditions added under section
-     7.  This requirement modifies the requirement in section 4 to
-     "keep intact all notices".
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+ released under this License and any conditions added under section
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-     Appropriate Legal Notices; however, if the Program has interactive
-     interfaces that do not display Appropriate Legal Notices, your
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-   6. Conveying Non-Source Forms.
+ 6. Conveying Non-Source Forms.

-   You may convey a covered work in object code form under the terms
+ You may convey a covered work in object code form under the terms
  of sections 4 and 5, provided that you also convey the
  machine-readable Corresponding Source under the terms of this License,
  in one of these ways:

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-     (including a physical distribution medium), accompanied by the
-     Corresponding Source fixed on a durable physical medium
-     customarily used for software interchange.
-
-     b) Convey the object code in, or embodied in, a physical product
-     (including a physical distribution medium), accompanied by a
-     written offer, valid for at least three years and valid for as
-     long as you offer spare parts or customer support for that product
-     model, to give anyone who possesses the object code either (1) a
-     copy of the Corresponding Source for all the software in the
-     product that is covered by this License, on a durable physical
-     medium customarily used for software interchange, for a price no
-     more than your reasonable cost of physically performing this
-     conveying of source, or (2) access to copy the
-     Corresponding Source from a network server at no charge.
-
-     c) Convey individual copies of the object code with a copy of the
-     written offer to provide the Corresponding Source.  This
-     alternative is allowed only occasionally and noncommercially, and
-     only if you received the object code with such an offer, in accord
-     with subsection 6b.
-
-     d) Convey the object code by offering access from a designated
-     place (gratis or for a charge), and offer equivalent access to the
-     Corresponding Source in the same way through the same place at no
-     further charge.  You need not require recipients to copy the
-     Corresponding Source along with the object code.  If the place to
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-     may be on a different server (operated by you or a third party)
-     that supports equivalent copying facilities, provided you maintain
-     clear directions next to the object code saying where to find the
-     Corresponding Source.  Regardless of what server hosts the
-     Corresponding Source, you remain obligated to ensure that it is
-     available for as long as needed to satisfy these requirements.
-
-     e) Convey the object code using peer-to-peer transmission, provided
-     you inform other peers where the object code and Corresponding
-     Source of the work are being offered to the general public at no
-     charge under subsection 6d.
-
-   A separable portion of the object code, whose source code is excluded
+ a) Convey the object code in, or embodied in, a physical product
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+ Corresponding Source fixed on a durable physical medium
+ customarily used for software interchange.
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+ b) Convey the object code in, or embodied in, a physical product
+ (including a physical distribution medium), accompanied by a
+ written offer, valid for at least three years and valid for as
+ long as you offer spare parts or customer support for that product
+ model, to give anyone who possesses the object code either (1) a
+ copy of the Corresponding Source for all the software in the
+ product that is covered by this License, on a durable physical
+ medium customarily used for software interchange, for a price no
+ more than your reasonable cost of physically performing this
+ conveying of source, or (2) access to copy the
+ Corresponding Source from a network server at no charge.
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+ c) Convey individual copies of the object code with a copy of the
+ written offer to provide the Corresponding Source.  This
+ alternative is allowed only occasionally and noncommercially, and
+ only if you received the object code with such an offer, in accord
+ with subsection 6b.
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+ d) Convey the object code by offering access from a designated
+ place (gratis or for a charge), and offer equivalent access to the
+ Corresponding Source in the same way through the same place at no
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+ Corresponding Source along with the object code.  If the place to
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+ e) Convey the object code using peer-to-peer transmission, provided
+ you inform other peers where the object code and Corresponding
+ Source of the work are being offered to the general public at no
+ charge under subsection 6d.
+
+ A separable portion of the object code, whose source code is excluded
  from the Corresponding Source as a System Library, need not be
  included in conveying the object code work.

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+ A "User Product" is either (1) a "consumer product", which means any
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  commercial, industrial or non-consumer uses, unless such uses represent
  the only significant mode of use of the product.

-   "Installation Information" for a User Product means any methods,
+ "Installation Information" for a User Product means any methods,
  procedures, authorization keys, or other information required to install
  and execute modified versions of a covered work in that User Product from
  a modified version of its Corresponding Source.  The information must
  suffice to ensure that the continued functioning of the modified object
  code is in no case prevented or interfered with solely because
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-   If you convey an object code work under this section in, or with, or
+ If you convey an object code work under this section in, or with, or
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+ The requirement to provide Installation Information does not include a
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+ Corresponding Source conveyed, and Installation Information provided,
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+ If your software can interact with users remotely through a computer
  network, you should also make sure that it provides a way for users to
  get its source.  For example, if your program is a web application, its
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  of the code.  There are many ways you could offer source, and different
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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

NEO4J, INC., a Delaware corporation, and NEO4J SWEDEN AB, a Swedish corporation, Plaintiffs, v. PURETHINK LLC, a Delaware limited liability company, IGOV INC., a Virginia corporation, and JOHN MARK SUHY, an individual, Defendants.	CASE NO. 5:18-cv-07182-EJD **THIRD AMENDED COMPLAINT FOR: (1) TRADEMARK INFRINGEMENT; (2) FALSE DESIGNATION OF ORIGIN; (3) FALSE ADVERTISING; (4) DEFAMATION; (5) FEDERAL AND STATE UNFAIR COMPETITION; (6) BREACH OF CONTRACT; (7) INVASION OF PRIVACY; AND (8) VIOLATIONS OF THE DMCA** **DEMAND FOR JURY TRIAL**

Plaintiffs Neo4j, Inc. (“Neo4j USA”) and Neo4j Sweden AB (“Neo4j Sweden”) hereby bring the present action against Defendants PureThink LLC, iGov Inc., and John Mark Suhy (collectively “Defendants”) and alleges as follows:

NATURE OF ACTION

1. This is an action for damages and injunctive relief arising out of Defendants’ infringement of Neo4j USA’s registered trademarks, acts amounting to unfair competition, breaches of contract, invasion of privacy and defamation, as well as Defendants’ violations of the Digital Millennium Copyright Act.

THE PARTIES

2. Neo4j USA is a corporation organized under the laws of the State of Delaware with its principal place of business in San Mateo, California. Neo4j USA originally incorporated as Neo Technology, Inc. and then changed its name to Neo4j, Inc. in or about July 2017. Neo4j USA is the company behind the number one graph platform for connected data, marketed and sold under the trademark Neo4j®. The Neo4j® graph database platform helps organizations make sense of their data by revealing how people, processes and digital systems are interrelated. This connections-first approach powers intelligent applications tackling challenges such as artificial intelligence, fraud detection, real-time recommendations and master data.

3. Neo4j USA boasts the world's largest dedicated investment in native graph technology. It has more than 300 commercial customers, including global enterprises like Comcast, Cisco, eBay, and UBS use the Neo4j® graph database platform to create a competitive advantage from connections in their data. Neo4j USA also does substantial business with government agencies, including a number of agencies within the United States Government.

4. Neo4j Sweden is a Swedish corporation, having its principal place of business at Nordenskiöldsgatan 24, 6th Floor, 211 19 Malmö, Sweden, and is a wholly owned subsidiary of Neo4j USA. Neo4j Sweden is the owner of all copyrights related to the Neo4j® graph database platform, including the source code, and has licensed said copyrights to Neo4j USA in connection with the making, use, creation of derivative works, sale, offer to sell, importation, performance, display, reproduction and distribution of the copyrighted material, and the sublicensing of such rights in the United States.

5. Defendant PureThink LLC ("PureThink") is a limited liability company organized under the laws of the State of Delaware with a principal place of business in Reston, Virginia. PureThink purports to be a software development company and was previously an authorized Neo4j® Solution Partner. PureThink is no longer an authorized Neo4j® Solution Partner and Plaintiffs are informed and believe that PureThink is currently a shell entity maintained by the other defendants and is not currently conducting or engaged in any meaningful business activities.

6. Plaintiffs are informed and believe, and based thereon allege, that Defendant iGov Inc. ("iGov") is a corporation organized under the laws of the Commonwealth of Virginia with a principal place of business in Reston, Virginia. Plaintiffs are informed and believe, and based thereon allege, that iGov is a software development and consulting company that focuses on large-scale graph and AI solutions, which competes with Neo4j® and its authorized Solution Partners. Plaintiffs are further informed and believe that iGov is the assignee and successor-in-interest to PureThink, or otherwise acquired substantially all of PureThink's assets sometime in mid-2017.

7. Plaintiffs are informed and believe, and based thereon allege, that iGov also does business as GraphStack, which also competes with Neo4j® and its authorized Solution Partners.

8. Plaintiffs are informed and believe, and based thereon allege, that Defendant John Mark Suhy ("Suhy") is an individual residing in Reston, Virginia. Plaintiffs are further informed and believe that Suhy is the sole member and manager of PureThink. Plaintiffs are also informed and believe that Suhy is the sole shareholder of iGov, as well as an officer and director of iGov.

ALTER EGO ALLEGATIONS

9. Plaintiffs are informed and believe, and based thereon allege, that at all times herein mentioned there existed a unity of interest and ownership between iGov and PureThink. Any individuality and separateness between iGov and PureThink ceased and/or never existed, and iGov is the alter ego of PureThink, in that, among other reasons, and that iGov was conceived, intended, and used by Suhy and PureThink as a device to avoid liability and that PureThink is so inadequately capitalized that, compared with the business done by iGov and the risk of loss attendant thereon, such capitalization was illusory and/or trifling.

10. Plaintiffs are informed and believe, and based thereon allege, that at all times herein mentioned that PureThink is a mere shell instrumentality maintained to protect iGov. It now carries on its business in the company name exactly as PureThink and Suhy had conducted it previous to formation of iGov and/or previous to them acquiring a controlling interest in iGov and/or previous to becoming promoters thereof, exercised complete control and dominance of the business done by PureThink and now iGov to such an extent that any individuality or

separateness of PureThink and iGov at all times herein mentioned did not and do not exist.

11. For example, PureThink and iGov originally shared the same principal place of business at 1902 Campus Commons Drive, Suite 101, Reston, VA 20191. Likewise, PureThink and iGov still share the same customer support number, 1-855-979-7771.

12. PureThink and iGov's websites are also virtually identical and contain much of the same verbiage, such as their core philosophies and results:

> To help you succeed, we believe in working closely and cooperatively with our clients. Our goal is to ensure everyone on the same page regarding project status, methods and tasks. Our approach is to develop software according to an Agile methodology which means we emphasize people and interaction rather than complicated processes and endless documentation.
>
> * * *
>
> Our mission is to bring the greatest value to our clients by leveraging our considerable depth of resources and experience. We align our approach to the specific business drivers of each business we work with whom we tailor solutions to best suit different cultural environments, industries, and market conditions. We focus on business strategy implementation, not business strategy development.

Compare https://purethink.com/about.html *and* https://igovsol.com/about.html.

13. Plaintiffs are informed and believe, and based thereon allege, that other components from PureThink's website were ported over to iGov's website.

14. Plaintiffs are informed and believe, and based thereon allege, that adherence to the fiction of the separate existence of iGov as an entity distinct from PureThink would permit an abuse of the privilege of formation and would sanction fraud and/or promote injustice, and that among other circumstances, Suhy and PureThink caused monetary and other assets to be withdrawn and/or transferred from PureThink without any consideration, or with insufficient consideration, to iGov, all for the purposes of avoiding liability and preventing attachment and execution by creditors, including Plaintiffs, thereby rendering PureThink insolvent and unable to fully perform its obligations; and at all times herein mentioned, was not so capitalized, solvent and unable to fully perform any obligations undertaken by as set further herein.

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JURISDICTION AND VENUE

15. The jurisdiction of this Court over the subject matter of this action is predicated, pursuant to 28 U.S.C. § 1331, on the fact that Plaintiffs present a civil action arising under the Federal Trademark Act (the "Lanham Act"), 15 U.S.C. § 1051 et seq., and the Digital Millennium Copyright Act (DMCA), 17 U.S.C. § 1201 et seq. The remainder of Plaintiffs' claims are subject to the jurisdiction of this Court, pursuant to 28 U.S.C. §§ 1338(b) and 1367, because the claims are joined with one or more substantial and related claims under the Lanham Act.

16. This action arises out of wrongful acts committed by Defendants in California and this District, which acts subject Defendants to the personal jurisdiction of this Court. Plaintiffs are informed and believe, and based thereon allege that Defendants specifically target consumers and derive substantial revenue within California and this District, and expect their actions to have consequences within California and this District. For all of these reasons, personal jurisdiction over Defendants exists.

17. Venue is proper in the Northern District of California pursuant to 28 U.S.C. § 1391 as Defendants engage in infringing activities, defamation and acts of unfair competition in this District. In addition, Defendants have on a continual basis committed the wrongful acts alleged below within this District, in business interactions purposefully elicited by Defendants with or directed to residents of the District, all of which has harmed and continues to harm Plaintiffs within this District.

18. At least one defendant, PureThink, entered into a Solution Partner Agreement with Neo4j USA ("the Partner Agreement"), which is subject to the claims asserted herein and contains a provision wherein it effectively agreed and consented to jurisdiction within California and specifically a court within the Northern District of California.

INTRADISTRICT ASSIGNMENT

19. Pursuant to Northern District Local Rule 3-2(c) and Northern District General Order 44, venue in this action is proper in any Courthouse in this District because this case is brought under the Lanham Act and involves intellectual property rights.

/ / /

THE NEO4J® BRAND

20. Plaintiffs' business was formed after its founders encountered performance problems with relational database management systems (RDMS). Plaintiffs then developed a graph database management system developed under the Neo4j® brand and quickly became the industry leader in graph database solutions and software.

21. In conjunction with Plaintiffs' business, Neo4j USA filed for and obtained several federally registered trademarks. Specifically, Neo4j USA is the owner of U.S. Trademark Registration No. 4,784,280 for the word mark "NEO4J" covering the following goods and services (the "NEO4J® Mark"):

- (IC 009) Computer programs for managing, storing, and accessing data from a database, analyzing data in computer databases for business purposes, processing in the nature of updating data in computer databases, and visualizing in the nature of creating graphs from data stored in databases; computer programs for storing, managing, and querying data from databases on computers, computer networks, and global computer networks.
- (IC 035) Consulting services and advice in the field of updating and maintenance of data in computer databases.
- (IC 041) Educational services, namely, conducting training classes, certification training, workshops, tutorial sessions, and online classes in the fields of designing computer databases and updating and maintenance of data in computer databases, and distributing course materials in connection therewith; providing training services in the fields of designing computer databases and updating and maintenance of data in computer databases, and distributing course materials in connection therewith.
- (IC 042) Providing a web site featuring technology that enables end users to store, manage, and query data from databases on computers, computer networks, and global computer networks; cloud computing featuring software for use in managing, storing, and accessing data from a database, analyzing

data in computer databases for business purposes, processing in the nature of updating data in computer databases, and visualizing in the nature of creating graphs from data stored in databases; Technical support services, namely, installation, administration, and troubleshooting of database applications; Computer services, namely, providing consultation services and advice in the fields of designing computer databases.

- (IC 045) Consulting services and advice in the field of maintaining the security and integrity of databases.

22. Plaintiffs first used the NEO4J® Mark in June 2006 and first used that mark in commerce in May 2007, and have continually used the NEO4J® Mark for the above goods and services at least as early as the filing date of the NEO4J® Mark. A true and correct copy of the NEO4J® Mark, as seen in U.S. Trademark Registration No. 4,784,280, is attached hereto as **Exhibit 1**.

23. Neo4j USA owns valid and subsisting federal statutory and common law rights in the NEO4J® Mark, and as a result of its considerable efforts and investment in the brand to identify its goods and services and Plaintiffs as their source, the NEO4J® Mark has become widely known and is closely identified with Plaintiffs and represents its substantial, valuable goodwill.

THE EVOLUTION OF PLAINTIFFS' LICENSING MODEL FOR NEO4J® GRAPH DATABASE PLATFORM SOFTWARE

24. Prior to November 2018, Plaintiffs' business model was to offer a free open source version of the Neo4j® graph database platform, its primary software offering, NEO4J® Community Edition ("Community Edition"), under the GNU General Public License version 3 ("GPLv3") license. This edition is limited in its feature set and offers no support. Users requiring additional features for more advanced commercial operation, together with support, licensed use of the Neo4j® graph database platform through NEO4J® Enterprise Edition ("NEO4J® EE") under commercial terms. NEO4J® EE is a full superset of Community Edition

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of the Neo4j® graph database platform, containing significant additional functionality intended for commercial use.

25. Plaintiffs originally offered NEO4J® EE under both a paid-for commercial license and the free GNU Affero General Public License, version 3 ("AGPLv3"). A commercial license to NEO4J® EE entitled the purchaser to use it in a proprietary setting with industry standard terms, receive support or professional services from Neo4j USA, and the right to receive software updates, which included feature updates, bug fixes and assistance. Purchasing a commercial license at a fair price supported the continued development and improvement of NEO4J® EE and the Neo4j® graph database platform, including the Community Edition software.

26. In May 2018, Plaintiffs released NEO4J® EE version 3.4, which they continued to offer under a proprietary commercial license. However, Neo4j Sweden replaced the AGPLv3 with a stricter license, which included the terms of the AGPLv3 with additional restrictions provided by the Commons Clause ("Neo4j Sweden Software License"). This new license, while allowing code to be publicly viewable and used within a certain limited scope of usage, is generally recognized in the software industry not to qualify as open source, as it prohibits all third-party resale and services activity. Neo4j Sweden licensed NEO4J® EE version 3.4 under the Neo4j Sweden Software License to prevent third parties, such as Defendants, from monetizing such software while not contributing back to the companies who are producers of the software.

27. In November 2018, Plaintiffs officially released version 3.5 of NEO4J® EE solely under a commercial license, while they continued to offer the Community Edition under an open source license. This meant that Plaintiffs were no longer publishing source code for NEO4J® EE under an open source license. This was done to simplify its licensing model, as well as prevent bad actors from willfully misrepresenting the Neo4j Sweden Software License and profiting by providing commercial support services in closed, proprietary projects.

28. All versions of Neo4j® graph platform software are subject to Neo4j USA's Trademark Policy found on its website, which states in relevant part:

/ / /

> Although some Neo4j projects may be available under free and open licenses, those licenses cover copyright only and do not include any express or implied right to use our trademarks. Neo4j does not allow third parties to use its trademarks without a written agreement or express permission. Thus, Neo4j projects that are available under open source licenses may be copied, modified, or sold by third parties, but they cannot be branded or marketed with Neo4j trademarks in the absence of a trademark license.
>
> While open-source licenses allow modification of copyrighted software and distribution in original or modified form, such distribution could be misleading if distributed under the same name. This could cause confusion among consumers of the software as to source. They may mistakenly believe they are receiving software that is produced or supported by Neo4j. This Policy describes the circumstances under which you may use our trademarks, regardless of the type of license you may have from Neo4j.
>
> * * *
>
> Any use of the Marks must be licensed and comply with these guidelines. Whenever you use one of the Marks, you must always do so in a way that does not mislead anyone, either directly or by omission, about exactly what they are getting and from whom. For example, you cannot say you are distributing the Neo4j® software when you're distributing a modified version of it, because people would be confused when they are not getting the same features and functionality they would get if they downloaded the software directly from us. You also cannot distribute Neo4j® software using the Marks if you do not have a license from us, because that would imply that your distribution comes from or is supported by Neo4j. You cannot use our Marks on your website in a way that suggests that your website is an official website or that we endorse your website, unless permitted in a written agreement with us.

A true and correct copy of Neo4j USA's Trademark Guidelines (https://neo4j.com/trademark-policy) is attached hereto as **Exhibit 2**.

NEO4J'S AGREEMENT WITH PURETHINK

29. On or about September 30, 2014, Neo4j USA and PureThink entered into the Partner Agreement. Under the Partner Agreement, PureThink agreed to provide first and second line support to end-users of NEO4J® EE software in exchange for annual partner program fees and shared revenue as specified in the Partner Agreement.

30. Under Section 4.1 of the Partner Agreement, Neo4j USA provided PureThink with a non-exclusive, non-transferable limited license during the term of that agreement to, inter alia, "use [Neo4j USA's] trademarks solely to market and promote the Products in accordance with the terms of [the Partner Agreement]." Section 4.1 also incorporated Neo4j's trademark

policies as additional limitations on Defendants' use of the NEO4J® mark and making representations about NEO4J® EE and NEO4J® Community Edition software products, which at the time provided in relevant part that:

> Neo Technology software, which is created and/or distributed by Neo Technology and thus properly bears the Trademarks, is the software in the exact binary form that it is distributed by Neo Technology, without modification of any kind. To the extent any authorized modifications are made to the software, such modified software should no longer bear the Trademarks. The public has a right to know when it is receiving a genuine Neo Technology product that is quality assured by Neo Technology.
>
> You must not use any Trademark in a web page title, titletag, metatag, or other manner with the intent or the likely effect of influencing search engine rankings or results listings.

31. In or about March 2017, Plaintiffs learned that Defendants had encouraged at least one government agency to use "free open source NEO4J® EE under the AGPL" and pay PureThink for consulting and support instead of obtaining a commercial license. Plaintiffs also learned that Defendants used a server that belonged to another company to compile that open source software in an attempt to avoid the restrictions imposed by the Partner Agreement on PureThink. Defendants even admitted that they intended to form a new company that would market and offer consulting services for users of NEO4J® open source products.

32. Defendants' words and actions constituted a material breach of the express terms of the Partner Agreement that precluded PureThink from modifying open source Neo4j software and providing related support services. The fact that PureThink led this government agency to believe that it was getting an authentic version of NEO4J® EE was also a breach of the express terms of Section 4.1. When PureThink recompiled NEO4J® EE, it was actually creating software that is not of the same quality as if were compiled by Neo4j, which uses tens of thousands of integrated test scripts. Defendants' introduced their own modifications in recompiling the software, thereby misleading that government agency and potentially damaging the NEO4J® Mark and associated goodwill.

33. As a result, on or about May 30, 2017, Neo4j USA provided PureThink with a formal notification of PureThink's material breaches of the Partner Agreement and a demand to

cure such breaches pursuant to Section 7.2 thereof. PureThink's material breaches included compiling, using and distributing NEO4J® open source products, and performing services on, as well as continuing to perform services on, NEO4J® open source products in violation of Section 4.3 of the Partner Agreement. A true and correct copy of this May 30, 2017 notice is attached hereto as **Exhibit 3**.

34. On or about June 30, 2017, Neo4j USA provided PureThink with 90-days written notice pursuant to Sections 7.1 and 7.2 of its election to terminate the Partner Agreement and not to renew the Partner Agreement for a renewal term that would commence on September 30, 2017.

35. On or about July 11, 2017, Neo4j USA provided PureThink with written notice that the Partner Agreement was terminated pursuant to Section 7.2 thereof due to PureThink's failure to timely cure the material breaches set forth in the May 30, 2017 letter ("Breach Notice"). A true and correct copy of this letter is attached hereto as **Exhibit 4**.

36. Neo4j USA also reminded PureThink that several provisions in the Partner Agreement survived termination pursuant to Section 7.4 thereof. This includes, Section 7.3, which provides that upon such termination

> all rights and licenses of Partner hereunder will terminate and Partner shall cease all communications with End Users regarding the Products; and (b) each party … will cease using any trademarks, service marks and other designations of the other party….

37. Section 10 also survived termination and provides that "either party may assign this Agreement without the other party's consent to a parent or subsidiary of such party or in the case of a merger or sale of all or substantially all of its assets or stock."

38. In light of these continuing obligations, Neo4j USA provided notice that it was terminating PureThink's rights and licenses under the Partner Agreement. Neo4j USA demanded that PureThink "cease using [Neo4j USA's] trademarks, service marks, and other designations… and remove from PureThink's website(s) and marketing materials, [Neo4j USA's] trademarks and tradenames, including, without limitation, Neo4j." Neo4j USA further advised that PureThink had "no rights to use [Neo4j USA's] trademarks or tradenames and continued use of such trademarks and/or tradenames will constitute trademark infringement." *See* Exhibit 4.

DEFENDANTS’ MISINFORMATION CAMPAIGN REGARDING NEO4J’S SOFTWARE AND INFRINGEMENT OF THE NEO4J® MARK

39. Since Neo4j USA terminated the Partner Agreement, Defendants have engaged in acts that amount to the breach thereof and constitute violations of the Lanham Act. These acts include using the NEO4J® Mark in an improper manner that falsely suggests the Neo4j USA’s authorization and/or sponsorship of Defendants’ products and services.

40. Plaintiffs are informed and believed, and based thereon allege that Suhy incorporated iGov on or about June 23, 2017 in response to the May 30th notice of breach, and in anticipation of Neo4j USA’s termination of the Partner Agreement, and to avoid the aforementioned continuing, agreed-upon restrictions placed on PureThink thereunder and the potential liability for breaching such restrictions.

41. As of November 2017, iGov’s website admitted this was Defendants’ intent:

> PureThink, the company who created, managed and sold Neo4j Government Edition to all US Federal agencies has ceased their partnership with Neo Technology and Neo4j Government Edition has been retired.
>
> The principle behind PureThink and the Government Package has created a new corporate entity called iGov Inc, which is not a Neo4j Solution Partner. Because iGov Inc is not a solution partner, it can offer packages at great cost savings to US Government Agencies as it has no restrictions on working with Neo4j Enterprise open source licenses!
>
> iGov Inc and the new Government Package for Neo4j allows agencies to spend their money on developing innovative solutions around Neo4j, not paying for unnecessary production support before they even have a solution built that could be in production.

A true and correct copy of this archived webpage is attached hereto as **Exhibit 5**.

42. However, Plaintiffs are informed and believed, and based thereon alleges that PureThink assigned the Partner Agreement as part of the transfer and/or sale of substantially all of its assets to iGov in conjunction with Suhy’s incorporation of iGov. Alternatively, iGov assumed PureThink’s obligations under the Partner Agreement as its alter ego. As a result, iGov became subject to the aforementioned contractual restrictions relating to the use of the NEO4J® Mark and any resulting liability for the breach of such provisions in the Partner Agreement.

43. Defendants deceive prospective customers about the source of legitimate NEO4J® products by marketing software modified by Defendants as genuine a NEO4J® EE product via iGov's website. In particular, iGov's website claims that end-users did not need to purchase a commercial license for NEO4J® EE and obtain support from Neo4j or its Solution Partners. Rather, consumers can download iGov's unauthorized recompiled and modified version of NEO4J® EE (confusingly called "Neo4j Enterprise" by iGov) because in Defendants' unqualified legal opinion:

> Neo4j Enterprise can be used for free under the [AGPL]. [] There are no hidden or limiting terms beyond the standard [AGPL]. With Neo4j Enterprise under its free open source [AGPL] license, you simply don't get production email and phone support from Neo4j Inc. You can get a much cheaper support contract through iGov Inc for a fraction of the cost to support your production.

A true and correct copy of the aforementioned portions of iGov's website as they appeared on October 2, 2019 and July 27, 2020 are attached hereto as **Exhibit 6** and **Exhibit 7**.

44. Via iGov's website, Defendants published step-by-step instructions on how to circumvent the commercial license requirement for NEO4J® EE version 3.3, and the security features released as closed-source along with it. A true and correct copy of a blog published by Defendants containing these instructions is attached hereto as **Exhibit 8.**

45. When Neo4j released NEO4J® EE version 3.4 under the Neo4j Sweden Software License, Defendants continued to take advantage of the fact that most of this source code was available on GitHub (an open source software hosting site). This allowed them to copy the code while ignoring the restrictions imposed by the Neo4j Sweden Software License. Defendants also stripped out valid legal notices and license terms in NEO4J® source code files.

46. Defendants even went as far as to giving unsolicited answers to public posts on open community websites, such as www.stackoverflow.com, to spread further misinformation concerning the nature of Plaintiffs' licensing model and promote Defendants' own unauthorized hybrid offerings as identical to those originating from Neo4j. True and correct copies of examples of Defendants' posts on www.stackoverflow.com are attached hereto as **Exhibits 9-10**.

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47. Defendants also mislead consumers by claiming iGov's haphazard "Neo4j Enterprise" builds were equivalent to corresponding versions of NEO4J® EE, which Defendants knew were not. They also ignored that Section 4.1 of the Partner Agreement incorporated Neo4j USA's trademark policies and expressly prohibited Defendants from using the NEO4J® Mark in conjunction with recompiled and modified versions of NEO4J® EE.

48. Defendants further breached Section 4.1 of the Partner Agreement and violated the Lanham Act by including the link titled "Graph Packages" on the home page of iGov's website directs to the domain "https://igovsol.com/**neo4j**.html" (emphasis added). A true and correct copy of a screenshot iGov's homepage and a print out of this home page is attached hereto as **Exhibit 11** and **Exhibit 12**, respectively as they appeared in October 2019. The linked webpage at https://igovsol.com/**neo4j**.html as of October 2, 2019 is attached hereto as **Exhibit 13**.

49. Even after this was identified as infringing conduct in the first and second amended complaints filed in this Action, Defendants have steadfastly refused to abate such clear infringement of the NEO4J® Mark. A true and correct copy of a printout of iGov's homepage as of July 27, 2020 is attached hereto **Exhibit 14** and true and correct copies print outs of the linked webpage at https://igovsol.com/**neo4j**.html as of July 27, 2020 are attached hereto as **Exhibit 14 and Exhibit 15**.

50. Use of NEO4J® in the domain is unnecessary in this instance as any number of generic terms could have been used in place of NEO4J®. The use of NEO4J® as a part of a domain is for a purpose other than to reference Neo4j USA or its NEO4J®-branded products and services, and is in fact misleading to confuse the source or origin of its own offerings to those of Neo4j USA.

51. The top of iGov website at https://igovsol.com/neo4j.html prominently displays "Request Procurement Document Package" link that has "mailto:neo4j@igovsol.com" embedded in the html and creates an email addressed to "neo4j@igovsol.com" upon activation. *See* Exhibits 15-16. This link is a clear attempt by Defendants to mislead and confuse consumers that it is somehow an authorized source of NEO4J® software and/or support packages for that software.

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The "Downloads" page on iGov's website (https://igovsol.com/downloads.html) also provides the same contact email address, neo4j@igovsol.com. *See* Exhibits 6-7.

52. The usage of "neo4j" as an email alias constitutes an unauthorized use of the NEO4J® Mark, especially since more common descriptive or non-infringing terms such as "support@igovsol.com" and "sales@igovsol.com" should be readily available. In fact, iGov uses info@igovsol.com elsewhere on its website as an email address for potential customers to inquire about iGov's services and products.

53. iGov's website at https://igovsol.com/neo4j.html also contains false and misleading statements concerning the source of at least one NEO4J® software product: "Our team is the same team that created Neo4j Enterprise Government Edition. Further, we are the same team that sold and supported every US Federal Government procurement of Neo4j Enterprise Government Edition up until its retirement in July 2017." *See* Exhibits 13, 15-16. This statement is untrue because neither PureThink nor Suhy created an authorized NEO4J® software product entitled "Neo4j Enterprise Government Edition." Instead, Defendants are improperly rebranding Plaintiff's Neo4j Enterprise Edition without the authorization of Plaintiff

54. In a further attempt to mislead potential purchasers of Neo4j® software and services, iGov claims to have commercial pricing information for Neo4J® software and services on its website. *See* Exhibits 11-12, 14. iGov's maintenance of this pricing information and Suhy's repeated public references thereto is misleading to potential purchasers of Neo4j®-branded software because it is outdated and was obtained from a United States General Services Administration (GSA) pricing schedule from 2018 for NEO4J® EE and was subject to specific GSA terms and conditions. As a result, it does not accurately reflect Neo4j USA's current pricing structure for NEO4J® EE 4.0.x commercial licenses.

DEFENDANTS ENGAGE IN UNFAIR COMPETITION BY FALSELY PROMOTING THIRD PARTY SOFTWARE AS BEING IDENTICAL TO NEO4J® EE

55. Defendants remained undeterred in their efforts tarnish the NEO4J® brand and mislead consumers. In or about September 2018, Defendants began to promote a third-party

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graph database software, Open Native Graph DB (ONgDB), which they describe on iGov's website as "a non-restrictive fork of Neo4j, the world's leading Graph Database."

56. Defendants deceptively market ONgDB via iGov's website as the equivalent of Neo4j's current version of NEO4J® EE which is only available via a commercial license:

> ONgDB (AKA ONgDB Enterprise) 3.5.5 is Neo4j 3.5.5 Core + the enterprise features Neo4j Inc removed from the code base as of v3.5. All ONgDB and Neo4j Enterprise AGPL distributions can be used in production, in closed source projects, and with no limitations on # of cores or causal cluster instances. ONgDB is a drop in replacement for the Neo4j Community and Enterprise branded distributions.

See Exhibits 11-12; *see also* Exhibits 6-7, 14. Defendants further misleadingly state on iGov's website that "ONgDB Enterprise is free and open source. You have all the feature parity of Neo4j Enterprise commercial licenses, but without limits on usage, cluster instances, cores, etc." *See* Exhibit 13, 15-16. These and similar statements made by Defendants are misleading because ONgDB is not entirely based on open source version of the Neo4j® graph database platform as it continues to claim. Plaintiffs are informed and believe that Defendants knew full well that this was untrue since ONgDB contained additional closed-source components that required a commercial license from Neo4j Sweden AB or one of its affiliates.

57. iGov's website also contains a "Neo4j Enterprise Open Source Frequently Asked Questions" section, which deceives consumers into downloading "Neo4j Enterprise from our the Neo4j Inc. [sic] distribution site, or from our Amazon Gov Cloud mirror. **Download Neo4j Enterprise**" rather than download an official trial version of NEO4J® EE from Plaintiffs. *See* Exhibits 6-7. This link misleadingly redirects consumers to the top of iGov's download page with links to download ONgDB rather than to Neo4j USA's distribution site. *See id.* Thus, the use of "Neo4j Enterprise" and corresponding bold texted link is a clear attempt to mislead and confuse consumers regarding ONgDB being the purported equivalent of NEO4J® EE.

58. Plaintiffs are informed and believe, and based thereon allege that ONgDB is compiled from a patchwork of source code from older versions of official Neo4j® graph database platform software, and includes "glue" source code authored by Graph Foundation Inc. ("GFI")

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and Suhy, while mischaracterized by Defendants as identical to Plaintiffs' commercial-only releases of NEO4J® EE.

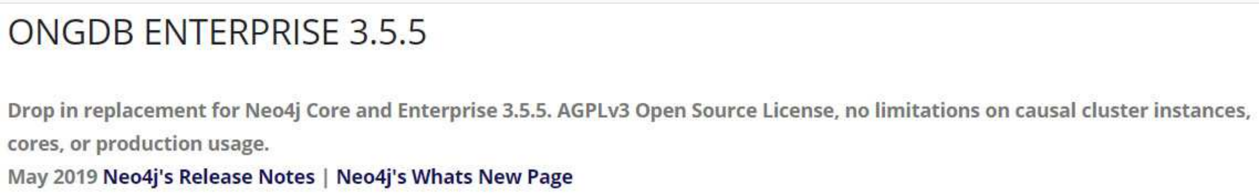
59. Defendants are thus promoting software that is not of the same quality as if were compiled by Plaintiffs. This is because ONgDB software was not entirely created using Plaintiffs' build infrastructure, which carries out tens of thousands of functional, performance, load, stress, and other tests to ensure quality and consistency. ONgDB also does not include critical fixes or other ongoing improvements made by Plaintiffs to NEO4J® EE. Further, because Graph Foundation and Suhy introduced their own modifications in recompiling ONgDB from various older iterations of NEO4J® software, this increases the potential for instability and compatibility issues with ONgDB. As a result, Defendants are misleading consumers into believing they are downloading an exact copy of Plaintiffs' current commercial-only releases of NEO4J® EE, which in actuality is an inferior product that is not a true "drop in" replacement.

60. Defendants promoted the misleadingly matched version numbers of ONgDB to the equivalent genuine NEO4J® EE version, while falsely maintaining ONgDB is identical to Neo4j USA's official offerings except offered under an open source license. The few statements by Defendants that disclaim a relationship or affiliation with Neo4j USA are undermined by their misinformation campaign to confuse customers as to the nature of its "forked" version of ONgDB, and failure to properly display and use proper trademark notices after the NEO4J® Mark, which they often display as "Neo4j," "Neo4j Enterprise," "neo4j project" and "Neo4j open source," furthering their attempts to detract the distinctiveness and significance of the NEO4J® Mark. Defendants' prominent display of the NEO4J® Mark in a repetitive, albeit inconsistent manner and without proper trademark usage and notices, the historical use of various iterations of "Neo4j" and interchangeable use of "Neo4j Enterprise" with "ONgDB Enterprise" on their website, without proper trademark notices, is a clear attempt to confuse customers as to the source, origin or affiliate of the parties' respective offerings.

61. The foregoing improper use of the NEO4J® Mark in conjunction with Defendants' promotion of unauthorized software violates Neo4j USA's Trademark Guidelines and Section 4.1 of the Partner Agreement. For example, these guidelines prohibit Defendants

from using the NEO4J® Mark in conjunction with modified open source software based on the Neo4j® graph database platform, including forks thereof, and suggesting endorsement by Neo4J USA. As a result, Defendants create consumer confusion that they and GFI are offering a current authorized version of NEO4J® EE or that ONgDB is otherwise endorsed by Neo4j USA.

62. Defendants do not provide their own release notes in relation to their promotion of ONgDB. Instead, Defendants use html links on iGov's website to redirect consumers to Neo4j USA's official release notes (https://neo4j.com/release-notes/neo4j-3-5-5/) and "What's New" page (https://neo4j.com/whats-new-in-neo4j/):



ONGDB ENTERPRISE 3.5.5

Drop in replacement for Neo4j Core and Enterprise 3.5.5. AGPLv3 Open Source License, no limitations on causal cluster instances, cores, or production usage.

May 2019 **Neo4j's Release Notes** | **Neo4j's Whats New Page**

See Exhibits 6-7. Thus, further promoting the false equivalency between ONgDB and the latest version of NEO4J® EE.

63. Defendants have used a second website, www.graphstack.io, to further promote the false equivalency between ONgDB and the latest version of NEO4J® EE. Defendants openly admitted that "iGov Inc is the company behind GraphStack" and that "iGov Inc offers production support packages for Neo4j / ONgDB Enterprise open source distributions for US government agencies." Defendants' GraphStack website contains misleading statements concerning ONgDB similar to those on iGov's website, including that ONgDB "is a non-restrictive fork of Neo4j" and "a drop in replacement for any Neo4j Enterprise (or community) distribution of the same version number." A true and correct copy of the homepage for GraphStack's website as it existed on October 2, 2019 is attached hereto as **Exhibit 13**.

64. GraphStack website improperly used html links to redirect consumers to Neo4j USA's official release notes (https://neo4j.com/release-notes/neo4j-3-5-5/) and "What's New" page (https://neo4j.com/whats-new-in-neo4j/) in conjunction with encouraging consumers to download ONgDB as an alleged "[d]rop in replacement for Neo4j Core and Enterprise 3.5.3." *See* Exhibit 17. As indicated on Neo4j USA's website (https://neo4j.com/docs/license/), the

foregoing and other documentation provided by Neo4j USA is copyrighted and subject to the Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International Public License, which expressly prohibits the use of such documents for commercial purposes, requires attribution to the copyright holder and notice of modifications.

65. The latest iteration of Defendants' GraphStack website is now touting that "ONgDB Enterprise 4.0.x (Neo4j Core 4.0.x + Enterprise Code) is coming soon" and that "ONgDB 4.0 adds in the enterprise features removed from Neo4j core - including multi-database, clustering, security, and more." Plaintiffs are informed and believe, and based thereon allege that Defendants are adding features to ONgDB found in NEO4J® EE 4.0 that are based on Plaintiffs' source code that has never been released under the AGPL or any other open source license, and as a result would render this statement false and misleading. A true and correct copy of the homepage for GraphStack's website as of July 15, 2020 is attached hereto as **Exhibit 18**.

66. Defendants impermissibly use the NEO4J® Mark as a hashtag ("#Neo4j") to represent ONgDB software and mislead consumers by retweeting posts on Twitter made by GFI. Use of the NEO4J® Mark as a hashtag ("#Neo4j") in this manner falsely implies sponsorship or endorsement by Neo4j USA as there are other descriptive or generic words that Defendants and GFI may use to describe ONgDB graph software without reference to the NEO4J® mark in this manner. Defendants and GFI use the NEO4J® Mark to refer to their own ONgDB software, rather than Plaintiffs' software, and use more of the NEO4J® Mark than is reasonably necessary to identify its product further exacerbating the confusion. A true and correct copy of examples of Defendants' republication of GFI's tweets improperly using "#Neo4j" is attached hereto as **Exhibit 19**.

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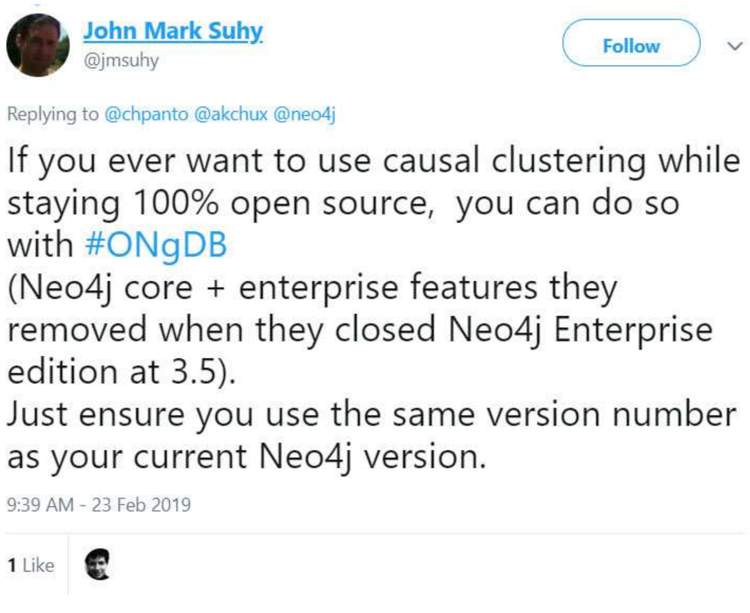
67. Defendants also use Twitter to spread misinformation concerning NEO4J® EE and unfairly complete with Plaintiffs. For example, Suhy has falsely suggested to potential customers that ONgDB contains the same source code as commercial-only licensed NEO4J® EE:



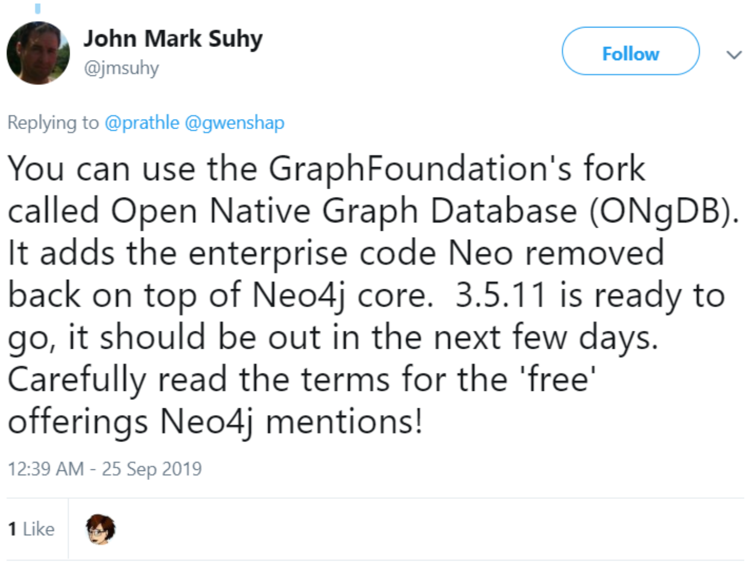
John Mark Suhy
@jmsuhy

Replying to @chpanto @akchux @neo4j

If you ever want to use causal clustering while staying 100% open source, you can do so with #ONgDB
(Neo4j core + enterprise features they removed when they closed Neo4j Enterprise edition at 3.5).
Just ensure you use the same version number as your current Neo4j version.

9:39 AM - 23 Feb 2019

1 Like



John Mark Suhy
@jmsuhy

Replying to @prathle @gwenshap

You can use the GraphFoundation's fork called Open Native Graph Database (ONgDB). It adds the enterprise code Neo removed back on top of Neo4j core. 3.5.11 is ready to go, it should be out in the next few days. Carefully read the terms for the 'free' offerings Neo4j mentions!

12:39 AM - 25 Sep 2019

1 Like

A true and correct copy of these Tweets are attached hereto as **Exhibit 20** and **Exhibit 21**.

68. Defendants continue to mislead consumers by claiming that ONgDB is properly licensed under AGPLv3 as a free and open source equivalent of official NEO4J® EE that is now only available via a commercial license from Plaintiffs. Such statements made by Defendants are false and misleading because Defendants and GFI never created or developed a true open source

fork based on an open source version of the Neo4j® graph database platform. Rather, Defendants knowingly copied source code from the Neo4j® graph database platform that is subject to Neo4j Sweden Software License. Suhy has been a major contributor to the development of ONgDB, and as detailed below, Suhy intentionally stripped out valid legal notices and license terms governing that source code under an erroneous view of the AGPLv3 and Neo4j Sweden's right as the copyright holder to grant a license to its software as it sees fit.

DEFENDANTS' MISCONDUCT IS LIKELY TO CAUSE CONSUMER CONFUSION AND HAS RESULTED IN ACTUAL CONSUMER CONFUSION

69. Defendants' actions described above constitute unauthorized use of the NEO4J® Mark in commerce in connection with the distribution, offering, or promotion of its "Neo4j Enterprise" and ONgDB software is likely to cause consumer confusion. Such actions were made with an intent to deceive consumers, which interferes with Neo4j's ability to differentiate its NEO4J® offerings from those of these unauthorized, third-party compiled offerings.

70. Plaintiffs are informed and believe, and based thereon allege that Defendants actions described above have caused actual consumer confusion. For example, users have expressed uncertainty and confusion over license obligations, as well as encountered compatibility issues resulting from downloading ONgDB:

> Do the terms of use for "neo4j Desktop" apply to the ONGDB server which I downloaded under AGPLv3 license? I read the Desktop terms carefully and they refer everywhere to "neo4j Desktop software". Has anybody encountered this issue? I am feeling really stupid for not thinking this through before downloading the Desktop Software, especially as database authentication keeps failing. Before I spend any more time troubleshooting, could someone indicate any features of Desktop that are really worth it (other than UI)? I am planning production, so the license is important to me.

A true and correct copy of the foregoing post on the Neo4j Online Community is attached hereto as **Exhibit 22**.

71. Plaintiffs are informed and believe, and based thereon allege that consumers that have downloaded ONgDB rather than officially licensed Neo4j® graph database platform software have experienced issues that Plaintiffs would have been able to address for licensed

users with authorized support services and/or may not have occurred at all had such users downloaded officially licensed Neo4j® graph database platform software rather than ONgDB. True and correct copies of printouts from third party websites www.stackoverflow.com illustrating these issues are attached hereto as **Exhibits 23-26**.

72. Consumers that have downloaded ONgDB have expressed uncertainty over Defendants' unauthorized modification to the proprietary Neo4j Sweden Software License. *See, e.g.*, Exhibit 22. Defendants continue to extenuate such issues and cause consumer confusion by falsely equating ONgDB with commercially licensed NEO4J® EE. *See, e.g.,* Exhibits 11-16.

73. Defendants take full advantage of their deceptive marketing of ONgDB as being the equivalent of the same numbered version of NEO4J® EE that was only available via a commercial license by inducing potential customers to use the money they would normally pay Plaintiffs for a commercial license for NEO4J® EE and instead download from GFI a purportedly equivalent version of ONgDB for free and use those funds to obtain support and development services from ARI and GraphGrid in closed, proprietary projects. Thus, Defendants are illicitly profiting from their misrepresentations about the validity of the Neo4j Sweden Software License and their wrongful removal of the restrictions imposed by that license.

74. Plaintiffs are informed and believe, and based thereon allege that Defendants continues to extenuate such issues and causes consumer confusion by engaging in the above-described unauthorized use of the NEO4J® Mark and making the foregoing false and misleading statements in connection with the distribution, offering, and promotion of its "Neo4j Enterprise" and ONgDB software.

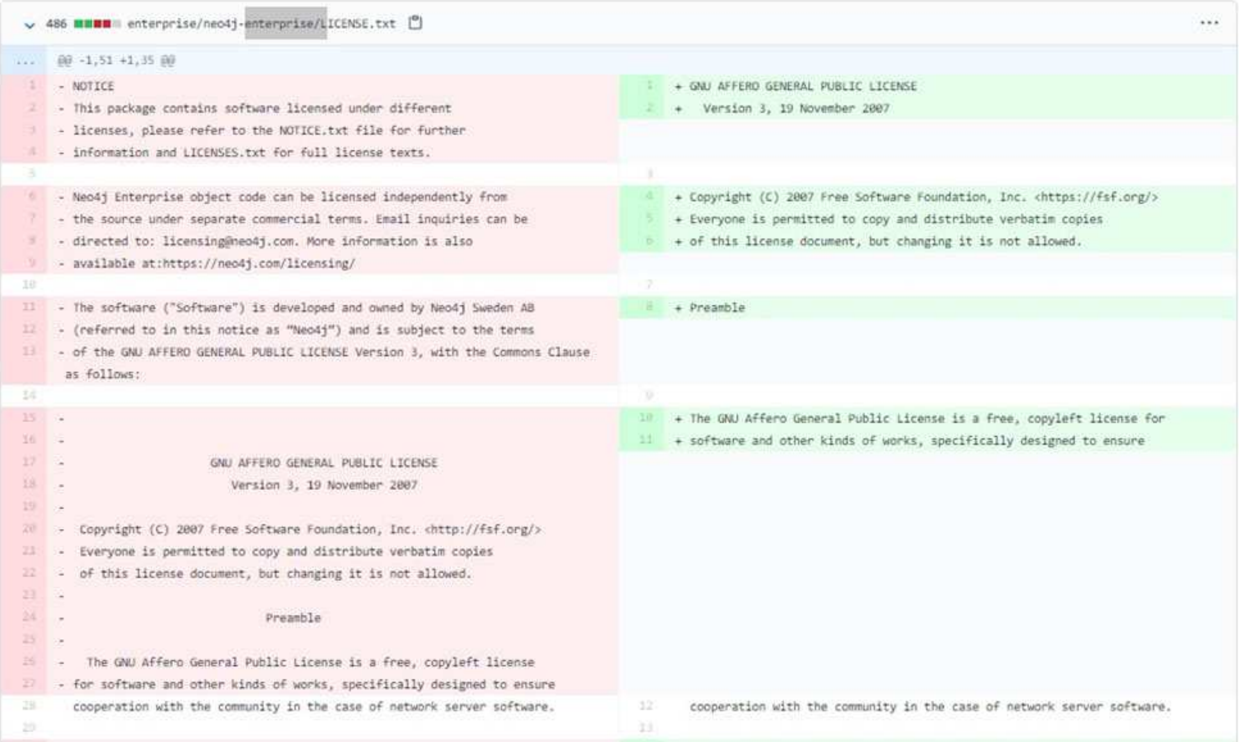
75. Plaintiffs are informed and believe, and based thereon allege that Suhy was the moving, active conscious force behind the foregoing acts of infringement and false advertising by iGov and PureThink. Suhy either personally took part in the foregoing infringing activities or specifically directed, controlled, ratified PureThink and iGov's employees to engage in such infringing activities.

DEFENDANT SUHY'S VIOLATIONS OF THE DMCA

76. Plaintiffs include copyright management information within the electronic source

code files for NEO4J® EE, including information identifying the copyright owner as Neo4j Sweden, the title of the work, licensing information, terms and conditions for use of the copyrighted work, and other conspicuous displays identifying the owner or title of these copyrighted works, including such use of "Neo4j" in the source code and NOTICE headers with terms and conditions.

77. Plaintiffs are informed and believe, and based thereon that with Graph Foundation's approval and encouragement, Suhy replicated the NEO4j® EE source code files and removed and/or altered (a) the existing Neo4j Sweden Software License; (b) copyright owner information; and (c) other terms and conditions for the use of the copyrighted work from at least 28 separate files from NEO4j® EE. Suhy replaced the Neo4j Sweden Software License with a generic version of the APGLv3 thereby removing the additional license imposed by the Neo4j Sweden Software License to prevent commercial abuse and other copyright management information, and republished these source code files on Graph Foundation's Github repository for ONgDB. The following is an example of the changes (deletions in red, additions in green) Suhy made within the NEO4J® EE code entitled "enterprise/neo4j-enterprise/License.txt":



```
486 enterprise/neo4j-enterprise/LICENSE.txt
@@ -1,51 +1,35 @@
- NOTICE
- This package contains software licensed under different
- licenses, please refer to the NOTICE.txt file for further
- information and LICENSES.txt for full license texts.

- Neo4j Enterprise object code can be licensed independently from
- the source under separate commercial terms. Email inquiries can be
- directed to: licensing@neo4j.com. More information is also
- available at:https://neo4j.com/licensing/

- The software ("Software") is developed and owned by Neo4j Sweden AB
- (referred to in this notice as "Neo4j") and is subject to the terms
- of the GNU AFFERO GENERAL PUBLIC LICENSE Version 3, with the Commons Clause
 as follows:

-
-
-                    GNU AFFERO GENERAL PUBLIC LICENSE
-                       Version 3, 19 November 2007
-
-  Copyright (C) 2007 Free Software Foundation, Inc. <http://fsf.org/>
-  Everyone is permitted to copy and distribute verbatim copies
-  of this license document, but changing it is not allowed.
-
-                            Preamble
-
-   The GNU Affero General Public License is a free, copyleft license
- for software and other kinds of works, specifically designed to ensure
  cooperation with the community in the case of network server software.
```

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+ GNU AFFERO GENERAL PUBLIC LICENSE
+   Version 3, 19 November 2007

+ Copyright (C) 2007 Free Software Foundation, Inc. <https://fsf.org/>
+ Everyone is permitted to copy and distribute verbatim copies
+ of this license document, but changing it is not allowed.

+ Preamble

+ The GNU Affero General Public License is a free, copyleft license for
+ software and other kinds of works, specifically designed to ensure
  cooperation with the community in the case of network server software.
```

Suhy made virtually identical changes to the other 27 files. A true and correct print out of the listing of these source code files on Graph Foundation's Github repository for ONgDB is attached hereto as **Exhibit 27.**

78. Plaintiffs are informed and believe, and based thereon allege that Suhy was acting and continues to act in concert with GFI and for their collective benefit in improperly modifying Plaintiffs' source code to be used in ONgDB. A true and correct copy of a tweet from GFI's co-founder and CEO, Bradley Nussbaum, is attached hereto as **Exhibit 28**.

DEFENDANTS' OTHER MISCONDUCT

79. Between 2015 and 2018, employees of Neo4j USA engaged in numerous telephone, cellular and VOIP communications with Suhy, via Skype and/or GoToMeeting via his accounts at jmsuhy@purethink.com. These calls related to the Parties' business activities.

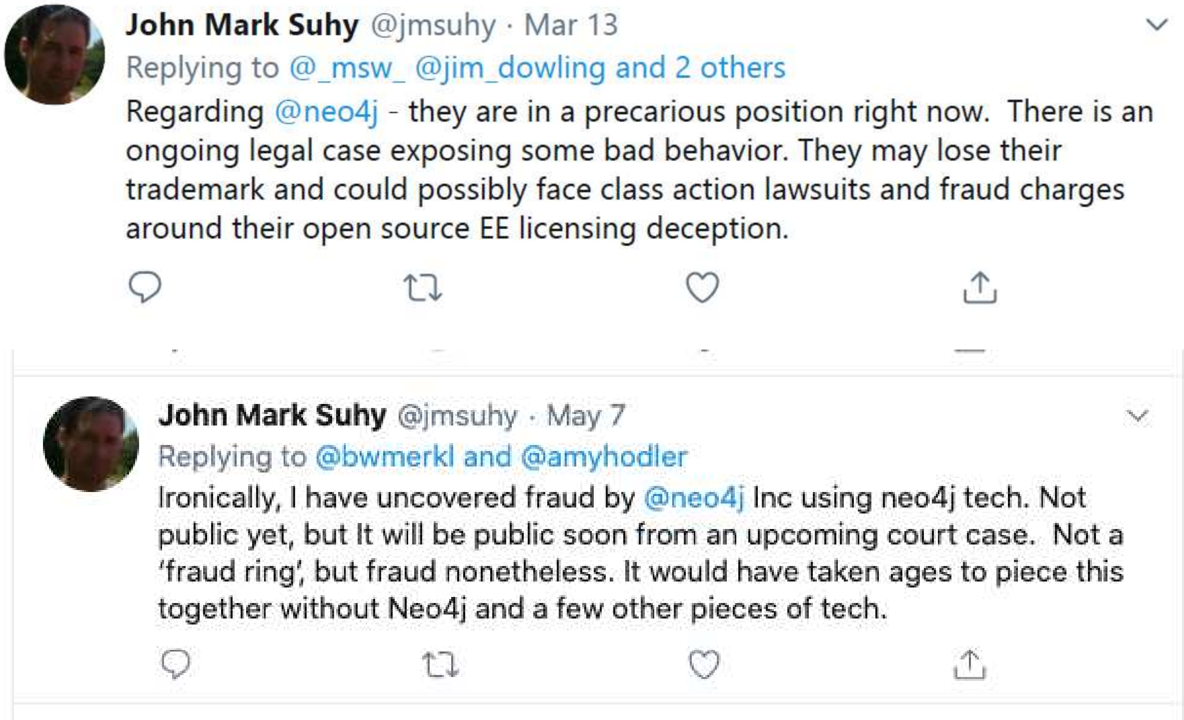
80. In the fall of 2016, Suhy informed Neo4j USA's Director of Global Alliances (who resides in California) that Suhy had recorded prior telephone conversations with him and other employees of Neo4j USA. He then demanded that Suhy immediately cease recording the conversation and confirmed that Suhy and PureThink did not have permission to record that conversation or any other conversation with Neo4j USA's employees.

81. In or about February 7, 2018, Suhy admitted in an email exchange with Neo4j USA's Vice President of Products that he recorded multiple calls with Neo4j USA's Director of Global Alliances and Neo4j USA's federal sales representative.

82. On or about May 25, 2018, approximately mid-way through a 28-minute cellular phone call, Suhy informed Neo4j USA's Vice President of Products that he was recording that call, as well as had recorded all of Suhy's prior conversations with him "as a matter of course." Neither Neo4j USA's Vice President of Products nor any other employee of Neo4j USA consented to the recording of the aforementioned communications

DEFENDANTS CAMPAIGN TO DEFAME PLAINTIFFS

83. Defendants have repeatedly made public false and defamatory statements about Plaintiffs on social media, including Twitter, in order to damage Plaintiffs' reputations. Between January 2020 and May 2020, Suhy repeated made posts on Twitter that contained unsubstantiated false accusations of fraud and criminal conduct about Plaintiffs. Examples include:



John Mark Suhy @jmsuhy · Mar 13

Replying to @_msw_ @jim_dowling and 2 others

Regarding @neo4j - they are in a precarious position right now. There is an ongoing legal case exposing some bad behavior. They may lose their trademark and could possibly face class action lawsuits and fraud charges around their open source EE licensing deception.

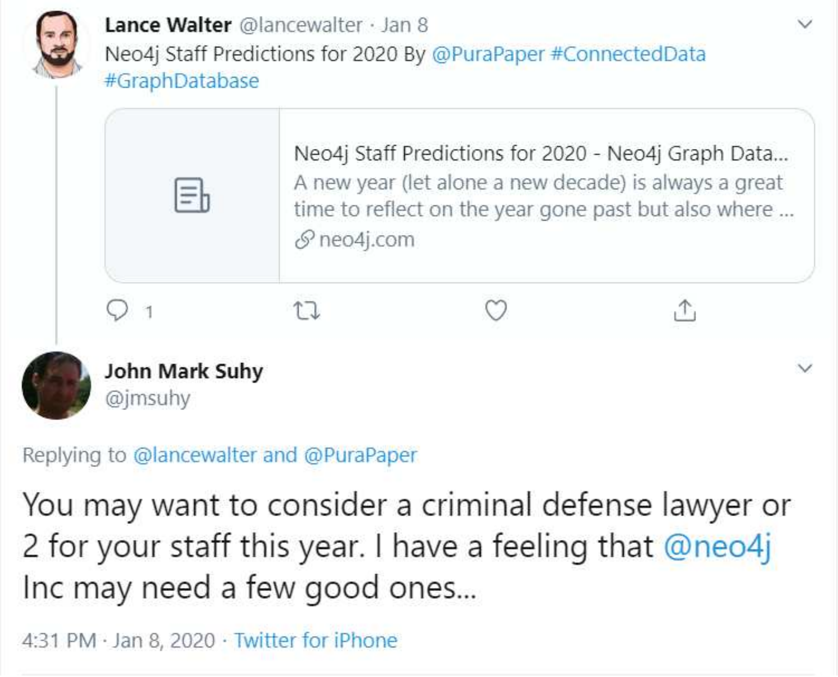
John Mark Suhy @jmsuhy · May 7

Replying to @bwmerkl and @amyhodler

Ironically, I have uncovered fraud by @neo4j Inc using neo4j tech. Not public yet, but It will be public soon from an upcoming court case. Not a 'fraud ring', but fraud nonetheless. It would have taken ages to piece this together without Neo4j and a few other pieces of tech.

True and correct copies of Suhy's tweets are attached hereto as **Exhibit 29** and **Exhibit 30**.

84. During this same time period, Defendants also have harassed Plaintiffs' employees on Twitter with their false and defamatory statements in an effort to intimidate them. In January 2020, Suhy targeted Neo4j USA's Chief Marketing officer, Lance Walter, with the following unsolicited tweets falsely accusing Plaintiffs of engaging criminal and fraudulent acts:



Lance Walter @lancewalter · Jan 8

Neo4j Staff Predictions for 2020 By @PuraPaper #ConnectedData #GraphDatabase

Neo4j Staff Predictions for 2020 - Neo4j Graph Data...
A new year (let alone a new decade) is always a great time to reflect on the year gone past but also where ...
neo4j.com

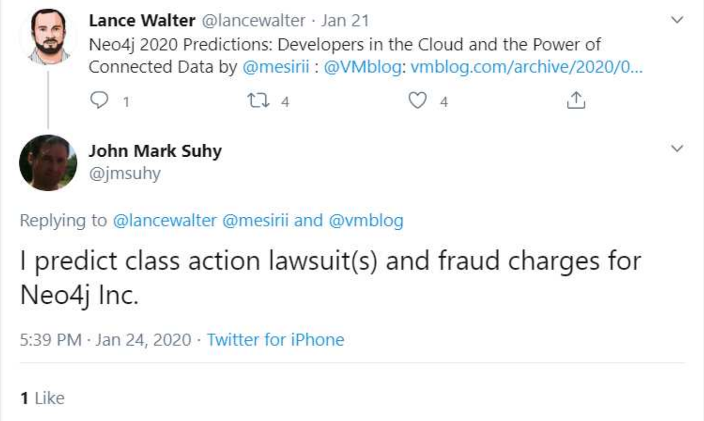
1

John Mark Suhy
@jmsuhy

Replying to @lancewalter and @PuraPaper

You may want to consider a criminal defense lawyer or 2 for your staff this year. I have a feeling that @neo4j Inc may need a few good ones...

4:31 PM · Jan 8, 2020 · Twitter for iPhone



Lance Walter @lancewalter · Jan 21
Neo4j 2020 Predictions: Developers in the Cloud and the Power of Connected Data by @mesirii : @VMblog: vmblog.com/archive/2020/0...

John Mark Suhy
@jmsuhy

Replying to @lancewalter @mesirii and @vmblog

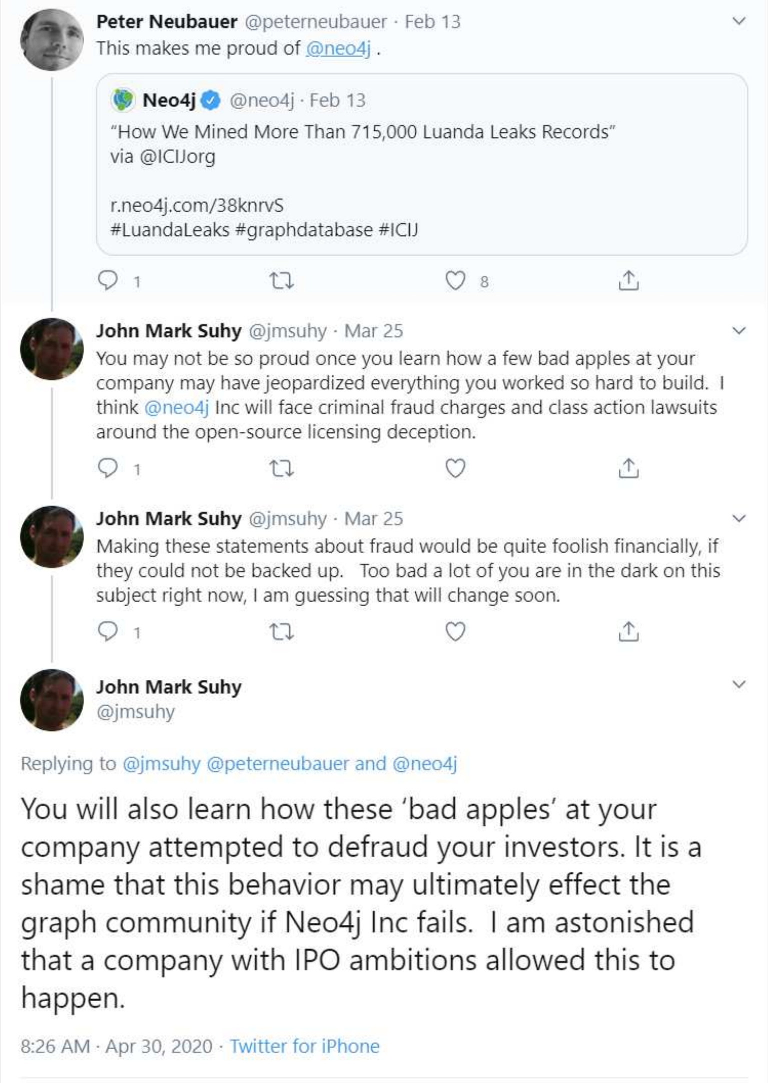
I predict class action lawsuit(s) and fraud charges for Neo4j Inc.

5:39 PM · Jan 24, 2020 · Twitter for iPhone

1 Like

True and correct copies of the foregoing tweets is attached hereto as **Exhibit 31** and **Exhibit 32**.

85. In March and April 2020, Suhy targeted Peter Neubauer, former Vice President of Neo4j Community, falsely claiming that Neo4j USA defrauded its investors, as well as would face criminal charges and class action lawsuits:



Peter Neubauer @peterneubauer · Feb 13
This makes me proud of @neo4j .

Neo4j @neo4j · Feb 13
"How We Mined More Than 715,000 Luanda Leaks Records" via @ICIJorg

r.neo4j.com/38knrvS
#LuandaLeaks #graphdatabase #ICIJ

John Mark Suhy @jmsuhy · Mar 25
You may not be so proud once you learn how a few bad apples at your company may have jeopardized everything you worked so hard to build. I think @neo4j Inc will face criminal fraud charges and class action lawsuits around the open-source licensing deception.

John Mark Suhy @jmsuhy · Mar 25
Making these statements about fraud would be quite foolish financially, if they could not be backed up. Too bad a lot of you are in the dark on this subject right now, I am guessing that will change soon.

John Mark Suhy
@jmsuhy

Replying to @jmsuhy @peterneubauer and @neo4j

You will also learn how these 'bad apples' at your company attempted to defraud your investors. It is a shame that this behavior may ultimately effect the graph community if Neo4j Inc fails. I am astonished that a company with IPO ambitions allowed this to happen.

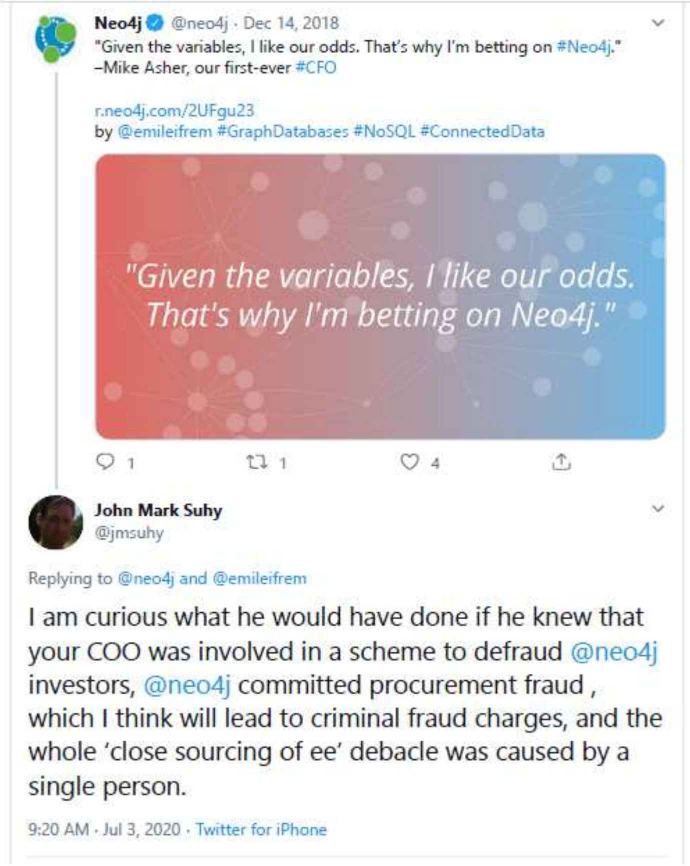
8:26 AM · Apr 30, 2020 · Twitter for iPhone

True and correct copies of the foregoing tweets is attached hereto as **Exhibit 33**.

86. On or about May 27, 2020, Plaintiffs sent Defendants a letter requesting that they immediately take down the foregoing false and defamatory statements from Twitter. Plaintiffs also demanded that Defendants not engage in any further attempts to damage Plaintiffs' reputation in the marketplace with unsubstantiated false accusations of fraud and criminal conduct, as well as improperly litigate the parties' dispute outside of court and taint the jury pool. A true and correct copy of the foregoing letter is attached hereto as **Exhibit 34**.

87. Defendants never responded to Plaintiffs' May 27, 2020 letter nor removed the foregoing false and defamatory statements from Twitter as requested. Instead, Defendants continued to engage in their campaign to unfairly complete with and defame Plaintiffs by specifically targeting Plaintiffs' actual and potential investors.

88. On July 3, 2020, Suhy posted a tweet falsely accusing Neo4j USA's Chief Operations Officer, Lars Nordwall, of defrauding Plaintiffs' investors among other false and defamatory statements about Plaintiffs:



Neo4j @neo4j · Dec 14, 2018
"Given the variables, I like our odds. That's why I'm betting on #Neo4j."
–Mike Asher, our first-ever #CFO

r.neo4j.com/2UFgu23
by @emileifrem #GraphDatabases #NoSQL #ConnectedData

"Given the variables, I like our odds. That's why I'm betting on Neo4j."

John Mark Suhy
@jmsuhy

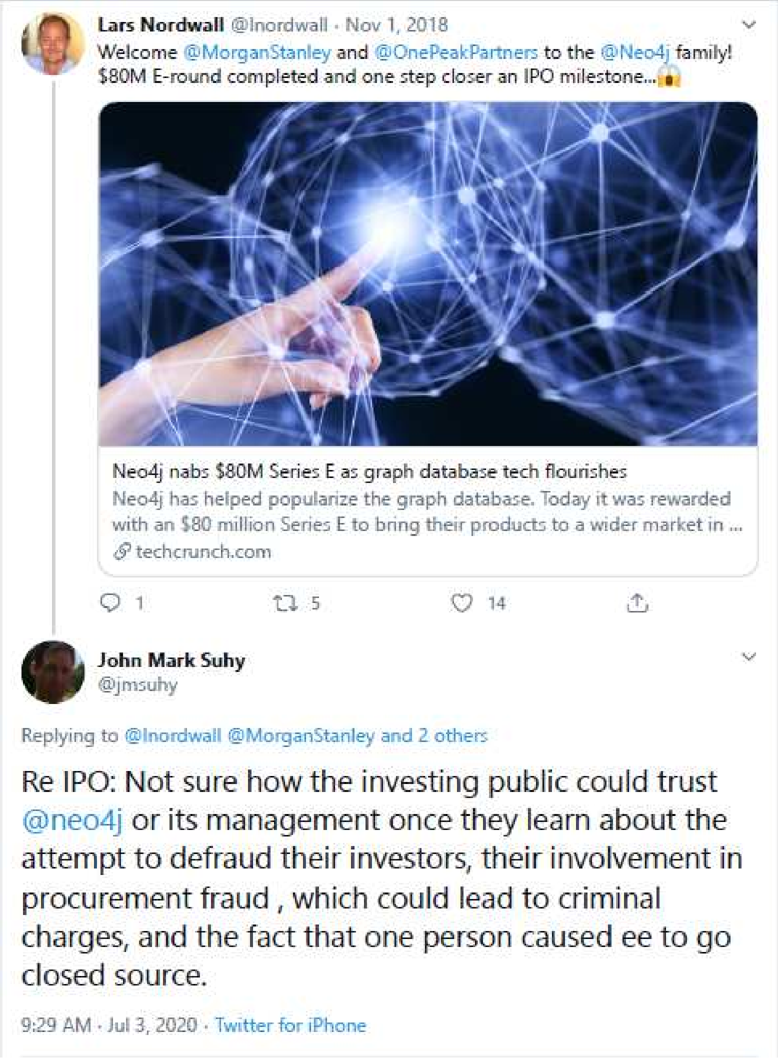
Replying to @neo4j and @emileifrem

I am curious what he would have done if he knew that your COO was involved in a scheme to defraud @neo4j investors, @neo4j committed procurement fraud , which I think will lead to criminal fraud charges, and the whole 'close sourcing of ee' debacle was caused by a single person.

9:20 AM · Jul 3, 2020 · Twitter for iPhone

A true and correct copy of the foregoing tweet is attached hereto as **Exhibit 35**.

89. Minutes later, Suhy posted a tweet responding to a November 1, 2018 tweet by Mr. Nordwall, which he directed at two of Plaintiffs' investors, One Peak Partners and Morgan Stanley Expansion Capital, again falsely accusing Plaintiffs of attempting to criminally defraud their investors:



Lars Nordwall @lnordwall · Nov 1, 2018

Welcome @MorganStanley and @OnePeakPartners to the @Neo4j family! $80M E-round completed and one step closer an IPO milestone...😱

Neo4j nabs $80M Series E as graph database tech flourishes

Neo4j has helped popularize the graph database. Today it was rewarded with an $80 million Series E to bring their products to a wider market in ...

techcrunch.com

John Mark Suhy
@jmsuhy

Replying to @lnordwall @MorganStanley and 2 others

Re IPO: Not sure how the investing public could trust @neo4j or its management once they learn about the attempt to defraud their investors, their involvement in procurement fraud , which could lead to criminal charges, and the fact that one person caused ee to go closed source.

9:29 AM · Jul 3, 2020 · Twitter for iPhone

A true and correct copy of the foregoing tweet is attached hereto as **Exhibit 36**.

90. There was no legitimate reason for Suhy to dig up a tweets from November 2018 and making false statements that they engaging in criminal fraud directed at Neo4j's investors, other than to maliciously harm Plaintiffs' reputation and ability to receive future funding.

91. On July 6, 2020, Plaintiffs sent an email again warning Defendants that they were not entitled to make false and defamatory statements regarding Neo4j and engage in defamation

as a means of self-help in both the lawsuit and the marketplace. A true and correct copy of the foregoing email is attached hereto as **Exhibit 37**.

92. Defendants have not limited such misconduct to Twitter. Plaintiffs are informed and believe, and based thereon allege that Defendants have made similar false and defamatory statements directly to Plaintiffs' actual and potential customers. For example, on February 22, 2020, Mr. Suhy sent an email to a Neo4j employee and copied several employees of a Neo4j USA customer wherein he stated:

> you may not be aware of this yet but there is an upcoming court case in the US, which is going to expose Neo4j's deception on this topic, and it is starting to look like it may lead to possible criminal fraud charges and class action lawsuits against Neo4j Inc.

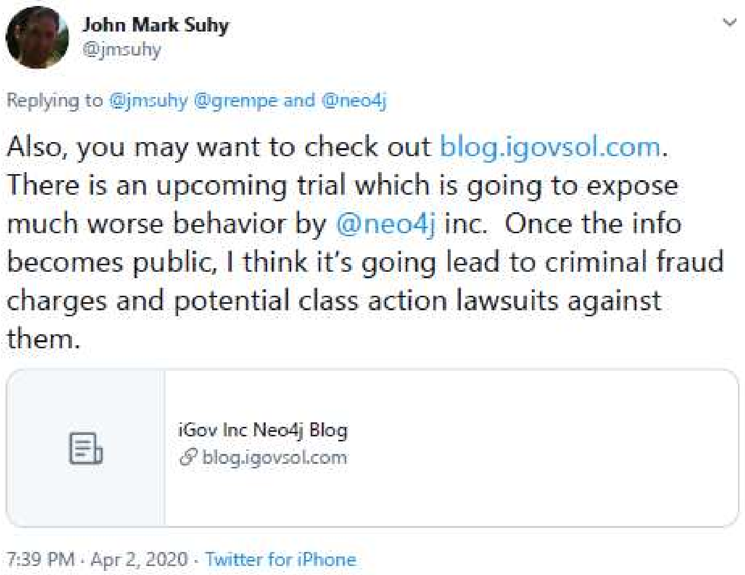
Despite being relevant and responsive to discovery propounded by Plaintiffs in this lawsuit, Defendants did not produce this email. As result, there is reason to believe that Defendants have made similar false accusations of criminal fraud to other actual and potential customers of Plaintiffs as part of their broader scheme to harm Plaintiffs' reputation and business.

93. Under the Partner Agreement, PureThink agreed to maintain the confidentiality of Neo4j USA's confidential and proprietary information. In particular, Section 3 of the Partner Agreement restricted the use and disclosure of confidential information obtained under the terms thereof for a period of five (5) years from receipt, and the confidentiality obligations survived the termination per Section 7 of this agreement. By definition, this included the confidential pricing for various licenses to Neo4j® software and services, as well as the compensation structure for Solution Partners such as PureThink that is set forth in the Partner Agreement. Hence, it states "NEO TECHNOLOGY INC. CONFIDENTIAL" at the bottom of each page of the Partner Agreement.

94. When Neo4j USA initiated this lawsuit, it did not attach the Partner Agreement to the original complaint or any subsequent iterations due to the fact that it contained the compensation structure for PureThink among other things.

95. In complete disregard of their obligations under the confidentiality provisions, iGov and PureThink attached the Partner Agreement to their original counterclaim (Dkt. No. 22)

and did not file it under seal. Plaintiffs are informed and believe that Defendants publicly filed the Partner Agreement in the lawsuit in an effort to tarnish Plaintiffs' goodwill. Suhy has since posted entry on iGov's blog that includes two links to the entire Partner Agreement and has also redirected users on Twitter to this blog entry in conjunction with making the aforementioned false and defamatory statements regarding Plaintiffs:



John Mark Suhy
@jmsuhy

Replying to @jmsuhy @grempe and @neo4j

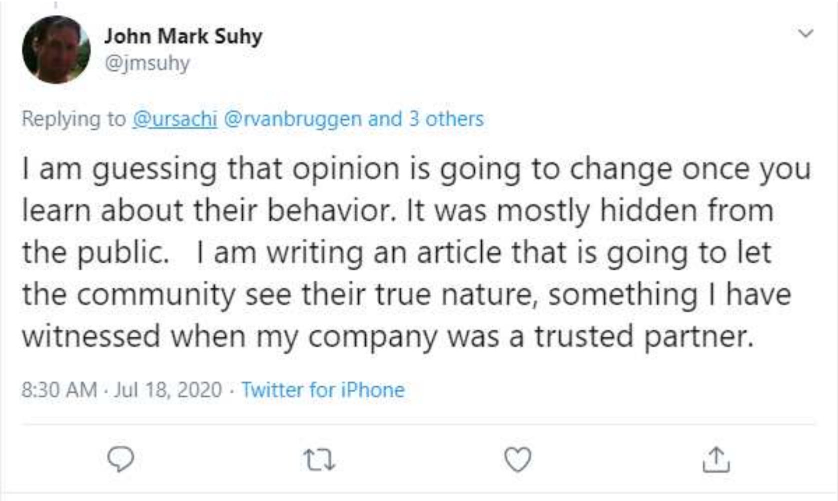
Also, you may want to check out blog.igovsol.com. There is an upcoming trial which is going to expose much worse behavior by @neo4j inc. Once the info becomes public, I think it's going lead to criminal fraud charges and potential class action lawsuits against them.

iGov Inc Neo4j Blog
blog.igovsol.com

7:39 PM · Apr 2, 2020 · Twitter for iPhone

A true and correct copy of this April 2, 2020 tweet by Suhy is attached hereto as **Exhibit 38**.

96. On July 18, 2020, Suhy sent another tweet further suggested he would breach by the confidentiality provisions of the Partner Agreement:



John Mark Suhy
@jmsuhy

Replying to @ursachi @rvanbruggen and 3 others

I am guessing that opinion is going to change once you learn about their behavior. It was mostly hidden from the public. I am writing an article that is going to let the community see their true nature, something I have witnessed when my company was a trusted partner.

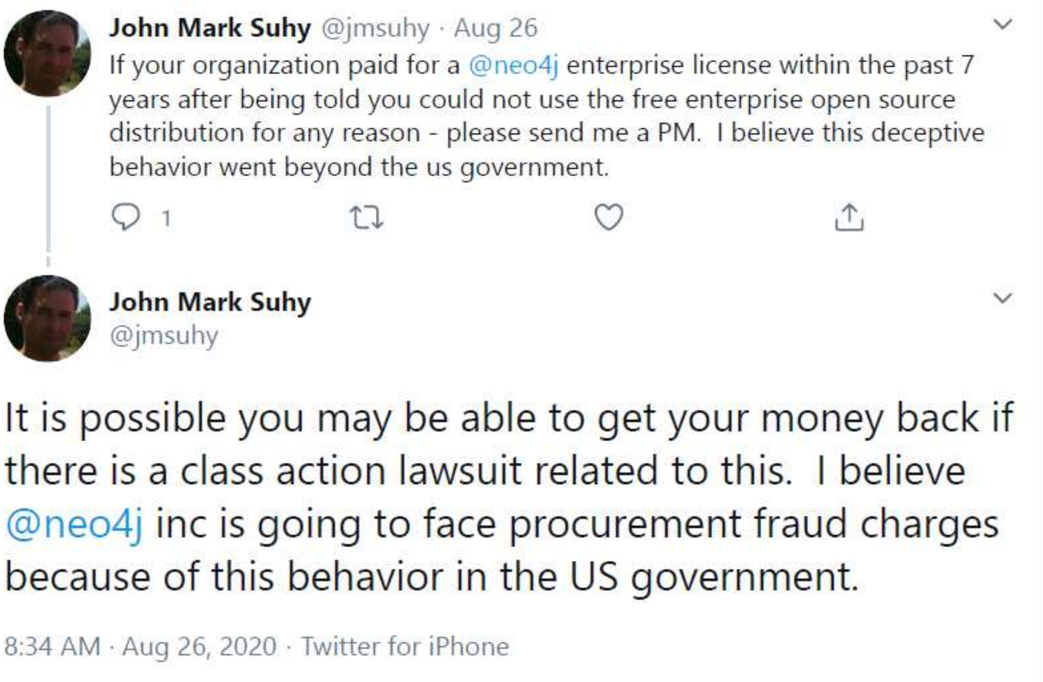
8:30 AM · Jul 18, 2020 · Twitter for iPhone

A true and correct copy of this July 18, 2020 tweet by Suhy is attached hereto as **Exhibit 39**.

Suhy posted a similar tweet on July 29, 2020, a true and correct copy of which is attached hereto as **Exhibit 40**.

97. In addition, Suhy's repeated references to confidential information in his tweets suggests that he may be improperly using confidential materials that were provided to him by Plaintiffs subject to the confidentially provision in the Neo4j Solution Partner Agreement. Suhy's tweets further suggest that Defendants are abusing the access they were granted under the Protective Order and using materials designated as "CONFIDENTIAL" thereunder for improper purposes outside the scope of this litigation

98. On August 26, 2020, Suhy posted two additional tweets on his Twitter feed that are false and defamatory:



John Mark Suhy @jmsuhy · Aug 26

If your organization paid for a @neo4j enterprise license within the past 7 years after being told you could not use the free enterprise open source distribution for any reason - please send me a PM. I believe this deceptive behavior went beyond the us government.

John Mark Suhy

@jmsuhy

It is possible you may be able to get your money back if there is a class action lawsuit related to this. I believe @neo4j inc is going to face procurement fraud charges because of this behavior in the US government.

8:34 AM · Aug 26, 2020 · Twitter for iPhone

A true and correct copy of these tweets are attached hereto as **Exhibit 41**.

FIRST CAUSE OF ACTION

TRADEMARK INFRINGEMENT – 15 U.S.C. § 1114

(By Neo4j USA Against All Defendants)

99. Plaintiffs incorporate and reallege the allegations set forth in paragraphs 1 through 97 of this Complaint as though fully set forth herein.

100. Plaintiffs have been actively using the NEO4J® Mark in interstate commerce

since at least as early as 2007. Plaintiffs' graph database solutions and software and related supported services offered under the NEO4J® Mark has enjoyed and continues to enjoy extensive recognition among customers, reviewers and industry professionals in the marketplace.

101. Neo4j USA currently offers, and Plaintiffs have a long and established history of offering graph database solutions and software and related services, both directly and through authorized Neo4j® Solution Partners under the distinctive NEO4J® Mark. Through favorable acceptance and recognition by customers, reviewers and industry professionals, the NEO4J® Mark has come to be associated in the public with Neo4j USA, have become an asset of substantial value to Neo4j USA, and a symbol of its high quality, industry leading graph database solutions and software and related services, as garnered substantial goodwill.

102. Plaintiffs' graph database solutions and software and related services offered under the NEO4J® Mark are advertised via print publications, over the Internet through Neo4j USA's website and through third-party websites and blogs, paid advertising on LinkedIn, Twitter, Facebook, and elsewhere, as well as via mobile applications and publications, physical billboards, and signage at both company-branded and third-party events.

103. Neo4j USA has expended considerable time, money and effort in advertising and promoting its graph database solutions and software and related support services under the NEO4J® Mark among consumers and authorized Neo4j® Solution Partners. Consequently, Neo4j USA has developed substantial and exclusive goodwill and reputation in connection with the NEO4J® Mark for its graph database solutions and software and related support services.

104. As a result of these expenditures, combined with substantial sales of Plaintiffs' graph database solutions and software and related support services under the NEO4J® Mark, the relevant consuming public and likely customers have come to recognize the NEO4J® Mark as favorably distinguishing Neo4j USA's graph database solutions and software and related support services from those of its competitors.

105. Due to this widespread public use and recognition, the NEO4J® Mark has become an asset of significant value and goodwill, and a successful indicator of the source of Neo4j USA's graph database solutions and software and related support services.

106. Defendants' software and related support services directly compete with Neo4j USA's graph database solutions and software and related support services offered and sold under Neo4j USA's NEO4J® Mark. The customers and users, and potential users and consumers of Neo4j USA's graph database solutions and software and related support services offered and sold under Neo4j USA's NEO4J® Mark are identical to the user and customers and potential users and customers of the graph database solutions and software and related support services offered by Defendants.

107. Defendants have had and have actual knowledge of Neo4j USA's rights in the NEO4J® Mark and are willfully infringing and intentionally adopted and used this mark in commerce without Neo4j USA's consent in connection with the sale, offering for sale, distribution and advertising of competing graph database solutions and software and related support services. The software and related support services promoted by Defendants have been disseminated and distributed through various means including, without limitation, sales and solicitations through PureThink, iGov and GraphStack's Internet interactive websites and other third party websites, including within this District.

108. Defendants' willful, intentional and unauthorized use of the NEO4J® Mark in conjunction with the sale and advertising of Defendants and third parties' unauthorized database solutions and software and related support services is likely to cause and is causing confusion, mistake, and deception as to the origin and quality of Neo4j USA's graph database solutions and software and related support services.

109. Defendants' activities constitute willful trademark infringement under Section 32 of the Lanham Act, 15 U.S.C. § 1114.

110. The injuries and damages sustained by Neo4j USA have been directly and proximately caused by Defendants' wrongful sale, offering for sale, distribution, or advertising of Defendants and third parties' software products and services in conjunction with their unauthorized use of the NEO4J® Mark. Specifically, Neo4j USA has been damaged in an amount according to proof at trial, but in no event less than approximately $3.1 million, plus interest thereon under applicable law.

111. As iGov and Suhy's acts are likely to continue, the award of money damages alone will not adequately compensate Neo4j USA. By their unauthorized use of the NEO4J® Mark and refusal to cease such use, Defendants have caused, and will continue to cause irreparable harm, damages and injury to Neo4j USA. Neo4j USA's injuries will continue unless restrained by order of this Court. Accordingly, Neo4j USA is entitled to preliminary and permanent injunctive relief.

SECOND CAUSE OF ACTION

FALSE DESIGNATION OF ORIGIN AND FALSE ADVERTISING – 15 U.S.C. § 1125(a)

(By Neo4j USA Against All Defendants)

112. Plaintiffs incorporate and reallege the allegations set forth in paragraphs 1 through 110 of this Complaint as though fully set forth herein.

113. Defendants' actions constitute a false designation of origin and false advertising under 15 U.S.C. § 1125(a), which is likely to cause confusion, mistake or to deceive and has confused and deceived consumers into believing that Defendants' goods and services are affiliated with, sponsored by, or somehow connected with Neo4j USA and/or Neo4j USA's NEO4J® Mark, and, as a consequence, are likely to divert customers away from Neo4j USA and/or its authorized NEO4J® Solution Partners.

114. Defendants' unlawful activities reflect adversely on Neo4j USA because it has no control over the nature and quality of the services and products advertised and sold by iGov, and as the believed source of origin, Neo4j USA's efforts to continue to protect its reputation for high quality graph database solutions and software and related support services sold under the NEO4J® Mark will be hampered, resulting in the loss of goodwill and sales, to the irreparable harm of Neo4j USA.

115. Further, any failure, neglect, or default by Defendants in using the NEO4J® Mark in offering its and third parties' unauthorized software products will continue to reflect adversely on Neo4j USA as the believed source of origin thereof, hampering efforts by Neo4j USA to continue to protect its outstanding reputation for high quality graph database solutions and software and software-related services, resulting in loss of customers and partners, as well as the

loss of goodwill and sales, all to the irreparable harm of Neo4j USA.

116. The actions of Defendants as alleged herein constitute intentional, willful, knowing and deliberate false designation of origin and false advertising pursuant to 15 U.S.C. § 1125(a).

117. Defendants' willful, intentional and unauthorized use of the NEO4J® Mark is likely to cause and is causing confusion, mistake, and deception as to the origin and quality of Defendants' software products and software-related services.

118. The injuries and damages sustained by Neo4j USA have been directly and proximately caused by Defendants' wrongful and misleading sale, offering for sale, distribution, or advertising of Defendants and third parties' unauthorized software products and software-related services. Specifically, Neo4j USA has been damaged in an amount according to proof at trial, but in no event less than the approximate amount of approximately $3.1 million, plus interest thereon under applicable law.

119. As Defendants' acts are likely to continue, the award of money damages alone will not adequately compensate Neo4j USA. By their false designation of origin and false advertising, and refusal to cease the use of the NEO4J® Mark, Defendants have caused, and will continue to cause irreparable harm, damages and injury to Neo4j USA. Neo4j USA's injuries will continue unless restrained by order of this Court. Accordingly, Neo4j USA is entitled to preliminary and permanent injunctive relief.

THIRD CAUSE OF ACTION

UNFAIR COMPETITION – 15 U.S.C. § 1125(a)

(By Neo4j USA Against All Defendants)

120. Plaintiffs incorporate and reallege the allegations set forth in paragraphs 1 through 118 of this Complaint as though fully set forth herein.

121. Defendants' conduct described and alleged in this complaint constitutes unfair competition and fraudulent business practices in violation of 15 U.S.C. § 1125. Defendants are deliberately, intentionally and unlawfully exploiting the NEO4J® Mark and consumer goodwill for their benefit.

122. Defendants’ use of the NEO4J® Mark in conjunction with their business constitutes the use of a word, term, name, or any combination thereof, that is likely to cause confusion, mistake, or deception as to the affiliation, connection, origin, sponsorship, approval and/or association of Defendants and their software products and software-related services with Neo4j USA, within the meaning of 15 U.S.C. § 1125(a)(1).

123. In addition, Defendants’ use of the NEO4J® Mark constitutes a commercial use that causes actual and/or likely dilution of the distinctive quality of the NEO4J® Mark by lessening the capacity of the NEO4J® Mark to identify Neo4j USA and distinguish its software products and software-related services. Defendants knowingly traded on Neo4j USA’s reputation after the NEO4J® Mark had become well known.

124. As a direct and proximate result of Defendants’ acts and misconduct, Plaintiffs are informed and believe, and thereon allege, that customers and prospective customers have been confused and misled, deceived and mistaken as to the source or sponsorship of Defendants and third parties’ unauthorized software products and software-related services, and have been deterred from purchasing Neo4j USA’s graph database solutions and software and related support services, in disruption of Neo4j USA’s business activities.

125. Neo4j USA has therefore been damaged and is likely to suffer further damage in an amount to be proven at trial, but in excess of the minimum jurisdiction of this Court. In particular, Neo4j USA is entitled to, without limitation, damages for its loss of sales and goodwill, as well as recovery of any and all profit derived by Defendants through their wrongful acts in an amount according to proof at trial, but in no event less than the approximate amount of $3.1 million, plus interest thereon under applicable law.

126. As Defendants’ wrongful acts are likely to continue, the award of money damages alone will not adequately compensate Neo4j USA. By their use of the NEO4J® Mark, Defendants have caused, and will continue to cause irreparable harm, damages and injury to Neo4j USA. Neo4j USA’s injuries will continue unless restrained by order of this Court. Accordingly, Neo4j USA is entitled to preliminary and permanent injunctive relief.

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FOURTH CAUSE OF ACTION

UNFAIR COMPETITION – Cal. Bus. Prof. Code §§ 17200 et seq.

(By Neo4j USA Against All Defendants')

127. Plaintiffs incorporate and reallege the allegations set forth in paragraphs 1 through 125 of this Complaint as though fully set forth herein.

128. Plaintiffs are informed and believe, and thereon allege, that Defendants' conduct business within California, including, without limitation, the advertising and distribution of Defendants and third parties' unauthorized software products and services through its headquarters and over iGov's interactive internet website.

129. Defendants' and third parties' unauthorized software products conduct described and alleged in this Complaint constitutes unfair, unlawful, and fraudulent business practices in violation of California Business & Professions Code §§ 17200 et seq.

130. Defendants' knew or reasonably should have known that use of NEO4J® Mark deceives and/or confuses customers into believing that Defendants and third parties' unauthorized software products and software related services are produced, endorsed, affiliated and/or associated with Neo4j USA.

131. Plaintiffs are informed and believe, and thereon allege, that Defendants' misuse of the NEO4J® Mark was an intentional and deliberate attempt to trade on the Neo4j USA's goodwill.

132. As a direct and proximate result of Defendants' wrongful acts, Plaintiffs are informed and believe, and thereon allege, that customers and prospective customers have been confused and misled, deceived and mistaken as to the source or sponsorship of Defendants and third parties' unauthorized software products and services, and have been deterred from purchasing and/or using Neo4j USA's NEO4J® software and services, in disruption of Neo4j USA's business activities.

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133. Neo4j USA has therefore been damaged and is likely to suffer further damage in an amount to be proven at trial, and is entitled to the remedies available under Business and Professions Code § 17200 et seq., including but not limited to injunctive relief and restoration of money or property acquired by means of Defendants' wrongful acts.

FIFTH CAUSE OF ACTION

BREACH OF CONTRACT

(By Neo4j USA Against Defendant PureThink LLC and iGov Inc.)

134. Plaintiffs incorporate and reallege the allegations set forth in paragraphs 1 through 132 of this complaint as though fully set forth herein.

135. The Partner Agreement constitutes a valid and enforceable contract between Neo4j USA and PureThink.

136. Under Section 4.1 of the Partner Agreement, Neo4j USA provided PureThink with a non-exclusive, non-transferable limited license during the term of the Partner Agreement to, *inter alia*, use the NEO4J® Mark solely to market and promote Neo4j USAs' products.

137. Section 7.3 of the Partner Agreement further provided that all rights and licenses to Neo4j USA's software products and the NEO4J® Mark would terminate upon the expiration or termination of the Partner Agreement, and upon such an event, PureThink agreed to "cease all communications with End Users regarding the Products" and "cease using any trademarks, service marks and other designations of Neo4j USAs" including the NEO4J® Mark.

138. Under Section 4.3.2 of the Partner Agreement, PureThink further agreed and understood that during the term of the Partner Agreement, it would not "develop, market, distribute or offer any services related to any [NEO4J®] Community Edition Products, derivative works of such products, or any [PureThink] software code made to work with [NEO4J®] Community Edition Products (including, without limitation, hosting services, training, technical support, configuration and customization services, etc.)." It was PureThink's acts and omissions in breach of this section occurring prior to July 11, 2017, among other things, that led to Neo4j's termination of the Partner Agreement on that date.

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139. Under Section 3 of the Partner Agreement, PureThink agreed "that it acquires only the right to use [Neo4j USA's] Confidential Information under the terms and conditions of this Agreement and does not acquire any rights of ownership or title in [Neo4j USA's] Confidential Information." PureThink further agreed that it would "hold in confidence any Confidential Information received by it from [Neo4j USA] and will protect the confidentiality of such with the same degree of care that it exercises with respect to its own information of like import, but in no event less than reasonable care, for a period of five (5) years from receipt."

140. The foregoing provisions were intended and necessary to protect Neo4j USA's legitimate business interests in its goodwill and intellectual property and survived termination pursuant to Section 7.4 of the Partner Agreement.

141. Neo4j USA is informed and believed, and based thereon alleges that iGov is bound by the aforementioned restrictions and liable for breaches thereof as PureThink's successor-in-interest, assign, acquirer of substantially all of PureThink's assets as contemplated by Section 10 of the Partner Agreement and/or as PureThink's alter ego.

142. Neo4j USA has performed every promise and condition required to be performed by it pursuant to the Partner Agreement except any which were or would be excused or prevented by the breaches of PureThink and iGov as set forth herein.

143. PureThink and iGov have willfully and with conscious disregard for the contractual obligations owed to Neo4j USA have breached and continue to breach Sections 3.1, 4.1 and 7.3 of the Partner Agreement by (a) their unauthorized use of the NEO4J® Mark in conjunction with the sale and advertising of graph database solutions and software and related support services; (b) deceptively offering support and development services related to NEO4J® Community Edition Products and unauthorized derivative works of such products; (c) deceptively developing, marketing, and distributing software purporting to be the equivalent of NEO4J® products; and (d) using Neo4j USA's confidential information to harm NEO4J's goodwill. Their breaches of the Partner Agreement also include falsely suggesting Neo4j USA's authorization and/or sponsorship of PureThink and iGov's products and services, as well as misleading consumers regarding their prior contributions to NEO4J®-branded products.

144. The misconduct and breaches alleged above also constitute violations of the covenant of good faith and fair dealing implied in the Partner Agreement, because those activities injured and frustrated the right of Neo4j USA to the benefits of the Partner Agreement.

145. As a direct and proximate result of PureThink and iGov's breaches of contract, Neo4j USA has been damaged in an amount according to proof at trial, but in no event less than the approximate amount of $3.1 million, plus interest thereon under applicable law.

146. As a direct and proximate result of PureThink and iGov's breaches of contract, Neo4j USAs has suffered irreparable injury and harm and will continue to suffer such injury and harm unless and until PureThink and iGov are enjoined from further misuse and infringement of the NEO4J® Mark.

147. PureThink and iGov have derived, received, and will continue to derive and receive from the aforementioned breaches of contract, gains, profits and advantages, many of which are not presently known to Neo4j USA. Unless restrained and enjoined by the Court, PureThink and iGov will continue to breach the Partner Agreement. Neo4j USA therefore entitled to injunctive relief or specific performance, as well as damages as provided by law and the Partner Agreement.

SIXTH CAUSE OF ACTION

INVASION OF PRIVACY – CAL. PENAL CODE §§ 632, 637.2

(By Neo4j USA Against PureThink LLC and John Mark Suhy)

148. Plaintiffs incorporate and reallege the allegations set forth in paragraphs 1 through 146 of this complaint as though fully set forth herein.

149. Unbeknownst to Neo4j USA and its employees, between 2015 and 2018, PureThink and Suhy intentionally recorded their conversations and audible communications transmitted over various electronic and telephonic devices with employees of Neo4j USA by using an electronic device. Neo4j USA's employees utilized cellular devices to communicate with PureThink and Suhy for one or more of these communications.

150. Neo4j USA and its employees were located and/or resided in California at the time that these communications occurred.

151. These communications related sensitive aspects of the Neo4j USA's business, including confidential customer information, private financial information, and other confidential business information. Neo4j USA and its employees thus had a reasonable expectation that these communications were not being recorded by PureThink and Suhy.

152. At no time did Neo4j USA or its employees consent to the recording of any of their communications with PureThink and Suhy. Rather, in the Fall of 2016, Neo4j USA instructed PureThink and Suhy not to record any of their calls and confirmed that PureThink and Suhy that did not have permission record any audible communications with Neo4j USA. Notwithstanding these demands, PureThink and Suhy continued to secretly record their calls with Neo4j USA for the next two years without first obtaining Neo4j USA's consent.

153. Neo4j USA is informed and believed, and based thereon on allege that PureThink and Suhy intentionally recording such conversations and audible communications with the intent to disclose those recordings to third parties and/or the general public that would not otherwise be privy to or have a right to listen to such communications.

154. Neo4j USA is informed and believed, and based thereon on allege that PureThink and Suhy intentionally recording such conversations and audible communications with the intent to cause harm to Neo4j USA.

155. Neo4j USA seeks statutory damages in the amount $5,000 per incident of unauthorized recording as authorized by Cal. Penal Code § 637.2.

156. As PureThink and Suhy's wrongful acts are likely to continue due to their unauthorized possession of the aforementioned recordings, the award of money damages alone will not adequately compensate Neo4j USA. By possessing aforementioned recordings, PureThink and Suhy have caused, and will continue to cause irreparable harm, damages and injury to Neo4j USA. Neo4j USA's injuries will continue unless restrained by order of this Court. Accordingly, Neo4j USA is entitled to preliminary and permanent injunctive relief.

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SEVENTH CAUSE OF ACTION

DEFAMATION – Cal. Civ. Code §§ 45, 45a

(By Plaintiffs Against All Defendants)

157. Plaintiffs incorporate and reallege the allegations set forth in paragraphs 1 through 155 of this Complaint as though fully set forth herein.

158. Suhy published the above-alleged defamatory statements that Plaintiffs have engaged in fraud and deception with their customers, and engaged in fraudulent and criminal conduct were made to third parties such as Plaintiffs' actual and potential customers and actual and potential investors. Suhy made such defamatory statements in his individual capacity, as well as an agent and employee of iGov and PureThink and was acting within the course and scope of such agency in making the above-alleged defamatory statements.

159. It was reasonably understood by those third parties who read Defendants' defamatory statements that they were about Plaintiffs.

160. On their face of the foregoing defamatory statements, it was reasonably understood Defendants meant to convey that Plaintiffs have engaged in fraud and deception with their customers, engaged in fraudulent and criminal conduct, and are dishonest and should not be dealt with or be trusted.

161. Defendants' defamatory statements were false, unprivileged and had a natural tendency to injure Plaintiffs.

162. Defendants intentionally made the defamatory statements with malice with the intent to harm Defendants' business, trade and reputation, with the knowledge that such statements were false or had serious doubts about the truth of the statements.

163. Defendants' defamatory statements have cast Plaintiffs in a negative and false light, exposed Plaintiffs to hatred, contempt, ridicule and obloquy, as well as making it odious in the estimation of those with whom Plaintiffs have business dealing or connections, and have caused harm to Plaintiffs' business, trade and reputation.

164. As a result, Plaintiffs have suffered damages in an amount to be proven at trial according to proof, including but not limited to, harm to their business reputation, exposure to

contempt, ridicule, and obloquy, and bringing Plaintiffs' business into public contempt, and of making it odious in the estimation of those with whom they have business dealing or connections.

165. In making the defamatory statement identified above, Defendants acted with malice, oppression, or fraud, and is thus responsible for punitive damages in an amount to be proven at trial according to proof.

EIGHTH CAUSE OF ACTION

UNAUTHORIZED DISTRIBUTION OF ALTERED COPYRIGHT MANAGEMENT INFORMATION – 17 U.S.C. § 1202(b)

(By Plaintiffs Against Defendants)

166. Plaintiff incorporates and realleges the allegations set forth in paragraphs 1 through 164 of this complaint as though fully set forth herein.

167. Neo4j Sweden is the exclusive owner of the copyrights associated with all versions of NEO4J® graphing database software, including the versions of NEO4J® EE referenced herein (collectively "NEO4J® graph database platform"). Neo4j Sweden is the exclusive owner of the rights to license, copy or distribute and license the use of copies of the NEO4J® graph database platform.

168. The NEO4J® graph database platform is published and distributed with copyright management information that includes the copyright owner's name, the title of the work, terms and conditions for use of the work, and other identifying information about the copyright owner ("NEO4J® CMI"). Various identifications in the source code for the NEO4J® graph database platform reference Neo4j Sweden, including use of "Neo4j" in library file structures – this and other conspicuous displays of the NEO4J® CMI, which constitute copyright management information pursuant to 17 U.S.C. § 1202(b).

169. Acting his individual capacity, as well as an agent of iGov, PureThink and GFI, Suhy intentionally copied source code files for the NEO4J® graph database platform containing NEO4J® CMI, and then intentionally altered and removed NEO4J® CMI, including licensing terms and conditions, in at least 28 separate source code files for the NEO4J® graph database platform. Defendants publicly distribute these altered source code files as part of the Graph

Foundation's ONgDB software on iGov's website and Graph Foundation's Github repository with the intent and knowledge that the NEO4J® CMI had been intentionally removed therefrom.

170. Defendants intentionally removed the NEO4J® CMI and distributed altered versions of NEO4J® graph database platform with the knowledge that doing so would induce, enable, facilitate, or conceal an infringement of Neo4j Sweden's rights under the Copyright Act.

171. Defendants have knowingly distributed and continue to distribute altered versions of NEO4J® graph database platform with the knowledge that doing so would induce, enable, facilitate, or conceal an infringement of Neo4j Sweden's rights under the Copyright Act.

172. Defendants engaged in these activities without the consent or authorization of Neo4j Sweden.

173. Plaintiffs have been injured as a result of these violations of 17 U.S.C. § 1202(b) and is entitled to injunctive relief, damages, costs, and attorneys' fees. Pursuant to 17 U.S.C. § 1203(c)(3), Neo4j Sweden may also elect to recover statutory damages for not less than $2,500 or more than $25,000 for each violation of 17 U.S.C. § 1202(b).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. For compensatory damages in an amount to be proven at trial, in amount no less than $3,100,000, and that the amount of damages for infringement of Neo4j USA's NEO4J® Mark be increased by a sum not exceeding three times the amount thereof as provided by 15 U.S.C. § 1117;

2. For an award of all profits heretofore realized by Defendants during their infringing use of the NEO4J® Mark pursuant to 15 U.S.C. § 1117 and other applicable laws and statutes;

3. For reasonably attorneys' fees and costs pursuant to 15 U.S.C. § 1117 and/or 18 U.S.C. § 2520(b)(3);

4. Compensatory damages according to proof for Defendants' breaches of contract, but in amount no less than $3,100,000;

5. Disgorgement and restitution of Defendants' ill-gotten gains;

6. For a preliminary and permanent injunction restraining Defendant, its officers, agents, servants, employees, attorneys, confederates, and all persons acting for, with, by through, under, or in active concert with them temporarily, preliminarily, and permanently enjoined and restrained from use of the NEO4J® Mark;

7. For injunctive relief, costs, and attorneys' fees pursuant to 17 U.S.C. § 1203(b);

8. For actual damages, or in the alternative statutory damages for not less than $2,500 or more than $25,000 for each violation of 17 U.S.C. § 1202(b), pursuant to 17 U.S.C. § 1203(c);

9. For damages suffered as a result of Defendants' defamatory statements and an award of punitive damages in amounts to be proven at trial;

10. For interest as allowed by law;

11. For cost of suit herein incurred; and

12. For such other and further relief as this Court may deem proper.

Dated: September 28, 2020

HOPKINS & CARLEY
A Law Corporation

By: */s/ Jeffrey M. Ratinoff*
John V. Picone III
Jeffrey M. Ratinoff
Attorneys for Neo4j USA
NEO4J, INC.

DEMAND FOR JURY TRIAL

Neo4j USA Neo4j, Inc. hereby demands trial by jury for all causes of action presented herein pursuant to Fed. R. Civ. P. 38.

Dated: September 28, 2020

HOPKINS & CARLEY
A Law Corporation

By: */s/ Jeffrey M. Ratinoff*
John V. Picone III
Jeffrey M. Ratinoff
Attorneys for Plaintiffs
NEO4J, INC. AND NEO4J SWEDEN AB

EXHIBIT 1

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Attorneys for Defendants:
PURETHINK LLC, a Delaware limited liability company, IGOV INC., a Virginia corporation, and JOHN MARK SUHY

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

NEO4J, INC., a Delaware corporation, and NEO4J SWEDEN AB, a Swedish corporation, Plaintiffs v. PURETHINK LLC, a Delaware limited liability company, IGOV INC., a Virginia corporation, and JOHN MARK SUHY, an individual, Defendants.	CASE NO. 5:18-cv-7182 EJD **DEFENDANTS PURETHINK, LLC, IGOV INC AND JOHN MARK SUHY'S ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT** **DEMAND FOR JURY TRIAL**

Defendants PURETHINK, LLC, iGOV and JOHN MARK SUHY ("Defendants") answers NEO4J, INC. ("Neo4J USA") and NEO4J SWEDEN AB's ("Neo4J Sweden") Second Amended Complaint as follows:

1. Defendants admits the statement outlines the claims but otherwise deny the claims and allegations in paragraph 1.

2. Defendants admits the first and second sentence in paragraph 2. Defendants deny that plaintiff is the graph company behind an open source software product called Neo4J as the software is owned by and licensed by Neo4J Sweden AB according to the license for Neo4J-enterprise available at GitHub. Defendants lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations and on that basis deny the remaining allegations.
3. Defendants deny the allegation in paragraph 3. Defendants believes that many users are using the open source version called Neo4J and not what plaintiff calls Neo4J®. This confusion arises because plaintiff Neo4J, USA claims they own Neo4J software yet the open source license is by Neo4J Sweden. Likewise, there appear over 183 contributors to the open source version of the Neo4J software and Defendants do not know if each contributor has assigned contributions or moral rights in works to either plaintiff. Defendants lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations and on that basis deny the remaining allegations.
4. Defendants lacks knowledge or information sufficient to form a belief about the truth of the allegations and on that basis deny the allegations.
5. Defendants admits the allegations in paragraph 5 except they deny PureThink is a shell entity maintained by the other Defendants and is

not currently conducting or engaged in any meaningful business activities.

6. Defendants admits the allegations in paragraph 6 except they deny iGov is the assignee and successor-in-interest to PureThink or otherwise acquired substantially all of PureThink's assets sometime in mid-2017 and deny that Neo4J is a large scale graph solution as it is limited in scalability.
7. Defendants admits that iGov does business as GraphStack, but deny the remaining allegations in paragraph 7.
8. Defendants deny the allegations in paragraph 8 except for the fact Suhy is an individual and the last sentence.
9. Defendants deny the allegations in paragraph 9.
10. Defendants deny the allegations in paragraph 10.
11. Defendants deny the allegations in paragraph 11 are an example to support the allegations and deny Defendants share the same customer support number but admit the facts alleged.
12. Defendants deny the allegations in paragraph 12 are an example to support the allegations but admit the facts alleged except Defendants lacks information or belief about what virtually identical means.
13. Defendants deny the allegations in paragraph 13 as the verb ported is unclear and vague.
14. Defendants deny the allegations in paragraph 14.
15. Defendants admits the allegations in paragraph 15.
16. Defendants deny the allegations in paragraph 16.

17. Defendants deny the allegations in paragraph 17.

18. Defendants admits the allegations in paragraph 18.

19. Defendants admits the allegations in paragraph 19.

20. Defendants deny the allegations in paragraph 20.

21. Defendants lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 21 and on that basis deny the allegations.

22. Defendants lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 22 and on that basis deny the allegations.

23. Defendants lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 23 and on that basis deny the allegations.

24. Defendants lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 24 and on that basis deny the allegations. Defendants is informed and believes that both plaintiffs did not license the open source version of Neo4J software as the open source licenses state the software is owned and license by Neo4J Sweden.

25. Defendants lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 25 and on that basis deny the allegations. Defendants is informed and believes that both plaintiffs did not license the open source version of Neo4J software as the open source licenses state the software is owned and license by

Neo4J Sweden. Further, Neo4J Sweden did not license a commercial product based on the open source software.

26. Defendants deny the allegations in paragraph 26.

27. Defendants deny the allegations in paragraph 27.

28. Defendants deny the allegations in paragraph 28.

29. Defendants deny they agreed to provide first and second line support to end-users of NEO4J® EE software. Defendants admits the remaining allegations paragraph 29.

30. Defendants admits the first sentence in paragraph 30 and deny the remainder.

31. Defendants lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 31 and on that basis deny the allegations.

32. Defendants deny the allegations in paragraph 32.

33. Defendants admits the first sentence in paragraph 33 and deny the remainder.

34. Defendants admits the allegations paragraph 34.

35. Defendants admits the allegations paragraph 35.

36. Defendants admits the allegations paragraph 36.

37. Defendants admits the allegations in paragraph 37.

38. Defendants admits the allegations in paragraph 38.

39. Defendants deny the allegations in paragraph 39.

40. Defendants deny the allegations in paragraph 40.

41. Defendants deny the allegations in paragraph 41.

42. Defendants deny the allegations in paragraph 42.

43. Defendants deny the allegations in paragraph 43.

44. Defendants deny the allegations in paragraph 44.

45. Defendants deny the allegations in paragraph 45.

46. Defendants deny the allegations in paragraph 46.

47. Defendants deny the allegations in paragraph 47.

48. Defendants deny the allegations in paragraph 48.

49. Defendants deny the allegations in paragraph 49.

50. Defendants deny the allegations in paragraph 50.

51. Defendants deny the allegations in paragraph 51.

52. Defendants deny the allegations in paragraph 52.

53. Defendants deny the allegations in paragraph 53.

54. Defendants deny the allegations in paragraph 54.

55. Defendants deny the allegations in paragraph 55.

56. Defendants deny the allegations in paragraph 56.

57. Defendants deny the allegations in paragraph 57.

58. Defendants deny the allegations in paragraph 58.

59. Defendants deny the allegations in paragraph 59.

60. Defendants deny the allegations in paragraph 60.

61. Defendants deny the allegations in paragraph 61.

62. Defendants admits to posting messages on Twitter. Defendants deny that he spread misinformation, unfairly competed, and the remaining allegations in paragraph 62.

63. Defendants deny the allegations in paragraph 63.

64. Defendants deny the allegations in paragraph 64.

65. Defendants deny the allegations in paragraph 65.

66. Defendants deny the allegations in paragraph 66.

67. Defendants deny the allegations in paragraph 67.

68. Defendants lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 68 and on that basis deny the allegations. Neo4J Sweden's copyright management information violates the APGL copyright.

69. Defendants admits the allegations in paragraph 69 and such removal was to prevent further violation of the AGPL license and removal of infringing material is expressly allowed under the AGPL.

70. Defendants admits the allegations in paragraph 70.

71. Defendants deny the allegations in paragraph 71 to the extent Suhy stated in an email he had recorded him, otherwise denied. The statement was to avoid the changes of instructions on the employees part. Suhy felt if the employee thought his calls were being recorded, he would temper his fluxuations and false changes in instructions.

72. Defendants admits the allegations in paragraph 72 to the extent Suhy stated in an email he had recorded him, otherwise denied. The statement was to avoid the changes of instructions on the employees part. Suhy felt if the employee thought his calls were being recorded, he would temper his fluxuations and false changes in instructions.

73. Defendants admits the allegations in paragraph 73 to the extent Suhy told him he had recorded phone calls, otherwise denied. The statement was to avoid the changes of instructions on the employees

part. Suhy felt if the employee thought his calls were being recorded, he would temper his fluxuations and false changes in instructions.

74. Defendants incorporate its responses to paragraphs 1-73.

75. Defendants deny the allegations in paragraph 75. Neo4J USA did not exist in 2007. It was formed in 2011. The software has been licensed on an open source basis by Neo4J Sweden and called Neo4J by Neo4J Sweden. The ownership of the Neo4J software is claimed by Neo4J Sweden. Likewise, the software development was provided by over 100 contributors, Github shows that there are 1,515 forks to the software with 22 branches and Defendants do not know if the contributors have assigned the rights to the Neo4J open source software copyright to either plaintiff.

76. Defendants deny the allegations in paragraph 76. Neo4J USA did not exist in 2007. It was formed in 2011. The software has been licensed on an open source basis by Neo4J Sweden and called Neo4J by Neo4J Sweden. The ownership of the Neo4J software is claimed by Neo4J Sweden. Likewise, the software development was provided by over 100 contributors, Github shows that there are 1,515 forks to the software with 22 branches and Defendants do not know if the contributors have assigned the rights to the Neo4J open source software copyright to either plaintiff.

77. Defendants deny the allegations in paragraph 77. The software has been licensed on an open source basis by Neo4J Sweden and called Neo4J by Neo4J Sweden. The ownership of the Neo4J software is claimed by Neo4J Sweden AB. Likewise, software development was

provided by over 100 contributors, Github shows that there are 1,515 forks to the software with 22 branches and Defendants do not know if the contributors have assigned the rights to the Neo4J open source software copyright to plaintiff.

78. Defendants deny the allegations in paragraph 78. The software has been licensed on an open source basis by Neo4J Sweden AB and called Neo4J by Neo4J Sweden AB and ownership of the software is claimed by Neo4J Sweden AB. Likewise, software development was provided by over 100 contributors, Github shows that there are 1,515 forks to the software with 22 branches and Defendants do not know if the contributors have assigned the rights to the Neo4J open source software copyright to plaintiff. Defendants deny that goodwill in the name Neo4J is exclusively held by Neo4J USA.

79. Defendants deny the allegations in paragraph 79.

80. Defendants deny the allegations in paragraph 80.

81. Defendants deny the allegations in paragraph 81.

82. Defendants deny the allegations in paragraph 82.

83. Defendants deny the allegations in paragraph 83.

84. Defendants deny the allegations in paragraph 84.

85. Defendants deny the allegations in paragraph 85.

86. Defendants deny the allegations in paragraph 86.

87. Defendants incorporate its responses to paragraphs 1-86.

88. Defendants deny the allegations in paragraph 88.

89. Defendants deny the allegations in paragraph 89.

90. Defendants deny the allegations in paragraph 90.

91. Defendants deny the allegations in paragraph 91.

92. Defendants deny the allegations in paragraph 92.

93. Defendants deny the allegations in paragraph 93.

94. Defendants deny the allegations in paragraph 94.

95. Defendants incorporate its responses to paragraphs 1-94.

96. Defendants deny the allegations in paragraph 96.

97. Defendants deny the allegations in paragraph 97.

98. Defendants deny the allegations in paragraph 98.

99. Defendants deny the allegations in paragraph 99.

100. Defendants deny the allegations in paragraph 100.

101. Defendants deny the allegations in paragraph 101.

102. Defendants incorporate its responses to paragraphs 1-101.

103. Defendants deny the allegations in paragraph 103.

104. Defendants deny the allegations in paragraph 104.

105. Defendants deny the allegations in paragraph 105.

106. Defendants deny the allegations in paragraph 106.

107. Defendants deny the allegations in paragraph 107.

108. Defendants incorporate its responses to paragraphs 1-107.

109. Defendants admits PureThink signed the Partner Agreement but Defendants otherwise deny the allegations in paragraph 83, because plaintiff has failed to perform, clauses 4.3.1, and 4.3.2 are not enforceable as written or applied and the limitations in the Partner Agreement violate the open source Neo4J enterprise license.

110. Defendants admits the allegations in paragraph 110.

111. Defendants admits the terms of the 7.3 of the Partner Agreement claims to prevent PureThink from dealing in Products which is defined as Neo4J commercial software provided by Neo Technology and licensed to the End User but otherwise deny the allegations in paragraph 111.

112. Defendants deny the allegations in paragraph 112.

113. Defendants deny the allegations in paragraph 113.

114. Defendants deny the allegations in paragraph 114.

115. Defendants deny the allegations in paragraph 115.

116. Defendants deny the allegations in paragraph 116.

117. Defendants deny the allegations in paragraph 117.

118. Defendants deny the allegations in paragraph 118.

119. Defendants deny the allegations in paragraph 119.

120. Defendants deny the allegations in paragraph 120.

121. Defendants incorporate its responses to paragraphs 1-120.

122. Defendants deny the allegations in paragraph 122.

123. Defendants deny the allegations in paragraph 123.

124. Defendants deny the allegations in paragraph 124.

125. Defendants admits the first and second sentence in paragraph 125 and deny the remaining allegations in paragraph 125.

126. Defendants deny the allegations in paragraph 126.

127. Defendants deny the allegations in paragraph 127.

128. Defendants admits Neo4J USA seeks statutory damages but deny they are entitled to any damages as alleged in paragraph 128.

129. Defendants deny the allegations in paragraph 129.

130. Defendants incorporate its responses to paragraphs 1-129.

131. Defendants lack sufficient information and belief to answer parararagraph 131 and on said basis deny. Neo4J Sweden states it owns the open source version of Neo4J but the software was also created by over 183 contributors who are also copyright and moral rights holders.

132. Defendants deny the allegations in paragraph 132.

133. Defendants deny the allegations in paragraph 133.

134. Defendants deny the allegations in paragraph 134.

135. Defendants deny the allegations in paragraph 135.

136. Defendants deny the allegations in paragraph 136.

137. Except as otherwise admitted, Defendants deny the allegations in the FAC.

Affirmative Defenses

1. Void Restriction

Section 4.3.2 of the Partner Agreement, provides:

> During the term of this Agreement and up until thirty six (36) months after the termination or expiration of this Agreement, Partner may not develop, market, distribute or offer any services related to any Neo Technology Community Edition Products, derivative works of such products, or any Partner software code made to work with Neo Technology Community Edition Products(including, without limitation, hosting services, training, technical support, configuration and customization services, etc.)

Neo4J USA seeks to prevent Defendants from licensing and supporting open source software during and for 36 months after termination of the Partner Agreement. The Partner Agreement is. by its terms, governed by California law. The restriction under Section 4.3.2 cannot be enforced against Defendants as the restriction is void under California Business and Professions Code §16600: “Except as provided in this chapter, every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void.”

2. License To Use Neo4J Open Source Software

Section 4.3.1 of the Partner Agreement provides:

> **4.3.1** During the term of this Agreement, Partner may not use or run on any of Partner’s hardware, or have deployed for internal use, any Neo Technology Community Edition Products for commercial or production use. In no event shall Partner reverse engineer, distribute or otherwise use the Products for its own internal use. There are no implied rights. Partner will not fork or bifurcate the source code for any Neo Technology Community Edition Products into a separately maintained source code repository so that development done on the original code requires manual work to be transferred to the forked software or so that the forked software starts to have features not present in the original software.

The restrictions in Paragraphs 4.3.1 and 4.3.2 violate the GNU AFFERO GENERAL PUBLIC LICENSED VERSION 3 for Neo4J enterprise software:

Section 2 (Basic Permissions) of the AGPL license provides, in part:

> “All rights granted under this License are granted for the term of copyright on the Program, and are irrevocable provided the stated conditions are met. This License explicitly affirms your unlimited permission to run the unmodified Program. …
>
> You may make, run and propagate covered works that you do not convey, without conditions so long as your license otherwise remains in force. You may convey covered works to others for the sole purpose of having them make modifications exclusively for you, or provide you with facilities for running those works, provided that you comply with the terms of this License in conveying all material for which you do not control copyright.”

Section 4 of the AGPL license provides, in part:

> "You may charge any price or no price for each copy that you convey, and you may offer support or warranty protection for a fee."

Section 10 (Automatic licensing of Downstream Recipients)

of the AGPL provides, in part:

> "You may not impose any further restrictions on the exercise of the rights granted or affirmed under this License."

Defendants are licensed to use the open source software version of Neo4J by Neo4J Sweden AB without restriction under the AGPL license agreement. Neo4J USA may not impose restrictions on use of Neo4J and cannot prevent or bar Defendants from using the open source Neo4J. By imposing restrictions in violation of the License, plaintiff has breached the open source license and has no rights to use or license Neo4J.

3. Right to fork and use Neo4J open source under GitHub Terms of Service

By using a public repository at GitHub, the open source versions of Neo4J are subject to the GitHub Terms of Service which allow any user to use and fork the software and other content on the NEO4J SWEDEN public GitHub repository:

> D. 5. If you set your pages and repositories to be viewed publicly, you grant each User of GitHub a nonexclusive, worldwide license to use, display, and perform Your Content through the GitHub Service and to reproduce Your Content solely on GitHub as permitted through GitHub's functionality (for example, through forking). You may grant further rights if you adopt a license. If you are uploading Content you did not create or own, you are

> responsible for ensuring that the Content you upload is licensed under terms that grant these permissions to other GitHub Users.

https://help.github.com/en/articles/github-terms-of-service

4. **Unclean Hands**

Neo4J USA should not be permitted to enforce the Partner Agreement and trademarksbecause of plaintiffs unclean hands in the use of the Partner Agreement and unlawful licensing practices. Neo4J USA told PureThink they could modify the scope of a license agreement to meet the needs of the government users such as the IRS. Neo4J USA's license model is priced for core processor charges. However, there is no per core charge on the open source version. Neo4J USA at first agreed PureThink could drop the core use pricing for the IRS, then later plaintiff refused to allow the price change. Neo4J USA also forbade its partners, such as PureThink, to discuss the available open source versions. When the IRS, faced with core pricing limitations, asked PureThink about the differences between the commercial software and the open source version of Neo4J, plaintiff told PureThink to lie stating the open source version could only be used on an open project to try to induce the IRS to purchase a commercial version of Neo4J. When Neo4J USA threatened to terminate PureThink, they agreed PureThink could remedy the breach if the IRS signed up for a commercial license through plaintiff. When the IRS wanted to use the Neo4J open source software with support from PureThink, plaintiff interfered falsely stating PureThink could not use or support Neo4J open source software. Neo4J USA is attempting to improperly use a dual licensing practice having a commercial version controlled by plaintiff and an open source software licensed under a General Public License. Because the open source software is under a GPL or AGPL license, and has over 183 contributors, plaintiff may not be able to actually convert the GPL or AGPL license to proprietary software. Under a GPL or AGPL type license, contributors' efforts to modify the software cannot be taken away and turned into privately controlled software. NEO4J SEDWEN added an invalid Commons Clause to the AGPL to improperly restrict use and support of the open source software. Defendants are informed and believe that plaintiff only provides an object code version of the Neo4J software under a commercial license while the GPL and AGPL type license requires access to the source code as well. Defendants are informed and believe that because plaintiff cannot lawfully operate a dual license model since the open source is based on GPL or AGPL, plaintiff resorts to sharp and false advertising practices with customers (lying about the difference between the commercial versions and the open source version) attempting to restrict partners, such as PureThink, from supporting the open source Neo4J version with unlawful restrictions and interfering in attempts to use open source Neo4J software during the partner term and for three years after termination. The rights of open source users to use the software without making it open, as Neo4J USA claims, is shown by the FAQs at the GNU site:

If I only make copies of a GPL-covered program and run them, without distributing or conveying them to others, what does the license require of me?(#NoDistributionRequirements)

> Nothing. The GPL does not place any conditions on this activity.

The same rules apply to modified versions of the open source code:

> Does the GPL require that source code of modified versions be posted to the public? (#GPLRequireSourcePostedPublic)
>
> The GPL does not require you to release your modified version, or any part of it. **You are free to make modifications and use them privately, without ever releasing them. This applies to organizations (including companies), too; an organization can make a modified version and use it internally without ever releasing it outside the organization.**
>
> But *if* you release the modified version to the public in some way, the GPL requires you to make the modified source code available to the program's users, under the GPL.
>
> Thus, the GPL gives permission to release the modified program in certain ways, and not in other ways; but the decision of whether to release it is up to you.
>
> [Emphasis added]

As plaintiffs have sought to threaten open source users improperly, prevent third parties from providing services to open source code users, they come to this court with unclean hands, they should be barred from any recovery.

5. The addition of the commons clause is unlawful under the AGPL

The open source license used by Neo4J Sweden AB, the AGPL, is a license copyrighted by the Free Software Foundation. The beginning of the AGPL license provides a copyright notice:

> Copyright (C) 2007 Free Software Foundation, Inc. <http://fsf.org/>
> Everyone is permitted to copy and distribute verbatim copies
> of this license document, but changing it is not allowed. [Emphasis added]

By its terms, the license may not be changed.

Neo4J Sweden AB's attempt to change the AGPL license violates its terms. The licensee is protected from this violation under the terms of the license: "If the Program as you received it, or any part of it, contains a notice stating that it is governed by this License along with a term that is a further restriction, **you may remove that term**." [Emphasis added]. §7 AGPL.

Defendants had the express right to remove any improper terms and such removal prevented further infringement of the APGL license's terms.

6. **NEO4J USA violated the AGPL**

Neo4J has attempted to take the open source software under the AGPL and commercialize it in violation of the AGPL while preventing former partner from supporting the open source software. But the APGL provides "You may not impose any further restrictions on the exercise of the rights granted or affirmed under this License. For example, you may not impose a license fee, royalty, or other charge for exercise of rights granted under this License." §10 of the AGPL.

7. **Cancellation of Trademark Procured by Fraud**

The Registered Trademark for NEO4J, Reg. No. 4,784,280, was procured by fraud as the representation was that Neo Technology (a Delaware corporation) (changed to Neo4J, Inc.) first used the trademark in 6-4-2006 and in commerce in 5-28-2007. These statements are false as Neo Technology did not exist on those dates represented as the company was formed 7-7-2011 in Delaware under File Number 5007564. Because the registration was procured by fraud, the registration should be cancelled pursuant to 15 U.S.C. §1119.

8. **Fair Use of Trademarks**

Defendants use of the trademarks was and is a nominative fair use to 1) identify a software product they support called Neo4J that is freely available as open source software, 2) comparative advertising (See 16 C.F.R. §14.15(b)) and 3) to advise others PureThink was no longer a partner with Neo4J USA.

9. **Naked License Abandonment of Trademark**

Neo4J USA claims they own the Neo4J trademark but there is confusion whether that is a company name trademark or product name trademark. This confusion is exacerbated by Neo4J Sweden's open source license for the Neo4J software. Neo4J Sweden's license states: "The software ("Software") is developed and owned by Neo4J Sweden AB (referred to in this notice as "Neo4J")… . Neo4J Sweden asserts they own the software-and not Neo4J USA- and yet both companies use Neo4J name as part of the company name and call the open source software product Neo4J too. As the Neo4J software is licensed as open source software, there is no ability to maintain quality control of how licensees modify, use or distributed or conveyed. As a result, Neo4J USA has abandoned the Neo4J trademark under the doctrine of Naked License.

10. **Waiver**

Neo4J USA waived PureThink's conduct in modifying the open source version of Neo4J to create the government edition as they agreed PureThink could use and modify the software as required to satisfy the United States Government buyers.

11. **Setoff**

Neo4J USAs' alleged claims to damages are barred, in whole or in part, by the right of one or more Defendants to a setoff against any such damages.

Prayer for Relief

Wherefore Defendants request:

1. The complaint be dismissed with prejudice;
2. That the trademark based claims be found exceptional as the trademark was obtain through fraud, the alleged infringments are obviously nominative fair use and comparative advertising, allowing Defendants to recover attorneys fees under 15 U.S.C. §1117 (a);
3. That Defendants recover costs and attorneys fees as permitted by law;
4. And for such other relief as the Court deems just.

Dated: December 9, 2019

____/s/ Adron G. Beene__________
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PURETHINK LLC, a Delaware limited
liability company, IGOV INC., a Virginia
corporation, and JOHN MARK SUHY

DEMAND FOR JURY TRIAL

Defendants PureThink LLC, iGOV Inc. and John Mark Suhy hereby demand a trial by jury.

Dated: December 9, 2019

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NEO4J, INC., a Delaware corporation,
NEO4J SWEDEN AB

Plaintiffs,
v.
PURETHINK LLC, a Delaware limited liability company, IGOV INC., a Virginia corporation, and JOHN MARK SUHY, an individual,
Defendants.

PURETHINK LLC, a Delaware limited liability company, IGOV, INC. a Virginia corporation, JOHN MARK SUHY
Counter Claimants

v.

NEO4J, INC. a Delaware corporation,
NEO4J SWEDEN AB

CASE NO. 5:18-cv-7182 EJD

DEFENDANT PURETHINK LLC AND IGOV, INC'S FIRST AMENDED COUNTERCLAIM AGAINST NEO4J, INC. AND NEO4J SWEDEN AB FOR

1) **Interference With Prospective Economic Advantage**
2) **Interference with Contract**
3) **Breach of Contract**
4) **Breach of Exclusive Contract to Government**
5) **Declaratory Relief (Void Restrictions)**
6) **Declaratory Relief (Restrictions Violate AGPL License)**
7) **Declaratory Relief (Creative Commons Clause in AGPL is invalid)**
8) **Declaratory Relief**

Counter Defendants.

(Creative Commons Clause in AGPL does not apply to professional services)

9) Declaratory Relief (Users may use and fork content NEO4J SWEDEN put on a public GitHub respository)

10) Declaratory Relief (Abandonment of Trademark)

11) Cancellation of Trademark procured by Fraud

12) Unfair Business Practices (California Business and Professions Code § 17200 et. Seq.)

DEMAND FOR JURY TRIAL

Counter Claimants PURETHINK LLC, a Delaware limited liability company ("PureThink"), IGOV, INC. a Virginia corporation ("iGov") and John Mark Suhy allege against NEO4J, Inc. ("NEO4J USA") and NEO4J SWEDEN AB ("NEO4J SWEDEN") as follows:

I. Jurisdiction

1. This is a compulsory counterclaim under Federal Rule of Civil Procedure §13(a). This Court has supplemental jurisdiction under 28 USC § 1367(a).

II. Parties

2. Counter Claimant PureThink LLC, is a Delaware limited liability company.
3. Counter Claimant IGOV, INC. is a Virginia corporation.
4. Counter Claimant John Mark Suhy is an individual.
5. Counter Defendant NEO4J, Inc. is a Delaware corporation.
6. Counter Defendant NEO4J SWEDEN is a Swedish corporation.

III. Introduction

7. NEO4J SWEDEN licenses software called Neo4j as open source software under a GNU General Public License model. The GNU General Public License "GPL" license and a variant for server deployment called the GNU Affero General Public License "AGPL" license have several versions and distinctions. Neo4j is licensed as a Community edition under the GPLv.3 and an Enterprise edition under the AGPLv.3 ("License") A true and correct copy of the Neo4j AGPL License is attached as Exhibit A.
8. The Neo4j open source software is available at Github.com which is the preeminent open source software repository: https://github.com/neo4j/neo4j/tree/3.5
9. PureThink and iGov have downloaded Neo4j source code from GitHub under the APGL license. Anyone may download the Neo4j source code and use, modify, support, combine and convey the software. However, using GPL or AGPL may require distribution of modifications to the source code under "copyleft" license requirements of GPL and AGPL licenses.

10. Using an open source distribution and development model, NEO4J SWEDEN distributes Neo4j software to users and developers. The GPL and AGPL licenses provide for free use of the software and free use of distributed modifications and extended versions of the program as well.

11. After starting the Neo4j software with open source free licensing and benefitting from free third party development, there was a change to a dual-license model. Neo4j SWEDEN continues to license the open source software while NEO4J USA licenses an object code version of the open source software with support under a "commercial" license. PureThink is unable to determine if NEO4J USA claims the commercial version is proprietary or limited in some manner. Neo4j has over 183 contributors and it is unclear if all contributors assigned their copyright and moral rights to changes in Neo4j to NEO4J USA. As NEO4J USA used the open source version to develop and convey "commercial" versions of Neo4j, the "commercial" software is subject to the terms of the AGPL. Those terms include:

Section 2 of the AGPL license provides, in part:

> All rights granted under this License are granted for the term of copyright on the Program, and are irrevocable provided the stated conditions are met. This License explicitly affirms your unlimited permission to run the unmodified Program. …
>
> You may make, run and propagate covered works that you do not convey, without conditions so long as your license otherwise remains in force."

Section 4 of the AGPL license provides, in part:

> "You may charge any price or no price for each copy that you convey, and you may offer support or warranty protection for a fee."

Section 7 of the AGPL license provides, in part:

> All other non-permissive additional terms are considered "further restrictions" within the meaning of section 10. If the Program as you received it, or any part of it, contains a notice stating that it is governed by this License along with a term that is a further restriction, you may remove that term. If a license document contains a further restriction but permits relicensing or conveying under this License, you may add to a covered work material governed by the terms of that license document, provided that the further restriction does not survive such relicensing or conveying.

Section 10 (Automatic licensing of Downstream Recipients)

of the AGPL provides, in part:

> "Each time you convey a covered work, the receipient automatically receives a license from the original licensors, to run, modify and propagate that work, subject to this license… ."

> "You may not impose any further restrictions on the exercise of the rights granted or affirmed under this License."

12. NEO4J USA also set up a sales channel to use partners, such as PureThink, to sell and support the "commercial" version of Neo4j. As part of that model, the partner would receive 25% of the fee and provide support for customer.

13. The Partner Agreement seeks to restrict partners from working with the open source version of Neo4j software during the Partner Agreement and for 3 years after termination. But these restrictions are invalid under California Business and Professions Code §16600. PureThink and IGOV filed a motion under FRCP 12 (b)(6) and 12 (f) against the attempt by NEO4J USA to enforce a restrictive covenant preventing defendants from performing any services on the open source versions of Neo4J software for a period of three years post termination

of the Partner Agreement. Conceding the invalidity of the restriction, raised by the motions, Plaintiffs then filed a Second Amended Complaint altering paragraph 112 in the First Amended Complaint removing and waiving a breach of contract claim based on the unlawful restriction. The restriction also violate the no further restrictions clause (Section 10) of the AGPL. The AGPL license limits the rights of a party to restrict rights to use the AGPL. PureThink is informed and believes that NEO4J USA uses these restrictions to prevent partners from working with any customers on open source versions of Neo4j which also prevents such parties from working for or with PureThink and iGov.

14. During 2014, the MPO (Maryland Procurement Office) was in discussions with NEO4J USA about Neo4j. The MPO referred NEO4J USA to PureThink as PureThink was a registered vendor in the Arcnet Vendor System and with Neo4j listed as one it its capabilities.

15. PureThink and NEO4J USA signed a NEO4J Solution Partner Agreement with Neo Technology, Inc, effective 9-30-2014. ("Partner Agreement") A true and correct copy of the Partner Agreement is attached as Exhibit B.

16. John Suhy, of PureThink, had discussions with Lars Nordwall, COO of NEO4J USA concerning the challenges of obtaining business with the US government. Mr. Suhy and Mr. Nordwall discussed the need to modify the software offering to satisfy security and other requirements the government had. Mr. Nordwall represented to Mr. Suhy that Mr. Suhy could improve the open source Neo4j software

offering for the government and that PureThink would have exclusive rights to the Neo4J support and deals with the Government. Furthermore, a separate agreement came into place for the new Neo4j version for the government which was supposed to protect the investment PureThink was making and was going to make. A true and correct copy of the exclusive agreement for Government sales is attached as Exhibit C.

17. PureThink, worked for months on the new Neo4j Government Package software, determining the requirements, designing and developing enhancements and additional features around Neo4j including support and professional services to addressed critical government security and procurement requirements. PureThink spent an equivalent to $650,000 to design, develop, and build the new Neo4j Government Package software based on Mr. Nordwall's representations that PureThink would have continuing exclusivity with the government sales and support contracts. PureThink's government packaging of Neo4j was called Neo4j Government Edition and a.k.a. Neo4j Enterprise Government Edition. ("Neo4j Government Edition"). The Neo4j Government Edition was a complete package that included additional services, support and software modules enhancing Neo4j to address critical government requirements.

18. PureThink did deals with MPO, Sandia National Laboratories, and the FBI with NEO4J USA's approval and closed a deal with the IRS which NEO4J USA initially approved but later changed its position and ultimately did not approve.

19. There were no significant functional differences between the open source version of Neo4j and what NEO4J USA called a commercial version of Neo4j. Further, under the rules of GPL and AGPL open source software, there could not be proprietary modification as modifications to and conveyance of open source software under an AGPL license must continue to be licensed on an open source AGPL license. It appears NEO4J USA's solution to this problem was and is to misrepresent the truth or actively conceal the issue.

20. PureThink and IRS entered into a contract which for the first time, was done completely outside the Partner Agreement, and under the Government Edition agreement. The contract included consulting services to build out a solution IRS requested around the Neo4j Government Edition. NEO4J USA told PureThink to make whatever decisions were needed regarding the much smaller license portion of the contract. During the performance of the contract, when the IRS asked PureThink the difference between Neo4j open source and NEO4J USA's commercial version, NEO4J USA told PureThink to tell the IRS the open source version had to be an open use. When PureThink would not make this statement to IRS, NEO4J USA then proceeded to reach out directly to IRS personel directly with this false message. This scare tactic is utterly false and a user of AGPL software does not have to license its use to everyone. The other improper control is NEO4J USA's unlawful restrictions in its Solution Partner Agreement which claims the partner may not suport the open source software during the Partner Agreement or for three years after termination. With these

invalid restrictions NEO4J USA unlawfully restricts third parties from supporting the free open source version so NEO4J USA can license and support the same software under an expensive commercial license without fear of fair competition. NEO4J SWEDEN attempted to improperly restrict this open source software by adding a restriction to the AGPL software license documents referred to as “Commons Clause” license condition which sought to broadly restrict the rights of anyone from selling or otherwise profiting from the sales of support services upon such software. Such attempt of adding this type of restriction was in violation of the AGPL license.

21. When PureThink resisted misrepresenting the differences between the open source software and NEO4J USA’s commercial version, NEO4J USA retaliated, terminating the Government Edition, the Government Edition Agreement, the Partner Agreement with the stated intent of shutting down PureThink. NEO4J USA told users and potential users PureThink could not support the open source version of Neo4j. See Exhibit D where Neo4j Inc. specifically told the IRS PureThink could not provided professional services to the IRS for a period of three years as a result of the termination of the Partner Agreement. Because of NEO4J USA’s improper retaliation and interference with PureThink’s business, tarnishing PureThink’s business, iGov was set up to start fresh in providing solutions around Neo4j for parties who use the open source software version of Neo4J. iGov is informed and believes that NEO4J USA also advised iGov potential customers that iGov could not work with them either.

IV. Counterclaims

First Cause of Action

Interference With Prospective Economic Advantage

(Against NEO4J, Inc.)

22. PureThink and iGov reincorporate the allegations in paragraph 1-21 as alleged above.

23. PureThink had an economic relationship with the possibility of future economic relationships with the United States government agencies MPO, FBI, Sandia National Laboratories, IRS, and others (“Agencies”). PureThink had already secured prior business with the MPO, FBI and Sandia National Laboratories, and the US Treasury. PureThink had been awarded a new contract with the IRS.

24. PureThink was working on potential business opportunities with US Treasury, Linkurious, Excella, Information Analysis Incorporated, Deloitte, GraphAware, Calibre, Lockheed Martin, Modus21 LLC, Mitre, United States Postal Service (USPS), National Institutes of Health (NIH), U.S. Census Bureau, Army, DHS, and others.

25. iGov was working on potential business opportunities with the possibility of future economic relationships with Accenture, Northrop Grumman Corporation, Anacapa Micro Products, NASA, NGA, Airforce, and others.

26. PureThink and iGov are informed and believe NEO4J USA was aware of each of the economic relationships and prospective future relationships PureThink and iGov had with these Agencies and companies.

27. PureThink and iGov are informed and believes an on said basis alleges that NEO4J USA intentionally interfered with PureThink and iGov's relationships by telling the Agencies and companies, PureThink was terminated as a solution partner and could not support open source versions of Neo4j for a period of 36 months following termination. Upon information and belief, NEO4J USA also informed other 3rd parties that iGov was under the same 36 month restriction.

28. This interference was intended to and did disrupt the economic relationship between PureThink, iGov and the Agencies and companies.

29. NEO4J USA's interference was an independent wrongful act as it violated California Business and Professions Code §16600: "Except as provided in this chapter, every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void."

30. PureThink and iGov had the legal right to enter into agreements with the Agencies and third parties using Neo4j open source software under the terms of the APGL software license and could not be prevented from lawfully doing so.

31. PureThink and iGov's relationship with the Agencies and companies was actually and totally disrupted by NEO4J USA's wrongful interference.

32. PureThink and iGov have suffered economic harm proximately caused by NEO4J USA's wrongful interference including lost sales, lost

profits, and future business with. PureThink has also lost its investment in developing the Government Edition.

33. PureThink and iGov have suffered damages in an amount believed to exceed $1,354,856.55.

34. NEO4J USA's conduct was oppressive, malicious, and fraudulent justifying an award of punitive damages under California Civil Code §3294. PureThink and iGov are informed and believe that NEO4J USA's conduct was authorized, ratified or made by an officer, director or managing agent of NEO4J.

Second Cause of Action
Interference With Contract
(Against NEO4J, Inc.)

35. PureThink and iGov reincorporate the allegations in paragraph 1-34 as alleged above.

36. PureThink and iGov have an irrevocable right to use, modify, support and convey Neo4j software under an APGL license through NEO4J SWEDEN.

37. PureThink and iGov are informed and believe NEO4J USA was aware of the License between PureThink, iGov and NEO4J SWEDEN.

38. PureThink is informed and believes and on said basis alleges that NEO4J USA intentionally interfered with the License by improperly telling the government agencies and companies, PureThink and iGov could not support open source versions of Neo4J based on void terms of the Partner Agreement. NEO4J USA action was the purpose of shutting down PureThink and causing PureThink economic harm. The

open source version was freely available under the License and the License provides PureThink and iGov may provide support for Neo4j and such right may not be restricted.

39. PureThink and iGov have the legal right to enter into agreements with the agencies and third parties using Neo4j open source software under the terms of the APGL software license and could not be prevented from lawfully doing so.

40. PureThink's and iGov's relationships with the Agencies and companies was actually and totally disrupted by NEO4J USA's interference with the License.

41. PureThink and iGov have both suffered economic harm proximately caused by NEO4J USA's wrongful interference including lost sales, lost profits, and future business. PureThink has also lost its investment in developing the Government Edition.

42. PureThink and iGov has suffered damages in an amount believed to exceed $5,000,000.

43. NEO4J's conduct was oppressive, malicious, and fraudulent justifying an award of punitive damages under California Civil Code §3294. PureThink and iGov are informed and believes that NEO4J USA's conduct was authorized, ratified or made by an officer, director or managing agent of NEO4J USA

Third Cause of Action
Breach of Contract
(Against NEO4J, Inc.)

44. PureThink reincorporates the allegations in paragraph 1-43 as alleged above.

45. PureThink and NEO4J USA entered into the Partner Agreement effective 9-30-2014.

46. PureThink performed all its obligations under the Partner Agreement, except those which are unlawful, were prevented, waived or excused.

47. NEO4J USA breached the Partner Agreement by failing to pay PureThink $26,020 which is 25% of a $104,028 deal with DHS USCIS.

48. As a result of NEO4J USA's breach, PureThink has been damaged in the sum of $26,020 plus interest at the legal rate.

Fourth Cause of Action

Breach of Exclusive Contract to Government

(Against NEO4J, Inc.)

49. PureThink reincorporates the allegations in paragraph 1-48 as alleged above.

50. Under the terms of the exlusive government agreement dated April 11, 2015, Neo4J, Inc., through its COO Lars Nordwall, agreed PureThink is the only Neo4J Government Edition reseller for the US Federal Bovernment, Department of Defense and Intelligence Agrencies. This exclusive agreement is Exhibit C. This agreement was a separate and distinct agreement from the Partner Agreement. There are no terms in the Partner Agreement where PureThink would develop software or functionality for the US government as PureThink did to create the Government Edition. NEO4J USA is estopped from

denying the April 11, 2015 agreement as PureThink was induced by the agreement to develop the Government Edition for the exclusive sale by PureThink.

51. PureThink has performed all its obligations under the April 11, 2015 exclusive government agreement except those which are unlawful, were prevented, waived or excused.

52. PureThink is informed and believes that NEO4J USA took features developed by PureThink incorporated it into NEO4J. PureThink is informed and believes that NEO4J USA sold Neo4J software and services directly to the US government, Department of Defense and intelligence Agencies in breach of its April 11, 2015 agreement with PureThink.

53. As a result of its breach, PureThink has suffered damages in excess of $1,354,856.55.

Fifth Cause of Action

Declaratory Relief

(Void Restrictions)

(Against NEO4J, Inc.)

54. PureThink and iGov reincorporates the allegations in paragraph 1-53 as alleged above.

55. There is a present controversy where NEO4J USA claims 4.3.2 of the Partner Agreement may be enforced against PureThink and iGov. That clause states:

> 4.3.2 During the term of this Agreement and up until thirty six (36) months after the termination or expiration of this Agreement, Partner may not develop, market, distribute or offer any services related to any Neo Technology Community Edition

> Products, derivative works of such products, or any Partner software code made to work with Neo Technology Community Edition Products(including, without limitation, hosting services, training, technical support, configuration and customization services, etc.)

56. PureThink asserts clause 4.3.2 of the Partner Agreement is void under California Business and Professions Code §16600. iGov claims the Partner Agreement does not apply to iGov, but if it does, clause 4.3.2 of the Partner Agreement is void under California Business and Professions Code §16600.

57. PureThink and iGov requests a declaration that § 4.3.2 of the Partner Agreement is void under California Business and Professions Code §16600.

Sixth Cause of Action

Declaratory Relief

(Restrictions Violate AGPL License)

(Against NEO4J, Inc.)

58. PureThink and iGov reincorporate the allegations in paragraph 1-57 as alleged above.

59. There is a present controversy where NEO4J USA claims 4.3.1 and 4.3.2 of the Partner Agreement may be enforced while PureThink and iGov assert the restriction in those section violate the GNU AFFERO GENERAL PUBLIC LICENSED VERSION 3 or the GPL for Neo4j because the NEO4J’s commercial software is based on the open source version of Neo4J from NEO4J SWEDEN. NEO4J USA is subject to the license limitation on restricting use of the open source version of Neo4j. The Section 2 (Basic Permissions) of the APGL provides, in part:

> "All rights granted under this License are granted for the term of copyright on the Program, and are irrevocable provided the stated conditions are met. This License explicitly affirms your unlimited permission to run the unmodified Program." …
>
> "You may make, run and propagate covered works that you do not convey, without conditions so long as your license otherwise remains in force"...

Section 4 of the AGPL license provides, in part:

> "You may charge any price or no price for each copy that you convey, and you may offer support or warranty protection for a fee."

Section 10 (Automatic licensing of Downstream Recipients) of the AGPL provides, in part:

> "You may not impose any further restrictions on the exercise of the rights granted or affirmed under this License."

60. PureThink and iGov have the rights granted under the License and may use Neo4j, provide support for Neo4j, charge for support and NEO4J USA may not restrict the use of Neo4j and prevent PureThink, iGov or any third party from exercising the rights granted under the AGPL. Under the AGPL, NEO4J USA may not prohibit anyone from using, modifying or supporting Neo4j.

61. PureThink and iGov request a declaration that §§ 4.3.1 and 4.3.2 of the Partner Agreement are void under the AGPL as the restriction violate the terms of the AGPL.

Seventh Cause of Action

Declaratory Relief

(Commons Clause in AGPL is void)

(Against NEO4J SWEDEN AB)

62. PureThink and iGov reincorporate the allegations in paragraph 1-61 as alleged above.

63. There is a present controversy where NEO4J, SWEDEN added a restrictive clause to the AGPL on at least version 3.4 of the open source version of Neo4J known as a Commons Clause License Condition which provides:

> "Commons Clause" License Condition
> The Software is provided to you by the Licensor under the License, as defined below, subject to the following condition. Without limiting other conditions in the License, the grant of rights under the License will not include, and the License does not grant to you, the right to Sell the Software. For purposes of the foregoing, "Sell" means practicing any or all of the rights granted to you under the License to provide to third parties, for a fee or other consideration, a product or service that consists, entirely or substantially, of the Software or the functionality of the Software. Any license notice or attribution required by the License must also include this Commons Cause License Condition notice.

Last page of Exhibit A.

64. These restriction are to 1) prevent users of the open source software from selling modified versions of the software for consideration-thus giving NEO4J USA the right to sell similar software for a fee, and 2) suggests that no third party may provide services for the open source version of Neo4J preventing PureThink and IGov from providing professional services to support the open source version of Neo4J.

65. These Commons Clause restrictions are not allowed under an AGPL license because The Free Software Foundation, Inc., the copyright holder of the AGPL, states that changes to the license agreement are not allowed:

> GNU AFFERO GENERAL PUBLIC LICENSE

> Version 3, 19 November 2007
> Copyright (C) 2007 Free Software Foundation USA <http://fsf.org/>
> Everyone is permitted to copy and distribute verbatim copies of this license document, but changing it is not allowed.

Exhibit A, page 1.

66. Adding the Commons Clause is a violation of the terms of the AGPL exceeding the copyright grant and is void.

67. Moreover, under the AGPL, the Commons Clause is a restriction that is not allowed under the AGPL and may be removed:

> If the Program as you received it, or any part of it, contains a notice stating that it is governed by this License along with a term that is a further restriction, you may remove that term.

Exhibit A, §7.

68. As the Commons Clause cannot apply to the AGPL and may be removed by any user, the clause should be voided.

69. PureThink and iGov request a declaration that the Commons Clause NEO4J, SWEDEN added to the AGPL is void.

Eight Cause of Action

Declaratory Relief

(The Commons Clause in AGPL does not apply to Professional Services for the open source versions of Neo4J)

(Against NEO4J SWEDEN AB)

70. PureThink and iGov reincorporate the allegations in paragraph 1-69 as alleged above.

71. There is a present controversy where NEO4J, SWEDEN added a restrictive clause to the AGPL on at least version 3.4 of the open source version of Neo4J known as a Commons Clause License Condition which provides:

> "Commons Clause" License Condition The Software is provided to you by the Licensor under the License, as defined below, subject to the following condition. Without limiting other conditions in the License, the grant of rights under the License will not include, and the License does not grant to you, the right to Sell the Software. For purposes of the foregoing, "Sell" means practicing any or all of the rights granted to you under the License to provide to third parties, for a fee or other consideration, a product or service that consists, entirely or substantially, of the Software or the functionality of the Software. Any license notice or attribution required by the License must also include this Commons Cause License Condition notice.

Last page of Exhibit A.

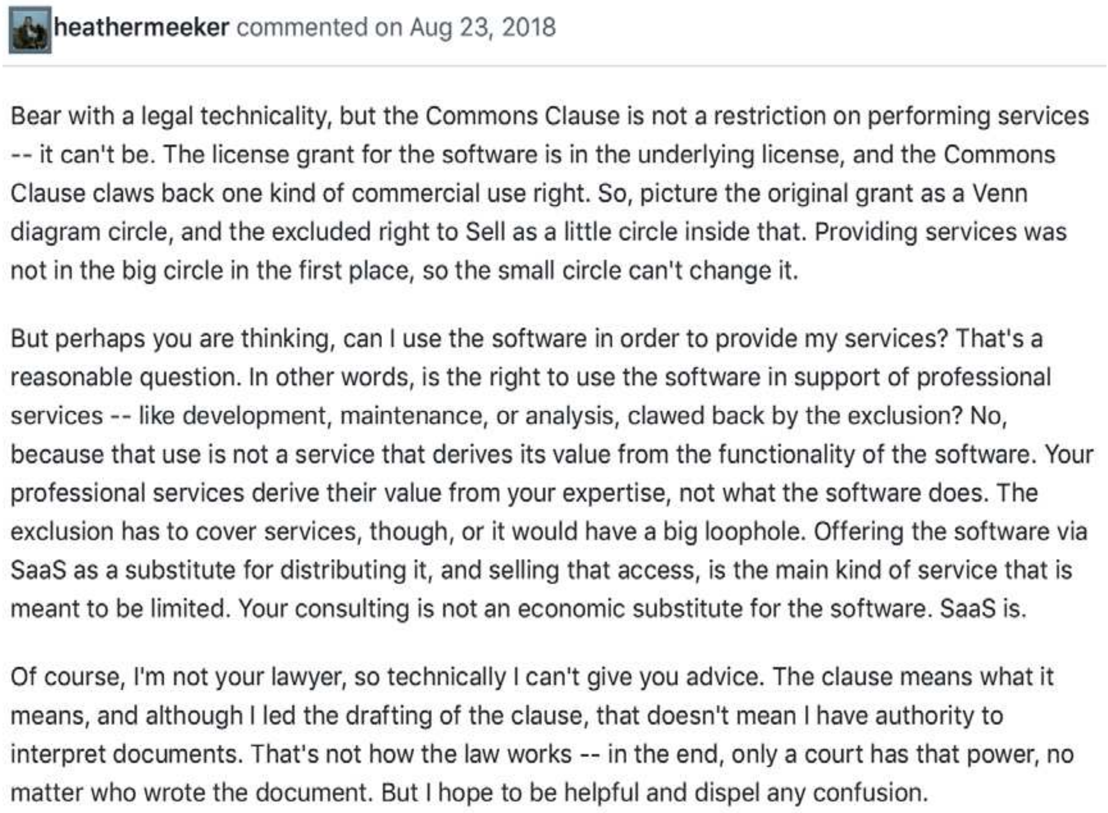
72. There is a present controversy whether the Commons Clause, even if valid, prevents professional service providers from supporting open source Neo4J users from using independent third party from supporting upen source Neo4J users. The reason for this controversy is the definition of Sell in the Commons Clause provides:

> For purposes of the foregoing, "Sell" meanspracticing any or all of the rights granted to you under the License to provide to third parties, for a fee or other consideration, a product or service that consists, entirely or substantially, of the Software or the functionality of the Software.

Exhibit A, last page.

73. PureThink and IGOV should not be prevented from providing professional support services to open source Neo4J users under the Commons Clause as such services do not consist of entirely or substantially the software or the functionality of the software.

74. PureThink and IGOV's position is supported by NEO4J, Inc's own attorney, Heather Meeker, who led the drafting of the Commons Clause. She stated "[t]he Commons Clause does not restrict performing services—it can't be.":



heathermeeker commented on Aug 23, 2018

Bear with a legal technicality, but the Commons Clause is not a restriction on performing services -- it can't be. The license grant for the software is in the underlying license, and the Commons Clause claws back one kind of commercial use right. So, picture the original grant as a Venn diagram circle, and the excluded right to Sell as a little circle inside that. Providing services was not in the big circle in the first place, so the small circle can't change it.

But perhaps you are thinking, can I use the software in order to provide my services? That's a reasonable question. In other words, is the right to use the software in support of professional services -- like development, maintenance, or analysis, clawed back by the exclusion? No, because that use is not a service that derives its value from the functionality of the software. Your professional services derive their value from your expertise, not what the software does. The exclusion has to cover services, though, or it would have a big loophole. Offering the software via SaaS as a substitute for distributing it, and selling that access, is the main kind of service that is meant to be limited. Your consulting is not an economic substitute for the software. SaaS is.

Of course, I'm not your lawyer, so technically I can't give you advice. The clause means what it means, and although I led the drafting of the clause, that doesn't mean I have authority to interpret documents. That's not how the law works -- in the end, only a court has that power, no matter who wrote the document. But I hope to be helpful and dispel any confusion.

75. The AGPL license expressly allows users to have third parties make modifications for users on the licensed open source software. Such use is not considered a conveyance implicating the copyleft requirements of the AGPL. Exhibit A, pg. 3, §2. The Commons Clause, if interpreted to prevent such right, violates the APGL as a further restriction and is void.

76. The Commons Clause is unclear whether third parties such as PureThink and IGOV may provide professional services for open source

users of Neo4J. PureThink and IGOV's position is that the Commons Clause does not prevent independent service providers from supporting open source code users. The conclusion services provided are not prevent from providing users services under the Commons Clause is fully supported by NEO4J USA's attorney and the drafter of the Commons Clause. The Commons Clause should be judicially interpreted so there is no controversy that prevents open source Neo4J users from using independent service providers such as PureThink and iGov to provide support and development services for open source Neo4J users.

77. PureThink and iGov request a declaration that the Commons Clause does not prevent PureThink and IGOV from providing professional services to users of the open source versions of Neo4J where the AGPL has a Commons Clause.

Ninth Cause of Action

Declaratory Relief

(Users may use and fork content NEO4J SWEDEN put on a public GitHub respository)

(Against NEO4J SWEDEN AB)

78. PureThink and iGov reincorporate the allegations in paragraph 1-77 as alleged above.

79. There is a present controversy where NEO4J, SWEDEN contends users of its github public repository, such as PureThink and IGOV may not use or fork its content NEO4J SWEDEN put on the GitHub repository. NEO4J, SWEDEN has content including the open source

versions of Neo4J software, documentation and extensive information about Neo4J software on NEO4J SWEDEN'S public GitHub respository.

80. Under the GitHub terms of services for public repositories, NEO4J SWEDEN agreed: By setting your repositories to be viewed publicly, you agree to allow others to view and "fork" your repositories (this means that others may make their own copies of Content from your repositories in repositories they control).

81. Under the GitHub terms of services for public repositories, NEO4J SWEDEN granted each user the right to "User of GitHub a nonexclusive, worldwide license to use, display, and perform Your Content through the GitHub Service and to reproduce Your Content solely on GitHub as permitted through GitHub's functionality (for example, through forking)." By its express grant, NEO4J may not bar users from using the content NEO4J SWEDEN put on the public GitHub repository.

82. Under the GitHub Terms of Service, "Content" means:

> "Content" refers to content featured or displayed through the Website, including without limitation code, text, data, articles, images, photographs, graphics, software, applications, packages, designs, features, and other materials that are available on the Website or otherwise available through the Service. "Content" also includes Services. "User-Generated Content" is Content, written or otherwise, created or uploaded by our Users. "Your Content" is Content that you create or own.

83. PureThink and iGov request a declaration that they may use use NEO4J SWEDEN's public repository on GitHub and may fork, use,

display and perform all Content NEO4J SWEDEN has on its public GitHub Repository.

Tenth Cause of Action

Declaratory Relief

(Abandonment of Trademark)

(Against NEO4J USA)

84. PureThink iGov and John Mark Suhy reincorporate the allegations in paragraph 1-83 as alleged above.

85. There is a present controversy where NEO4J USA claims it has the right to use and enforce the Neo4j trademark. PureThink, iGov and John Mark Suhy claim there is confusion whether Neo4j is a company name trademark or product name trademark. This confusion is exacerbated by NEO4J SWEDEN' open source license for a product called Neo4j. NEO4J SWEDEN's license states: "The software ("Software") is developed and owned by NEO4J SWEDEN (referred to in this notice as "Neo4j")… . NEO4J SWEDEN asserts they own the software-and not NEO4J Inc.- and they use Neo4j name as part of the company name and call the open source software product Neo4j too. As the Neo4j trademark is used and licensed as open source software there is no ability to maintain quality control over the software product called Neo4j as any licensees may modify combine the software with other code and distributed or convey Neo4j without required quality control by NEO4J USA.

86. PureThink, iGov and John Mark Suhy request declaratory relief that the Neo4j registered trademark be abandoned under the doctrine of Naked License.

Eleventh Cause of Action
Cancellation of Trademark 15 U.S.C. §1119
(Against Neo4J, Inc.)

87. PureThink, iGov and John Mark Suhy reincorporate the allegations in paragraph 1-86 as alleged above.

88. The Registered Trademark for NEO4J, Reg. No. 4,784,280, was procured by fraud as the representation to the PTO was that Neo Technology (a Delaware corporation) (changed to Neo4J, Inc.) first used the trademark in 6-4-2006 and in commerce in 5-28-2007.

89. These statements are knowlingly false and material to the decision to grant the registration application.

90. Neo Technology, the predecessor to NEO4J USA did not exist on 6-4-2006 or 5-28-2007.

91. Neo Technology, the predecessor to NEO4J US was first formed 7-7-2011 in Delaware under File Number 5007564.

92. Because the registration was procured by fraud, PureThink, iGov and John Mark Suhy demand the registration to the NEO4J trademark be cancelled pursuant to 15 U.S.C. §1119.

Twelfth Cause of Action
Unfair Business Practices
(Against NEO4J SWEDEN and NEO4J USA)

93. PureThink and iGov reincorporate the allegations in paragraph 1-92 as alleged above.

94. NEO4J SWEDEN licensed Neo4j software in 2007 as open source software through a GitHub repository in the United States.

95. PureThink and IGov are informed and believe that NEO4J SWEDEN licensed on an open source basis to accelerate users and free contributors-new authors- for Neo4J software.

96. NEO4J SWEDEN generated users and people who contributed to the development of the Neo4J open source software. Since May 20, 2007 there have been 183 contributors to Neo4J.

97. PureThink and IGov are informed and believe that not all contributors have assigned copyright ownership and moral rights to the portions of Neo4J they authored.

98. NEO4J SWEDEN has allowed NEO4J USA to use the open source version of Neo4J, modify it and license it on a commercial basis without consent of all the contributors. PureThink and IGov are informed and believe that NEO4J SWEDEN has allowed NEO4J USA to license the object code to the modified version of Neo4J without compliance with the terms of the AGPL.

99. NEO4J USA advertises it can sell the object code of the modified AGPL version of Neo4J and charge a license fee. This advertisement is false and NEO4J USA is in violation of the AGPL and the rights of contributors.

100. In an effort to restrict end users of the AGPL version of Neo4J, NEO4J SWEDEN has included the Commons Clause in violation of the

terms of the AGPL. The restriction was added to prevent users from selling modified versions of Neo4J or allow independent service providers to provide services to open source users in an attempt to allow NEO4J USA to have exclusive control of the sale and service of Neo4J.

101. NEO4J SWEDEN advertises an Enterprise Edition which includes closed source components which are not available on GitHub and requires a commercial license.

102. PureThink and IGov are informed and believe NEO4J USA licenses Neo4J on a commercial basis charging a license fee for users of software which is primarily based on the open source version of Neo4J.

103. While NEO4J SWEDEN attempted to limit users with the void Commons Clause amendment, NEO4J USA created a Partner Agreement to sign up companies such as PureThink to resell and support the commercial version of Neo4J.

104. Because NEO4J SWEDEN added the Commons Clause to the AGPL, there was concern that third parties could not provide services to open source code users until the validity and scope of the Commons Clause was resolved.

105. NEO4J USA inserted a clause in the Partner Agreement that partners could not provide services for open source versions of Neo4J during the agreement and for three years after termination. This business practice effectively barred third parties from supporting open source software which harmed and continues to harm PureThink and iGov, users and other companies.

106. NEO4J USA has advertised that if you incorporate Neo4J in a closed, proprietary project, then you require a commercial license. NEO4J USA stated as a user, you can either buy commercial software, or contribute to open-source software. NEO4J USA omitted to state that an internal user, who does not distribute the open source software modifications is not required to provide the modifications to third parties. This is was a scare tactic to generate commercial licenses.

107. There is perception that any modifications to open source software under a GPL or AGPL license requires the modified software to be open-made available to the open software community. By omitting the fact that internal users are not subject to the copyleft requirments of the GPL and AGPL licenses, NEO4J SWEDEN and NEO4J USA customers were likely deceived in buying a commercial version and paying a license fee and support for Neo4J instead of using the open source version for free and other lower cost service providers.

108. Under the terms of the AGPL license, a user who does not distribute or convey modifications of the open source version of Neo4J software to the public has not duty to provide the modified source code to third parties.

109. In 2016, Neo4J agreed that most users would choose the open source version of Neo4J because it was free. The US government has embraced open source software to save licensing costs. The key reason is the US government does not distribute modified open source so the viral copyleft terms in GPL and AGPL licenses is not an issue for the Government users. The copy left issue with GPL and AGPL licenses are

not an issue for users that do not distribute or convey modified versions of open source software. This is confirmed by GNU.org, the group which manages the GPL and AGPL licenses:

> If I only make copies of a GPL-covered program and run them, without distributing or conveying them to others, what does the license require of me?(#NoDistributionRequirements)
>
> Nothing. The GPL does not place any conditions on this activity.

The same rules apply to modified versions of the open source code:

> Does the GPL require that source code of modified versions be posted to the public? (#GPLRequireSourcePostedPublic)
>
> The GPL does not require you to release your modified version, or any part of it. **You are free to make modifications and use them privately, without ever releasing them. This applies to organizations (including companies), too; an organization can make a modified version and use it internally without ever releasing it outside the organization.**
>
> But *if* you release the modified version to the public in some way, the GPL requires you to make the modified source code available to the program's users, under the GPL.
>
> Thus, the GPL gives permission to release the modified program in certain ways, and not in other ways; but the decision of whether to release it is up to you.

[Emphasis added]

110. PureThink and IGov are informed and believe that NEO4J USA and NEO4J SWEDEN has falsly advertised to customers, that use of the open source version of Neo4J requires that the use be “Open”.

111. When PureThink was working a deal with the IRS for development on the open source government edition developed by PureThink, NEO4J USA demanded that the IRS be charged a license fee on a per server bases for the software.

112. The IRS asked PureThink the difference between free Neo4j open source and Neo4J's commercial version. As there was no significant difference, PureThink asked for Neo4J's guidance. Neo4J USA told PureThink to tell the IRS the open source version had to be an open use and that the IRS could not use the open source version of Neo4J. NEO4J told PureThink it should not be advising the IRS they can use the APGL version.

113. PureThink would not make this false representation and material omission of the APGL license to the IRS. NEO4J takes the position that there position is based on the company's intent but that intent is not what the APGL says. They claim that NEO4J USA's intent described under a document explaining a Fair Trade Software License controls but that is not the APGL under which the open source software is licensed. NEO4J USA and NEO4J SWEDEN falsely advertise that their intent controls over the APGL. However the open source software has been licensed for years under the AGPL and users are not bound by a separate document which is inconsistent with the terms of the AGPL. And, under the terms of the APGL, the restrictions may not be changed and no further restrictions, such as those NEO4J USA and NEO4J SWEDEN intend to impose, are allowed.

114. PureThink is informed and believes that NEO4J USA directly contacted the IRS and told them using the open source version of Neo4J had to be open which is false advertising.

115. PureThink and IGov are informed and believe that NEO4J USA and NEO4J SWEDEN have false advertised to other users and

potential users that using the open source version of Neo4J had to be open otherwise, they had to buy the commercial version of the software.

116. PureThink and IGov are informed and believe that NEO4J USA and NEO4J SWEDEN have false advertised that only authorized service providers may support the open version of Neo4J and have told potential customers that PureThink may not support the open version of Neo4J because of the term in section 4.3.2 of the Partner Agreement that unlawfully bars PureThink from supporting the open source version of Neo4J.

117. PureThink and IGov are informed and believe that NEO4J USA's commercial version of Neo4J software is based on the open source version of Neo4J licensed under the GPL and the AGPL. NEO4J USA has modified the open source version and distributes or conveys the commercial version in object code for a fee while not providing users the source code at no charge in violation of the GPL and AGPL.

118. NEO4J SWEDEN and NEO4J USA have engaged in unfair competition as defined in Busines and Professions Code §17200.

119. PureThink and IGov have suffered actual damages from NEO4J USA and NEO4J SWEDEN in lost sales of services to potential users and unless enjoined, will continue to suffer loses.

120. It is likely without an injunction the conduct will continue as NEO4J USA has expressly stated it intends to shutdown PureThink, and by implication, IGov.

121. PureThink and IGov request the following injunction as a result of NEO4J USA and NEO4J SWEDEN unfair business practices:

a. That NEO4J USA and NEO4J SWEDEN advise all commercial Neo4J license customers and potential customers and post on each repository where the open source software version of Neo4J is offered:
    i. The Commons Clause added to the AGPL license is void and not a term of the license;
    ii. That a user of an open source version of Neo4J is not required to make derivatives or modifications to the source code available when the user is only internally using the software;
    iii. That any third party may provide support and development services for users of the open source version of Neo4J; and
    iv. That PureThink and IGov are not barred from providing support and development services for users of the open source version of Neo4J.

122. PureThink and IGov. request the following restition remedy as a result of NEO4J USA and NEO4J SWEDEN unfair business practices:

That NEO4J USA and NEO4J SWEDEN refund all license and support fees paid by commercial Neo4J license customers.

V. Prayer for Relief

Wherefore PureThink and iGov request judgment against NEO4J USA and NEO4J SWEDEN as follows:

1. For general, special and punitive damages according to proof.
2. For declaratory relief that:

a. § 4.3.2 of the Partner Agreement is void under California Business and Professions Code §16600.

b. §§ 4.3.1 and 4.3.2 of the Partner Agreement are void under the AGPL License.

c. The Commons Clause NEO4J, SWEDEN added to the AGPL is void.

d. The Commons Clause does not prevent third parties, such as PureThink and IGOV from providing professional services to users of the open source versions of Neo4J where the AGPL has a Commons Clause.

e. PureThink and iGov and any user of NEO4J SWEDEN's public repository on GitHub may fork, use, display and perform all Content NEO4J SWEDEN has on its public GitHub Repository.

f. The Neo4j registered trademark be abandoned under the doctrine of Naked License.

3. That the registration to the NEO4J trademark be cancelled pursuant to 15 U.S.C. §1119.
4. For an preliminary and permanent injunction as a result of NEO4J USA and NEO4J SWEDEN's unfair business practices:
    a. That NEO4J USA and NEO4J SWEDEN advise all commercial Neo4J license customers and potential customers and post on each repository where the open source software version of Neo4J is offered:
        i. The Commons Clause added to the AGPL license is void and not a term of the license;

ii. That a user of an open source version of Neo4J is not required to make derivatives or modifications to the source code available when the user is only internally using the software;

iii. That any third party may provide support and development services for users of the open source version of Neo4J; and

iv. That PureThink and IGov are not barred from providing support and development services for users of the open source version of Neo4J.

5. For an order of restitution that NEO4J USA and NEO4J SWEDEN refund all license and support fees paid by commercial Neo4J license customers.

6. That Counter Claimants recover costs and attorneys fees as permitted by law, including under trademark law and copyright law and, because of the significant benefit to the public, Code of Civil Procedure §1021.5;

7. And for such other relief and remedies as the Court deems just.

Dated: December 9, 2019

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Attorney for Counter Claimants
PURETHINK LLC, a Delaware limited
liability company, IGOV INC., a Virginia
corporation and John Mark Suhy.

DEMAND FOR JURY TRIAL

Counter Claimant PURETHINK LLC and IGOV, Inc. and John Mark Suhy demand a trial by jury.

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corporation.

FILER'S ATTESTATION

I, Adron G. Beene, am the ECF user whose credentials were utilized in the electronic filing of this document. In accordance with N.D. Cal. Civil Local Rule 5-1(i)(3), I hereby attest that all signatories hereto concur in this filing.

Dated: December 9, 2019

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liability company, IGOV INC., a Virginia
corporation, and JOHN MARK SUHY

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In the following three paragraphs, a "patent license" is any express agreement or commitment, however denominated, not to enforce a patent (such as an express permission to practice a patent or covenant not to sue for patent infringement). To "grant" such a patent license to a party means to make such an agreement or commitment not to enforce a patent against the party.

If you convey a covered work, knowingly relying on a patent license, and the Corresponding Source of the work is not available for anyone to copy, free of charge and under the terms of this License, through a publicly available network server or other readily accessible means, then you must either (1) cause the Corresponding Source to be so available, or (2) arrange to deprive yourself of the benefit of the patent license for this particular work, or (3) arrange, in a manner consistent with the requirements of this License, to extend the patent license to downstream recipients. "Knowingly relying" means you have actual knowledge that, but for the patent license, your conveying the covered work in a country, or your recipient's use of the covered work in a country, would infringe one or more identifiable patents in that country that you have reason to believe are valid.

If, pursuant to or in connection with a single transaction or arrangement, you convey, or propagate by procuring conveyance of, a covered work, and grant a patent license to some of the parties receiving the covered work authorizing them to use, propagate, modify or convey a specific copy of the covered work, then the patent license you grant is automatically extended to all recipients of the covered work and works based on it.

A patent license is "discriminatory" if it does not include within the scope of its coverage, prohibits the exercise of, or is conditioned on the non-exercise of one or more of the rights that are specifically granted under this License. You may not convey a covered work if you are a party to an arrangement with a third party that is in the business of distributing software, under which you make payment to the third party based on the extent of your activity of conveying the work, and under which the third party grants, to any of the parties who would receive the covered work from you, a discriminatory patent license (a) in connection with copies of the covered work conveyed by you (or copies made from those copies), or (b) primarily for and in connection with specific products or compilations that contain the covered work, unless you entered into that arrangement, or that patent license was granted, prior to 28 March 2007.

Nothing in this License shall be construed as excluding or limiting any implied license or other defenses to infringement that may otherwise be available to you under applicable patent law.

12. No Surrender of Others' Freedom.

If conditions are imposed on you (whether by court order, agreement or otherwise) that contradict the conditions of this License, they do not excuse you from the conditions of this License. If you cannot convey a covered work so as to satisfy simultaneously your obligations under this License and any other pertinent obligations, then as a consequence you may not convey it at all. For example, if you agree to terms that obligate you to collect a royalty for further conveying from those to whom you convey the Program, the only way you could satisfy both those terms and this License would be to refrain entirely from conveying the Program.

13. Remote Network Interaction; Use with the GNU General Public License.

Notwithstanding any other provision of this License, if you modify the Program, your modified version must prominently offer all users interacting with it remotely through a computer network (if your version supports such interaction) an opportunity to receive the Corresponding Source of your version by providing access to the Corresponding Source from a network server at no charge, through some standard or customary means of facilitating copying of software. This Corresponding Source shall include the Corresponding Source for any work covered by version 3 of the GNU General Public License that is incorporated pursuant to the following paragraph.

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EXHIBIT A

apply to the part which is the covered work, but the work with which it is combined will remain governed by version 3 of the GNU General Public License.

14. Revised Versions of this License.

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If the Program specifies that a proxy can decide which future versions of the GNU Affero General Public License can be used, that proxy's public statement of acceptance of a version permanently authorizes you to choose that version for the Program.

Later license versions may give you additional or different permissions. However, no additional obligations are imposed on any author or copyright holder as a result of your choosing to follow a later version.

15. Disclaimer of Warranty.

THERE IS NO WARRANTY FOR THE PROGRAM, TO THE EXTENT PERMITTED BY APPLICABLE LAW. EXCEPT WHEN OTHERWISE STATED IN WRITING THE COPYRIGHT HOLDERS AND/OR OTHER PARTIES PROVIDE THE PROGRAM "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE PROGRAM IS WITH YOU. SHOULD THE PROGRAM PROVE DEFECTIVE, YOU ASSUME THE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION.

16. Limitation of Liability.

IN NO EVENT UNLESS REQUIRED BY APPLICABLE LAW OR AGREED TO IN WRITING WILL ANY COPYRIGHT HOLDER, OR ANY OTHER PARTY WHO MODIFIES AND/OR CONVEYS THE PROGRAM AS PERMITTED ABOVE, BE LIABLE TO YOU FOR DAMAGES, INCLUDING ANY GENERAL, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE PROGRAM (INCLUDING BUT NOT LIMITED TO LOSS OF DATA OR DATA BEING RENDERED INACCURATE OR LOSSES SUSTAINED BY YOU OR THIRD PARTIES OR A FAILURE OF THE PROGRAM TO OPERATE WITH ANY OTHER PROGRAMS), EVEN IF SUCH HOLDER OR OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

17. Interpretation of Sections 15 and 16.

If the disclaimer of warranty and limitation of liability provided above cannot be given local legal effect according to their terms, reviewing courts shall apply local law that most closely approximates an absolute waiver of all civil liability in connection with the Program, unless a warranty or assumption of liability accompanies a copy of the Program in return for a fee.

END OF TERMS AND CONDITIONS

How to Apply These Terms to Your New Programs

EXHIBIT A

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  If you develop a new program, and you want it to be of the greatest
possible use to the public, the best way to achieve this is to make it
free software which everyone can redistribute and change under these terms.

  To do so, attach the following notices to the program.  It is safest
to attach them to the start of each source file to most effectively
state the exclusion of warranty; and each file should have at least
the "copyright" line and a pointer to where the full notice is found.

    <one line to give the program's name and a brief idea of what it does.>
    Copyright (C) <year>  <name of author>

    This program is free software: you can redistribute it and/or modify
    it under the terms of the GNU Affero General Public License as
    published by the Free Software Foundation, either version 3 of the
    License, or (at your option) any later version.

    This program is distributed in the hope that it will be useful,
    but WITHOUT ANY WARRANTY; without even the implied warranty of
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    You should have received a copy of the GNU Affero General Public License
    along with this program.  If not, see <http://www.gnu.org/licenses/>.

Also add information on how to contact you by electronic and paper mail.

  If your software can interact with users remotely through a computer
network, you should also make sure that it provides a way for users to
get its source.  For example, if your program is a web application, its
interface could display a "Source" link that leads users to an archive
of the code.  There are many ways you could offer source, and different
solutions will be better for different programs; see section 13 for the
specific requirements.

  You should also get your employer (if you work as a programmer) or school,
if any, to sign a "copyright disclaimer" for the program, if necessary.
For more information on this, and how to apply and follow the GNU AGPL, see
<http://www.gnu.org/licenses/>.


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other conditions in the License, the grant of rights under the License
will not include, and the License does not grant to you, the right to
Sell the Software.  For purposes of the foregoing, "Sell" means
practicing any or all of the rights granted to you under the License
to provide to third parties, for a fee or other consideration,
a product or service that consists, entirely or substantially,
of the Software or the functionality of the Software. Any license
notice or attribution required by the License must also include
this Commons Cause License Condition notice.
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EXHIBIT A

EXHIBIT B

neotechnology graphs are everywhere

NEO4J SOLUTION PARTNER AGREEMENT

Partner:	PureThink LLC		**Neo Representative:**	Erik Nolten; erik.nolten@neotechnology.com Phone: +31 652 721 808
Address:	4202 Adrienne Dr		**Address:**	Neo Technology, Inc. 111 East 5th Avenue San Mateo, CA 94401
Contact Name:	John Mark Suhy Jr		**Phone:**	1-855-636-4532
Contact Phone:	703-348-3968 x 101		**Web:**	www.neotechnology.com
Contact Email:	jmsuhy@purethink.com		**E-mail:**	accounting@neotechnology.com
Support contact 1			**Support contact 2**	
Name:	John Mark Suhy		**Name:**	Nikhil Budhiraja
Email:	jmsuhy@purethink.com		**Email:**	nikhil@purethink.com
Mobile:	703-348-3968 x 101		**Mobile:**	703-348-3968 x 109
Payment Information	Wire payment information: Silicon Valley Bank 3003 Tasman Drive Santa Clara, CA 95054, USA		Routing and Transit #: 121140399 SWIFT code: SVBKUS6S Credit Account #: 330072 6656	
Neo4j Solution Partner Program Fee:				
Agreement Period	1 Year		Annual fees:	USD 1,995.00
Special condition: Fee is payable with the first Product order/referral.				
Territory. Subject to the terms and conditions of this Agreement, Partner may sell the Products in the following "Territory" (check all that apply). Applicable territories: ___X__North America; _____ Central and South America; _____Europe; _____Middle Eastern; _____Africa; _____Japan; ______ India; ____ Australia and New Zealand; _____Asia Pacific excluding Australia, New Zealand, Japan and India; _________ (Other).				

By signing below, "Partner" shall be entitled to the benefits set forth on Exhibit A and Partner acknowledges and agrees to the terms and conditions of the Partner Terms attached hereto as Exhibit B effective as of ____09-30-2014_____ ("Effective Date"), by and between Neo Technology, Inc. ("Neo Technology"), a corporation having its principal place of business at 111 East Fifth Ave., First Floor, San Mateo, CA 94401 ("Neo Technology") and the "Partner" below.

Partner:			**Neo Technology, Inc.**	
Name:	PureThink LLC		**Name:**	LARS NORDWALL
Title:	CTO / Director		**Title:**	COO
Date:	09-30-2014		**Date:**	10/6/2014
Signature:			**Signature:**	DocuSigned by: LARS NORDWALL 5E9692354E8643E...

EXHIBIT B

NEO4J SOLUTION PARTNER AGREEMENT

Exhibit A
Benefits

In consideration for Partner's pre-payment of applicable fees and ongoing compliance with all of the other terms and conditions of this Agreement, and any Exhibits hereto, Neo Technology agrees to offer Partner the non-exclusive benefits described below.

NEO4J SOLUTION PARTNER BENEFIT & QUALIFICATION TABLE	
Revenue sharing on sold subscriptions based on price list	25% or as otherwise mutually agreed in an order form
Referral fee on sold new subscription	optional
Internal use of Neo4j for training and demo purposes	✓
Press release support for customer case studies	✓
Invitation to Neo events (fees may apply)	✓
Neo4j Partner Logo Usage	✓
Invitation to Product Roadmap Discussions	✓
Strategic Account Support	✓
Listing on Partner Page	✓
Access to training and certification program subject to execution of Authorized Training Partner Addendum	
Partner Portal Access	✓
Access to Neo4j Support	✓
Training discount	20%
Qualification and Partner Guidelines	
Proven ability to commit and deliver on consulting engagements with high success rate	✓
Complete and submit Neo Partner Agreement	✓
2 or more Certified Neo Consultants	✓
Joint Business & Marketing Plan for Territory	✓
Generate Case study(s) for joint customer	✓
Two Annual new customer acquisition target	✓
Organize Neo4j events	✓

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NEO4J SOLUTION PARTNER AGREEMENT

Exhibit B

Partner Terms

1. PARTNER PROGRAM AND ORDERS. In exchange for the payment of applicable fees, Partner will be entitled to the benefits of the Partner Program for described on Exhibit A. Partner may submit orders for Products to Neo Technology from time to time. All orders must be consistent with the terms of this Agreement and are subject to Neo Technology's acceptance or rejection. If accepted, Partner shall execute the Neo Technology Order Form and shall: (i) shall cause the applicable End User to execute Neo Technology's Acknowledgement Form as Neo Technology provides to Partner from time to time or (ii) Partner hereby agrees to be responsible and jointly and severally liable for all of the End User/Licensee obligations found at http://www.neotechnology.com/terms/enduser-partner-us/ with respect to (a) the State of Maryland as the End User/Licensee under such terms and (b) with respect to any other governmental entity that Neo Technology approves of in a mutually agreed upon Neo Technology Order Form. All licenses to use the Products will be between Neo Technology and the applicable End User. Partner will inform Neo Technology of the status of each Product order renewal in writing at least thirty (30) days before the expiration date of each End User's subscription license period. In the event Partner fails to notify Neo Technology within the thirty (30) day period described above, Neo Technology may, in its sole discretion, renew the Product subscription directly with the End User.

2. PAYMENTS AND FEES.

2.1 Partner Program Fees. During the term of this Agreement, Partner will pay to Neo Technology the annual Partner Program fees as specified on the front page of this Agreement. The first year's annual Program fees are due on the Effective Date of this Agreement. Thereafter, the annual Program fees for renewal years will be invoiced at the then current annual Partner Program fees and such renewal Partner Program fees will be invoiced annually in advance on each anniversary of the Effective Date of this Agreement.

2.2 Product Orders and Fees. Fees for orders for subscriptions to the Products, including for renewals subject to Section 1, will be at the discounted prices set forth in Exhibit A and will be invoiced in advance after Neo Technology's Acknowledgement Form is executed by Partner and the End User or as otherwise set forth in Section 1. Partner shall not enable any End User to download, install or use the Products unless and until the End User has duly executed Neo Technology's Acknowledgement Form or as otherwise set forth in Section 1. Neo Technology shall have the right to modify the discounted prices set forth in Exhibit A at any time. Neo Technology will provide the renewal amount to Partner for each End User renewal within a reasonable period of time after Partner informs Neo Technology of the status of each Product order renewal as set forth in Section 1 above.

2.3 Taxes/Duties. All fees and charges payable by Partner under this Agreement are exclusive of any (a) duties or (b) present or future sales, use, value added, excise, or other governmental or similar taxes applicable to this Agreement. Neo Technology will separately itemize any applicable taxes and duties of which it is aware on each invoice, unless Partner furnishes Neo Technology with a properly executed tax exemption certificate certifying that it does not owe such taxes and duties. Partner will be responsible for paying any applicable taxes and duties currently or hereafter assessed by a government agency, other than taxes based on Neo Technology's net income. If all or any part of any payment owed to Neo Technology under this Agreement is withheld, based upon a claim that such withholding is required pursuant to the tax laws of any country or its political subdivisions and/or any tax treaty between the U.S. and any such country, such payment shall be increased by the amount necessary to result in a net payment to Neo Technology of the amounts otherwise payable under this Agreement.

2.4 Payment. Unless otherwise indicated in addendums to this Agreement, payments of all invoices: (a) will be paid within thirty (30) days of the date of the invoice; and (b) will be made in EUROS or U.S. dollars as set forth on the front page of this Agreement or as Neo Technology otherwise specifies without right of set off or chargeback. All fees are non-refundable. All amounts not paid when due are subject to a late fee of the lesser of one percent (1%) per month or the maximum amount allowable by law.

2.5 Notification of Changes. Neo Technology will provide Partner with sixty (60) days written notice of any changes in the Partner program benefits set forth on Exhibit A.

2.6 Audit Rights. Partner will, during this Agreement and for a period of one (1) year after termination, maintain records relating to its performance under this Agreement. Partner agrees that Neo Technology, upon at least ten (10) days prior written notice during business hours may at its own cost and expense directly or through an agent inspect such accounts, records and other information as may be required to verify Partner's compliance with this Agreement. The cost of the audit will be borne by Neo Technology unless the audit reveals an underpayment by Partner to Neo Technology, in which case Partner will immediately pay the amount of the underpayment and will pay for the cost of the audit.

3. CONFIDENTIALITY. Each party acknowledges that it acquires only the right to use the other party's Confidential Information under the terms and conditions of this Agreement and does not acquire any rights of ownership or title in the other party's Confidential Information. Each party will hold in confidence any Confidential Information received by it from the other and will protect the confidentiality of such with the same degree of care that it exercises with respect to its own information of like import, but in no event less than reasonable care, for a period of five (5) years from receipt. Each party will only disclose Confidential Information to its employees, agents, representatives and authorized contractors (collectively "Representatives") having a need to know for the purposes of this Agreement. Each party will notify and inform such Representatives of each party's limitations, duties, and obligations regarding use, access to, and nondisclosure of Confidential Information and will obtain or have obtained its Representatives' agreements to comply with such limitations, duties, and obligations with regard to such Confidential Information no less restrictive than those contained herein. Each party is liable for all acts and omissions of the Representatives related to the other party's Confidential Information. Each party agrees to give notice to the other party immediately after learning of or having reason to suspect a breach of any of the proprietary restrictions set forth in this Section. In the event that a party is required to disclose Confidential Information pursuant to any applicable statute, regulation or order of a court of competent jurisdiction, that party will use commercially reasonable efforts to notify the other party of the required disclosure.

4. LICENSES AND OWNERSHIP.

4.1 Licenses. Neo Technology hereby grants to Partner a non-exclusive, non-transferable limited license during the term of this Agreement to: (i) use the Products solely to demonstrate the Products to potential customers in connection with its performance under this Agreement; (ii) provided that Partner has executed an Authorized Training Partner Addendum, use the Products to provide training and Level 1 and Level 2 Support to End Users that have licensed the Products from Neo Technology, with all such Support as described on Exhibit C; (iii) use the Neo Technology trademarks solely to market and promote the Products in accordance with the terms of this Agreement; and (iv) market and resell licenses to the Products (in object code only) to End Users, for use by End Users for their internal business purposes and subject to the End Users' agreement to Neo Technology's Acknowledgement Form and license agreement or as otherwise set forth in Section 1. Partner will use Neo Technology trademarks only in accordance with Neo Technology's then-current trademark usage guidelines. Any use by Partner of Neo Technology trademarks will inure to the benefit of Neo Technology Neo Technology will provide Partner with Level 3 Support as described on Exhibit C.

4.2 Pre-Existing Technology. Each party acknowledges and agrees that, as between the parties, each party is and will remain the sole and exclusive owner of all right, title, and interest in and to its pre-existing technology, and all associated Intellectual Property Rights, and that this Agreement does not affect such ownership. Each party acknowledges that it acquires no rights under this Agreement to the other party's pre-existing technology other than the limited rights specifically granted in this Agreement. Neo Technology will own all right, title, and interest in and to all Products and derivative works of the Products and all associated Intellectual Property Rights. If Partner acquires any rights, including any Intellectual Property Rights, in the Products or derivative works thereof, Partner hereby assigns and agrees to assign to Neo Technology all such rights.

4.3 Modifications to Pre-Existing Technology. Each party acknowledges and agrees that, as between the parties, each party is and will remain the sole and exclusive owner of all right, title, and interest in and to any modifications and/or derivative works to its pre-existing technology regardless of who created such modifications and/or derivative works, and all associated Intellectual Property Rights. Each party acknowledges that it acquires no rights under this Agreement to the modifications and/or derivative works of the other party's pre-existing technology other than the limited rights specifically granted in this Agreement.

4.3 Restrictions.

4.3.1 During the term of this Agreement, Partner may not use or run on any of Partner's hardware, or have deployed for internal use, any Neo Technology Community Edition Products for commercial or production use. In no event shall Partner reverse engineer, distribute or otherwise use the Products for its own internal use. There are no implied rights. Partner will not fork or bifurcate the source code for any Neo Technology Community Edition Products into a separately maintained source code repository so that development done on the original code requires manual work to be transferred to the forked software or so that the forked software starts to have features not present in the original software.

4.3.2 During the term of this Agreement and up until thirty six (36) months after the termination or expiration of this Agreement, Partner may not develop, market, distribute or offer any services related to any Neo Technology Community Edition Products, derivative works of such products, or any Partner software code made to work with Neo Technology Community Edition Products (including, without limitation, hosting services, training, technical support, configuration and customization services, etc.).

4.3.3 During the term of this Agreement, Partner will not accept work, enter into a contract or accept an obligation inconsistent or incompatible with Partner's obligations, or the scope of services to be rendered for Neo Technology, under this Agreement. Partner warrants that, to the best of Partner's knowledge, there is no other existing contract or duty on Partner's part that conflicts with or is inconsistent with this Agreement. Partner agrees to indemnify and hold harmless Neo Technology from any and all losses and liabilities incurred or suffered by Neo Technology by reason of the alleged breach by Partner of any services agreement between Partner and any third party.

4.3.4 Partner shall conduct and perform its obligations under this Agreement in a manner that reflects favorably on Neo Technology at all times. Partner shall not make any representations or warranties regarding Neo Technology or the Products. Partner agrees to indemnify, defend and hold harmless Neo Technology from any and all claims arising from any representations or warranties made by Partner regarding Neo Technology and/or Product(s) and/or Neo Technology Services. Partner may not approach any End Users who purchased Products directly from Neo Technology for the purpose of renewing or upgrading the End User's subscription to the Products through Partner.

5. DISCLAIMER. NEO TECHNOLOGY MAKES NO WARRANTIES REGARDING THE PRODUCTS OR ANY INFORMATION PROVIDED BY NEO TECHNOLOGY HEREUNDER, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE.

6. LIMITATION OF LIABILITY. NEO TECHNOLOGY WILL NOT BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGE IN CONNECTION WITH OR ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING LOSS OF BUSINESS, REVENUE, PROFITS, USE, DATA, OR OTHER ECONOMIC ADVANTAGE), HOWEVER IT ARISES, WHETHER FOR BREACH OR IN TORT (INCLUDING NEGLIGENCE), EVEN IF NEO TECHNOLOGY HAS BEEN PREVIOUSLY ADVISED OF THE

EXHIBIT B

POSSIBILITY OF SUCH DAMAGE. NEO TECHNOLOGY'S AGGREGATE CUMULATIVE LIABILITY FOR CLAIMS RELATING TO THIS AGREEMENT, WHETHER FOR BREACH OR IN TORT, WILL BE LIMITED TO THE AMOUNT PAID BY PARTNER TO NEO TECHNOLOGY UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE ACT OR OMISSION FIRST GIVING RISE TO THE CLAIM. LIABILITY FOR DAMAGES WILL BE LIMITED AND EXCLUDED, EVEN IF ANY EXCLUSIVE REMEDY PROVIDED FOR IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.

7. TERM AND TERMINATION.

7.1 Term. This Agreement will commence on the Effective Date, and remain in effect for a period of one (1) year. Thereafter, this Agreement will automatically renew at additional one (1) year periods unless either party provides at least sixty (60) days prior written notice to the other party of its intent not to renew.

7.2 Termination. This Agreement may be terminated by a party for cause immediately if (a) the other ceases to do business, or otherwise terminates its business operations; or (b) the other materially breaches any material provision of this Agreement and fails to cure such breach within thirty (30) days of written notice describing the breach. In addition, Neo Technology may terminate this Agreement at any time by providing Partner with ninety (90) days prior written notice. This Agreement may be terminated as set forth on Exhibit C.

7.3 Effect of Termination. Upon termination of this Agreement by either party (a) all rights and licenses of Partner hereunder will terminate and Partner shall cease all communications with End Users regarding the Products; and (b) each party will immediately return to the other party all Confidential Information in its possession, custody or control in whichever form held (including all copies or embodiments of the Confidential Information) and will cease using any trademarks, service marks and other designations of the other party; and (c) Partner shall pay to Neo Technology all outstanding fees. To remove all doubt, except as set forth in this Agreement, it is hereby clarified that Partner will not be entitled to any additional remuneration, or reimbursement of any expenses based on the expiration or termination of this Agreement. An addendum to this Agreement may specify additional effects of termination of this Agreement. After any termination of this Agreement, Neo Technology shall not be restricted in any manner from licensing or contracting with End Users.

7.4 Survival. In addition to any provisions set forth on an addendum to this Agreement that expressly survive termination or expiration of this Agreement, any definitions any payment obligations that accrued prior to the effective termination or expiration date and Sections 2.6, 3, 4.2, 4.3.2 (as set forth therein), 4.3.4, 5, 6, 7, 8, 10 and 11 will survive the expiration or termination of this Agreement.

8. INDEMNITY. Partner will indemnify, defend and hold harmless Neo Technology from and against any and all third party claims, suits, actions, demands and proceedings against Neo Technology and all losses, costs and liabilities related thereto arising out of or related to any negligence by Partner or any other act or omission of Partner, including without limitation any breach of this Agreement by Partner.

9. MARKETING

9.1 Marketing. Provided that Partner complies with all of the obligations herein, Neo Technology will include the Partner company logo and profile on the Neo Technology website. Partner will include the Neo Technology company logo on Partner website in accordance with the Neo Technology trademark usage guidelines. Each party may issue a press release announcing that Partner is a Partner as the other party approves in writing. Each party will provide a quote from an executive to support the other party's press release. All marketing activities are subject to approval by both Partner and Neo Technology.

9.2 Surveys. Neo Technology may issues surveys to Partner once per quarter in an effort to improve customer satisfaction. Partner will provide responses within ten (10) business days of receipt of each survey.

10. GENERAL TERMS.

10.1 Force Majeure. A party is not liable under this Agreement for non-performance caused by events or conditions beyond that party's control if the party makes reasonable efforts to perform.

10.2 Relationship of Parties. This Agreement is not intended to create a relationship such as a partnership, franchise, joint venture, agency, or employment relationship. Neither party may act in a manner which expresses or implies a relationship other than that of independent contractor, nor bind the other party.

10.3 Notices. All written notices required by this Agreement must be delivered to the addresses specified above, either in person or by a means evidenced by a delivery receipt. All notices will be effective upon receipt.

10.4 Assignment. Neither party may assign or otherwise transfer any of its rights or obligations under this Agreement, without the prior written consent of the other party; provided, however, either party may assign this Agreement without the other party's consent to a parent or subsidiary of such party or in the case of a merger or sale of all or substantially all of its assets or stock.

10.5 Waiver or Delay. Any express waiver or failure to exercise promptly any right under this Agreement will not create a continuing waiver or any expectation of non-enforcement.

10.6 Provisions Found Invalid. If any term or provision of this Agreement is found to be invalid under any applicable statute or rule of law then, that provision notwithstanding, this Agreement will remain in full force and effect and such provision will be deemed omitted; provided, however, in lieu of such omitted provision there will be added to this Agreement a valid provision which is as nearly identical to the omitted provision as possible.

10.7 Construction. This Agreement has been negotiated by the parties, each of which has been represented by counsel. This Agreement will be fairly interpreted in accordance with its terms, without any strict construction in favor of or against either party.

10.8 Governing Law. Any action related to this Agreement will be governed by the laws of California without regard for its choice of law provisions. The United Nations Convention on Contracts for the International Sale of Goods will not apply.

10.9 Venue. Except as set forth below, the courts seated in San Mateo, California, will have sole and exclusive jurisdiction for all purposes in connection with any action or proceeding that arises from, or relates to, this Agreement, and each party hereby irrevocably waives any objection to such exclusive jurisdiction. Notwithstanding anything in this Agreement to the contrary, Neo Technology may seek injunctive or other equitable relief in any court of competent jurisdiction to protect any actual or threatened misappropriation or infringement of its intellectual property rights or those of its licensors, and Partner hereby submits to the exclusive jurisdiction of such courts and waives any objection thereto on the basis of improper venue, inconvenience of the forum or any other grounds.

10.10 Export. Partner will not export the Products in violation of the export laws of the United States or of any other country.

10.11 Non-solicitation. During the term of this Agreement and for a period of one (1) year thereafter Partner will not directly or indirectly, either alone or in association with others, (a) solicit, or permit any of its affiliates to solicit, any employee of Neo Technology or its affiliates to leave the employ of Neo Technology or any of its affiliates, or (b) solicit for employment, hire, or engage as an independent contractor, or permit any of its affiliates to solicit for employment, hire, or engage as an independent contractor, any person who was employed by Neo Technology or its affiliates; provided, that this clause (b) will not apply to any individual whose employment with Neo Technology or any of its affiliates has been terminated for a period of six (6) months or longer and provided further that this Section 10.11 will not prohibit general advertisement of employment opportunities not specifically targeting any employee(s) of Neo Technology or its affiliates.

10.13 Other. This Agreement and attached Exhibit(s) is the entire agreement between the parties. This Agreement supersedes and cancels any prior documents or agreements, whether written or oral, regarding the subject matter addressed in this Agreement and attached Exhibit(s). If any terms on Partner's orders conflict with the terms of this Agreement, the conflicting terms of this Agreement shall control. Any preprinted terms on Partner's purchase order or similar ordering or other document are hereby rejected.

11. DEFINITIONS.

"Confidential Information" means information which has value because it is not generally known and which the disclosing party uses reasonable means to protect and includes without limitation any information designated as confidential or proprietary by either party to this Agreement upon disclosure. Confidential Information may include proprietary information of third parties who have granted licenses to or have contractual relationships with the disclosing party. Confidential Information excludes information that receiving party can clearly establish by written evidence: (a) was in the possession of, or was known by, receiving party prior to its receipt from disclosing party; (b) is or becomes generally known to the public without violation of this Agreement; (c) is obtained by receiving party from a third party not under any obligation of confidentiality; or (d) is independently developed by receiving party without use of Confidential Information. Furthermore, disclosure of Confidential Information will not be prohibited if disclosure is required by law, regulation or order of a court of competent jurisdiction.

"End User" means an end customer that may use the Products for their own internal use and not for resale or distribution.

"Intellectual Property Rights" means all intellectual property rights worldwide arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued, or acquired, including all: (a) patent rights; (b) rights associated with works of authorship including copyrights and mask work rights; (c) rights relating to the protection of trade secrets and confidential information; (d) trademarks, service marks, trade dress and trade names; and (e) any right analogous to those set forth in this Agreement and any other proprietary rights relating to intangible property.

"Neo Technology Community Edition Product" means an open source version of a Neo Technology software product.

"Products" means the Neo4J commercial software provided by Neo Technology and licensed to the End User.

"Support" refers generally to the provision of support as described in Exhibit C of this Agreement.

Exhibit C

Support

1. Introduction. This Support Summary is an attachment to the Partner Agreement between Neo Technology and the applicable Partner and is automatically deemed part of, and governed by, the Partner Agreement. Unless otherwise defined in this Support Summary, any capitalized term used in this Support Summary will have the meaning given it in the Partner Agreement.

2. Partner's Support Obligations. Partner will provide First and Second Line Support to End User(s) for the Products. This First and Second Line Support shall be provided in accordance with Neo Technology's standard Support Terms, available at http://neotechnology.com/support-terms, and be provided in the time zone and local language of End User(s) unless agreed otherwise with End User(s) and Neo Technology. Additionally, Partner commits to agreeing with End User(s) on the manner in which Partner will provide First and Second Line Support, including the minimum response time(s). Partner will provide for any First and Second Line Support request by End User(s), and will provide Neo Technology with a summary of each such agreement.

3. Deficiencies. In the event an End User is dissatisfied with Partner's Support, or Neo Technology otherwise reasonably believes that Partner is not providing such Support in accordance with accepted industry standards, then Neo Technology will notify Partner in writing and both parties will work together in good faith to resolve the deficiencies. If within thirty (30) days, Neo Technology does not believe, in its sole discretion, that such deficiencies have been resolved, Neo Technology may require that Partner cease the provision of Support and allow Neo Technology, or a nominated representative of Neo Technology, to provide such Support directly to the applicable End User(s). In such event, Partner agrees to provide reasonable cooperation in the transition of Support to Neo Technology, or the nominated representative of Neo Technology, and, if Partner was paid in advance for future Support, Partner will pay Neo Technology agreed-to amounts for the period of Support to be provided by Neo Technology or its nominated representative.

4. Partner Certification. Partner must meet any certification requirements specified by Neo Technology from time to time in writing, including, without limitation, the requirement to have on Partner's staff at least two (2) Neo Technology certified engineers within six (6) months of the Effective Date. Neo Technology will offer, and Partner may order, training programs in accordance with Neo Technology's then-current program rates or as agreed by the parties in writing. In addition, Partner will comply with any additional certification and training requirements established by Neo Technology from time to time, within ninety (90) days notice from Neo Technology. Support certification is based on a combination of performance-based tests and attended training days that measure competency on Products.

5. Neo Technology's Support Obligations. For the purposes of Support, Neo Technology will consider Partner as a customer and provide Partner with Second Line Support in accordance with Neo Technology's standard Support Terms, available at http://neotechnology.com/support-terms. Partner will meet all obligations of a customer described in the Support Terms. Partner agrees to contact Neo Technology for Second Line Support only when, after reasonable commercial efforts, Partner has identified an issue related specifically to Product and is unable to determine a resolution. If any terms of the Support Terms at http://neotechnology.com/support-terms conflict with any terms of this Exhibit C, the conflicting terms of this Exhibit C shall control.

6. Cooperation. Partner will cooperate with and provide assistance to Neo Technology as Neo Technology may reasonably request in connection with Neo Technology's Support obligations, including, without limitation, the following:

> *6.1. Test Code*. Partner will use its best efforts to provide Neo Technology functioning test code that reproduces and isolates the issue in Product. Such test code must be reproducible using systems and tooling available to Neo Technology. In addition, Partner will remove extraneous comments and code from the test code provided and to the extent possible, such code will be fully self-contained, automated and will demonstrate the precise issue reported rather than other possible problems. If Partner cannot provide test code that reproduces the issue, Partner acknowledges that Neo Technology may be unable to provide a resolution to the issue. In such cases, Neo Technology will work with Partner to assist in the development of a test case.
>
> *6.2. Access*. Partner will use its best efforts to provide Neo Technology with access (via remote telecommunications and, if applicable, on-site access at the End User's or Partners premises) to the extent reasonably necessary to allow Neo Technology to provide Support. If Partner cannot provide remote access, Neo Technology may be unable to provide a resolution to the issue.
>
> *6.3. Assistance*. Partner will provide Neo Technology with a continually-available engineer who will promptly assist Neo Technology with data gathering, testing, and applying all fixes to the applicable environment for Severity Level 1 and Severity Level 2 issues.

7. Data. In connection with any activities provided hereunder, Partner will only share or otherwise disclose data to Neo Technology for which Partner has obtained the rights, and express consent of the data subject, to disclose to Neo Technology.

8. Reporting. Partner will provide Neo Technology with a monthly report detailing the status of all Severity Level 1 and Severity Level 2 Support cases, as defined in the Support Terms, provided to each End User, including all information reasonably requested by Neo Technology. Such reports will be provided on the first Friday of every month and cover the previous month's activities. Partner acknowledges that Neo Technology may change the reporting obligations described in this Section, and Partner will comply with any new reporting obligations within thirty (30) days of Neo Technology's request. The Support report will provide the following:

- Case number (provided by Partner to End User)
- Partner ID (provided by Neo Technology)
- End user name and contact details
- Status (e.g. new, open, hold, solved, closed)
- Severity Level, based on the categories defined in Neo Technology's standard Support Terms.
- Initial response time; opened and closed date
- Responsible support representative
- Product
- Issue description and type, and root cause description

9. Exclusions. Neo Technology will not be obliged to provide Support to Partner for any issue arising out of any of the following events:

- A failure of hardware, equipment or programs not provided by Neo Technology
- Support for any versions of the Product that are not obtained by Partner via the Neo Technology Customer Support Portal
- Use in a Production Environment of versions of the Product not marked as 'Generally Available'
- Support for any version of the Product in production more than two years from the date of its general availability
- Any cause or causes beyond the reasonable control of Neo Technology (e.g. floods, fires, loss of electricity or other utilities)
- Partner's or End User's failure to comply with operating instructions contained in the Product documentation
- Any modification, enhancement or customization of the Product by anyone other than Neo Technology
- APIs, interfaces, web services or data formats other than those included with the Product

10. Other Terms. Neo Technology may modify its processes and requirements from time to time upon reasonable written notice to Partner; provided that any such changes will apply only prospectively.

11. Termination. Neo Technology reserves the right, at any time, to withdraw the availability of Support for a Product with twelve (12) months prior written notice.

EXHIBIT B

EXHIBIT C

San Mateo, 11. April 2015

To whom it may concern,

PureThink LLC a Delaware Company, is the only Neo4j Government Edition reseller that is certified to resell and support to the US Federal Government, Department of Defense (DOD), and Intelligence Agencies.

This agreement can be provided to Government Agencies to support any **Federal Acquisition Regulation (FAR)** regulations.

Signed: DocuSigned by: LARS NORDWALL
5E9692354E8643E...

Signed:

Neo Technology, Inc. Lars Nordwall COO Neo Technology, Inc. lars.nordwall@neotechnology.com 1-855-636-4532	PureThink LLC John Mark Suhy CTO PureThink LLC jmsuhy@purethink.com 703-862-7780

EXHIBIT C

DocuSign Envelope ID: 9C05B5E7-6D91-4C15-A1C5-81FB1B29C22F

San Mateo, 23. June 2016

To whom it may concern,

PureThink LLC a Delaware Company, is the only Neo4j Government Edition reseller that is certified to resell and support to the US Federal Government, Department of Defense (DOD), and Intelligence Agencies.

This agreement can be provided to Government Agencies to support any Federal Acquisition Regulation (FAR) regulations.

Signed: DocuSigned by: LARS NORDWALL
5E9692354E8643E...

Neo Technology, Inc.
Lars Nordwall
COO
Neo Technology, Inc.
lars.nordwall@neotechnology.com
1-855-636-4532

Signed:

PureThink LLC
John Mark Suhy
CTO
PureThink LLC
jmsuhy@purethink.com
703-862-7780

EXHIBIT C

EXHIBIT D

John Mark Suhy <jmsuhy@purethink.com>

FW: Termination of Neo4j Solution Partner PureThink LLC

Dunn Michael C <Michael.C.Dunn@irs.gov> Wed, Jul 12, 2017 at 6:13 AM
To: "Suhy John M Jr [Contractor]" <John.M.SuhyJr@irs.gov>, "jmsuhy@purethink.com" <jmsuhy@purethink.com>
Cc: Hess Chris <Christopher.E.Hess@irs.gov>, Goss Renee Y <Renee.Y.Goss@irs.gov>, Rosenmerkel Lisa S <Lisa.S.Rosenmerkel@irs.gov>, Butler Jeff <Jeff.Butler@irs.gov>

Hello John Mark,

We received this notification from Jason (Neo4j), and so it's been passed onto Procurement too: Vivian and Genevieve. One question I have for this existing contract is if services are stopped due to what Neo4j states below regarding Purethink's inability to provide open-source version support in the below? Now this is me asking from an initial statement, and so there's probably also a need to either work through Renee to the Procurement folks and/or talk with them too, since I figured they're going to reach out after receiving this email from Jason.

"Regarding the consulting services, please be advised that PureThink is not authorized to provide consulting services and support on open source versions of Neo4j products… prohibit them from providing any consulting services on these products during the term of their agreement and for a period of thirty six (36) months following termination. Neo will work with IRS to ensure that it receives the correct product and services from an authorized Neo4j partner."

Michael C. Dunn

Data Management Division/Business Systems Planning

Research, Applied Analytics, & Statistics

(o) 202.803.9009

From: Dunn Michael C
Sent: July-12-17 6:03 AM
To: 'Jason Zagalsky' <jason@neo4j.com>
Cc: vvivian.d.daniels@irs.gov; John Broad <john.broad@neo4j.com>; Goss Renee Y <Renee.Y.Goss@irs.gov>
Subject: RE: Termination of Neo4j Solution Partner PureThink LLC

Hello, Thank Jason. I'm looping in Renee Goss, our COR on the Purethink contract.

EXHIBIT D

Michael C. Dunn

Data Management Division/Business Systems Planning

Research, Applied Analytics, & Statistics

(o) 202.803.9009

From: Jason Zagalsky [mailto:jason@neo4j.com]
Sent: July-11-17 7:49 PM
To: Dunn Michael C <Michael.C.Dunn@irs.gov>
Cc: vvivian.d.daniels@irs.gov; John Broad <john.broad@neo4j.com>
Subject: Termination of Neo4j Solution Partner PureThink LLC

July 11, 2017

Internal Revenue Service

Attn: Michael Dunn

Cc: Vivian Daniels

Department of Treasury

To: Michael Dunn

Re: Termination of Neo4j Solution Partner PureThink LLC (“PureThink”)

I write to inform you that Neo4j, Inc., formerly Neo Technology, Inc. ("Neo"), recently terminated its partnership agreement with PureThink. I understand that IRS has a relationship with PureThink relating to Neo’s products. Because this change in PureThink’s status may affect the services and support IRS receives, Neo wanted to notify IRS of this development and to offer Neo’s assistance in transitioning IRS to an authorized Neo4j partner to ensure IRS continues to receive the support it requires in a manner that respects Neo’s intellectual property rights and contractual relationships.

Neo understands that IRS entered into an agreement with PureThink in September 2016 to purchase a commercial license to Neo4j Government Edition and for consulting services and support. We understand that the term of that agreement expires on September 22, 2017. We further understand that IRS paid PureThink $229,000 for a Neo4j subscription and the consulting services.

Regarding IRS’s purchase of a Neo4j subscription, Neo still has not received a purchase order from PureThink. As a result of PureThink’s termination, please be advised that PureThink is no longer authorized to purchase a Neo4j subscription on behalf of IRS. Neo will work with IRS to purchase a subscription through an authorized Neo4j partner.

Regarding the consulting services, please be advised that PureThink is not authorized to provide consulting services and support on open source versions of Neo4j products. This prohibition applies not only to the APGL-licensed Enterprise Edition but also to the GPL-licensed Community Edition. While IRS has stated its intention to proceed with the AGPL-licensed Enterprise Edition, please understand that Neo’s agreements with its partners, including PureThink, prohibit them from providing any consulting services on these products during the term of their agreement and for a period of thirty six (36) months following termination. Neo will work with IRS to ensure that it receives the correct product and services from an authorized Neo4j partner.

We appreciate that this news may come as a surprise to IRS, and Neo wanted to make sure that IRS was promptly notified of this action so that it can make the appropriate decisions. Neo is available to answer any questions you may have and to assist in transitioning your subscription and support to an authorized Neo4j partner. We appreciate your continued interest in Neo4j and look forward to continuing to work with you.

Please do not hesitate to reach out to me with any questions regarding this notification.

EXHIBIT D

Sincerely,

Jason Zagalsky

Federal Technical Account Manager | Neo4j

410-280-9697 | jason@neo4j.com

neo4j

EXHIBIT D

John V. Picone III, Bar No. 187226
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jratinoff@hopkinscarley.com
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Attorneys for Plaintiffs and Counter-Defendants
NEO4J, INC. and NEO4J SWEDEN AB

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

NEO4J, INC., a Delaware corporation, NEO4J SWEDEN AB, a Swedish corporation,

Plaintiffs,

v.

PURETHINK LLC, a Delaware limited liability company, IGOV INC., a Virginia corporation, and JOHN MARK SUHY, an individual,

Defendants.

AND RELATED COUNTERCLAIMS.

CASE NO. 5:18-cv-07182-EJD

PLAINTIFF NEO4J, INC.'S NOTICE OF MOTION AND MOTION FOR JUDGEMENT ON THE PLEADINGS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

[Fed. R. Civ. P. 12(c)]

Date: May 7, 2020
Time: 9:00 a.m.
Dept.: Courtroom 4, 5th Floor
Judge: Hon. Edward J. Davila

JURY TRIAL DEMANDED

TO ALL PARTIES AND COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on May 7, 2020, at 9:00 a.m., Courtroom 4, 5th Floor, at the United States District Court located at 280 South First Street, San Jose, CA 95113 before the Honorable Edward J. Davila, Plaintiff and Counter-Defendant Neo4j, Inc. ("Plaintiff" or "Neo4j USA") will, and hereby does, move for a judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c) ("Rule 12(c)") on the First Cause of Action for Cancellation of Trademark 15 U.S.C. §1119 and Second Cause of Action for Declaratory Relief for Abandonment of Trademark asserted in Defendant John Mark Suhy's Counterclaim (Dkt. No. 48), as well as the Tenth Cause of Action for Declaratory Relief for Abandonment of Trademark and Eleventh Cause of Action Cancellation of Trademark 15 U.S.C. §1119 asserted in the First Amended Counterclaim filed by Defendants PureThink LLC and iGov Inc. (Dkt. No. 55).

Neo4j USA further will, and hereby does, move for a judgment on the pleadings as to pursuant to Rule 12(c) on the substantively identical Seventh Affirmative Defense for Cancellation of Trademark Procured by Fraud and Ninth Affirmative Defense for Naked License Abandonment of Trademark asserted in the Answer to the Second Amended Complaint (Dkt. No. 54) by Defendants John Mark Suhy, PureThink LLC, and iGov Inc. (collectively "Defendants").

This Motion is made on the grounds that Defendants cannot prevail on their counterclaims and affirmative defenses seeking the cancellation of Neo4j USA's Registered Trademark for NEO4J® (Reg. No. 4,784,280) (the "NEO4J® mark") as a matter of law because the alleged statements made in the application for registration do not legally amount to a material misrepresentation USPTO that would allow for the cancellation. This Motion is also made on the grounds that Defendants cannot succeed on their counterclaims and affirmative defenses seeking a declaration that the NEO4J® mark be abandoned under the doctrine of Naked License as a matter of law on any grounds alleged therein.

This motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the accompanying Declaration of Jeffery M. Ratinoff and Request for Judicial Notice, all records and pleadings on file in this action, and all other matters that the Court may properly consider.

REQUESTED RELIEF

Neo4j USA respectfully requests that the Court dismiss, with prejudice, Defendants' claims and defenses that seek a declaration that Neo4j USA allegedly abandoned its NEO4j® mark based on the theory of naked licensing, and enter a judgment on the pleadings in favor of Neo4j USA on those claims and defenses.

Neo4j USA further respectfully requests that the Court dismiss, with prejudice, Defendants' claims and defenses that seek to cancel the NEO4j® mark based on fraud in the procurement thereof and enter a judgment on the pleadings in favor of Neo4j USA on those claims and defenses.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF ISSUES TO BE DECIDED

1. Whether Defendants' counterclaims and defenses seeking cancellation of the NEO4j® mark based on fraud in the procurement thereof is adequately plead to satisfy Federal Rule of Civil Procedure 9(b)'s heighted requirements for pleading the circumstances of the alleged fraud.

2. Whether Defendants' counterclaims and defenses seeking cancellation of the NEO4j® mark are otherwise legally viable defenses based on fraud in the procurement thereof since it is indisputable that Neo4j was using the mark prior to the date it filed an application to register that mark.

3. Whether Defendants' theory of naked licensing amounts legally viable counterclaim or defense for abandonment of trademark under the Lanham Act.

4. Whether Defendants' theory of Neo4j USA's use of the NEO4J® mark as a trade name and trademark amounts legally viable counterclaim or defense for abandonment of trademark under the Lanham Act.

5. Whether the Court should grant Defendant leave to amend any of the foregoing counterclaims or defenses.

II. INTRODUCTION

Plaintiff and Counter-Defendant Neo4j, Inc. ("Neo4j USA") filed this action over a year ago against Defendants PureThink LLC, iGov Inc. and John Mark Suhy (collectively "Defendants") to halt their on-going willful infringement of Neo4j USA's federally registered NEO4J® mark. In response, Defendants assert counterclaims and an affirmative defense seeking to cancel the NEO4J® mark pursuant to 15 U.S.C. § 1119 due to Neo4j USA allegedly claiming a date of first use prior to its incorporation.[1] However, Defendants cannot seek cancelation on that basis as a matter of law. The Ninth Circuit has made clear that a trademark applicant's claimed date of first use ***cannot constitute a material misrepresentation so long as the first use in fact preceded the application date***. Defendants' original and amended pleadings have never alleged that Neo4j USA failed to use the NEO4J® mark when it filed the application. Nor could they because judicially noticeable facts make clear that Neo4j USA was using the NEO4J® mark at least three years prior to such filing. As a result, Defendants have not – and cannot – state a claim for cancelation of the NEO4J® mark upon which relief can be granted.

---

[1] Neo4j USA denies that the use dates stated in the application for the NEO4J® Mark are inaccurate. Defendants ignore that this application indicated that these dates were based on use by Neo4j's predecessor-in-interest whose use inured to the benefit of Neo4j USA.

Defendants alternatively seek a declaration via their counterclaims and an identical affirmative defense that Neo4j USA abandoned the NEO4j® mark by (1) creating "confusion" by using it as both a company and a trademark for software products; and (2) distributing NEO4j®-branded software via an open source license, both of which allegedly amount to naked licensing. Neither of these grounds meet the Lanham Act's specific definitions of abandonment under 15 U.S.C. § 1127, which requires either non-use or a course of conduct by the mark holder that causes the mark to become generic or otherwise lose significance as a mark. In fact, these abandonment theories run contrary to established case law, which holds that it is permissible to use a mark as both a trade name and trademark and the use of open source license shows an ***intent to control*** trademark rights rather than an intent relinquishing them. Consequently, Defendants' abandonment counterclaims and affirmative defense fail as a matter of law.

Defendants' counterclaims claims and defenses that seek to cancel the NEO4j® pursuant to 15 U.S.C. §1119 and a declaration of abandonment pursuant to 15 U.S.C. § 1127 have gone through several amendments. Yet, none of these amendments changed their foundational theories which render them fatally defective. Accordingly, the Court should enter a judgment on the pleadings in favor of Neo4j USA on those claims and defenses and dismiss them with prejudice.

III. FACTUAL AND PROCEDURAL BACKGROUND

A. Neo4j USA and the NEO4J® mark

On or about July 7, 2011, Neo4j USA was incorporated as "Neo Technology, Inc." in Delaware. Dkt. No. 55 at ¶¶ 5, 91; *see also* Declaration of Jeffrey M. Ratinoff in Support of Neo4j Inc.'s Motion for Judgment on the Pleadings ("Ratinoff Decl."), Exh. 1; Request for Judicial Notice in Support of Neo4j Inc.'s Motion for Judgment on the Pleadings ("RJN"), ¶ 1.

On May 17, 2017, Neo Technology, Inc. officially changed its name to "Neo4j Inc." Dkt. No. 55 at ¶ 88; *see also* Ratinoff Decl., Exh. 2; RJN, ¶ 2.

On April 30, 2014, Neo4j USA filed an application to register "Neo4j" as a trademark in covering goods and services in IC 009, IC 035, IC 041 and IC 045. Ratinoff Decl., Exh. 3; RJN, ¶ 3. Neo4j USA claimed first use of the NEO4J® mark in June 2006 and first use in commerce in May 2007. *Id.*

B. Neo4j USA Filed Suit Against Defendants for Violations of the Lanham Act

On November 28, 2018, Neo4j USA filed suit against PureThink and its successor-in-interest iGov, along with their founder John Mark Suhy for (1) trademark infringement 15 U.S.C. § 1114; (2) false designation of origin and false advertising in violation of 15 U.S.C. § 1125(a); (3) federal unfair competition in violation of 15 U.S.C. § 1125(a); (4) state unfair competition in violation of Cal. Bus. Prof. Code §§ 17200 et seq.; (5) breach of the Partner Agreement; and (6) invasion of privacy in violation of Cal. Penal Code §§ 632, 637.2. *See* Dkt. No. 1. Neo4j USA's Lanham Acts claims were based, *inter alia*, on Defendants' unauthorized use of the NEO4J® mark in conjunction with the sale and advertising of Defendants' graph database solutions and software and related support services. Their alleged violations also include falsely suggesting Neo4j USA's authorization and/or sponsorship of Defendants' products and services and misleading consumers regarding their prior contributions to NEO4J®-branded products.

On February 9, 2019, PureThink and iGov filed their original counterclaim, which sought declaratory relief that Neo4j USA had allegedly abandoned the NEO4J® mark under the doctrine of naked licensing:

> There is a present controversy where NEO4J, Inc. claims it has the right to use and enforce the Neo4j trademark. PureThink and iGOV claim there is confusion whether Neo4j is a company name trademark or product name trademark. This confusion is exacerbated by Neo4j Sweden AB' open source license for a product called Neo4j. Neo4j Sweden AB's license states: "The software ("Software") is developed and owned by Neo4j Sweden AB (referred to in this notice as "Neo4j")…. Neo4j Sweden AB asserts they own the software-and not plaintiff- and they use Neo4j name as part of the company name and call the open source software product Neo4j too. As the Neo4j trademark is used and licensed as open source software there is no ability to maintain quality control over the software product called Neo4j as

> any licensees may modify combine the software with other code and distributed or convey Neo4j without required quality control by NEO4J, Inc.
>
> * * *
>
> PureThink and iGOV request declaratory relief that the Neo4j registered trademark be abandoned under the doctrine of Naked License.

Dkt. No. 22 at ¶¶ 56-57. The next day, all three defendants filed their answer, which asserted an affirmative defense for "Naked License Abandonment of Trademark" based on the same facts and theories as the aforementioned counterclaim. *See* Dkt. No. 23 at 13:16-14:3.

C. The Parties' First Round of Amended Pleadings

After the parties engaged in discovery, Neo4j USA filed its First Amended Complaint ("FAC") on October 23, 2019. *See* Dkt. Nos. 35, 37. The FAC provided, *inter alia*, additional and more recent examples of Defendants' continuing violations of the Lanham Act. *Compare* Dkt. No. 1 at ¶¶ 33-43 *and* Dkt. No. 37 at ¶¶ 39-67. The FAC also added Neo4j Sweden AB as a plaintiff, which in turn asserted claims against Suhy for violations of the DMCA. In response, PureThink and iGov filed a motion to dismiss a cause of action for breach of contract on grounds unrelated to the Lanham Act claims. *See* Dkt. No. 49.

On November 13, 2019, Suhy filed his answer to the FAC and his counterclaim wherein he asserted the same "Naked License Abandonment of Trademark" affirmative defense (*compare* Dkt. No. 47 at 19:7-20 *and* Dkt. No. 23 at 13:16-14:3) and sought declaratory relief for "Abandonment of Trademark" (*compare* Dkt. No. 48 at ¶¶ 8-10 *and* Dkt. No. 22 at ¶¶ 56-57) as previously asserted by PureThink and iGov. Suhy also asserted a new counterclaim, solely based on the following allegations:

> The Registered Trademark for NEO4J, Reg. No. 4,784,280, was procured by fraud as the representation to the PTO was that Neo Technology (a Delaware corporation) (changed to Neo4J, Inc.) first used the trademark in 6-4-2006 and in commerce in 5-28-2007.
>
> These statements are knowlingly [sic] false and material to the decision to grant the registration application as Neo Technology did not exist on those dates as the company was formed 7-7-2011 in Delaware under File Number 5007564.
>
> Because the registration was procured by fraud, the registration to the NEO4J trademark should be cancelled pursuant to 15 U.S.C. §1119.

Dkt. No. 48 at ¶¶ 4-7. Suhy also asserted an identical affirmative defense in his answer based on the same conclusory allegations. *See* Dkt. No. 47 at 18:15-24.

D. The Parties' Second Round of Amended Pleadings

In lieu of filing an opposition to the motion to dismiss, Plaintiffs filed their Second Amended Complaint ("SAC") clarifying the allegations that PureThink and iGov had taken issue with on November 25, 2019. *See* Dkt. No. 50. On December 9, 2019 – just over a year after Neo4j USA filed this action – PureThink and iGov then filed their First Amended Counterclaim, which sought declaratory relief for trademark abandonment based on the same facts purporting to establish naked licensing as in their prior pleadings:

> There is a present controversy where NEO4J USA claims it has the right to use and enforce the Neo4j trademark. PureThink, iGov and John Mark Suhy claim there is confusion whether Neo4j is a company name trademark or product name trademark. This confusion is exacerbated by NEO4J SWEDEN' open source license for a product called Neo4j. NEO4J SWEDEN's license states: "The software ("Software") is developed and owned by NEO4J SWEDEN (referred to in this notice as "Neo4j")…. NEO4J SWEDEN asserts they own the software-and not NEO4J Inc.- and they use Neo4j name as part of the company name and call the open source software product Neo4j too. As the Neo4j trademark is used and licensed as open source software there is no ability to maintain quality control over the software product called Neo4j as any licensees may modify combine the software with other code and distributed or convey Neo4j without required quality control by NEO4J USA.
>
> * * *
>
> PureThink, iGov and John Mark Suhy request declaratory relief that the Neo4j registered trademark be abandoned under the doctrine of Naked License.

Dkt. No. 55 at ¶¶ 85-86.

They also asserted a counterclaim for cancellation of the NEO4J® mark substantially based on the same facts as the one asserted by Suhy:

> The Registered Trademark for NEO4J, Reg. No. 4,784,280, was procured by fraud as the representation to the PTO was that NeoTechnology (a Delaware corporation) (changed to Neo4J, Inc.) first used the trademark in 6-4-2006 and in commerce in 5-28-2007.
>
> These statements are knowlingly [sic] false and material to the decision to grant the registration application. Neo Technology, the predecessor to NEO4J USA did not exist on 6-4-2006 or 5-28-2007.

> Neo Technology, the predecessor to NEO4J US was first formed 7-7-2011 in Delaware under File Number 5007564.
>
> Because the registration was procured by fraud, PureThink, iGov and John Mark Suhy demand the registration to the NEO4J trademark be cancelled pursuant to 15 U.S.C. §1119.

Dkt. No. 55 at ¶¶ 88-92.

On December 9, 2019, all three Defendants filed an answer to the SAC, which reasserted the two foregoing counterclaims as affirmative defenses. Dkt. No. 54 at 18:20-19:3, 19:12-25. The pleadings in this case are now effectively closed, and as discussed below, Defendants' abandonment and cancellation counterclaims and defenses fail as a matter of law and that no further amendments can save them from this Court from entering a judgment on the pleadings and dismissing them with prejudice.

IV. APPLICABLE LEGAL STANDARDS ON A RULE 12(C) MOTION

Federal Rule of Civil Procedure 12(c) ("Rule 12(c)") provides that "[a]fter the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings." Fed. R. Civ. P. 12(c). Similar to Rule 12(b)(6) motion, a Rule 12(c) motion challenges the legal sufficiency of the opposing party's pleadings. *See Chavez v. United States*, 683 F.3d 1102, 1108 (9th Cir. 2012); *see also Perez v. Wells Fargo & Co.*, 75 F.Supp.3d 1184, 1187 (N.D. Cal. 2014). "Under either provision, a court must determine whether the facts alleged in the complaint, taken as true, entitle the plaintiff to a legal remedy, and dismiss the claim or enter judgment on the pleadings if the complaint fails to state a legally sufficient claim." *Ross v. U.S. Bank Nat. Ass'n*, 542 F.Supp.2d 1014, 1023 (N.D. Cal. 2008); *see also Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009) (recognizing "[j]udgment on the pleadings is properly granted when there is no issue of material fact in dispute, and the moving party is entitled to judgment as a matter of law").

It is common for courts to grant Rule 12(c) motions where a moving party seeks judgment on the pleadings with respect to individual causes of action. *See Strigliabotti v. Franklin Res., Inc.,* 398 F.Supp.2d 1094, 1097 (N.D. Cal. 2005); *see also Moran v. Peralta Community College Dist.*, 825 F.Supp. 891, 893 (N.D. Cal. 1993) (recognizing that "[c]ourts have discretion to grant leave to amend in conjunction with 12(c) motions, and may dismiss causes of action rather than grant judgment"). Likewise, courts may grant Rule 12(c) motions aimed at answers and dismiss individual affirmative defenses. *Innovation Ventures, LLC v. Pittsburg Wholesale Grocers, Inc.*, No. C 12-05523 WHA, 2013 WL 4519805, at *1 (N.D. Cal. Aug. 23, 2013) (granting trademark holder's motion for judgment on the pleadings with respect to three of defendant's affirmative defenses).

In deciding a Rule 12(c) motion, courts use the same standards articulated in *Twombly* and *Iqbal* as those applied to a Rule 12(b)(6) motion. *Chavez*, 683 F.3d at 1108-1109. Thus, the Court must assess whether the complaint "contain[s] sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal,* 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) (*quoting Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678.

However, "the tenet that a court must accept as true all of the allegations contained in the complaint is inapplicable to legal conclusions." *Iqbal*, 556 U.S. at 678–79. Indeed, "a plaintiff's obligations to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (citations and quotations omitted); *accord Iqbal*, 555 U.S. at 677–80; *Epstein v. Wash. Energy Co.*, 83 F.3d 1136, 1140 (9th Cir. 1996) ("conclusory allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss for failure to state a claim"). A court thus discounts conclusory statements, which are not entitled to the presumption of truth, before determining whether a claim is plausible. *Iqbal*, 556 U.S. at 678.

A party may also challenge claims and defenses sounding in fraud pursuant to a Rule 12(c) motion on the grounds they fail to meet the heightened pleading requirements of Federal Rules of Civil Procedure Rule 9(b). *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.,* 637 F.3d 1047, 1054 (9th Cir. 2011); *Yetter v. Ford Motor Co.*, No. 19-CV-00877-LHK, 2019 WL 7020348, at *5 (N.D. Cal. Dec. 20, 2019). Thus, a plaintiff "must state with particularity the circumstances constituting fraud" to survive a motion for judgment on the pleadings. Fed. R. Civ. P. 9(b); *see Cafasso,* 637 F.3d at 1054-1055.

In deciding whether to grant a motion for judgment on the pleadings, the Court accepts all material facts alleged as true and construes them in the light most favorable to the non-moving party. *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009). As with a Rule 12(b)(6) motion, the Court may also consider documents that are attached to the complaint, incorporated by reference when their authenticity is not contested, or are otherwise properly the subject to judicial notice. *See Ramachandran v. City of Los Altos*, 359 F.Supp.3d 801, 810 (N.D. Cal. 2019); *see also Spy Optic, Inc. v. Alibaba.Com, Inc*., 163 F.Supp.3d 755, 764 (C.D. Cal. 2015). However, the Court need not accept as true allegations contradicted by judicially noticeable facts, or by exhibits attached to or incorporated in the pleading. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001); *accord ChriMar Sys., Inc v. Cisco Sys., Inc*, 72 F.Supp.3d 1012, 1016 (N.D. Cal. 2014) (citing same in context of a Rule 12(c) motion).

V. LEGAL ARGUMENT

A. Defendants' Counterclaims and Affirmative Defense Seeking Cancellation of the NEO4J® Mark are Inadequately Pled

Suhy's first counterclaim (Dkt. No. 48 at ¶¶ 4-7), PureThink and iGov's eleventh counterclaim (Dkt. No. 55 at ¶¶ 88-92) and Defendants' seventh affirmative defense (Dkt. No. 54 at 18:20-19:3) collectively seek the cancellation of Neo4j USA's federally registered trademark, NEO4J® pursuant to 15 U.S.C. §1119. "Fraud in procurement of a trademark registration may be raised as a ground for cancellation in civil litigation, in which case it may function as a 'defense' to a claim of trademark infringement." *eCash Techs., Inc. v. Guagliardo*, 127 F.Supp.2d 1069, 1079 (C.D. Cal. 2000); *accord AirWair Int'l Ltd.*, 84 F.Supp.3d 943, 951–52 (N.D. Cal. 2015) (quoting same). In asserting their defense of fraud in the procurement, however, Defendants bear the "heavy burden of demonstrating that a trademark should be cancelled." *Hokto Kinoko Co. v. Concord Farms, Inc.,* 738 F.3d 1085, 1097 (9th Cir. 2013). Thus, Defendants ***must*** meet the heightened pleading requirements imposed by Federal Rule of Civil Procedure 9(b). *Aureflam Corp. v. Pho Hoa Phat I, Inc.*, 375 F.Supp.2d 950, 953 (N.D. Cal. 2005) (Rule 9(b)'s heightened pleading requirement applies to claims of fraud in the procurement of trademarks).

To allege a claim of cancellation based on fraud in the procurement, Defendants must allege with particularity: "(1) a false representation regarding a material fact; (2) the registrant's knowledge or belief that the representation is false; (3) the registrant's intent to induce reliance upon the misrepresentation; (4) actual, reasonable reliance on the misrepresentation; and (5) damages proximately caused by that reliance." *Hokto Kinoko*, 738 F.3d at 1097 (*citing Robi v. Five Platters, Inc.*, 918 F.2d 1439, 1444 (9th Cir. 1990)); *accord AirWair Int'l Ltd.*, 84 F.Supp.3d at 952 (quoting same). A false representation in the original trademark application may be grounds for cancellation only if all five of the above requirements are met. *Id.*

These counterclaims and defenses are solely premised on the following allegations:

> The [NEO4J® mark] was procured by fraud as the representation to the PTO was that Neo Technology (a Delaware corporation) (changed to Neo4J, Inc.) first used the trademark in 6-4-2006 and in commerce in 5-28-2007.
>
> These statements are knowlingly [sic] false and material to the decision to grant the registration application.
>
> Neo Technology, the predecessor to NEO4J USA did not exist on 6-4-2006 or 5-28-2007.
>
> Neo Technology, the predecessor to NEO4J US was first formed 7-7-2011 in Delaware under File Number 5007564.
>
> Because the registration was procured by fraud, PureThink, iGov and John Mark Suhy demand the registration to the NEO4J trademark be cancelled pursuant to 15 U.S.C. §1119.

Dkt. No. 55 at ¶¶ 88-92; *see also* Dkt. No. 48 at ¶¶ 4-7; Dkt. No. 54 at 18:20-19:3.

The conclusory allegations fall well short of providing Neo4j USA with fair notice of an alleged *material* misrepresentation and facts establishing Neo4j's knowledge and intent, reliance and any alleged damage to GFI. *See Aureflam*, 375 F.Supp.2d at 953 (recognizing that to "demonstrate fraud, a pleading must identify the 'time, place and nature of the alleged fraudulent activities'"); *see also In re Bose Corp.*, 580 F.3d 1240, 1243-45 (Fed. Cir. 2009) (holding that party seeking to cancel a trademark registration based on fraud must allege that defendant "knowingly [made] false, material representations of fact in connection with his application"). Simply alleging an inconsistency between the date of Neo4j USA's incorporation and the date of first use stated by an unidentified person in the application for the NEO4J® mark does ***not*** establish any knowing and intentional act to deceive. *See id.* ("there is a material legal distinction between a 'false' representation and a 'fraudulent' one, the latter involving an intent to deceive, whereas the former may be occasioned by a misunderstanding, an inadvertence, a mere negligent omission, or the like"). There are also no allegation that Defendants have suffered any damages as a result from the purported misrepresentation. As such, Defendants fail to assert a legally viable cancellation claim or defense based on any alleged fraud in the procurement of the NEO4J® mark.[2]

B. Defendants' Counterclaims and Affirmative Defense Seeking Cancellation of the NEO4J® Mark Fail as a Matter of Law

Aside from their failure to meet Rule 9's particularity requirements, Defendants' cancellation counterclaims and affirmative defense fail to state a ***legally viable*** claim for trademark cancellation because the alleged misstatement of the date of first use in commerce of the NEO4J® mark is not material to the registration. The Ninth Circuit has held that in order "to prove fraud that would result in the cancellation of [a federally registered] mark, there would have to be a material misrepresentation in the affidavit on the basis of which the mark was registered." *Pony Exp. Courier Corp. of Am. v. Pony Exp. Delivery Serv.*, 872 F.2d 317, 319 (9th Cir. 1989). In this regard, a trademark applicant's claimed date of first use cannot constitute a material misrepresentation ***so long as the first use in fact preceded the application date***. *Id.*; *accord McCarthy on Trademarks and Unfair Competition* (2d ed.1984) § 31:21 (citing same);

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[2] Although it is not necessary to reach the conclusion that Defendants' cancellation claims and defense fails as a matter of law, it is worth noting that the claimed dates of first use for the NEO4J® Mark are accurate because they were based on use by Neo4j's predecessor-in-interest whose use properly inured to the benefit of Neo4j USA. *See* 15 U.S. Code § 1127 ("The term 'related company' means any person whose use of a mark is controlled by the owner of the mark with respect to the nature and quality of the goods or services on or in connection with which the mark is used."); 15 U.S.C. § 1055 ("Where a [] mark sought to be registered is [] used legitimately by related companies, such use shall inure to the benefit of the registrant or applicant for registration, and such use shall not affect the validity of such mark or of its registration…."); *see also* Trademark Manual of Examining Procedure § 903.05 ("If the first use anywhere or the first use in commerce was by a predecessor in title to the applicant, or by a related company of the applicant [] and the use inures to the benefit of the applicant….").

Angel Flight of Georgia, Inc. v. Angel Flight Am., Inc., 522 F.3d 1200, 1210 (11th Cir. 2008) ("misstatement of the date of first use in the application is not fatal to the securing of a valid registration as long as there has been valid use of the mark prior to the filing date").

Here, Defendants do not allege Neo4j USA failed to use the NEO4J® mark in commerce ***prior to the filing date of the application for that mark***. Nor can they do so. It is an indisputable, judicially noticeable fact that Neo4j USA was using the NEO4J® mark in interstate commerce before it filed the application for that mark. For example, Neo4j USA was actively offering licenses to NEO4J®-branded software via its website shortly after incorporating in July 2011. *See* Ratinoff Decl., Exhs. 4-5; RJN, ¶ 4. Neo4j USA was also doing so immediately before it filed the application for the NEO4J® mark in April 2014. *See* Ratinoff Decl., Exhs. 6-7; RJN, ¶ 4.

Any alleged misstatement of the date of first use by Neo4j USA is therefore immaterial and cannot be a basis for canceling the NEO4J® mark. *See Pony Exp.*, 872 F.2d at 319 (9th Cir. 1989); *accord Teeter-Totter, LLC v. Palm Bay Int'l, Inc.*, 344 F.Supp.3d 1100, 1109 (N.D. Cal. 2018) (citing same) (dismissing trademark cancellation counterclaim because "allegations that [the trademark applicant] made false statements about [its] date of first use in commerce are not sufficient to state a claim ... for fraud to cancel [Plaintiff's trademark] registration")*; see also Colt Industries Operating Corp. v. Olivetti Controllo Numerico S.P.A,* 221 U.S.P.Q. 73, 1983 WL 51834, at *3 (T.T.A.B. 1983) ("The only fraud that could be perpetrated on the Office with respect to false dates of first use in an application would be where no use was made as of the filing date of the application."). Accordingly, Suhy's first counterclaim, PureThink and iGov's eleventh counterclaim, and Defendants' seventh affirmative defense that collectively seek the cancellation of Neo4j USA's federally registered NEO4J® mark fail to state a claim or defense upon which relief may be granted.

C. Defendants' Counterclaim and Affirmative Defense for Abandonment of Trademark Fails as a Matter of Law

Suhy's second counterclaim (Dkt. No. 48 at ¶¶ 9-10), PureThink and iGov's tenth counterclaim (Dkt. No. 55 at ¶¶ 85-86) and Defendants' ninth affirmative defense (Dkt. No. 54 at

19:12-25) collectively seek a declaration that Neo4j abandoned the NEO4J® mark pursuant to the doctrine of "naked licensing." Under the Lanham Act, a mark can only be deemed "abandoned" when either of the following occurs: "(1) When its use has been discontinued with intent not to resume such use," or "(2) When any course of conduct of the owner, including acts of omission as well as commission, causes the mark to become the generic name for the goods or services on or in connection with which it is used or otherwise to lose its significance as a mark." 15 U.S.C. § 1127. Naked licensing falls under the second definition of abandonment because it is an "uncontrolled" license where the licensor "fails to exercise adequate quality control over the licensee." *Barcamerica Int'l USA Trust v. Tyfield Importers, Inc.*, 289 F.3d 589, 595-96 (9th Cir. 2002). The proponent of a naked license theory "faces a stringent standard" of proof. *Id.* at 596.

Defendants' naked licensing counterclaims and defense appear to be based on two separate theories of alleged abandonment of the NEO4J® mark. As discussed below, neither theory is legally viable as a counterclaim or defense under the 15 U.S.C. § 1127.

1. Defendants' "Confusion" Does Not Legally Constitute Abandonment

Defendants' first abandonment theory is based on the conclusory allegation that the use of the NEO4J name in multiple contexts, namely as a "product name trademark" and "company name trademark" has confused ***them*** (and not the general public), which is allegedly "exacerbated" by Neo4j Sweden being the owner of the copyright for the NEO4J®-branded software. *See* Dkt. No. 48 at 3:10-12; Dkt. No. 55 at 24:10-18; *see also* Dkt. No. 54 at 19:13-21. This alleged "confusion" is not a legally cognizable basis under the Lanham Act to establish Neo4j USA's abandonment of the NEO4J® mark. The allegation shows ***use*** of the mark, and therefore does not fit the first definition of abandonment under 15 U.S.C. § 1127, which requires discontinuation of use with an intent not to resume such use. Since Defendants do not alleged any discontinuation by Neo4j USA, their "confusion" theory is not a viable means to seek a declaratory judgment that the NEO4J® mark has been abandoned by Neo4j USA.

The "confusion" allegation also does not fit the second definition of abandonment under 15 U.S.C. § 1127 because it has nothing to do with naked licensing, or even licensing in a general sense. There are no allegations that the use of the NEO4J® mark as both a company name and a product name has caused the mark to become generic or otherwise lose its trade significance – the key requirement under the second prong of the statutory abandonment defense.

To the contrary, Neo4j USA's use of NEO4J® mark as a product name and its trade name demonstrates its strength and significance because the mark is functioning as its intended purpose as an indicator of origin. Such co-usage is a legitimate and protected use of a mark. *Accuride Int'l, Inc. v. Accuride Corp.*, 871 F.2d 1531, 1535 (9th Cir. 1989) (holding that "the same broad standards of protection apply to trademarks and trade names"); *Standard Oil Co. of N. M. v. Standard Oil Co. of Cal.*, 56 F.2d 973, 979 (10th Cir. 1932) (recognizing that a "corporate name or trade name identifies a corporation; it also identifies its business and the goods or services which it sells or renders"). Indeed, "courts are rarely called upon to distinguish between trade names, trademarks and service marks" because "[t]rade names often function as trademarks or service marks as well." *Accuride*, 871 F.2d at 1534.

In sum, Defendants' "confusion" allegations do not amount to abandonment under 15 U.S.C. § 1127. There is no plausible interpretation thereof that would suggest that the NEO4J® mark has been abandoned and ceased to function as an indicator of origin. Instead, these allegations establish multiple uses of the NEO4J® mark and its strength, not the mark's diminution, let alone loss of the significance as a mark. As such, Defendants' abandonment counterclaims and defense based on their confusion allegations fail as a matter of law.

2. Defendants' "Open Source Licensing" Theory Does Not Establish Abandonment via Naked Licensing as a Matter of Law

The crux of Defendants' second abandonment theory is that the distribution of NEO4J®-branded software subject to the GPL and AGPL amounts to an abandoning that mark:

> As the Neo4j trademark is used and licensed as open source software there is no ability to maintain quality control over the software product called Neo4j as any licensees may modify combine the software with other code and distributed or convey Neo4j without required quality control by Neo4J USA.
>
> As the Neo4J software is licensed as open source software, there is no ability to maintain quality control of how licensees modify, use or distributed or conveyed. As a result, Neo4J USA has abandoned the Neo4J trademark under the doctrine of Naked License.

Dkt. No. 55 at 24:18-23; *see also* Dkt. No. 48 at 3:18-22; Dkt. No. 54 at 19:21-25. The open source licenses reference by Defendants are the GNU General Public License ("GPL") and a variant for server deployment called the GNU Affero General Public License ("AGPL"). *See* Dkt. No. 55 at ¶ 7 and Exhibit A.

However, the fact that some NEO4J®-branded software was distributed via the GPL or the AGPL does not establish abandonment of the NEO4J® mark under 15 U.S.C. § 1127. Defendants' open source theory does not meet the first definition under this section because there are no facts alleged establishing that Neo4j USA discontinued the use of the NEO4J® mark at any time. It also fails to meet the second statutory definition because there are no factual allegations in either their counterclaims or answer that the open source licensing of software under the NEO4J® mark has actually resulted in any loss of significance of the NEO4J® mark or as an indicator of origin. To the contrary, Defendants are alleging Neo4j USA's use of the mark in conjunction with the NEO4J® mark in at least one of the registered classes of goods. Dkt. No. 48:18-19 ("As the Neo4j trademark is used and licensed as open source software…").

More importantly, Defendants erroneously presume that software distributed via open-source software licenses *ipso facto* means the licensor has abandoned its trademarks. This is not the law. Rather, courts recognize that the open source licensing software through at least one of the open source licenses identified by Defendants constitutes an ***intent to control*** trademark rights, not the relinquishment of rights. *See, e.g., Planetary Motion, Inc. v. Techsplosion, Inc.*, 261 F.3d 1188, 1198 (11th Cir. 2001).

Planetary Motion is particular instructive. In that case, Byron Darrah developed "Coolmail," which was a software that provides email users with notice of new email. *Planetary Motion*, 261 F.3d at 1191. He distributed the software online under the same GPL open source license at issue here. *Id.* Several years later, defendant began offering an email service under the mark "CoolMail." *Id.* In 1999, Darrah sold the rights in the software to Planetary Motion, who had in 1998 registered the mark "Coolmail" for its own email service. *Id.* at 1192. Plaintiff then sued defendant for infringement of the Coolmail mark, as well as for infringement of the trademark rights it had been assigned by Darrah. *Id.* The district court granted summary judgment and permanent injunctive relief to plaintiff. *Id.*

On appeal, defendant argued it could not have infringed the Coolmail mark because Darrah had initially distributed it via the GPL, which divested him of any ownership rights in the mark. *See Planetary Motion*, 261 F.3d at 1198. The Eleventh Circuit disagreed, holding "[t]hat the Software had been distributed pursuant to a GNU General Public License does not defeat trademark ownership, nor does this in any way compel a finding that Darrah abandoned his rights in trademark." *Id.* Rather, defendant "misconstrue[d] the function of a GNU General Public License" and that "[s]oftware distributed pursuant to such a license is not necessarily ceded to the public domain." *Id.* The fact that Darrah licensed the software under the GPL was instead ***evidence of a desire to retain ownership rights***. *Id.* at 1198, fn 16.

Here, Defendants' open source theory is predicated on the same failed arguments made in *Planetary Motion*. As in that case, the fact that Neo4j USA's software was licensed under the GPL and the AGPL ***establishes*** Neo4j USA's efforts to control the quality of the NEO4J® mark rather than evidences abandonment. This is because both the AGPL and GPL were drafted and published by the same organization—Free Software Foundation—and the AGPL is merely a modified variant of the GPL with all of the protections of the GPL plus an added requirement of for open-source software running on servers. *See* Dkt. No. 55 at ¶ 7. Both the GPL and AGPL require licensees who wish to copy, distribute, or modify the software to include a copyright notice properly identifying the actual copyright owner. *Planetary Motion*, 261 F.3d at 1191, fn 16; Dkt. No. 55, Exhibit A at §§ 4-5. Neo4j USA's use of both the GPL and AGPL thus shows an ***intent to control*** trademark rights, not the relinquishment of rights. Similarly, the licensing of NEO4J® branded software under either the AGPL and GPL does not mean that Neo4j USA ceded any ownership rights in that mark under the *Planetary Motion* analysis. Accordingly, Defendants cannot maintain a legally viable abandonment counterclaim or defense based on their open source theory.

D. The Court Should Deny Defendants Leave to Amend

If the Court determines that judgment on the pleadings is warranted, it must then decide whether to grant leave to amend. *See Harris v. Cnty. of Orange*, 682 F.3d 1126, 1131 (9th Cir. 2012). The general rule of liberality in granting leave to amend is subject to limitations, which including "undue prejudice to the opposing party, bad faith by the movant, futility, and undue delay." *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1058 (9th Cir. 2011). The Court's "discretion to deny leave to amend is particularly broad where plaintiff has previously amended the complaint." *Id.* (quotation marks omitted).

The Court also should not grant leave to amend "where doing so would be an exercise in futility." *Low v. LinkedIn Corp.*, 900 F.Supp.2d 1010, 1033 (N.D. Cal. 2012). The Court "may deny a plaintiff leave to amend if it determines that allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency." *Telesaurus VPC, LLC v. Power*, 623 F.3d 998, 1003 (9th Cir. 2010); *accord Missouri ex rel. Koster v. Harris*, 847 F.3d 646, 656 (9th Cir. 2017) (holding that an "amendment is futile when 'no set of facts can be proved under the amendment to the pleadings that would constitute a valid and sufficient claim or defense'") (citation omitted). Likewise, the Court should deny leave to amend where the facts are not in dispute, and the sole issue is whether there is liability as a matter of substantive law. *See Albrecht v. Lund*, 845 F.2d 193, 195–96 (9th Cir. 1988).

Defendants have already amended both their counterclaims and answer at least once over the past year – and did so well after discovery commenced. As discussed above, Defendants' cancellation counterclaims and defense based on Neo4j USA allegedly misrepresenting its use date is not legally viable because it is undisputable that Neo4j USA was using the NEO4J® mark at the time it filed the underlying application. Thus, granting Defendants leave to amend would be futile since the allegedly false statement made to the USPTO ***cannot*** amount to a material misrepresentation. *See Albrecht*, 845 F.2d at 195-196 (amendment to fraud complaint properly denied where alleged misstatements "could not be misrepresentations" as a matter of law).

Similarly, Defendants' abandonment counterclaims and affirmative defense have remained unchanged through several iterations of their pleadings. As detailed above, neither theory underpinning them legally meets the definitions of abandonment under 15 U.S.C. § 1127. Neo4j USA further submits that no additional facts would resuscitate Defendants' abandonment counterclaims and affirmative defense because the facts alleged by Defendants establish Neo4j USA's continuing use of the NEO4J® mark and its intent to control its rights therein. *See*

Weisbuch v. Cty. of L.A., 119 F.3d 778, 783 n.1 (9th Cir. 1997) (recognizing that a party may plead itself out of court where that party alleges facts establishing that it cannot prevail on its claim); *accord Minor v. FedEx Office & Print Servs., Inc.*, 78 F.Supp.3d 1021, 1026 (N.D. Cal. 2015) (citing same). Accordingly, the Court should not grant Defendants leave to amend their abandonment counterclaims and affirmative defense.

VI. CONCLUSION

For the foregoing reasons, the Court should grant Neo4j USA's motion for a judgment on the pleadings in its entirety and dismiss (a) the First Cause of Action for Cancellation of Trademark 15 U.S.C. §1119 and Second Cause of Action for Declaratory Relief for Abandonment of Trademark asserted in John Mark Suhy's Counterclaim; (b) the Tenth Cause of Action for Declaratory Relief for Abandonment of Trademark and Eleventh Cause of Action Cancellation of Trademark 15 U.S.C. §1119 asserted in the First Amended Counterclaim filed by PureThink and iGov; and (c) the Seventh Affirmative Defense for Cancellation of Trademark Procured by Fraud and Ninth Affirmative Defense for Naked License Abandonment of Trademark asserted in the Answer to the Second Amended Complaint filed by Defendants with prejudice.

Dated: February 11, 2020

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A Law Corporation

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

NEO4J, INC., et al.,
Plaintiffs,
v.
PURETHINK, LLC, et al.,
Defendants.

Case No. 5:18-cv-07182-EJD

ORDER GRANTING MOTION FOR JUDGMENT ON THE PLEADINGS

Re: Dkt. No. 60

Before the Court is Plaintiff and Counter-Defendant Neo4j, Inc.'s ("Plaintiff" or "Neo4j USA") motion for a judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c) (the "Motion"). Dkt. No. 60. Plaintiff requests judgment on the pleadings as to the First Cause of Action for Cancellation of Trademark and Second Cause of Action for Declaratory Relief for Abandonment of Trademark asserted in Defendant John Mark Suhy's ("Suhy") Counterclaim (Dkt. No. 48), as well as the Tenth Cause of Action for Declaratory Relief for Abandonment of Trademark and Eleventh Cause of Action for Cancellation of Trademark asserted in the First Amended Counterclaim filed by Defendants PureThink, LLC ("PureThink") and iGov Inc. ("iGov") (Dkt. No. 55). Plaintiff further seeks judgment on the on the substantively identical Seventh Affirmative Defense for Cancellation of Trademark Procured by Fraud and Ninth Affirmative Defense for Naked License Abandonment of Trademark asserted in the Answer to the Second Amended Complaint (Dkt. No. 54) by Defendants Suhy, PureThink, and iGov (collectively "Defendants").

The Court took the matter under submission for decision without oral argument pursuant to Civil Local Rule 7-1(b). For the reasons below, Plaintiff's motion is **GRANTED**.

I. Background[1]

A. Factual Background

Neo4j USA is a Delaware corporation with its principal place of business in San Mateo, California, specializing in graph database management systems. SAC, ¶ 2. Neo4j USA's platform "helps organizations make sense of their data by revealing how people, processes and digital systems are interrelated." *Id.* Neo4j USA has more than 300 commercial customers, including global enterprises such as Walmart, Comcast, Cisco, and eBay, and also does substantial business with government agencies, including agencies within the United States Government. *Id.* at ¶ 3. Neo4j USA was originally incorporated as Neo Technology, Inc., but changed its name to Neo4j, Inc. in or about July 2017. *Id.* at ¶ 2.

Neo4j USA owns the trademark for the word mark "Neo4j," U.S. Trademark Registration No. 4,784,280. *Id.* at ¶ 21. Neo4j USA first used this trademark in June 2006 and has continually used it since it was published by the USPTO in May 2015 and issued on August 4, 2015. *Id.* at ¶ 22. Neo4j Sweden AB ("Neo4j Sweden"), a wholly owned subsidiary of Neo4j USA and a plaintiff in this action, owns certain copyrights related to the Neo4j graph platform software, including the source code, and has licensed these copyrights to Neo4j USA. *Id.* at ¶ 4. Neo4j Sweden distributes a version of Neo4j software known as "Neo4j Community Edition" on an open source basis under the GNU General Public License (Dkt. No. 65, Ex. B) ("GPL") and a variant called the GNU Affero General Public License (Dkt. No. 55, Ex. A) ("AGPL"). First Amended Counterclaim, Dkt. No. 55 ("Am. Counterclaim"), ¶ 7. This open source software is available at Github.com, the preeminent open source software repository. *Id.* at ¶ 8. Under the GPL and AGPL, anyone can download the Neo4j Community Edition source code and use, modify, support, combine and convey the software for free; however, licensees who copy, distribute, or modify the software are required to provide notice of any modifications they make to the software. *Id.* at ¶ 9.

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[1] This background summarizes only the allegations relevant to the affirmative defenses and counterclaims at issue in the present motion for judgment on the pleadings. Because the motion challenges both affirmative defenses and counterclaims, this background draws from allegations in both the Second Amended Complaint and the First Amended Counterclaim.

While Neo4j Sweden licensed the Neo4j Community Edition software under the GPL and AGPL, Neo4j USA licensed a commercial version, known as the "Enterprise Edition" which came with additional features and commercial support. *Id.* at ¶ 11; SAC ¶ 24. The commercial version was initially licensed under the terms of the AGPL as well as under a paid commercial license. *Id.* at ¶ 25; Am. Counterclaim, ¶ 11. Plaintiff alleges that beginning in November 2018, it exclusively offered the commercial version under a paid commercial license. SAC ¶¶ 25-27.

On or around September 30, 2014, Neo4j USA entered into a Partner Agreement with Defendant PureThink, by which PureThink agreed to sell and support the commercial version of the software in exchange for a percentage of the fees. *Id.* at ¶ 29; Am Counterclaim, ¶¶ 12-15. PureThink is a Delaware limited liability company, allegedly focused on software development. SAC ¶ 6. Plaintiff alleges that iGov is the successor-in-interest and alter ego of PureThink. *Id.* at ¶¶ 6-14. Plaintiff alleges that Defendant Suhy is the sole member and manager of PureThink and the sole shareholder of iGov. *Id.* at ¶ 8.

The partnership between Neo4j USA and PureThink deteriorated, for reasons not relevant to the analysis herein, and on May 30, 2017, Neo4j USA provided PureThink with formal notification of material breach. SAC ¶ 33. Shortly thereafter, on July 11, 2017, Neo4j USA provided PureThink with written notice that the Partner Agreement was terminated due to PureThink's failure to cure the material breaches set forth in the May 30, 2017 letter. *Id.* at ¶ 35.

B. Procedural History

On November 28, 2018, Plaintiff filed this action against Defendants, asserting (1) Trademark Infringement; (2) False Designation of Origin; (3) False Advertising; (4) Federal and State Unfair Competition; (5) Breach of Contract; and (6) Invasion of Privacy. On January 9, 2019, Defendants PureThink and iGov filed a counterclaim against Plaintiff, alleging (1) Interference With Prospective Economic Advantage; (2) Interference with Contract; (3) Breach of

Contract; (4) Declaratory Relief (Void Restrictions); (5) Declaratory Relief (Restrictions Violate AGPL License); and (6) Declaratory Relief (Abandonment of Trademark).

On October 1, 2019, Neo4j USA filed the now-related action, *Neo4j, Inc. v. Graph Foundation, Inc.*, Case No. 3:19-cv-06226-EJD (the "GFI Action"). Neo4j USA alleges that GFI engaged in conduct that amounts to trademark infringement in violation of 15 U.S.C. § 1117(a), as well false advertising, passing-off and false designation of origin in violation of 15 U.S.C. § 1125(a). Neo4j USA further alleges that this same conduct constitutes unlawful and unfair competition in violation of California's unfair competition law, Cal. Bus. & Prof. Code § 17200 et seq. ("UCL"). These claims overlap with and are substantially similar to the Lanham Act and UCL claims asserted by Neo4j USA against Defendants in this action.

On October 22, 2019, Plaintiff sought and obtained leave to file its First Amended Complaint (*see* Dkt. Nos. 35-37), which set forth additional allegations to support its claims under the Lanham Act and the UCL, and also included a new claim alleging that Defendant Suhy violated the Digital Millennium Copyright Act ("DMCA"). The First Amended Complaint also added Neo4j Sweden AB ("Neo4j Sweden") as a plaintiff, which joined in the new DMCA claim.

On November 13, 2019, Suhy filed a counterclaim wherein he asserted claims for (1) Cancellation Of Trademark Procured By Fraud; and (2) Declaratory Relief (Abandonment of Trademark). Dkt. No. 48 ("Suhy Counterclaim"). On November 25, 2019, Plaintiffs filed their Second Amended Complaint in response to a motion to dismiss filed by PureThink and iGov Inc. *See* Dkt. Nos. 49-50. On December 9, 2019, PureThink and iGov filed their First Amended Counterclaim. Dkt. No. 55 ("Am. Counterclaim"). The First Amended Counterclaim contained claims identical to claims (1) and (2) asserted by Suhy for the cancellation and abandonment of the trademark. Similarly, the Answer filed by all Defendants on December 9, 2019 contains affirmative defenses that are substantively identical to the cancellation and abandonment counterclaims. Dkt. No. 54 ("Answer").

The Defendants' Ninth Affirmative Defense, PureThink and iGov's Tenth Cause of Action in their Amended Counterclaim, and Suhy's Second Cause of Action in his Counterclaim (collectively, the "Abandonment Arguments") all allege:

> [T]here is confusion whether Neo4j is a company name trademark or product name trademark. This confusion is exacerbated by NEO4J SWEDEN' open source license for a product called Neo4j. NEO4J SWEDEN's license states: "The software ("Software") is developed and owned by NEO4J SWEDEN (referred to in this notice as "Neo4j") . . . NEO4J SWEDEN asserts they own the software-and not NEO4J Inc.- and they use Neo4j name as part of the company name and call the open source software product Neo4j too.

See Suhy Counterclaim at ¶ 9; Am. Counterclaim at ¶ 85; Answer at 19:13-21. They further allege, in varying language, that because "the Neo4j trademark is used and licensed as open source software, there is no ability to maintain quality control" over the product and that Neo4j has therefore abandoned the Neo4j trademark. Am. Counterclaim ¶ 85.

Similarly, the Defendants' Seventh Affirmative Defense, PureThink and iGov's Eleventh Cause of Action in their Amended Counterclaim, and Suhy's First Cause of Action in his Counterclaim (collectively, the "Cancellation Arguments") all allege:

> "The Registered Trademark for NEO4J, Reg. No. 4,784,280, was procured by fraud as the representation to the PTO was that Neo Technology (a Delaware corporation) (changed to Neo4J, Inc.) first used the trademark in 6-4-2006 and in commerce in 5-28-2007. [] These statements are [knowingly] false and material to the decision to grant the registration application. [] Neo Technology, the predecessor to NEO4J USA did not exist on 6-4-2006 or 5-28-2007. [] Neo Technology, the predecessor to NEO4J US was first formed 7-7-2011 in Delaware under File Number 5007564."

Am. Counterclaim at ¶¶ 88-92; *see also* Suhy Counterclaim at ¶¶ 4-7; Answer at 18:20-19:3.

The Abandonment and Cancellations Arguments are also identical to the trademark-related affirmative defenses asserted by Graph Foundation in the GFI Action. Thus, in addition to filing the present motion for judgment on the pleadings, Neo4j USA also filed a motion to strike GFI's affirmative defenses in the GFI action, which raises substantively identical legal arguments. See GFI Action, Dkt. No. 32.

II. Legal Standard

Federal Rule of Civil Procedure 12(c) provides that "[a]fter the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings." A Rule 12(c) motion challenges the legal sufficiency of the opposing party's pleadings. Judgment on the pleadings is appropriate when, even if all material facts in the pleading under attack are true, the moving party is entitled to judgment as a matter of law. *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009).

On a motion for judgment on the pleadings, "all material allegations in the complaint are accepted as true and construed in the light most favorable to the non-moving party." *Turner v. Cook*, 362 F.3d 1219, 1225 (9th Cir. 2004). "[A]ll reasonable inferences" must be made "in favor of the nonmoving party." *Mediran v. International Ass'n of Machinists and Aerospace Workers*, No. 09-0538 TEH, 2011 WL 2746601, at *2 (N.D. Cal. July 14, 2011). "A motion for judgment on the pleadings may be granted if, after assessing the complaint and matters for which judicial notice is proper, it appears 'beyond doubt that the [non-moving party] cannot prove any facts that would support his claim for relief.'" *Williams v. Nichols Demos, Inc.*, No. 5:17-CV-07101-EJD, 2018 WL 3046507, at *3 (N.D. Cal. June 20, 2018) (citing *Morgan v. County of Yolo*, 436 F. Supp. 2d 1152, 1155 (E.D. Cal. 2006)). In other words, the standard for a Rule 12(c) motion is essentially the same as that for a Rule 12(b)(6) motion. *Chavez v. United States*, 683 F.3d 1102, 1108 (9th Cir. 2012).

"[I]t is common to apply Rule 12(c) to individual causes of action," as well as individual affirmative defenses and answers. *Strigliabotti v. Franklin Res., Inc.*, 398 F.Supp.2d 1094, 1097 (N.D. Cal. 2005); *Innovation Ventures, LLC v. Pittsburg Wholesale Grocers, Inc.*, No. C 12-05523 WHA, 2013 WL 4519805, at *1 (N.D. Cal. Aug. 23, 2013) (granting trademark holder's motion for judgment on the pleadings with respect to three of defendant's affirmative defenses). Although Rule 12(c) makes no mention of leave to amend, "courts have discretion both to grant a Rule 12(c) motion with leave to amend . . . and to simply grant dismissal of the action instead of entry of judgment." *Mitchell v. Corelogic, Inc.*, No. SA 17-CV-2274-DOC (DFMx), 2019 WL 7172978, at *4 (C.D. Cal. Nov. 20, 2019) (citing *Carmen v. S.F. Unified Sch. Dist.*, 982 F. Supp. 1396, 1401 (N.D. Cal. 1997) and *Moran v. Peralta Community College Dist.*, 825 F.Supp. 891, 893 (N.D. Cal. 1993)).

III. Discussion

A. Judicial Notice

As with a Rule 12(b)(6) motion, the Court may also consider documents that are attached to the complaint, incorporated by reference when their authenticity is not contested, or are otherwise properly the subject to judicial notice. *See Ramachandran v. City of Los Altos*, 359 F.Supp.3d 801, 810 (N.D. Cal. 2019); *see also Spy Optic, Inc. v. Alibaba.Com, Inc.*, 163 F.Supp.3d 755, 764 (C.D. Cal. 2015).

The AGPL was attached to the Amended Counterclaim as Exhibit A. It was also repeatedly referenced and quoted throughout the SAC and Amended Counterclaim. The GPL was attached to Plaintiff's Request for Judicial Notice, submitted in conjunction with the Reply. See Dkt. No. 65, Ex. B. The GPL was also repeatedly referenced in the SAC, Amended Counterclaim Suhy Counterclaim and Answer. Both documents are publicly available and their authenticity is not in dispute. Thus, the Court finds that the document is incorporated by reference into the pleadings and may be properly considered on this motion. *See Van Buskirk v. CNN*, 284 F.3d 977, 980 (9th Cir. 2002) (recognizing that a court may rely upon "the doctrine of 'incorporation by reference' to consider documents that were referenced extensively in the complaint and were accepted by all parties as authentic"); *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003) ("Even if a document is not attached to a complaint, it may be incorporated by reference into a complaint if the plaintiff refers extensively to the document or the document forms the basis of the plaintiff's claim.").

The remainder of the documents included in Plaintiff's two requests for judicial notice are not relevant to the Court's analysis and, therefore, the Court declines to take judicial notice of those documents.

B. Cancellation Arguments

In their Opposition, Defendants conceded, and the Court agrees, that a misstatement of a date of first use in a registration in and of itself does not support cancellation of the trademark. Opposition, p. 3; *see Pony Exp. Courier Corp. of Am. v. Pony Exp. Delivery Serv.*, 872 F.2d 317, 319 (9th Cir. 1989); *Teeter-Totter, LLC v. Palm Bay Int'l, Inc.*, 344 F.Supp.3d 1100, 1109 (N.D. Cal. 2018) (citing same) (dismissing trademark cancellation counterclaim because "allegations that [the trademark applicant] made false statements about [its] date of first use in commerce are not sufficient to state a claim ... for fraud to cancel [Plaintiff's trademark] registration").

Thus, Defendants effectively conceded that the Cancellation Arguments fail to establish a legally plausible claim or defense. Given this concession, the Court finds that amendment would be futile. *See Telesaurus VPC, LLC v. Power*, 623 F.3d 998, 1003 (9th Cir. 2010) (The Court "may deny a plaintiff leave to amend if it determines that allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency."). Accordingly, the Court **GRANTS** the Motion as to the Cancellation Arguments and **DISMISSES** these claims with prejudice.

C. Abandonment Arguments

Under the Lanham Act, a mark can only be deemed "abandoned" when either of the following occurs: "(1) When its use has been discontinued with intent not to resume such use," or "(2) When any course of conduct of the owner, including acts of omission as well as commission, causes the mark to become the generic name for the goods or services on or in connection with which it is used or otherwise to lose its significance as a mark." 15 U.S.C. § 1127. Both of Defendants' arguments fall under the second definition of abandonment.

In their counterclaims and identical affirmative defense, Defendants argue that Neo4j USA abandoned the Neo4j mark by (1) creating "confusion" by using it as both a company name and the name of multiple software products; and (2) distributing Neo4j-branded software via an open source license, which allegedly amounts to naked licensing.

i. Confusion

Defendant first alleges that the use of the mark "Neo4j" as both a trade name and the name of multiple software products is confusing. Specifically, the allegations stated in the Amended Counterclaim are that "there is confusion whether Neo4j is a company name trademark or product name trademark" and that "[Plaintiffs] use Neo4j name as part of the company name and call the open source software product Neo4j too." Am. Counterclaim, ¶ 85; *see also* Suhy Counterclaim, ¶ 9; Answer, 19:13-21.

Plaintiff argues that these allegations are insufficient to state a claim or defense of abandonment because there are no allegations suggesting that the use of "Neo4j" as both a company name and product name has caused the mark to become generic or otherwise lose its trade significance. In fact, Plaintiff avers that the use of the mark as both a company name and product name "demonstrates its strength and significance because the mark is functioning as its intended purpose as an indicator of origin." Motion, p. 13.

The Court agrees with Plaintiff that the use of a mark in both a company name and product name, without more, is not sufficient to show that the mark has been abandoned. Indeed, companies often share a name with their products without causing any confusion to the public or reducing the significance of the mark. *See Accuride Int'l, Inc. v. Accuride Corp.*, 871 F.2d 1531, 1534 (9th Cir. 1989) ("Trade names often function as trademarks or service marks as well."); *SunEarth, Inc. v. Sun Earth Solar Power Co.*, 846 F. Supp. 2d 1063, 1074 (N.D. Cal. 2012) (finding that trademark was still protected where plaintiff SunEarth "used SunEarth as both a trade name, referring to the company, and a trademark, referring to particular products"); *Stork Rest. v. Sahati*, 166 F.2d 348, 353 (9th Cir.1948) ("A corporate name or trade name identifies a corporation; it also identifies its business and the goods or services which it sells or renders"); *Standard Oil Co. of N. M. v. Standard Oil Co. of Cal.*, 56 F.2d 973, 979 (10th Cir. 1932) (same).

Defendants do not address this case law in their Opposition, nor do they provide any factual allegations in their pleadings demonstrating that Plaintiff's use of the Neo4j mark in its company name and product name has caused confusion. Even accepting the allegations of confusion in the pleadings as true, Defendant does not allege that this confusion has caused the mark "to become the generic name" for goods of the same type or "to lose its significance as a mark" such that the mark could be found to be abandoned. 15 U.S.C. § 1127.

Defendants' allegation that the "Neo4j" mark is used in the company names of both Neo4j, Inc. as well as Neo4j Sweden is insufficient to establish abandonment for the same reasons. Plaintiff alleges that Neo4j Sweden is a wholly owned subsidiary of Neo4j USA. SAC ¶ 4. The Lanham Act expressly recognizes that a registered mark "may be used legitimately by related companies, such use shall inure to the benefit of the registrant . . . and such use shall not affect the validity of such mark or of its registration." 15 U.S.C. § 1055; see also 15 U.S.C. § 1127 ("The term 'related company' means any person whose use of a mark is controlled by the owner of the mark with respect to the nature and quality of the goods or services on or in connection with which the mark is used.").

Defendants, however, denied the allegation that the companies are related in their Answer, asserting a lack of knowledge sufficient to form a belief. Answer, ¶ 4. Defendants do not assert any allegations as to the relationship of Neo4j USA and Neo4j Sweden in their pleadings. Even making all inferences in favor of Defendants and assuming that the companies are not related, the allegation that both companies use "Neo4j" in their name is still insufficient to show that the mark has been abandoned. The use of the mark in two companies' names, without more, does not demonstrate that the mark has "become the generic name" for goods of the same type or has "los[t] its significance as a mark" such that the mark could be found to be abandoned. 15 U.S.C. § 1127. Thus, Defendants' argument that Plaintiff used the mark in multiple company names and product names fails to support a claim or defense that the mark has been abandoned.

ii. Naked Licensing

Defendants next argue that the "Neo4j" mark has been abandoned under the "naked licensing" doctrine because Plaintiff failed to control the quality of products using the trademark.

It is well-established that "[u]ncontrolled or 'naked' licensing may result in the trademark ceasing to function as a symbol of quality and controlled source." *Barcamerica Int'l USA Trust v. Tyfield Importers, Inc.*, 289 F.3d 589, 595-96 (9th Cir. 2002) (citing *Moore Bus. Forms, Inc. v. Ryu,* 960 F.2d 486, 489 (5th Cir.1992)). "Consequently, where the licensor fails to exercise adequate quality control over the licensee, a court may find that the trademark owner has abandoned the trademark, in which case the owner would be estopped from asserting rights to the trademark." *FreecycleSunnyvale v. Freecycle Network*, 626 F.3d 509, 516 (9th Cir. 2010) (quoting *Barcamerica*, 289 F.3d at 596). "[T]he naked licensing claim is fundamentally a claim that the trademark is no longer valid and enforceable because of the licensor's neglect in policing its use." *Monster, Inc. v. Dolby Labs. Licensing Corp.*, 920 F. Supp. 2d 1066, 1076 (N.D. Cal. 2013). Because the theory is essentially that a party forfeited trademark rights, "the Ninth Circuit has described the standard required of the trademark challenger as 'stringent.'" *Id.* (quoting *FreecycleSunnyvale*, 626 F.3d at 514) (citing *Barcamerica*, 289 F.3d at 596).

Defendants argue that the distribution of Neo4j branded software on an open source basis, subject to the GPL and AGPL, amounts to naked licensing. Specifically, Defendants allege that because "the Neo4j trademark is used and licensed as open source software there is no ability to maintain quality control over the software product called Neo4j as any licensees may modify combine the software with other code and distribute[] or convey Neo4j without required quality control by Neo4J USA." Am. Counterclaim, ¶ 85; *see also* Suhy Counterclaim, ¶ 9; Answer at 19:21-25.

Plaintiff argues that distribution of Neo4j software on an open source basis does not establish abandonment because its use of the GPL and AGPL demonstrates an effort to control the quality of the mark rather than evidence an abandonment of it. Motion, p. 15. Under the terms of the GPL, a licensee may "convey a work based on the Program, or the modifications to produce it from the Program, in the form of source code under the terms of section 4, provided that . . . [t]he work must carry prominent notices stating that [the licensee] modified it, and giving a relevant date." GPL § 5(a). The AGPL similarly provides that a licensee "may convey a work based on the Program, or the modifications to produce it from the Program, in the form of source code under the terms of section 4, provided that . . . [t]he work must carry prominent notices stating that the licensee modified it, and giving a relevant date." AGPL § 5(a). Plaintiff argues that these provisions expressly require licensees to identify any and all modifications they make to the software to ensure that such modifications are not attributed to the Neo4j mark. Because users are required to provide prominent notice of their modifications, Plaintiff argues that the GPL and AGPL are not trademark licenses at all, and that it is still able to control the quality of software bearing the Neo4j mark. *See* GPL § 7(e) (authorizing users to *supplement* to terms of the GPL with terms "declining to grant rights under trademark law for . . . trademarks" indicating that the GPL does not otherwise cover trademark rights).

In support of this argument, Plaintiff cites *Planetary Motion, Inc. v. Techsplosion, Inc.*, 261 F.3d 1188, 1198 (11th Cir. 2001). In *Planetary Motion*, the Eleventh Circuit considered whether the plaintiff's distribution of his software on a public site pursuant to the GPL constituted "use in commerce" sufficient to create ownership rights in the mark. *Id.* at 1196. The Court held:

> "That the Software had been distributed pursuant to a GNU General Public License does not defeat trademark ownership, nor does this in any way compel a finding that [plaintiff] abandoned his rights in trademark. Appellants misconstrue the function of a GNU General Public License. Software distributed pursuant to such a license is not necessarily ceded to the public domain and the licensor purports to retain ownership rights, which may or may not include rights to a mark."

Id. at 1198. In a footnote, the Court explained that "[b]ecause a GNU General Public License requires licensees who wish to copy, distribute, or modify the software to include a copyright notice, the license itself is evidence of [plaintiff's] efforts to control the use of the . . . mark in connection with the Software." *Ibid.*

Defendants argue that *Planetary Motion* is distinguishable here because "[c]ontrol of ownership of a trademark to support a use in commerce position is not equivalent to requiring quality control under a naked license analysis." Opposition, p. 7. While it is true that ownership analysis in *Planetary Motion* differs from the abandonment analysis here, Defendants fail to show why the level of control exerted under the GPL is not also sufficient to overcome a claim of abandonment. Instead, Defendants argue that Neo4j USA is unable to control the quality of products using the mark because neither the GPL nor AGLP contain specific trademark quality control provisions. In support of this contention, Defendants cite *FreecycleSunnyvale v. Freecycle Network*, 626 F.3d 509 (9th Cir. 2010). In *Freecycle*, the Court considered whether the defendant had established adequate control standards over its licensees' use of the trademark to avoid a finding of naked licensing and abandonment where the defendant allowed others to use the trademark without a formal license agreement. *Id.* The Court noted that the absence of an agreement with quality control provisions supports a finding of naked licensing, but also acknowledged that "[t]he lack of an express contract right . . . is not conclusive evidence of lack of control." *Id.* at 516 (citing *Barcamerica,* 289 F.3d at 596). The court found in that case that the defendant did not exercise "actual control" over licensees' use of the trademark. *Id.* at 518.

Defendants do not raise any allegations indicating that Plaintiff has failed to exercise actual control over licensees' use of the trademark. Thus, the Court finds that the absence of specific quality control provisions—either in the GPL, AGPL, or in a separate trademark license—is not dispositive here. *See Hokto Kinoko Co. v. Concord Farms, Inc.*, 738 F.3d 1085, 1098 (9th Cir. 2013) ("[e]ven absent formal quality control provisions, a trademark owner does not abandon its trademark where the particular circumstances of the licensing arrangement suggests that the public will not be deceived") (internal quotes and citation omitted). Moreover, this Court is persuaded by the reasoning in *Planetary Motion* that the notice requirements in the GPL and AGPL evidence an effort to control the use of the mark.

Thus, the fact that Plaintiff distributed Neo4j software on an open source basis pursuant to the GPL and AGPL is not, without more, sufficient to establish a naked license or demonstrate abandonment. However, "[t]he court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). To the extent that Defendants are able to allege that Plaintiff failed to exercise actual control over licensees' use of the trademark, such allegations may be sufficient to state a claim of abandonment under *Freecycle*. Because amending the complaint to add allegations regarding Plaintiff's lack of actual control over use of the trademark would not be futile, cause undue delay, or unduly prejudice Plaintiff, the Court grants leave to amend. *Leadsinger, Inc. v. Music Publ'g*, 512 F.3d 522, 532 (9th Cir. 2008). The Court **GRANTS** Neo4j USA's Motion and **DISMISSES** the Abandonment Arguments with leave to amend.

IV. Conclusion

For the reasons stated above, the Court **GRANTS** Neo4j USA's Motion in full. The First Cause of Action in the Suhy Counterclaim, the Eleventh Cause of Action in the Amended Counterclaim, and the Seventh Affirmative Defense in the Answer are **DISMISSED with prejudice**. The Second Cause of Action in the Suhy Counterclaim, the Tenth Cause of Action in the Amended Counterclaim and the Ninth Affirmative Defense in the Answer are **DISMISSED with leave to amend**.

If Defendants wish to file an amended counterclaim for the sole purpose of adding allegations to support an abandonment argument as described above, they may do so on a consolidated basis by no later than June 5, 2020.

IT IS SO ORDERED.

Dated: May 21, 2020

EDWARD J. DAVILA
United States District Judge

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

NEO4J, INC., a Delaware corporation, and NEO4J SWEDEN AB, a Swedish corporation, Plaintiffs v. PURETHINK LLC, a Delaware limited liability company, IGOV INC., a Virginia corporation, and JOHN MARK SUHY, an individual, Defendants.	CASE NO. 5:18-cv-7182 EJD **DEFENDANTS PURETHINK, LLC, IGOV INC AND JOHN MARK SUHY'S FIRST AMENDED ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT** **DEMAND FOR JURY TRIAL**

Defendants PURETHINK, LLC, iGOV, INC. and JOHN MARK SUHY ("Defendants") answers NEO4J, INC. ("Neo4J USA") and NEO4J SWEDEN AB's ("Neo4J Sweden") Second Amended Complaint as follows:

1. Defendants admits the statement outlines the claims but otherwise deny the claims and allegations in paragraph 1.

2. Defendants admits the first and second sentence in paragraph 2. Defendants deny that plaintiff is the graph company behind an open source software product called Neo4J as the software is owned by and licensed by Neo4J Sweden AB according to the license for Neo4J-enterprise available at GitHub. Defendants lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations and on that basis deny the remaining allegations.
3. Defendants deny the allegation in paragraph 3. Defendants believes that many users are using the open source version called Neo4J and not what plaintiff calls Neo4J®. This confusion arises because plaintiff Neo4J, USA claims they own Neo4J software yet the open source license is by Neo4J Sweden. Likewise, there appear over 183 contributors to the open source version of the Neo4J software and Defendants do not know if each contributor has assigned contributions or moral rights in works to either plaintiff. Defendants lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations and on that basis deny the remaining allegations.
4. Defendants lacks knowledge or information sufficient to form a belief about the truth of the allegations and on that basis deny the allegations.
5. Defendants admits the allegations in paragraph 5 except they deny PureThink is a shell entity maintained by the other Defendants and is

not currently conducting or engaged in any meaningful business activities.

6. Defendants admits the allegations in paragraph 6 except they deny iGov is the assignee and successor-in-interest to PureThink or otherwise acquired substantially all of PureThink's assets sometime in mid-2017 and deny that Neo4J is a large scale graph solution as it is limited in scalability.

7. Defendants admits that iGov does business as GraphStack, but deny the remaining allegations in paragraph 7.

8. Defendants deny the allegations in paragraph 8 except for the fact Suhy is an individual and the last sentence.

9. Defendants deny the allegations in paragraph 9.

10. Defendants deny the allegations in paragraph 10.

11. Defendants deny the allegations in paragraph 11 are an example to support the allegations and deny Defendants share the same customer support number but admit the facts alleged.

12. Defendants deny the allegations in paragraph 12 are an example to support the allegations but admit the facts alleged except Defendants lacks information or belief about what virtually identical means.

13. Defendants deny the allegations in paragraph 13 as the verb ported is unclear and vague.

14. Defendants deny the allegations in paragraph 14.

15. Defendants admits the allegations in paragraph 15.

16. Defendants deny the allegations in paragraph 16.

17. Defendants deny the allegations in paragraph 17.

18. Defendants admits the allegations in paragraph 18.

19. Defendants admits the allegations in paragraph 19.

20. Defendants deny the allegations in paragraph 20.

21. Defendants lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 21 and on that basis deny the allegations.

22. Defendants lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 22 and on that basis deny the allegations.

23. Defendants lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 23 and on that basis deny the allegations.

24. Defendants lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 24 and on that basis deny the allegations. Defendants is informed and believes that both plaintiffs did not license the open source version of Neo4J software as the open source licenses state the software is owned and license by Neo4J Sweden.

25. Defendants lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 25 and on that basis deny the allegations. Defendants is informed and believes that both plaintiffs did not license the open source version of Neo4J software as the open source licenses state the software is owned and license by

Neo4J Sweden. Further, Neo4J Sweden did not license a commercial product based on the open source software.

26. Defendants deny the allegations in paragraph 26.

27. Defendants deny the allegations in paragraph 27.

28. Defendants deny the allegations in paragraph 28.

29. Defendants deny they agreed to provide first and second line support to end-users of NEO4J® EE software. Defendants admits the remaining allegations paragraph 29.

30. Defendants admits the first sentence in paragraph 30 and deny the remainder.

31. Defendants lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 31 and on that basis deny the allegations.

32. Defendants deny the allegations in paragraph 32.

33. Defendants admits the first sentence in paragraph 33 and deny the remainder.

34. Defendants admits the allegations paragraph 34.

35. Defendants admits the allegations paragraph 35.

36. Defendants admits the allegations paragraph 36.

37. Defendants admits the allegations in paragraph 37.

38. Defendants admits the allegations in paragraph 38.

39. Defendants deny the allegations in paragraph 39.

40. Defendants deny the allegations in paragraph 40.

41. Defendants deny the allegations in paragraph 41.

42. Defendants deny the allegations in paragraph 42.

43. Defendants deny the allegations in paragraph 43.

44. Defendants deny the allegations in paragraph 44.

45. Defendants deny the allegations in paragraph 45.

46. Defendants deny the allegations in paragraph 46.

47. Defendants deny the allegations in paragraph 47.

48. Defendants deny the allegations in paragraph 48.

49. Defendants deny the allegations in paragraph 49.

50. Defendants deny the allegations in paragraph 50.

51. Defendants deny the allegations in paragraph 51.

52. Defendants deny the allegations in paragraph 52.

53. Defendants deny the allegations in paragraph 53.

54. Defendants deny the allegations in paragraph 54.

55. Defendants deny the allegations in paragraph 55.

56. Defendants deny the allegations in paragraph 56.

57. Defendants deny the allegations in paragraph 57.

58. Defendants deny the allegations in paragraph 58.

59. Defendants deny the allegations in paragraph 59.

60. Defendants deny the allegations in paragraph 60.

61. Defendants deny the allegations in paragraph 61.

62. Defendants admits to posting messages on Twitter. Defendants deny that he spread misinformation, unfairly competed, and the remaining allegations in paragraph 62.

63. Defendants deny the allegations in paragraph 63.

64. Defendants deny the allegations in paragraph 64.

65. Defendants deny the allegations in paragraph 65.

66. Defendants deny the allegations in paragraph 66.

67. Defendants deny the allegations in paragraph 67.

68. Defendants lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 68 and on that basis deny the allegations. Neo4J Sweden's copyright management information violates the APGL copyright.

69. Defendants admits the allegations in paragraph 69 and such removal was to prevent further violation of the AGPL license and removal of infringing material is expressly allowed under the AGPL.

70. Defendants admits the allegations in paragraph 70.

71. Defendants deny the allegations in paragraph 71 to the extent Suhy stated in an email he had recorded him, otherwise denied. The statement was to avoid the changes of instructions on the employees part. Suhy felt if the employee thought his calls were being recorded, he would temper his fluxuations and false changes in instructions.

72. Defendants admits the allegations in paragraph 72 to the extent Suhy stated in an email he had recorded him, otherwise denied. The statement was to avoid the changes of instructions on the employees part. Suhy felt if the employee thought his calls were being recorded, he would temper his fluxuations and false changes in instructions.

73. Defendants admits the allegations in paragraph 73 to the extent Suhy told him he had recorded phone calls, otherwise denied. The statement was to avoid the changes of instructions on the employees

part. Suhy felt if the employee thought his calls were being recorded, he would temper his fluxuations and false changes in instructions.

74. Defendants incorporate its responses to paragraphs 1-73.

75. Defendants deny the allegations in paragraph 75. Neo4J USA did not exist in 2007. It was formed in 2011. The software has been licensed on an open source basis by Neo4J Sweden and called Neo4J by Neo4J Sweden. The ownership of the Neo4J software is claimed by Neo4J Sweden. Likewise, the software development was provided by over 100 contributors, Github shows that there are 1,515 forks to the software with 22 branches and Defendants do not know if the contributors have assigned the rights to the Neo4J open source software copyright to either plaintiff.

76. Defendants deny the allegations in paragraph 76. Neo4J USA did not exist in 2007. It was formed in 2011. The software has been licensed on an open source basis by Neo4J Sweden and called Neo4J by Neo4J Sweden. The ownership of the Neo4J software is claimed by Neo4J Sweden. Likewise, the software development was provided by over 100 contributors, Github shows that there are 1,515 forks to the software with 22 branches and Defendants do not know if the contributors have assigned the rights to the Neo4J open source software copyright to either plaintiff.

77. Defendants deny the allegations in paragraph 77. The software has been licensed on an open source basis by Neo4J Sweden and called Neo4J by Neo4J Sweden. The ownership of the Neo4J software is claimed by Neo4J Sweden AB. Likewise, software development was

provided by over 100 contributors, Github shows that there are 1,515 forks to the software with 22 branches and Defendants do not know if the contributors have assigned the rights to the Neo4J open source software copyright to plaintiff.

78. Defendants deny the allegations in paragraph 78. The software has been licensed on an open source basis by Neo4J Sweden AB and called Neo4J by Neo4J Sweden AB and ownership of the software is claimed by Neo4J Sweden AB. Likewise, software development was provided by over 100 contributors, Github shows that there are 1,515 forks to the software with 22 branches and Defendants do not know if the contributors have assigned the rights to the Neo4J open source software copyright to plaintiff. Defendants deny that goodwill in the name Neo4J is exclusively held by Neo4J USA.

79. Defendants deny the allegations in paragraph 79.

80. Defendants deny the allegations in paragraph 80.

81. Defendants deny the allegations in paragraph 81.

82. Defendants deny the allegations in paragraph 82.

83. Defendants deny the allegations in paragraph 83.

84. Defendants deny the allegations in paragraph 84.

85. Defendants deny the allegations in paragraph 85.

86. Defendants deny the allegations in paragraph 86.

87. Defendants incorporate its responses to paragraphs 1-86.

88. Defendants deny the allegations in paragraph 88.

89. Defendants deny the allegations in paragraph 89.

90. Defendants deny the allegations in paragraph 90.

91. Defendants deny the allegations in paragraph 91.

92. Defendants deny the allegations in paragraph 92.

93. Defendants deny the allegations in paragraph 93.

94. Defendants deny the allegations in paragraph 94.

95. Defendants incorporate its responses to paragraphs 1-94.

96. Defendants deny the allegations in paragraph 96.

97. Defendants deny the allegations in paragraph 97.

98. Defendants deny the allegations in paragraph 98.

99. Defendants deny the allegations in paragraph 99.

100. Defendants deny the allegations in paragraph 100.

101. Defendants deny the allegations in paragraph 101.

102. Defendants incorporate its responses to paragraphs 1-101.

103. Defendants deny the allegations in paragraph 103.

104. Defendants deny the allegations in paragraph 104.

105. Defendants deny the allegations in paragraph 105.

106. Defendants deny the allegations in paragraph 106.

107. Defendants deny the allegations in paragraph 107.

108. Defendants incorporate its responses to paragraphs 1-107.

109. Defendants admits PureThink signed the Partner Agreement but Defendants otherwise deny the allegations in paragraph 83, because plaintiff has failed to perform, clauses 4.3.1, and 4.3.2 are not enforceable as written or applied and the limitations in the Partner Agreement violate the open source Neo4J enterprise license.

110. Defendants admits the allegations in paragraph 110.

111. Defendants admits the terms of the 7.3 of the Partner Agreement claims to prevent PureThink from dealing in Products which is defined as Neo4J commercial software provided by Neo Technology and licensed to the End User but otherwise deny the allegations in paragraph 111.

112. Defendants deny the allegations in paragraph 112.

113. Defendants deny the allegations in paragraph 113.

114. Defendants deny the allegations in paragraph 114.

115. Defendants deny the allegations in paragraph 115.

116. Defendants deny the allegations in paragraph 116.

117. Defendants deny the allegations in paragraph 117.

118. Defendants deny the allegations in paragraph 118.

119. Defendants deny the allegations in paragraph 119.

120. Defendants deny the allegations in paragraph 120.

121. Defendants incorporate its responses to paragraphs 1-120.

122. Defendants deny the allegations in paragraph 122.

123. Defendants deny the allegations in paragraph 123.

124. Defendants deny the allegations in paragraph 124.

125. Defendants admits the first and second sentence in paragraph 125 and deny the remaining allegations in paragraph 125.

126. Defendants deny the allegations in paragraph 126.

127. Defendants deny the allegations in paragraph 127.

128. Defendants admits Neo4J USA seeks statutory damages but deny they are entitled to any damages as alleged in paragraph 128.

129. Defendants deny the allegations in paragraph 129.

130. Defendants incorporate its responses to paragraphs 1-129.

131. Defendants lack sufficient information and belief to answer pararagraph 131 and on said basis deny. Neo4J Sweden states it owns the open source version of Neo4J but the software was also created by over 183 contributors who are also copyright and moral rights holders.

132. Defendants deny the allegations in paragraph 132.

133. Defendants deny the allegations in paragraph 133.

134. Defendants deny the allegations in paragraph 134.

135. Defendants deny the allegations in paragraph 135.

136. Defendants deny the allegations in paragraph 136.

137. Except as otherwise admitted, Defendants deny the allegations in the FAC.

Affirmative Defenses

1. **Void Restriction**

Section 4.3.2 of the Partner Agreement, provides:

> During the term of this Agreement and up until thirty six (36) months after the termination or expiration of this Agreement, Partner may not develop, market, distribute or offer any services related to any Neo Technology Community Edition Products, derivative works of such products, or any Partner software code made to work with Neo Technology Community Edition Products(including, without limitation, hosting services, training, technical support, configuration and customization services, etc.)

Neo4J USA seeks to prevent Defendants from licensing and supporting open source software during and for 36 months after termination of the Partner Agreement. The Partner Agreement is. by its terms, governed by California law. The restriction under Section 4.3.2 cannot be enforced against Defendants as the restriction is void under California Business and Professions Code §16600: "Except as provided in this chapter, every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void."

2. **License To Use Neo4J Open Source Software**

Section 4.3.1 of the Partner Agreement provides:

> **4.3.1** During the term of this Agreement, Partner may not use or run on any of Partner's hardware, or have deployed for internal use, any Neo Technology Community Edition Products for commercial or production use. In no event shall Partner reverse engineer, distribute or otherwise use the Products for its own internal use. There are no implied rights. Partner will not fork or bifurcate the source code for any Neo Technology Community Edition Products into a separately maintained source code repository so that development done on the original code requires manual work to be transferred to the forked software or so that the forked software starts to have features not present in the original software.

The restrictions in Paragragraphs 4.3.1 and 4.3.2 violate the GNU AFFERO GENERAL PUBLIC LICENSED VERSION 3 for Neo4J enterprise software:

Section 2 (Basic Permissions) of the AGPL license provides, in part:

> "All rights granted under this License are granted for the term of copyright on the Program, and are irrevocable provided the stated conditions are met. This License explicitly affirms your unlimited permission to run the unmodified Program. …
>
> You may make, run and propagate covered works that you do not convey, without conditions so long as your license otherwise remains in force. You may convey covered works to others for the sole purpose of having them make modifications exclusively for you, or provide you with facilities for running those works, provided that you comply with the terms of this License in conveying all material for which you do not control copyright."

Section 4 of the AGPL license provides, in part:

> "You may charge any price or no price for each copy that you convey, and you may offer support or warranty protection for a fee."

Section 10 (Automatic licensing of Downstream Recipients)

of the AGPL provides, in part:

> "You may not impose any further restrictions on the exercise of the rights granted or affirmed under this License."

Defendants are licensed to use the open source software version of Neo4J by Neo4J Sweden AB without restriction under the AGPL license agreement. Neo4J USA may not impose restrictions on use of Neo4J and cannot prevent or bar Defendants from using the open source Neo4J. By imposing restrictions in violation of the License, plaintiff has breached the open source license and has no rights to use or license Neo4J.

3. Right to fork and use Neo4J open source under GitHub Terms of Service

By using a public repository at GitHub, the open source versions of Neo4J are subject to the GitHub Terms of Service which allow any user to use and fork the software and other content on the NEO4J SWEDEN public GitHub repository:

> D. 5. If you set your pages and repositories to be viewed publicly, you grant each User of GitHub a nonexclusive, worldwide license to use, display, and perform Your Content through the GitHub Service and to reproduce Your Content solely on GitHub as permitted through GitHub's functionality (for example, through forking). You may grant further rights if you adopt a license. If you are uploading Content you did not create or own, you are

> responsible for ensuring that the Content you upload is licensed under terms that grant these permissions to other GitHub Users.

https://help.github.com/en/articles/github-terms-of-service

4. **Unclean Hands**

Neo4J USA should not be permitted to enforce the Partner Agreement and trademarksbecause of plaintiffs unclean hands in the use of the Partner Agreement and unlawful licensing practices. Neo4J USA told PureThink they could modify the scope of a license agreement to meet the needs of the government users such as the IRS. Neo4J USA's license model is priced for core processor charges. However, there is no per core charge on the open source version. Neo4J USA at first agreed PureThink could drop the core use pricing for the IRS, then later plaintiff refused to allow the price change. Neo4J USA also forbade its partners, such as PureThink, to discuss the available open source versions. When the IRS, faced with core pricing limitations, asked PureThink about the differences between the commercial software and the open source version of Neo4J, plaintiff told PureThink to lie stating the open source version could only be used on an open project to try to induce the IRS to purchase a commercial version of Neo4J. When Neo4J USA threatened to terminate PureThink, they agreed PureThink could remedy the breach if the IRS signed up for a commercial license through plaintiff. When the IRS wanted to use the Neo4J open source software with support from PureThink, plaintiff interfered falsely stating PureThink could not use or support Neo4J open source software. Neo4J USA is attempting to improperly use a dual licensing practice having a commercial version controlled by plaintiff and an open source software licensed under a General Public License. Because the open source software is under a GPL or AGPL license, and has over 183 contributors, plaintiff may not be able to actually convert the GPL or AGPL license to proprietary software. Under a GPL or AGPL type license, contributors' efforts to modify the software cannot be taken away and turned into privately controlled software. NEO4J SEDWEN added an invalid Commons Clause to the AGPL to improperly restrict use and support of the open source software. Defendants are informed and believe that plaintiff only provides an object code version of the Neo4J software under a commercial license while the GPL and AGPL type license requires access to the source code as well. Defendants are informed and believe that because plaintiff cannot lawfully operate a dual license model since the open source is based on GPL or AGPL, plaintiff resorts to sharp and false advertising practices with customers (lying about the difference between the commercial versions and the open source version) attempting to restrict partners, such as PureThink, from supporting the open source Neo4J version with unlawful restrictions and interfering in attempts to use open source Neo4J software during the partner term and for three years after termination. The rights of open source users to use the software without making it open, as Neo4J USA claims, is shown by the FAQs at the GNU site:

If I only make copies of a GPL-covered program and run them, without distributing or conveying them to others, what does the license require of me?(#NoDistributionRequirements)

> Nothing. The GPL does not place any conditions on this activity.

The same rules apply to modified versions of the open source code:

> Does the GPL require that source code of modified versions be posted to the public? (#GPLRequireSourcePostedPublic)
>
> The GPL does not require you to release your modified version, or any part of it. **You are free to make modifications and use them privately, without ever releasing them. This applies to organizations (including companies), too; an organization can make a modified version and use it internally without ever releasing it outside the organization.**
>
> But *if* you release the modified version to the public in some way, the GPL requires you to make the modified source code available to the program's users, under the GPL.
>
> Thus, the GPL gives permission to release the modified program in certain ways, and not in other ways; but the decision of whether to release it is up to you.
>
> [Emphasis added]

As plaintiffs have sought to threaten open source users improperly, prevent third parties from providing services to open source code users, they come to this court with unclean hands, they should be barred from any recovery.

5. **The addition of the commons clause is unlawful under the AGPL**

The open source license used by Neo4J Sweden AB, the AGPL, is a license copyrighted by the Free Software Foundation. The beginning of the AGPL license provides a copyright notice:

> Copyright (C) 2007 Free Software Foundation, Inc. <http://fsf.org/>
> Everyone is permitted to copy and distribute verbatim copies of this license document, but changing it is not allowed. [Emphasis added]

By its terms, the license may not be changed.

Neo4J Sweden AB's attempt to change the AGPL license violates its terms. The licensee is protected from this violation under the terms of the license: "If the Program as you received it, or any part of it, contains a notice stating that it is governed by this License along with a term that is a further restriction, **you may remove that term**." [Emphasis added]. §7 AGPL.

Defendants had the express right to remove any improper terms and such removal prevented further infringement of the APGL license's terms.

6. **NEO4J USA violated the AGPL**

Neo4J has attempted to take the open source software under the AGPL and commercialize it in violation of the AGPL while preventing former partner from supporting the open source software. But the APGL provides "You may not impose any further restrictions on the exercise of the rights granted or affirmed under this License. For example, you may not impose a license fee, royalty, or other charge for exercise of rights granted under this License." §10 of the AGPL.

7. **Omitted.** See Docket No. 70, but because of numbering references in the case, the numbering has not been altered on the remaining affirmative defenses.

8. **Fair Use of Trademarks**

Defendants use of the trademarks was and is a nominative fair use to 1) identify a software product they support called Neo4J that is freely available as open source software, 2) comparative advertising (See 16 C.F.R. §14.15(b)) and 3) to advise others PureThink was no longer a partner with Neo4J USA.

9. **Naked License Abandonment of Trademark**

Neo4J was released as an open source project by Neo4J Sweden in 2006. Neo4J Sweden allowed the unfettered and uncontrolled use of the Neo4J trademarks to successfully launch the Neo4J software and gain a user and development base. In 2006, Neo4J USA did not exist. Neo4J USA, under a different name, incorporated on 7-7-2011. When Neo4J USA obtained rights to the Neo4J trademark years later, the Neo4J trademark was already abandoned by Neo4J Sweden's lack of contractual and actual or adequate quality control for third party's extensive use of the Neo4J trademark.

While Neo4J USA may presently be the parent of Neo4J Sweden, the corporate structure is reverse as the parent was born after the subsidiary. Neo4J Sweden was created first and operated for years before Neo4J USA was created and Neo4J's corporate relationship could not establish a trademark control as Neo4J USA did not exist.

For a period of 5 years before the plaintiff existed and thereafter, Neo4J Sweden licensed Neo4J software as open source software under

GPL and AGPL licenses. Neo4J Sweden used the GPL and AGPL licenses to proliferate the free use, development and modification of Neo4J software.

Neo4J Sweden has not exercise contractual control over GPL and AGPL licensee's use of the Neo4J trademark. The GPL and AGPL provide that a licensee must carry prominent notices stating that you modified it and giving a relevant date. ¶5 GPL. This copyright notice requirement for licensees who modify the source code and convey new versions of Neo4J software and does not control quality to maintain the Neo4J trademark. Likewise, under the GPL and AGPL, trademark rights may be limited by a **licensee** when the **licensee** conveys a modified version of Neo4J. ¶7GPL This restriction applies to the **licensee's** trademarks and does not exercise any contractual control over Neo4J Sweden or Neo4J's USA's trademarks in Neo4J.

Neo4J Sweden was the only entity to license the Neo4J software under the GPL and AGPL licenses. Plaintiff is not the licensor of Neo4J under the GPL or the AGPL. As Plaintiff has no privity of contract and no special relationship with GPL and AGPL licensees, Neo4J USA cannot rely on contract terms to show any quality control to maintain the trademark.

Neo4J Sweden and, years later, Neo4J USA did not actually or adequately exercise control of the quality for the third party modified versions of Neo4J software to maintain the trademark.

Since Neo4J Sweden licensed Neo4J software as open source software, any person could modify the source code to Neo4J software and convey the modified Neo4J software to third parties. That right is expressly included in the GPL and AGPL licenses. But Neo4J Sweden did not actually maintain quality control of how licensees modify, use or conveyed the Neo4J software while Neo4J Sweden freely allowed licensees to use the Neo4J trademark. The GPL and AGPL free license rights were used to proliferate users and third party developers of Neo4J software. And it worked. There are over 10,564 (June 1, 2020) third party repositories on github and 99+ projects at GitLab alone: https://github.com/search?q=neo4j&type=Repositories https://gitlab.com/search?group_id=&nav_source=navbar&page=2&project_id=&repository_ref=&search=neo4j).
Many of these third party modified versions of Neo4J freely use Neo4J trademarks. However, Neo4J Sweden and Neo4J USA did not have express contractual terms or actually exercise any or adequate controls over the quality of the modified Neo4J software on the third party repositories, projects or modified versions of Neo4J software that use the Neo4J trademark. The above list is not an exclusive list of modified versions as there is no actual control of distribution of modified versions of Neo4J.

There are also significant consumer downloads and use of these third party modified Neo4J versions which use the Neo4J trademark:

1.8k Downloads : https://hub.docker.com/u/neo4jchina

1M+ Downloads: https://hub.docker.com/r/discsports/neo4j-apoc
1M+ Downloads: https://hub.docker.com/r/bitnami/neo4j

500k+ Downloads: https://hub.docker.com/r/phenompeople/neo4j

100k+ Downloads: https://hub.docker.com/r/frodenas/neo4j

100k+ Downloads: https://hub.docker.com/r/amd64/neo4j

50k+ Downloads: https://hub.docker.com/r/tpires/neo4j

10k+ Downloads: https://hub.docker.com/r/primedio/neo4j-cluster-ecs

100k+ Downloads: https://hub.docker.com/r/ryguyrg/neo4j-importer

100k+ Downloads: https://hub.docker.com/r/c12e/neo4j

100k+ Downloads: https://hub.docker.com/r/trollin/neo4j

100k+ Downloads: https://hub.docker.com/r/mmorga/neo4j-3.2.5

100k+ Downloads https://hub.docker.com/r/centular/neo4j-enterprise

3.8k+ Downloads https://hub.docker.com/r/builddoctor/neo4j

647 Downloads https://hub.docker.com/r/picnicsoftware/neo4j

788 Downloads https://hub.docker.com/r/digitalcloudsa/neo4j

There are millions of copies of modified versions of Neo4J downloaded where the modified version of the software uses the Neo4J trademark. While plaintiff's build infrastructure may carry out tens of thousands of functional, performance, load stress and other tests to ensure quality, Neo4J USA and Neo4J Sweden did not require any of these quality controls for the millions of copies of third party modified Neo4J software which use the Neo4J trademarks for well over a decade.

Defendant John Suhy modified Neo4J for a special government use and called it “Neo4J Government Edition.” John Suhy’s Neo4J Government Edition was was distributed to U.S. government agencies. Yet Neo4J USA did **no** quality assurance or verification of the source code or applications distributed as “Neo4J Government Edition.” Neo4J USA knew John Suhy modified Neo4J and allowed him to call the product Neo4J Government Edition yet Neo4J did no quality assurance on the modified version.

Because Neo4J Sweden and Neo4J USA had no contractual controls and did not exercise actual and adequate controls over the prolific use of the Neo4J trademark by third parties who modified and conveyed modified versions of Neo4J software, the trademark should be deemed abandoned.

10. **Waiver**

Neo4J USA waived PureThink’s conduct in modifying the open source version of Neo4J to create the government edition as they agreed PureThink could use and modify the software as required to satisfy the United States Government buyers.

11. **Setoff**

Neo4J USAs' alleged claims to damages are barred, in whole or in part, by the right of one or more Defendants to a setoff against any such damages.

Prayer for Relief

Wherefore Defendants request:

1. The complaint be dismissed with prejudice;
2. That the trademark based claims be found exceptional as the trademark the alleged infringments are obviously nominative fair use and comparative advertising, allowing Defendants to recover attorneys fees under 15 U.S.C. §1117 (a);
3. That Defendants recover costs and attorneys fees as permitted by law;
4. And for such other relief as the Court deems just.

Dated: June 5, 2020

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liability company, IGOV INC., a Virginia
corporation, and JOHN MARK SUHY

DEMAND FOR JURY TRIAL

Defendants PureThink LLC, iGOV Inc. and John Mark Suhy hereby demand a trial by jury.

Dated: June 5, 2020

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Attorneys for Plaintiffs and Counter-Defendants

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

NEO4J, INC., a Delaware corporation, NEO4J SWEDEN AB, a Swedish corporation,

Plaintiffs,

v.

PURETHINK LLC, a Delaware limited liability company, IGOV INC., a Virginia corporation, and JOHN MARK SUHY, an individual,

Defendants.

AND RELATED COUNTERCLAIMS.

CASE NO. 5:18-cv-07182-EJD

PLAINTIFF NEO4J, INC.'S NOTICE OF MOTION AND MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM AND MOTION TO STRIKE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

[Fed. R. Civ. P. 12(b)(6), 12(f)]

Date: August 13, 2020
Time: 9:00 a.m.
Dept.: Courtroom 4, 5th Floor
Judge: Hon. Edward J. Davila
JURY TRIAL DEMANDED

TO ALL PARTIES AND COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on August 13, 2020, at 9:00 a.m., or as soon thereafter as the matter may be heard, in Courtroom 4, 5th Floor, at the United States District Court located at 280 South First Street, San Jose, CA 95113 before the Honorable Edward J. Davila, Plaintiff and Counter-Defendant Neo4j, Inc. ("Plaintiff" or "Neo4j USA") will, and hereby does, moves to dismiss the Tenth Cause of Action for Declaratory Relief for Abandonment of Trademark asserted in the Second Amended Counterclaim (Dkt. No. 72) filed by Defendants and Counterclaimants John Mark Suhy, PureThink LLC, and iGov Inc. (collectively "Defendants") pursuant to Fed. R. Civ. P. 12(b)(6) ("Rule 12(b)(6)"). Neo4j USA further will, and hereby does, moves to strike the substantively identical Ninth Affirmative Defense asserted in Defendants' First Amended Answer to the Second Amended Complaint (Dkt. No. 71) pursuant to Fed. R. Civ. P. 12(f) ("Rule 12(f)"). [1]

This Motion is made on the grounds that Defendants' amendments to their pleadings add nothing substantive to its previously dismissed counterclaim and affirmative defense, and thus Defendants cannot succeed seeking a declaration that the NEO4J® mark be abandoned under the doctrine of naked licensing as a matter of law on any grounds alleged therein. This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the accompanying request for judicial notice, all records and pleadings on file in this action, and all other matters that the Court may properly consider.

REQUESTED RELIEF

Neo4j USA respectfully requests that the Court dismiss, with prejudice, Defendants' Tenth Cause of Action for Declaratory Relief for Abandonment of Trademark and the Ninth Affirmative Defense for Naked License Abandonment of Trademark, and enter judgment in favor of Neo4j USA thereon.

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[1] Prior to filing this motion, Neo4j USA made a reasonable and diligent attempt to obtain a hearing date from the Courtroom Deputy. Since June 19, 2020 was the statutory deadline for Neo4j USA to file a response to Defendants' Counterclaim, it had no other choice than to file this motion. Neo4j USA will issue an amended notice of motion once the Courtroom Deputy provides a hearing date.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF ISSUES TO BE DECIDED

1. Whether Defendants' theory of naked licensing amounts legally viable counterclaim or defense for abandonment of trademark pursuant to 15 U.S.C. § 1127.

2. Whether granting Defendants further leave to amend the foregoing counterclaim or defense would be futile.

II. INTRODUCTION

This Court gave Defendants a narrow avenue to amend their Tenth Cause of Action for Declaratory Relief for Abandonment of Trademark and the Ninth Affirmative Defense for Naked License Abandonment of Trademark to state a legally viable theory of trademark abandonment based on the theory that Neo4j USA engaged in the naked licensing by distributing NEO4J®-branded software via an open source license. However, the additional allegations Defendants assert in their amended pleadings do not thread this needle as they amount to the same defective open-source software theory that was previously dismissed by the Court.

In its May 21, 2020 Order, the Court held "the fact that Plaintiff distributed Neo4j software on an open source basis pursuant to the GPL and AGPL is not, without more, sufficient to establish a naked license or demonstrate abandonment." Dkt. No. 70. Defendants' amendments, which merely identify the number of copies of the Neo4j software distributed pursuant to the GPL and AGPL licenses, form the same nucleus of facts as those in its prior pleadings and do not cure the defects addressed by the Court's order.

Defendants' amendments purport to show Neo4j's failure to exercise quality control of the copies, however, the allegations are conclusory and do not meet the Lanham Act's specific definitions of abandonment under 15 U.S.C. § 1127, which requires either non-use or a course of conduct by the mark holder that causes the mark to become generic or otherwise lose significance as a mark. As with its prior allegations, Defendants' abandonment theory continues to run contrary to established case law, which holds the use of open source license shows an ***intent to control*** trademark rights rather than an intent to relinquish them. There are no allegations that support the requirement that NEO4J® mark has become generic or otherwise lost its significance as an indicator of origin. In a desperate attempt to save their defective counterclaim and defense, Defendants resort to their own conduct to try to establish naked licensing, but such self-serving theories are precluded by the doctrine of licensee estoppel. Consequently, Defendants' abandonment counterclaim and defense fail as a matter of law.

Defendants' Tenth Cause of Action for Declaratory Relief and the Ninth Affirmative Defense for Naked License Abandonment of Trademark have gone through several amendments. Yet, none of these amendments changed their foundational theories which render them fatally defective. Any further amendments would be futile as this theory is not legally viable. Accordingly, the Court should dismiss with this counterclaim and defense with prejudice.

III. FACTUAL AND PROCEDURAL BACKGROUND

A. Neo4j Sweden, Neo4j USA and the NEO4J® mark

Plaintiff Neo4j Sweden AB ("Neo4j Sweden") is the owner of all copyrights related to the Neo4j® graph platform, including the source code, and has licensed said copyrights to Neo4j USA. *See* Dkt. No. 50 at ¶ 4; *see also* Dkt. No. 72 at ¶ 86. On or about July 7, 2011, Neo4j USA was incorporated as "Neo Technology, Inc." in Delaware. Dkt. No. 55 at ¶¶ 5, 91; *see also* Dkt. No. 72 ¶ 86. Thereafter, Neo4j USA became the parent company to Neo4j Sweden and obtained the rights to the NEO4J® mark. Dkt. No. 72 ¶¶ 86-87. On April 30, 2014, Neo4j USA filed an application to register "NEO4J" as a trademark in covering goods and services in IC 009, IC 035, IC 041 and IC 045. Neo4j USA claimed first use of the NEO4J® mark in June 2006 and first use in commerce in May 2007 based on the use of that mark by Neo4j's predecessor-in-interest, Neo4j Sweden, whose use properly inured to the benefit of Neo4j USA. *See* Dkt. No. 72 at ¶ 89.

B. The History of the Parties' Respective Pleadings

On November 28, 2018, Neo4j USA filed suit against PureThink and its successor-in-interest iGov, along with their founder John Mark Suhy for (1) trademark infringement 15 U.S.C. § 1114; (2) false designation of origin and false advertising in violation of 15 U.S.C. § 1125(a); (3) federal unfair competition in violation of 15 U.S.C. § 1125(a); (4) state unfair competition in violation of Cal. Bus. Prof. Code §§ 17200 et seq.; (5) breach of the Partner Agreement; and (6) invasion of privacy in violation of Cal. Penal Code §§ 632, 637.2. *See* Dkt. No. 1. Neo4j USA's

Lanham Acts claims were based, *inter alia*, on Defendants' unauthorized use of the NEO4J® mark in conjunction with the sale and advertising of Defendants' graph database solutions and software and related support services. Their alleged violations also include falsely suggesting Neo4j USA's authorization and/or sponsorship of Defendants' products and services and misleading consumers regarding their prior contributions to NEO4J®-branded products.

After the parties engaged in discovery, Neo4j USA filed its First Amended Complaint ("FAC") on October 23, 2019. *See* Dkt. Nos. 35, 37. The FAC provided, *inter alia*, additional and more recent examples of Defendants' continuing violations of the Lanham Act. *Compare* Dkt. No. 1 at ¶¶ 33-43 *and* Dkt. No. 37 at ¶¶ 39-67. The FAC also added Neo4j Sweden AB as a plaintiff, which in turn asserted claims against Suhy for violations of the DMCA. In response, PureThink and iGov filed a motion to dismiss a cause of action for breach of contract on grounds unrelated to the Lanham Act claims. *See* Dkt. No. 49.

On November 25, 2019, Plaintiffs filed their Second Amended Complaint ("SAC") clarifying a handful of allegations that PureThink and iGov had taken issue with. *See* Dkt. No. 50. In response, Defendants re-asserted their declaratory relief for trademark abandonment based on the theory of naked licensing that was first raised in their original answer and counterclaim:

> There is a present controversy where NEO4J USA claims it has the right to use and enforce the Neo4j trademark. PureThink, iGov and John Mark Suhy claim there is confusion whether Neo4j is a company name trademark or product name trademark. This confusion is exacerbated by NEO4J SWEDEN' open source license for a product called Neo4j. NEO4J SWEDEN's license states: "The software ("Software") is developed and owned by NEO4J SWEDEN (referred to in this notice as "Neo4j")…. NEO4J SWEDEN asserts they own the software-and not NEO4J Inc.- and they use Neo4j name as part of the company name and call the open source software product Neo4j too. As the Neo4j trademark is used and licensed as open source software there is no ability to maintain quality control over the software product called Neo4j as any licensees may modify combine the software with other code and distributed or convey Neo4j without required quality control by NEO4J USA.
>
> * * *
>
> PureThink, iGov and John Mark Suhy request declaratory relief that the Neo4j registered trademark be abandoned under the doctrine of Naked License.

Dkt. No. 55 at ¶¶ 85-86; *see also* Dkt. No. 48 at ¶¶ 8-10. Defendants also filed an answer to the SAC, which reasserted the two foregoing counterclaim as an affirmative defense. Dkt. No. 54 at 18:20-19:3, 19:12-25.

C. The Court Grants Neo4j USA's Motion for Judgment on the Pleadings

Among several other counterclaims and defenses, Neo4j USA moved for judgment on the pleadings on Defendants' trademark abandonment theory based on allegations that Neo4j® software subject to the GNU General Public License ("GPL") and a variant for server deployment called the GNU Affero General Public License ("AGPL") amounted to an abandoning that mark. Neo4j USA argued that Defendants' theory failed as a matter of law because courts, including the Eleventh Circuit in *Planetary Motion, Inc. v. Techsplosion, Inc.*, 261 F.3d 1188, 1198 (11th Cir. 2001), recognize that the open source licensing software through at least one of those open source licenses identified by Defendants constitutes an intent to control trademark rights, not the relinquishment of rights. *See* Dkt. No. 70 at 11:21-12:25.

The Court took the motion under submission for decision without oral argument, and granted Plaintiff's motion on May 21, 2020. The Court's order dismissed Defendants' abandonment claims and defenses based on naked licensing (Second Cause of Action in the Suhy Counterclaim; Tenth Cause of Action in PureThink and iGov's First Amended Counterclaim; and the Ninth Affirmative Defense in the Defendants' Answer) with leave to amend. Dkt. No. 70. In particular, the Court held that

> Defendants fail to show why the level of control exerted under the GPL is not also sufficient to overcome a claim of abandonment. Instead, Defendants argue that Neo4j USA is unable to control the quality of products using the mark because neither the GPL nor AGLP contain specific trademark quality control provisions.
>
> * * *
>
> Defendants do not raise any allegations indicating that Plaintiff has failed to exercise actual control over licensees' use of the trademark. Thus, the Court finds that the absence of specific quality control provisions—either in the GPL, AGPL, or in a separate trademark license—is not dispositive here. *See Hokto Kinoko Co. v. Concord Farms, Inc.*, 738 F.3d 1085, 1098 (9th Cir. 2013) ("[e]ven absent formal quality control provisions, a trademark owner does not abandon its trademark where the particular circumstances of the licensing arrangement suggests that the public will not be deceived")

> (internal quotes and citation omitted). Moreover, this Court is persuaded by the reasoning in *Planetary Motion* that the notice requirements in the GPL and AGPL evidence an effort to control the use of the mark. Thus, the fact that Plaintiff distributed Neo4j software on an open source basis pursuant to the GPL and AGPL is not, without more, sufficient to establish a naked license or demonstrate abandonment.

Dkt. No. 70 at 12:2-13:26. The Court then granted leave to amend "[t]o the extent that Defendants are able to allege that Plaintiff failed to exercise actual control over licensees' use of the trademark, such allegations may be sufficient to state a claim of abandonment …." *Id.* at 13:27-14:2.

D. Defendants' Amended Pleadings Reallege the Same Untenable Theory of Abandonment via Naked Licensing

On June 5, 2020, Defendants filed their Second Amended Counterclaim and First Amended Answer to Plaintiffs' Second Amended Complaint containing the same amendments supporting their naked license theory of abandonment. *See* Dkt. Nos. 71, 72. However, Defendants continue to maintain the same flawed theory that it asserted before—that the open-source distribution of Neo4j® software, subject to the GPL and AGPL open source licenses, amounts to abandonment of the mark.

Defendants simply re-alleged their naked licensing defense based on the open source licensing of Neo4j® software by replacing Neo4j USA with Neo4j Sweden. Namely, that Neo4j USA's predecessor, Neo4j Sweden, licensing of Neo4j® branded software under the GPL and AGPL before Neo4j USA existed amounted to naked licensing of the Neo4j® mark because Neo4j Sweden did not implement any further quality controls beyond those licenses. Dkt. No. 72 at ¶¶ 85-88. As a result, when Neo4J USA "obtained rights to the Neo4J trademark years later, the [NEO4J® mark] was already abandoned by Neo4J Sweden's lack of contractual and actual or adequate quality control for third party's extensive use of the [NEO4J® mark]." *Id.* at ¶ 86.

Defendants then allege in conclusory fashion that even after Neo4j USA was incorporated and was assigned the rights in the NEO4J® mark, "Neo4J Sweden has not exercise contractual control over GPL and AGPL licensee's use of the [NEO4J® mark]." Dkt. No. 72 at ¶¶ 88-89.

This is followed by contradictory allegations that "[t]he GPL and AGPL provide that a licensee must carry prominent notices stating that you modified it and giving a relevant date." *Id.* at ¶ 89. Then in direct contradiction to *Planetary Motion* and the Court's findings based thereon, Defendants allege this requirement "does not control quality to maintain the Neo4J trademark" and "any person could modify the source code to Neo4J software and convey the modified Neo4J software to third parties" under the GPL and AGPL licenses. *Id.* at ¶¶ 89, 92.

Rather than cite specific examples of third party modified software that was distributed in a manner that is inconsistent with the requirements of the GPL and AGPL, Defendants simply cite to the large number of third party repositories on GitHub, projects at GitLab and potentially third party modified Neo4J versions which purport to use the Neo4J trademark. *See* Dkt. No. 72 at ¶¶ 91-95. Defendants also do not allege a single non-conclusory example of where either Neo4j USA or Neo4j Sweden failed to exercise actual quality control over Neo4j® software (third party modified or otherwise) or where the public was deceived into believing such modified software was an official unmodified version of Neo4j® software, and again simply cite to the fact that third parties modified and distributed Neo4j® software ***as expressly contemplated by the GPL and AGPL* and *Planetary Motion***. *See id.*

The only other allegations purporting to establish the naked licensing is Suhy's modification of Neo4j® software, which was called "Neo4J Government Edition." Dkt. No. 72 at ¶ 96. This is the same version of Neo4j® software that PureThink marketed to government entities under the Partner Agreement, which contains a trademark license provision, and an alleged "exclusivity agreement" it had entered into with Neo4j USA. *See id.*, ¶¶ 15-19, Exhs. B and C. Defendants continue to allege they spent significant time and money "designing and developing enhancements and additional features around Neo4j including support and professional services to addressed critical government security and procurement requirements" under these agreements with Neo4j USA's approval. *See id.*, ¶ 17. Yet, they are now alleging for the first time that "Neo4J USA did no quality assurance or verification of the source code or applications distributed as 'Neo4J Government Edition.'" *Id.*

Defendants then once again allege in conclusory and contradictory fashion that "[b]ecause

Neo4J Sweden and Neo4J USA had no contractual controls and did not exercise actual and adequate controls over the prolific use of the Neo4J trademark by third parties who modified and conveyed modified versions of Neo4J software, the trademark should be deemed abandoned." Dkt. No. 72 at ¶ 97. Defendant's Ninth Affirmative Defense for Naked License Abandonment of Trademark in their First Amended Answer repeat these allegations essentially verbatim. Dkt. No. 71 at 19:7-23:17. As discussed below, this counterclaim and defense fail as a matter of law and that no further amendments can save them from this Court from dismissing them with prejudice.

IV. APPLICABLE LEGAL STANDARDS

A. Rule 12(b)(6) Motions to Dismiss

Federal Rule of Civil Procedure 8(a) requires a plaintiff to plead each claim with sufficient specificity to "give the defendant fair notice of what the... claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Although particular detail is not generally necessary, the factual allegations "must be enough to raise a right to relief above the speculative level" such that the claim "is plausible on its face." *Id.* at 556-57. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A complaint which falls short of the Rule 8(a) standard may be dismissed if it fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). Dismissal of a claim under Rule 12(b)(6) may be based on a "lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988); *see Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008).

In deciding whether to grant a Rule 12(b)(6) motion for failure to state a claim upon which relief can be granted, the Court accepts all material facts alleged as true and construes them in the light most favorable to the non-moving party. *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009). However, "the tenet that a court must accept as true all of the allegations contained in the complaint is inapplicable to legal conclusions." *Iqbal*, 556 U.S. at 678–79. Indeed, "a plaintiff's obligations to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (citations and quotations omitted); *accord Iqbal*, 555 U.S. at 677–80. Thus, conclusory allegations of law, unwarranted deductions of fact, and unreasonable inferences are insufficient to defeat a motion to dismiss. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001); *Epstein v. Wash. Energy Co*., 83 F.3d 1136, 1140 (9th Cir. 1996). The Court may also consider documents attached to the complaint, documents relied upon but not attached to the complaint when authenticity is not contested, and matters of which the Court takes judicial notice. *Lee v. City of Los Angeles*, 250 F.3d 668, 688–89 (9th Cir. 2001). However, the Court need not accept as true allegations contradicted by judicially noticeable facts, or by exhibits attached to or incorporated in the pleading. *Sprewell*, 266 F.3d at 988.

B. Rule 12(f) Motions to Strike

Federal Rule of Civil Procedure 8(c) similarly requires that a party "affirmatively state any avoidance or affirmative defense." Courts in this District have held that the heightened pleading standard for complaints articulated in *Twombly* and *Iqbal* applies to affirmative defenses. *See Perez v. Gordon & Wong Law Group, P.C.*, No. 11-CV-03323-LHK, 2012 WL 1029425, at *8 (N.D. Cal. Mar. 26, 2012) (collecting cases); *see also Hernandez v. County of Monterey*, 306 F.R.D. 279, 283 (N.D. Cal. 2015) (recognizing that "[m]ost district courts in this circuit agree that the heightened pleading standard of *Twombly* and *Iqbal*...is now the correct standard to apply to affirmative defenses"). This standard is "consistent with *Iqbal's* admonition that fair notice pleading under Rule 8 is not intended to give parties free license to engage in unfounded fishing expeditions on matters for which they bear the burden of proof at trial." *Id.* (citing *Iqbal*, 556 U.S. at 678–79). Thus, "[w]hile a defense need not include extensive factual allegations in order to give fair notice, bare statements reciting mere legal conclusions may not be sufficient." *Id.* (internal quotation marks omitted).

A motion to strike brought pursuant to Rule 12(f) serves "to avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial." *SidneyVinstein v. A.H. Robins Co.*, 697 F.2d 880, 885 (9th Cir. 1983); *see also Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993), *rev'd on other grounds*, 510 U.S. 517

(1994). Thus, a defense may be stricken pursuant to Rule 12(f) as insufficient if it fails to give plaintiff "fair notice" of the defense. *Barnes v. AT & T Pension Benefit Plan–Nonbargained Program*, 718 F.Supp.2d 1167, 1170 (N.D. Cal. 2010).

For a court to grant a motion to strike, the grounds "must appear on the face of the pleading under attack or from matters of which the court may take judicial notice. *In re Apple, AT & T iPad Unlimited Data Plan Litig.*, No. C-10-02553 RMW, 2012 WL 2428248, at *2 (N.D. Cal. June 26, 2012); *accord In re New Century*, 588 F.Supp.2d 1206, 1220 (C.D.Cal.2008). "With a motion to strike, just as with a motion to dismiss, the court should view the pleading in the light most favorable to the nonmoving party." *Platte Anchor Bolt, Inc. v. IHI, Inc.*, 352 F. Supp. 2d 1048, 1057 (N.D. Cal. 2004). Affirmative defenses are insufficient as a matter of law where there are no questions of fact, any questions of law are clear and not in dispute, and under no set of circumstances could the defense succeed." *Hernandez v. Cty. of Monterey*, 306 F.R.D. 279, 284-85 (N.D. Cal. 2015).

V. LEGAL ARGUMENT

A. Defendants' Counterclaim and Affirmative Defense for Abandonment of Trademark Based on Naked Licensing Fails as a Matter of Law

Defendants' Tenth Cause of Action for Declaratory Relief in its Second Amended Counterclaim (Dkt. No. 72 at ¶¶ 84-98) and the Ninth Affirmative Defense for Naked License Abandonment of Trademark in its First Amended Answer (Dkt. No. 71 at 19:7-23:17) collectively seek a declaration that Neo4j abandoned the NEO4J® mark pursuant to the doctrine of "naked licensing." Under the Lanham Act, a mark can only be deemed "abandoned" when either of the following occurs: "(1) When its use has been discontinued with intent not to resume such use," or "(2) When any course of conduct of the owner, including acts of omission as well as commission, causes the mark to become the generic name for the goods or services on or in connection with which it is used or otherwise to lose its significance as a mark." 15 U.S.C. § 1127. Naked licensing falls under the second definition of abandonment because it is an "uncontrolled" license where the licensor "fails to exercise adequate quality control over the licensee." *Barcamerica Int'l USA Trust v. Tyfield Importers, Inc.*, 289 F.3d 589, 595-96 (9th Cir.

2002). The proponent of a naked license theory "faces a stringent standard" of proof. *Id.* at 596.

As discussed below, the additional allegations asserted by Defendants in their amended pleadings do nothing to make its claim and defense cognizable under 15 U.S.C. § 1127 and applicable cases governing naked licensing. Defendants merely offer conclusory and speculative allegations regarding a lack of quality control, but no reasonable inference can be drawn that the NEO4J® mark has been abandoned and ceased to function as an indicator of origin.

1. Defendants' Amendments Still Do Not Establish a Legally Viable Trademark Abandonment Counterclaim or Defenses Based on the Theory of Naked Licensing

As Defendants alleged before, the crux of their abandonment theory remains that the distribution of NEO4J®-branded software, subject to the AGPL and GPL, amounts to the naked licensing of the NEO4J® Mark. Defendants have simply extended that theory to Neo4j USA's predecessor-in-interest, Neo4j Sweden. Dkt. No. 72 at ¶¶ 86-87. However, the distinction Defendants attempt to draw between Neo4j Sweden and Neo4j USA is of no matter because Defendants concede that even before Neo4j USA existed, Neo4j Sweden used the GPL and AGPL to distribute Neo4j® software. *Id.* at ¶ 88 ("[f]or a period of 5 years before the plaintiff existed and thereafter…Neo4j Sweden used the GPL and AGPL licenses to proliferate the free use, development and modification of Neo4J software.") Thus, the GPL and AGPL governed the copies made of the Neo4j's software ***at all times alleged***.

The fact that NEO4J® Mark was used by Neo4j USA's predecessor-in-interest is also of no consequence as Neo4j Sweden's use properly inured to the benefit of Neo4j USA. *See* 15 U.S.C. § 1127 ("The term 'related company' means any person whose use of a mark is controlled by the owner of the mark with respect to the nature and quality of the goods or services on or in connection with which the mark is used."); 15 U.S.C. § 1055 ("Where a [] mark sought to be registered is [] used legitimately by related companies, such use shall inure to the benefit of the registrant or applicant for registration, and such use shall not affect the validity of such mark or of its registration…."). For this same reason, the fact that Neo4j Sweden continues to be the owner of the copyright in the Neo4j® software and is the licensor thereof, while Neo4j USA owns the NEO4J® mark does not amount to abandonment. *See* Dkt. No. 72 at ¶¶ 87, 90. As conceded by

Defendants, Neo4j USA is the parent of Neo4J Sweden. *See id.* at ¶ 87. Thus, they continue to meet the definition of "related companies" under 15 U.S.C. § 1127 and their combined use of the "shall not affect the validity of such mark." 15 U.S.C. § 1055**;** *see also Hokto Kinoko Co. v. Concord Farms, Inc.*, 738 F.3d 1085, 1098 (9th Cir. 2013) (no naked licensing where subsidiary used parent company's trademark).

Defendants' allegations that Neo4j Sweden somehow abandoned the Neo4j® mark before assigning it to Neo4j USA similarly miss the mark. Dkt. No. 72 at ¶¶ 86, 88. These are conclusions couched as fact. The Court need not accept those allegations as true. *See Twombly*, 550 U.S. at 555; *see also Ileto v. Glock Inc.*, 349 F.3d 1191, 1200 (9th Cir. 2003) (recognizing that courts "do not accept any unreasonable inferences or assume the truth of legal conclusions cast in the form of factual allegations"). More importantly, Defendants' allegations simply parrot their prior allegations against Neo4j USA that the distribution of Neo4j® software under the GPL and AGPL amounts to a lack of "contractual control over GPL and AGPL licensee's use of the Neo4J trademark." Dkt. No. 72 at ¶ 89. Substituting "Neo4j Sweden" for "Neo4j USA" does not address the Court's express finding that the distribution of Neo4j® software under the GPL and AGPL evidence of Plaintiffs' effort to control the NEO4J® mark. Dkt. No. 70 at 11:21-13:26.

Defendants' attempt to allege a lack of actual quality control by Neo4j Sweden and Neo4j USA also falls short of what the Court indicated would be necessary to revive their abandonment counterclaim and defense. Defendants repeatedly refer to unspecified "third-party modifications" to Neo4j® software found on GitHub, GitLab, and Docker software repositories, and unreasonably infer that simply because copies were made and downloaded by others, there is a lack of actual quality control on the part of Plaintiffs. *See, e.g.,* Dkt. No. 72, ¶¶ 85, 92-94. Noticeably absent are any allegations that Plaintiffs failed to exercise adequate quality control over these copies licensed under the GPL and AGPL, let alone that such omission "caused the mark to become the generic name for the goods or services on or in connection with which it is used or otherwise to lose its significance as a mark." 15 U.S.C. § 1127. Indeed, there is not a single allegation identifying which Neo4j® software features were actually modified and resulted in a loss of quality in relation to the NEO4J® mark. As a result, these are nothing more conclusory allegations that require the Court to make an unreasonable and unsupported inference that any and all unspecified modifications diminish the quality of Neo4j® software.

Defendants allegations that there are "significant consumer downloads and use of these third party modified Neo4J versions which use the Neo4J trademark" and that there "are millions of copies of modified versions of Neo4J downloaded where the modified version of the software uses the Neo4J trademark" also do not address the defects in their prior pleadings that resulted in dismissal. See Dkt. No. 72 at ¶¶ 93-94. This is because Defendants do not dispute that the third-party copies of Neo4j® software were proliferated pursuant to the GPL and AGPL licensing framework. Dkt. No. 72 at ¶ 92 ("[t]he GPL and AGPL free license rights were used to proliferate users and third party developers of Neo4J software"). Consequently, Defendants' naked licensing theory still runs afoul with the Court's finding that "the reasoning in *Planetary Motion* that the notice requirements in the GPL and AGPL evidence an effort to control the use of the mark." Dkt. No. 70 at 13:21-23.

Both the GPL and AGPL require licensees who wish to copy, distribute, or modify the software to include a copyright notice properly identifying the actual copyright owner and to identify ***any*** modifications made to the software. As previously recognized by the Court,

> Under the terms of the GPL, a licensee may "convey a work based on the Program, or the modifications to produce it from the Program, in the form of source code under the terms of section 4, provided that . . . [t]he work must carry prominent notices stating that [the licensee] modified it, and giving a relevant date." GPL § 5(a). [] The AGPL similarly provides that a licensee "may convey a work based on the Program, or the modifications to produce it from the Program, in the form of source code under the terms of section 4, provided that . . . [t]he work must carry prominent notices stating that the licensee modified it, and giving a relevant date." AGPL § 5(a).

Dkt. No. 70 at 11:23-12:3. Again, it is precisely this notice requirement imposed on licensees that acts as a control on quality and indication of origin, by allowing a user to distinguish the origin of the original source code from the licensee's copy and whatever modifications may have been made to that copy. *See Planetary Motion*, 261 F.3d at 1198 (recognizing that "the Software had been distributed pursuant to [the GPL] does not defeat trademark ownership, nor does this in any way compel a finding that [plaintiff] abandoned his rights in trademark" and "[b]ecause [the

GPL] requires licensees who wish to copy, distribute, or modify the software to include a copyright notice, the license itself is evidence of [plaintiff's] efforts to control the use of the . . . mark in connection with the Software."); *accord* Dkt. No. 70 at 11:14-13:26.

In addition, none of Defendants' amendments address the fact that GPL and AGPL are not trademark licenses at all, and that Plaintiffs are still able to control the quality of software bearing the NEO4J® mark. *See* Dkt. No. 70 at 12:6-10, 13:15-23. As conceded by Defendants, the only mention of trademarks in the AGPL and GPL relates to a licensee limiting the rights to its trademarks "when the licensee conveys a modified version of Neo4J." Dkt. No. 72 at ¶ 89. This necessarily relates to the requirement that the licensee identify the modifications it has made, and thus bolsters the notion that the AGPL and GPL evidence the ***licensor's*** efforts to control the quality of the software. *See Exxon Corp. v. Oxxford Clothes, Inc.,* 109 F.3d 1070, 1076 (5th Cir. 1997) (recognizing that no formal control requirements are necessary if the agreement between the licensor and licensee is not considered an actual trademark license). Clearly, the GPL and AGLP are not attempts "to transfer or license the use of a trademark ... but [instead] fix[ ] and define[ ] the existing trademark of each ... [so] that confusion and infringement may be prevented." *Id.* Thus, there is no naked licensing of the NEO4J® Mark as Defendants allege.

Finally, the Court made clear that Defendants would need to show that that Neo4j USA failed to exercise ***actual control*** over licensees' use of the trademark. *See* Dkt. No. 70 at 13:27-14:1. None of the amendments to Defendants' pleadings address the fact that Neo4j USA actually polices the NEO4J® mark by requiring that third parties who modify and distribute copies of Neo4j® software must abide by its Trademark Policy found on Neo4j's website, which states in relevant part:

> Although some Neo4j projects may be available under free and open licenses, those licenses cover copyright only and do not include any express or implied right to use our trademarks…. Whenever you use one of the Marks, you must always do so in a way that does not mislead anyone, either directly or by omission, about exactly what they are getting and from whom.

Dkt. No. 50, ¶ 28; *see also* Request for Judicial Notice, ¶¶1-2, Declaration of Cary Chien., Exhs. 1-2. Plaintiffs' use of the GPL, AGPL, and Neo4j USA's Trademark Policy thus shows an ***intent to control*** trademark rights in connection with the open-source community and third-party copies, not the relinquishment of rights. No reasonable reading of Defendants' naked license theory, even in light of the latest amendments, plausibly suggests the contrary. Consequently, Defendants' abandonment counterclaim and defense remain legally deficient and should be dismissed with prejudice.

2. Defendants' Amendments to its "Open Source Licensing" Theory Does Not Establish Any Evidence of Deception by the Public

Defendants' amendments also fail to allege facts establishing another necessary element to establish abandonment under 15 U.S.C. § 1127. Absent from Defendants' amended pleadings are allegations establishing that the NEO4J® mark ceased to function as an indicator of origin as a result of the permissible copies. This is fatal to Defendants' abandonment counterclaim and defense because, notwithstanding the use of the GPL and AGPL, a trademark owner does not abandon its trademark where the particular circumstances of the licensing arrangement suggests that the public will not be deceived. *See Hokto Kinoko*, 738 F.3d at 1098. Such circumstances exist "where the licensor is familiar with and relies upon the licensee's own efforts to control quality." *Id.* (internal quotation marks omitted).

Defendants do not allege that in any of the third-party copies found on any of the links cited (GitHub, GitLab, or Docker), anyone was led to believe the copies were official Neo4j software releases versus permissible copies under the AGPL and GPL. There are still no allegations that any of these unidentified third parties actually degraded the quality and brand of Neo4j® software. Likewise, Defendants do not allege specific facts plausibly establishing that modified copies of Neo4j® software were lacking in quality, or that there were actual complaints from users that mistakenly believed them to be unmodified.

Defendants' allegations concerning Neo4j Government Edition—which Defendants allege was the result of a Suhy/PureThink-Neo4j joint development effort—is devoid of any plausible facts indicating deception in the marketplace. *See* Dkt. No. 72 at ¶ 96. To the contrary, Defendants allege that the idea to develop Neo4j Government Edition originated with Neo4j USA, and which Neo4j USA authorized and contracted with PureThink to develop:

> John Suhy, of PureThink, had discussions with Lars Nordwall, COO of NEO4J USA concerning the challenges of obtaining business with the US government. Mr. Suhy and Mr. Nordwall discussed the need to modify the software offering to satisfy security and other requirements the government had. Mr. Nordwall represented to Mr. Suhy that Mr. Suhy could improve the open source Neo4j software offering for the government and that PureThink would have exclusive rights to the Neo4J support and deals with the Government. Furthermore, a separate agreement came into place for the new Neo4j version for the government which was supposed to protect the investment PureThink was making and was going to make. A true and correct copy of the exclusive agreement for Government sales is attached as Exhibit C.

See Dkt. No. 72, ¶ 16; *see also* ¶ 15, Exh. B. Defendants further allege that Suhy and Purethink worked tireless to ensure that the Neo4j Government Edition would function properly and meet the demands of government customers:

> **PureThink, worked for months on the new Neo4j Government Package software**, determining the requirements, designing and developing enhancements and additional features around Neo4j including support and professional services to addressed critical government security and procurement requirements. …PureThink's government packaging of Neo4j was called Neo4j Government Edition and a.k.a. Neo4j Enterprise Government Edition. ("Neo4j Government Edition"). **The Neo4j Government Edition was a complete package that included additional services, support and software modules enhancing Neo4j to address critical government requirements**.

See Dkt. No. 72, ¶ 17. Since the foregoing allegations, which Defendants have maintained since their original counterclaim (Dkt. No. 22 at ¶¶ 13-15), directly contradict their newly added allegations that Neo4j USA failed maintain quality control over Suhy and PureThink's creation of Neo4j Government Edition (Dkt. No. 72 at ¶ 96), the Court should disregard the latter as an unwarranted deduction of fact and an unreasonable inference. *See Sprewell*, 266 F.3d at 988.

Even if these new facts could be read in a non-contradictory manner, it was entirely reasonable for Neo4j USA to rely on Suhy and Purethink to control the quality of Neo4j Government Edition. *See Hokto Kinoko*, 738 F.3d at 1098; *see also Edwin K. Williams & Co., Inc. v. Edwin K. Williams & Co.-East*, 542 F.2d 1053, (9th Cir. 1976) (no quality control by licensor required in mark license for accounting services, where licensor knew from experience that licensee was a competent accountant, well-acquainted with bookkeeping, and would present no danger to the public if uncontrolled); *Monster, Inc. v. Dolby Laboratories Licensing Corp.*, 920 F.Supp. 2d 1066, 1077-78 (N.D. Cal. 2013) (recognizing that "[a] close or long-standing working relationship with a licensee, where the licensor can rely on the licensee's quality control, may stand in for a formal agreement in certain circumstances").

Defendants' preceding allegations make clear that Neo4j USA was familiar with and could reasonably rely upon PureThink's efforts to control the quality of government version of the Neo4j® software. *See* Dkt. No. 72, ¶¶ 12-15. It also would appear that was the point of the exclusive agreement with PureThink and Suhy. *Id.*, ¶¶ 16-17.

Defendants' reliance on the Neo4j Government Edition as an alleged example of a lack of quality control also falls short because there are no other facts establishing that there were any quality control issues with Neo4j Government Edition. To the contrary, Defendants allege that PureThink "did deals with MPO, Sandia National Laboratories, and the FBI" and allegedly had the potential for numerous other sales of the Neo4j Government Edition before Neo4j USA terminated the parties' contractual relationship. *See* Dkt. No. 72, ¶¶ 18, 21, 23-27, 50-52.

Finally, no reasonable inference taken from the totality of the facts alleged even suggest any actual or potential customer complained about the quality of the Neo4j Government Edition or was deceived as to Suhy and PureThink's role in its development. Indeed, the resultant product allegedly "enhanc[ed] Neo4j to address critical government requirements." *Id.* at ¶ 17. Taken as a whole, Defendants' allegations concerning Neo4j Government Edition simply do not meet the stringent standard of proof required by the Ninth Circuit for trademark challengers under the naked licensing theory. *See Transgo, Inc. v. Ajac Transmission Parts Corp.*, 768 F.2d 1001, 1017-18 (9th Cir. 1985) (even though licensor never directed inspected or tested the final product, reliance on a licensee's own quality control was sufficient where 90% of the components were made by the licensor, the parties worked closely in development of new products, and no complaints were ever received about licensee's products).

3. Defendants are Barred by the Doctrine of Licensee Estoppel From Basing their Abandonment Counterclaim and Defense on their Development and Sale of the Neo4j Government Edition

Defendants' allegations concerning Neo4j Government Edition also fails as a cognizable claim because it runs afoul with the doctrine of licensee estoppel. Courts in this District have made clear that a licensee cannot challenge the validity of a trademark based on a failure to police the licensee's own licensed use of that trademark or that the license itself constituted a naked license. *Monster, Inc.*, 920 F.Supp.2d at 1076–1077 (licensee estoppel prevents licensee's attempt to challenge the trademark based on failure to police its own licensed use); *STX, Inc. v. Bauer USA, Inc.*, 1997 WL 337578, 43 U.S.P.Q.2d 1492 (N.D. Cal. June 5, 1997) (former licensee may not challenge the licensor's mark based upon facts which arose during the term of the license); *see also TAP Mfg., LLC v. Signs*, 2015 WL 12752874, at *3 (C.D. Cal. July 23, 2015) ("a licensee may not assert that the licensor's mark is invalid because the licensor granted a naked license to the licensee") (citing *Monster*, 920 F.Supp. 2d at 1077).

For example, in *Monster, Inc. v. Dolby Labs. Licensing Corp.*, Monster alleged that Dolby's trademark infringement and related claims should be denied because Dolby supposedly abandoned its trademark rights via naked licensing. However, Dolby had previously granted Monster a license to use Dolby's mark. The court recognized that "the licensee estoppel doctrine precludes a licensee from challenging the validity of the licensor's trademark based upon conduct that occurred during the life of its license, particularly with respect to the licensee itself." *Monster, Inc.*, 920 F.Supp.2d at 1076-77. The *Monster* court thus concluded that under the doctrine of licensee estoppel, "any evidence that Dolby failed to police *Monster's* use of the Dolby Headphone Mark would be irrelevant." *Id.* (emphasis in original)

Similarly, in *STX, Inc. v. Bauer USA, Inc.*, the defendant Bauer asserted that STX's trademark infringement and related claims should be denied because STX allegedly abandoned its trademark rights via naked licensing. 43 U.S.P.Q.2d at 1500-01. Bauer alleged in pertinent part that during the term of the parties' license agreement, STX failed to supervise the quality of its licensed goods. *Id.* The *STX* court concluded that because the alleged lack of quality control occurred during the life of the parties' license, Bauer's naked licensing defense was barred by the doctrine of licensee estoppel. *Id.* at 1501.

The same reasoning applies here. PureThink and Neo4j USA entered into the Partner Agreement on September 30, 2014. Dkt. No. 72 at ¶ 15, Exh. B. Under Section 4.1 of the Partner Agreement, Neo4j USA provided PureThink with a non-exclusive, non-transferable limited license during the term of that agreement to, *inter alia*, "use [Neo4j USA's] trademarks solely to market and promote the Products in accordance with the terms of [the Partner Agreement]." Dkt. No. 72, Exhibit B. Section 4.1 also incorporated Neo4j USA's trademark policies by references as part of this license. *See id.* This license remained in place until Neo4j USA terminated the Partner Agreement and the Neo4j Government Edition in July 2017. *See* Dkt. No. 72 at ¶ 21 and Exhibit C. Defendants' allegations of Neo4j USA's alleged lack of quality control over Neo4j Government Edition arise entirely when the Partner Agreement was in effect. *See id.* at ¶ 96. Thus, Defendants' naked licensing defense is barred by the doctrine of licensee estoppel to the extent that it relies on such allegations, and such allegations concerning Neo4j's purported omissions on Neo4j Government Edition are irrelevant as a matter of law. *See Monster, Inc.*, 920 F.Supp.2d at 1076–1077 (licensee estoppel prevents licensee's attempt to challenge the trademark based on failure to police its own licensed use); *STX, Inc.*, 43 U.S.P.Q.2d at 1500-01; *see also Pacific Supply-Co-op. v. Farmers Union Central Exchange, Inc.*, 318 F.2d 894, 908 (9th Cir. 1963) (noting "long settled principle of law that a licensee [] of a trademark or trade name may not set up any adverse claim in it against its licensor").

B. The Court Should Deny Defendants Leave to Amend

If the Court determines that dismissal is warranted, it must then decide whether to grant leave to amend. *See Harris v. Cnty. of Orange*, 682 F.3d 1126, 1131 (9th Cir. 2012). The general rule of liberality in granting leave to amend is subject to limitations, which including "undue prejudice to the opposing party, bad faith by the movant, futility, and undue delay." *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1058 (9th Cir. 2011). The Court's "discretion to deny leave to amend is particularly broad where plaintiff has previously amended the complaint." *Id.* (quotation marks omitted).

In particular, the Court should not grant leave to amend "where doing so would be an exercise in futility." *Low v. LinkedIn Corp.*, 900 F.Supp. 2d 1010, 1033 (N.D. Cal. 2012). The Court "may deny a plaintiff leave to amend if it determines that allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency." *Telesaurus VPC, LLC v. Power*, 623 F.3d 998, 1003 (9th Cir. 2010); *accord Missouri ex rel. Koster v. Harris*, 847 F.3d 646, 656 (9th Cir. 2017) (holding that an "amendment is futile when 'no set of facts can be proved under the amendment to the pleadings that would constitute a valid and sufficient claim or defense'") (citation omitted). Likewise, the Court should deny leave to amend where the facts are not in dispute, and the sole issue is whether there is liability as a matter of substantive law. *See Albrecht v. Lund*, 845 F.2d 193, 195–96 (9th Cir. 1988).

Prior to the Court's May 21, 2020 Order, Defendants had already amended both their counterclaim and answer several times over the past year and half – and did so well after discovery commenced. As discussed above, Defendants' abandonment counterclaim and defense continue to be based on the same flawed open source licensing theory that legally fails to meet the definitions of abandonment under 15 U.S.C. § 1127 and runs afoul with *Planetary Motion*. Clearly, granting Defendants further leave to amend would be futile as they have now had a year and half to develop their naked licensing theory through discovery. The Court also gave Defendants explicit guidance on how they could revive their naked licensing counterclaim and defense, but Defendants did not head this guidance. Defendants simply added speculative, conclusory, and irrelevant assertions concerning the number of copies of Neo4j® software may have been permissibly distributed via the GPL and AGPL. The did not, however, allege specific facts showing a lack of actual quality control by Neo4j Sweden or Neo4j USA other than an example that is clearly barred by the licensee estoppel doctrine.

Neo4j USA further submits that no additional facts would resuscitate Defendants' abandonment counterclaim and affirmative defense because the facts alleged by Defendants establish Neo4j USA's continuing use of the NEO4J® mark and its intent to control its rights therein. *See Weisbuch v. Cty. of L.A.*, 119 F.3d 778, 783 n.1 (9th Cir. 1997) (recognizing that a party may plead itself out of court where that party alleges facts establishing that it cannot prevail on its claim); *accord Minor v. FedEx Office & Print Servs., Inc.*, 78 F.Supp. 3d 1021, 1026 (N.D. Cal. 2015) (citing same). Defendants simply cannot meet the stringent standard of proof required for naked licensing even under *Iqbal* and *Twombly*. Accordingly, the Court should not grant Defendants leave to amend their abandonment counterclaim and affirmative defense.

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VI. CONCLUSION

For the foregoing reasons, the Court should grant Neo4j USA's motion to dismiss for failure to state a claim in its entirety and dismiss with prejudice (a) Tenth Cause of Action for Declaratory Relief in Defendants' Second Amended Counterclaim and; (b) the Ninth Affirmative Defense for Naked License Abandonment of Trademark in Defendants' First Amended Answer.

Dated: June 19, 2020

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NEO4J, INC., a Delaware corporation, and NEO4J SWEDEN AB, a Swedish corporation,
Plaintiffs,
v.

PURETHINK LLC, a Delaware limited liability company, IGOV INC., a Virginia corporation, and JOHN MARK SUHY, an individual,
Defendants.

CASE NO. 5:18-cv-7182 EJD

DEFENDANTS AND COUNTERCLAIMANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF OPPOSITION TO NEO4J, INC.'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM AND MOTION TO STRIKE

Date: August 13, 2020
Time: 9:00 a.m.
Dept. Courtroom 4, 5th floor
Judge: Hon. Edward J. Davila

I. Introduction

Defendants and Counterclaimants Purethink LLC, John Mark Suhy and IGOV INC., ("Defendants") oppose Plaintiff and Counter defendant Neo4J, Inc.'s ("Neo4j USA") motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) motion which seeks dismissal of the Tenth Cause of Action in in the Second Amended Counter Claim. (Dkt. No. 72.). Defendants also oppose the motion to strike under Federal Rule of Civil Procedure 12(f) on the mirror claim stated as in the Ninth Affirmative Defenses in Defendants' First Amended Answer to Second Amended Complaint (Dkt. No. 71).

II. *Freecycle* Controls On Issues Raised Under This Motion

Defendants Tenth Cause of Action and the mirror Ninth Affirmative defense assert a claim fully supported by the controlling case, *FreecycleSunnyvale v. Freecycle Network*, 626 F.2d 509, 516 (9th Cir. 2010). Defendants two pleadings were amended to comply with this court's previous Order Granting Motion For Judgment On The Pleadings (Dkt. No,70) which provided in part:

> Thus, the fact that Plaintiff distributed Neo4j software on an open source basis pursuant to the GPL and AGPL is not, without more, sufficient to establish a naked license or demonstrate abandonment. However, "[t]he court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). To the extent that Defendants are able to allege that Plaintiff failed to exercise "actual control over licensees' use of the trademark, such allegations may be sufficient to state a claim of abandonment under *Freecycle*. Because amending the complaint to add allegations regarding Plaintiff's lack of actual control over use of the trademark would not be futile, cause undue delay, or unduly prejudice Plaintiff, the Court grants leave to amend. *Leadsinger, Inc. v. Music Publ'g*, 512 F.3d 522, 532 (9th Cir. 2008).

The Tenth Cause of Action and Ninth Affirmative Defense allege conduct that has resulted in abandonment of the Neo4j mark. The controlling case in this jurisdiction is *FreecycleSunnyvale v. Freecycle Network*, 626 F.2d 509, 516 (9th Cir. 2010). The controlling law has already been addressed by this court in its prior order (Docket No. 70 at pg. 11:1-11):

> It is well-established that "[u]ncontrolled or 'naked' licensing may result in the trademark ceasing to function as a symbol of quality and controlled source." *Barcamerica Int'l USA Trust v. Tyfield Importers, Inc.*, 289 F.3d 589, 595-96 (9th Cir. 2002) (citing *Moore Bus. Forms, Inc. v.Ryu,* 960 F.2d 486, 489 (5th Cir.1992)). "Consequently, where the licensor fails to exercise adequate quality control over the licensee, a court may find that the trademark owner has abandoned the trademark, in which case the owner would be estopped from asserting rights to the trademark." *FreecycleSunnyvale v. Freecycle Network*, 626 F.3d 509, 516 (9th Cir. 2010) (quoting Barcamerica, 289 F.3d at 596). "[T]he naked licensing claim is fundamentally a claim that the trademark is no longer valid and enforceable because of the licensor's neglect in policing its use." *Monster, Inc. v. Dolby Labs. Licensing Corp.*, 920 F. Supp. 2d 1066, 1076 (N.D. Cal.2013).

In *Freecycle*, the question on summary judgment was if the trademark owner allowed use of the trademark with so few restrictions as to compel a finding they engaged in naked licensing and abandoned the trademarks. *Freecycle* at, 516. In *Freecycle*, the Court affirmed a summary judgment ruling the trademark owner did not have adequate quality controls rendering the trademark abandoned.

As this is a pleading motion, the issue is whether Defendants have adequately stated a Naked License claim or defense under *Freecycle*.

Defendants allege[1]: PureThink, iGov and John Mark Suhy claim the trademark should be abandoned because Neo4J Sweden and Neo4J USA **did**

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[1] As the 10th cause of action and 9th affirmative are the same, references will be to the 10th cause of action in the SAC (Dkt. No.72)

not have contractual, actual or adequate controls of the quality of third party modifications of the open source versions of Neo4J licensed under the GPL and APGL licenses. [Emphsis added] (Dkt No. 72, ¶85).

Neo4J is licensed under the open source AGPL license **only** by Neo4J Sweden Dkt. No. 72, ¶90. Plaintiff has no contractual control of open source licensees' use of the Neo4J software. *Ibid.* Plaintiffs attempt to show trademark controls on the Neo4J USA website through judicial notice is not relevant and not proper for judicial notice in a pleading motion. *Freecycle*, 517 (Terms of service on a website do not establish contractual or actual quality control). Again, The Neo4J open source license is based on the AGPL and plaintiff is not a party to that agreement. None of the millions of licensees under the AGPL are contractually bound by terms on Neo4J USA's website. Such terms do not support the quality controls bearing on the open source licensee's right to modify the source code and third party use of the Neo4J trademark with the modified software. Instead, Neo4J Sweden has allowed use of the trademark unfettered and without quality controls for years.

Any concept that there is a parent subsidiary relationship establishing control is wrong for two reasons 1) there is no allegation that Neo4J USA controls Neo4J Sweden and 2) there could be no control when Neo4J USA did not exist for many years. During those years, and thereafter, Neo4J Sweden did not actually control any use of trademark with modified versions of the open source software.

There is no allegation that Neo4J USA owns all the intellectual property rights to Neo4J and can control Neo4J Sweden[2]. When Neo4J USA obtained rights[3] to the Neo4J trademark years later, the Neo4J trademark was already abandoned by Neo4J Sweden's lack of contractual and actual or adequate quality control for third party's extensive use of the Neo4J trademark. ¶86 Likewise, Plaintiff's claim Neo4J Sweden is the predecessor-in-interest (Dkt. No. 73 pg.2:17-21; pg.10:19) is a matter of proof as it is not in the pleadings. And the claim is not supported by the agreement between the Neo4J Sweden and Neo4J USA.

Anyone can use, modify, support, combine and convey the Neo4j software ¶92. Neo4J Sweden does not actually maintain quality control over the thousands of different Neo4J software versions which use the Neo4J trademark. *Ibid.* Neo4J Sweden and Neo4J USA did not have express contractual terms or actually exercise any or adequate controls over the quality of the modified Neo4J software on the third party repositories, projects or modified versions of Neo4J software that use the Neo4J trademark. ¶93. Millions of customers have downloaded these uncontrolled modified versions of Neo4J. ¶¶94, 95. While plaintiff claims the modified versions were done as permitted by the AGPL, there are no quality controls in the AGPL. The AGPL has broad rights for licensees to modify the source code. There are no limits on how or the scope of any modification in the

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[2] Contrary documents have been produced in discovery. This issue is more appropriate to proof than implication or conjecter.

[3] Neo4J Sweden has produced no document showing an assignment of its trademarks or the software to plaintiff Neo4J USA. The document produced related to Neo4J USA's limited rights to the trademark was listed as attorney's eyes only so further discussion in a pleading motion is inappropriate. But it is not an assignment agreement. Reliance on assertions that Neo4J USA owns the trademarks is improper as the position is not supported by the allegations in the SAC.

AGPL. What the AGPL does **not** have is any real quality control terms to control and verify third party open source derivative versions of Neo4J as required to maintain a trademark.

An example of quality control terms sufficient to defeat a naked license claim are found in the *Monster* case:

> First, Dolby offers evidence that it requires licensees to enter into an agreement to abide by its guidelines for use of the mark and use of the Dolby headphone technology. (See Dolby Separate Statement of Material Facts and evidence cited therein ["Dolby Fact"] Fact Nos. 17–20, 28–31, 33, 34, 44.) Dolby requires licensees to submit prototype products for testing to ensure that they meet Dolby's quality standards before they can use the mark. (Dolby Fact Nos. 29, 41.) Dolby also verifies that the licensee has the capacity to integrate and distribute the Dolby technology at a level that meets Dolby's quality standards. (Dolby Fact Nos. 28, 29, 31.) Dolby collects detailed information on products, testing equipment used by licensees, as well as their quality control processes. (Dolby Fact Nos. 28, 33.) Some prototypes are disapproved if they do not meet the trademark standard or the quality standards, and Dolby does not issue production-level chips for its technology until a prototype is approved. (Dolby Fact Nos. 36–39; 40.)
>
> With respect to the use of the mark itself, Dolby's requires licensees to abide by certain guidelines for its use and display. (See Dolby Fact Nos. 17–20, 22, 24–30, 34, 44, 45.) Dolby employs a program of monitoring use of its mark, as well as identifying similar, potentially confusing marks, in the marketplace using monitoring software, a compliance team in the field, evaluation of customer reports, and partnering with customs officials. (Dolby Fact Nos. 43, 46.) Dolby also engages in enforcement efforts when it finds unauthorized use of a Dolby mark. (Dolby Fact Nos. 47–51.)5

Monster, Inc. v. Dolby Laboratories Licensing Corp. (N.D. Cal. 2013) 920 F.Supp.2d 1066, 1077.

While plaintiff claims there are quality control terms in Neo4J Sweden's AGPL license, there are no quality control terms such as those in *Monster* in the AGPL sufficient to support contractual control required to prevail against a naked license claim.

Planetary Motion was not a naked license case and made no finding on the contractual quality controls required to avoid a naked license claim. *Monster*, was a naked license case and showed what adequate contractual quality controls were sufficient. The Neo4J Sweden AGPL does not have any of the satisfactory terms as shown in *Monster*.

III. Plaintiff Is Not The Licensor Of Neo4J Under the AGPL And Its Web Terms Are Without Effect

Plaintiff may not rely on licensee estoppel as Mr. Suhy's modified version of Neo4J was based on the AGPL open source version licensed by Neo4J Sweden. Plaintiff knowlingly allowed John Suhy to distribute his modified version of AGPL Neo4J to the the United States government without any quality controls. ¶96.[4]

Plaintiff was not the licensor of the open source version of Neo4J and had no license with Mr. Suhy to control modifications to that software. The licensee estoppel doctrine requires a license between the parties. The doctrine only "precludes a licensee from challenging the validity of the licensor's trademark based upon conduct that occurred during the life of its license, particularly with respect to the licensee itself." *Monster, Inc. v. Dolby*

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[4] These allegations are not inconsistent with ¶17. They are consistent with the fact Neo4J USA knew about the work done on the open source Neo4J Government Edition and made no effort to control quality.

Laboratories Licensing Corp. (N.D. Cal. 2013) 920 F.Supp.2d 1066, 1076–1077.

Plaintiff did not license it's alleged Neo4J trademark to Mr. Suhy for use on the AGPL version of Neo4J. The licensor for open source software is Neo4J Sweden. The Partnership Agreement did not license the open source verion of Neo4J. Dkt. No. 72 Exhibit B. The term "Products" under the Partnership Agreement is only the Neo4J commercial versions. The Partnership Agreement actually-and improperly-forbade[5] use of the open source version of Neo4J. *Ibid* §4.3.2. This case is about plaintiff's improper attempt to apply the Neo4J trademark against Neo4J Sweden's AGPL version of Neo4J. Since there is no nexus on the licensor-licensee, there can be no licensee estoppel.

The notion there was a long standing relationship allowing Neo4J USA to dispense with quality controls is not alleged. It is a question of fact considering there was no longterm relationship and this was the first software version Purethink released. As Neo4J USA had no prior experience with any defendant to support such a position, they cannot prevail on such a position on a pleading motion.

Because Neo4j USA has no license or quality control terms for the open source Neo4j software, Neo4j USA failed its duty to maintain quality control of the trademark. "The absence of an agreement with provisions restricting or monitoring the quality of goods or services produced under a trademark supports a finding of naked license." *FreecycleSunnyvale v. Freecycle Network*, 626 F.2d 509, 516 (9th Cir. 2010).

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[5] The AGPL does not allow other terms to the license-such as an AGPL licensee cannot be barred by a third party (Neo4J USA) from using Neo4J Sweden's open software for three years.

Under the legal standards in *Freescycle*, defendants have properly stated a Naked License claim and defense.

IV. Leave To Amend Should Be Granted

If the court considers plaintiff's assertions that do not appear supported by the allegations in the SAC, for example, that plaintiff owns the Neo4J trademark-as opposed to the registration, Neo4J USA is the successor-in-interest to Neo4J Sweden, or has granted a license to Neo4J Sweden's for its use of the trademark, defendants request they be permitted to amend to allege Neo4J Sweden is the owner of the Neo4J trademark which was licensed to Neo4J USA on a non-exclusive basis. This would eliminate any of the suggestions of control, and successor-in-interest. Neo4J Sweden controls Neo4J USA from a licensing perspective.

V. Conclusion

Because adequate facts are alleged, the motions should be denied.

Dated: July 6, 2020

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

NEO4J, INC., et al.,
Plaintiffs,
v.
PURETHINK, LLC, et al.,
Defendants.

Case No. 5:18-cv-07182-EJD

ORDER GRANTING MOTION TO DISMISS AND STRIKE

Re: Dkt. No. 73

Before the Court is Plaintiff and Counter-Defendant Neo4j, Inc.'s ("Plaintiff" or "Neo4j USA") Motion to Dismiss for Failure to State a Claim and Motion to Strike (the "Motion"). Dkt. No. 73. Plaintiff moves to dismiss the Tenth Cause of Action for Declaratory Relief for Abandonment of Trademark asserted in the Second Amended Counterclaim (Dkt. No. 72) filed by Defendants and Counterclaimants John Mark Suhy ("Suhy"), PureThink LLC ("PureThink"), and iGov Inc. ("iGov") (collectively "Defendants") pursuant to Federal Rule of Civil Procedure 12(b)(6). Plaintiff further moves to strike the substantively identical Ninth Affirmative Defense asserted in Defendants' First Amended Answer to the Second Amended Complaint (Dkt. No. 71) pursuant to Federal Rule of Civil Procedure 12(f).

The Court took the matter under submission for decision without oral argument pursuant to Civil Local Rule 7-1(b). For the reasons below, Plaintiff's motion is **GRANTED**.

I. Background

A. Factual Background

Neo4j USA is a Delaware corporation with its principal place of business in San Mateo, California, specializing in graph database management systems. Dkt. No. 50, Second Amended

Complaint ("SAC"), ¶ 2. Neo4j USA owns the trademark for the word mark "Neo4j," under the U.S. Trademark Registration No. 4,784,280. *Id.* at ¶ 21. Neo4j USA first used this trademark in June 2006 and has continually used it since it was published by the U.S. Patent and Trademark Office in May 2015 and issued on August 4, 2015. *Id.* at ¶ 22.

Neo4j Sweden AB ("Neo4j Sweden"), a wholly owned subsidiary of Neo4j USA and a plaintiff in this action, owns certain copyrights related to the Neo4j software, including the source code, and has licensed these copyrights to Neo4j USA. *Id.* at ¶ 4. Neo4j Sweden distributes a version of Neo4j software known as "Neo4j Community Edition" on an open source basis under the GNU General Public License (Dkt. No. 65, Ex. B) ("GPL") and a variant called the GNU Affero General Public License (Dkt. No. 55, Ex. A) ("AGPL"). Second Amended Counterclaim, Dkt. No. 72 ("Am. Counterclaim"), ¶ 7. This open source software is available on Github.com, the preeminent open source software repository. *Id.* at ¶ 8. Under the GPL and AGPL, anyone can download the Neo4j Community Edition source code and use, modify, support, combine and convey the software for free; however, licensees who copy, distribute, or modify the software are required to provide notice of any modifications they make to the software. *Id.* at ¶ 9.

While Neo4j Sweden licensed the Neo4j Community Edition software under the GPL and AGPL, Neo4j USA licensed a commercial version, known as the "Enterprise Edition" which came with additional features and commercial support. *Id.* at ¶ 11; SAC ¶ 24. On or around September 30, 2014, Neo4j USA entered into a Partner Agreement with Defendant PureThink, by which PureThink agreed to sell and support the commercial version of the software in exchange for a percentage of the fees. *Id.* at ¶ 29; Am. Counterclaim, Ex. B ("Partner Agreement"). PureThink is a Delaware limited liability company focused on software development. SAC ¶ 6. Plaintiffs allege that iGov is the successor-in-interest and alter ego of PureThink. *Id.* at ¶¶ 6-14. Plaintiffs further allege that Defendant Suhy is the sole member and manager of PureThink and the sole shareholder of iGov. *Id.* at ¶ 8.

The partnership between Neo4j USA and PureThink deteriorated, for reasons not relevant to the analysis herein, and on May 30, 2017, Neo4j USA provided PureThink with formal notification of material breach. SAC ¶ 33. Shortly thereafter, on July 11, 2017, Neo4j USA provided PureThink with written notice that the Partner Agreement was terminated due to PureThink's failure to cure the material breaches set forth in the May 30, 2017 letter. *Id.* at ¶ 35.

B. Procedural History

On November 28, 2018, Plaintiff filed this action against Defendants, asserting (1) Trademark Infringement; (2) False Designation of Origin; (3) False Advertising; (4) Federal and State Unfair Competition; (5) Breach of Contract; and (6) Invasion of Privacy. On January 9, 2019, Defendants PureThink and iGov filed a counterclaim against Plaintiff, alleging (1) Interference With Prospective Economic Advantage; (2) Interference with Contract; (3) Breach of Contract; (4) Declaratory Relief (Void Restrictions); (5) Declaratory Relief (Restrictions Violate AGPL License); and (6) Declaratory Relief (Abandonment of Trademark).

On October 22, 2019, Plaintiff sought and obtained leave to file its First Amended Complaint (*see* Dkt. Nos. 35-37), which set forth additional allegations to support its claims under the Lanham Act and the UCL, and included a new claim alleging that Defendant Suhy violated the Digital Millennium Copyright Act ("DMCA"). The First Amended Complaint also added Neo4j Sweden AB ("Neo4j Sweden") as a plaintiff, which joined in the new DMCA claim.

Suhy filed a counterclaim wherein he asserted, among other claims, a claim for declaratory relief regarding Plaintiffs' abandonment of the trademark. Dkt. No. 48. Plaintiffs then filed their Second Amended Complaint in response to a motion to dismiss filed by PureThink and iGov. *See* Dkt. Nos. 49-50. PureThink and iGov filed a First Amended Counterclaim, which contained a claim identical to that asserted by Suhy regarding the abandonment of the trademark. Dkt. No. 55. Similarly, the Answer filed by all Defendants also asserted a substantively identical affirmative defense. Dkt. No. 54. These abandonment claims and defenses asserted that Plaintiffs' distribution of the software on an open-source basis pursuant to the GPL and AGPL amounted to a naked license, and that the trademark could, therefore, be deemed abandoned.

Plaintiffs made a motion for judgment on the pleadings as to certain counterclaims and affirmative defenses, including the abandonment claims. Dkt. No. 60. On May 21, 2020, this

Court granted Plaintiffs' motion for judgment on the pleadings as to the abandonment claims. Dkt. No. 70, Order Granting Motion For Judgment On The Pleadings ("Order"). This Court held, in relevant part, that "the fact that Plaintiff distributed Neo4j software on an open source basis pursuant to the GPL and AGPL is not, without more, sufficient to establish a naked license or demonstrate abandonment." *Id.* The Court granted Defendants leave to amend in order to "allege that Plaintiff failed to exercise actual control over licensees' use of the trademark." *Id.*

Following the Court's Order, Defendants filed an Amended Answer to the Second Amended Complaint ("Am. Answer") and a Second Amended Counterclaim, adding allegations related to the abandonment claim and defense. Dkt. Nos. 71, 72. The amended abandonment counterclaim and the amended affirmative defense are substantively identical. *Compare* Am. Counterclaim, ¶¶ 86-97, *with* Am. Answer, pp. 19-23. Defendants again rely on a "naked license" theory of abandonment, arguing that "the trademark is should be abandoned because Neo4j Sweden and Neo4j USA did not have contractual, actual or adequate controls of the quality of third party modifications of the open source versions of Neo4J licensed under the GPL and APGL licenses." Am. Counterclaim ¶ 85.

Plaintiffs filed the present motion to dismiss the abandonment counterclaim and strike the corresponding affirmative defense, arguing that the new allegations fail to sufficiently state a claim or defense of abandonment by naked licensing.

II. Legal Standard

A. Motion to dismiss

Under Federal Rule of Civil Procedure 12(b)(6), a complaint may be dismissed if it fails to state a claim upon which relief can be granted. To survive a Rule 12(b)(6) motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim for relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (discussing Federal Rule of Civil Procedure 8(a)(2)). A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id.* Dismissal can be based on "the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). In considering a motion pursuant to Rule 12(b)(6), the court must accept as true all "well-pleaded factual allegations." *Iqbal*, 556 U.S. at 679. However, the requirement that the court "accept as true" all allegations in the complaint is "inapplicable to legal conclusions." *Id.*

B. Motion to Strike

Federal Rule of Civil Procedure 12(f) permits a court to "strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). "The function of a Rule 12(f) motion to strike is to avoid the expenditure of time and money that will arise from litigating spurious issues by dispensing with those issues prior to trial." *Solis v. Zenith Capital, LLC*, No. 08-cv-4854-PJH, 2009 WL 1324051, at *3 (N.D. Cal. May 8, 2009) (citing *Sidney-Vinstein v. A.H. Robins Co.*, 697 F.2d 880, 885 (9th Cir. 1983)).

"[C]ourts in this district continue to require affirmative defenses to meet the *Twombly/Iqbal* standard." *Goobich v. Excelligence Learning Corp.*, No. 5:19-CV-06771-EJD, 2020 WL 1503685, at *2 (N.D. Cal. Mar. 30, 2020) (collecting cases). Thus, "[w]hile a defense need not include extensive factual allegations in order to give fair notice, bare statements reciting mere legal conclusions may not be sufficient." *Perez v. Gordon & Wong Law Group, P.C.*, No. 11-CV-03323-LHK, 2012 WL 1029425, at *8 (N.D. Cal. Mar. 26, 2012) (internal quotation and citation omitted). In order to satisfy the pleading requirements of Rule 8, "a defendant's pleading of affirmative defenses must put a plaintiff on notice of the underlying factual bases of the defense." *Id.* (citing *Dion v. Fulton Friedman & Gullace LLP*, No. 11-2727 SC, 2012 WL 160221, at *2 (N.D. Cal. Jan. 17, 2012)).

"With a motion to strike, just as with a motion to dismiss, the court should view the pleading in the light most favorable to the nonmoving party." *Platte Anchor Bolt v. IHI, Inc.*, 352 F.Supp.2d 1048, 1057 (N.D. Cal. 2004).

III. Discussion

A. Judicial Notice

On both a motion to dismiss and a motion to strike, a court may consider the pleadings as well as documents that are attached to the pleadings, incorporated by reference when their authenticity is not contested, or are otherwise properly the subject to judicial notice. *See Ramachandran v. City of Los Altos*, 359 F.Supp.3d 801, 810 (N.D. Cal. 2019). The Court previously took judicial notice of the GPL and the AGPL, which are either attached to or incorporated by reference into the pleadings. *See* Order, Dkt. No. 70.

Plaintiffs now requests that the Court take judicial notice of (1) Neo4j's Trademark Policy dated October 13, 2015, from the WayBack Machine (Dkt. No. 73-2, Chien Decl., Ex. 1); (2) Neo4j's Trademark Guidelines, dated April 3, 2019 (Dkt. No. 73-3, Chien Decl., Ex. 2); (3) Defendant PureThink LLC's webpage from Wayback Machine (Dkt. No 79-2, Chien Reply Decl., Ex. A); and (4) a Dun & Bradstreet Comprehensive Report for Neo4j, Inc. (Dkt. No. 79-3, Chien Reply Decl., Ex. B). *See* Dkt. Nos. 74, 80, Requests for Judicial Notice.

Neo4j's Trademark Policy and Guidelines are incorporated into the Second Amended Complaint (SAC ¶ 29), however, it is not clear what iteration of the policy is incorporated. Plaintiffs do not explain the difference, if any, between the policy in 2015 (Dkt. No. 73-2) and the policy in 2019 (73-3), nor is it clear how any such differences are relevant to the allegations. The Court finds it unnecessary to take judicial notice of multiple iterations of the policy and guidelines, where the relevant portions are excerpted in the Second Amended Complaint. The remaining documents are not relevant to the Court's analysis. Therefore, the Court declines to take judicial notice of the documents Plaintiffs put forth.

B. Abandonment

Under the Lanham Act, a mark can only be deemed "abandoned" when either of the following occurs: "(1) [w]hen its use has been discontinued with intent not to resume such use," or "(2) When any course of conduct of the owner, including acts of omission as well as commission, causes the mark to become the generic name for the goods or services on or in connection with which it is used or otherwise to lose its significance as a mark." 15 U.S.C. § 1127. Defendants argue that the "Neo4j" mark has been abandoned under the second prong because Plaintiffs engaged in naked licensing by failing to control the quality of products using the trademark.

It is well established that "[u]ncontrolled or 'naked' licensing may result in the trademark ceasing to function as a symbol of quality and controlled source." *Barcamerica Int'l USA Trust v. Tyfield Importers, Inc.*, 289 F.3d 589, 595-96 (9th Cir. 2002) (citing *Moore Bus. Forms, Inc. v. Ryu,* 960 F.2d 486, 489 (5th Cir. 1992)). "Consequently, where the licensor fails to exercise adequate quality control over the licensee, a court may find that the trademark owner has abandoned the trademark, in which case the owner would be estopped from asserting rights to the trademark." *FreecycleSunnyvale v. Freecycle Network*, 626 F.3d 509, 516 (9th Cir. 2010) (quoting *Barcamerica*, 289 F.3d at 596). "[T]he naked licensing claim is fundamentally a claim that the trademark is no longer valid and enforceable because of the licensor's neglect in policing its use." *Monster, Inc. v. Dolby Labs. Licensing Corp.*, 920 F.Supp.2d 1066, 1076 (N.D. Cal. 2013). Because the theory is essentially that a party forfeited trademark rights, "the Ninth Circuit has described the standard required of the trademark challenger as 'stringent.'" *Id.* (quoting *FreecycleSunnyvale*, 626 F.3d at 514) (citing *Barcamerica*, 289 F.3d at 596).

i. Control of Third-Party Use

In support of their naked license theory, Defendants allege that Plaintiffs "did not have contractual, actual or adequate controls of the quality of third party modifications of the open source versions of Neo4J licensed under the GPL and APGL licenses." Am. Counterclaim ¶ 85. More specifically, Defendants assert that "Neo4J Sweden allowed the unfettered and uncontrolled use of the Neo4J trademarks to successfully launch the Neo4J software and gain a user and development base" and argue that the trademark was, therefore, already abandoned by the time Neo4j USA obtained the rights. *Id.* ¶ 86. The only fact alleged to support the assertion that Neo4j allowed "unfettered and uncontrolled use of the Neo4J trademarks" is that Neo4j Sweden openly distributed its software pursuant to the GPL and AGPL.

The GPL and AGPL are copyright licenses, not trademark licenses. Third party developers who modify the open source versions of the software pursuant to the GPL or AGPL do not have any right to use the Neo4j trademark absent a separate trademark license agreement. *See* SAC ¶ 28 (quoting Neo4j's website, alleging "[a]lthough some Neo4j projects may be available under free and open licenses, those licenses cover copyright only and do not include any express or implied right to use our trademarks."); Am. Counterclaim, Ex. B, GPL § 7(e) (authorizing users to supplement to terms of the GPL with terms "declining to grant rights under trademark law for . . . trademarks" indicating that the GPL does not otherwise cover trademark rights).

Other than the Partner Agreement with Defendant PureThink, neither party alleges that Neo4j entered into any express trademark licenses. *See* Partner Agreement § 4.1 (granting limited license to "use the Neo Technology trademarks solely to market and promote the Products in accordance with the terms of this Agreement"). Rather, Defendants assert that in the absence of an express trademark license, "Neo4J Sweden freely allowed licensees to use the Neo4J trademark" and that "many of these third party modified versions of Neo4J freely use Neo4J trademarks." Am. Counterclaim ¶ 92-93. The term "licensees" in this instance refers to *copyright* licensees, under the GPL or AGPL, not *trademark* licensees. In other words, Defendants' allegation is that Plaintiffs failed to prosecute third-party copyright licensees' unauthorized use of the trademark.

This set of allegations does not fit comfortably within the doctrine of naked licensing. A "naked license" occurs when a trademark owner grants a trademark license then fails to monitor the quality of goods that the licensee produces under that trademark to such an extent that the trademark can be deemed abandoned. *See FreecycleSunnyvale*, 626 F.3d at 516; *Barcamerica Int'l USA Tr.*, 289 F.3d at 596. Naked licensing does not occur where there is no trademark license at issue. *Sweetheart Plastics, Inc. v. Detroit Forming, Inc.*, 743 F.2d 1039, 1047 (4th Cir. 1984) ("Th[e] rule of uncontrolled licensing of a trademark is inapplicable to the instant case as no evidence of licensing has been presented.").

In *Barcamerica*, it was undisputed that plaintiff, a vintner, had licensed its trademark to another winemaker. The Ninth Circuit held that the plaintiff failed to retain or otherwise exercise adequate quality control over the wine produced under that trademark and had therefore engaged in naked licensing and abandoned the trademark. *Barcamerica Int'l USA Tr.*, 289 F.3d at 596.

Freecyle involved a dispute between a nationwide nonprofit organization, which owned certain trademarks related to the term "freecycle," and a local member-group of that organization, which used those trademarks. The *Freecyle* court first considered whether the parties had a trademark licensing agreement. Concluding that there was no express agreement, the court assumed without deciding that there was an "implied" agreement, albeit one that did not address quality control. *FreecycleSunnyvale*, 626 F.3d at 516 ("Even assuming that [the parties' correspondence] constitutes an implied licensing agreement, it contained no express contractual right to inspect or supervise" the licensee's activities). The court next considered whether in the absence of express quality control provisions, the trademark owner "maintained actual control over its member groups' services and use of the trademarks when [Plaintiff] *was granted use of the trademarks*." *Ibid.* (emphasis added). Thus, the court assumed, and the parties did not dispute, that the plaintiff in that case had been granted the right to use the trademarks under the parties implied licensing agreement.

Both *Barcamerica* and *Freecycle*, therefore, concerned trademark licenses and the level of quality control, or lack thereof, exercised under those licenses. There is no allegation of a trademark license between Plaintiffs and third-party modifiers in this case. Defendants have not identified any case, and the Court is not aware of any, in which a trademark owner was found to have engaged in naked licensing where no trademark license existed. Indeed, requiring a trademark owner to police the quality of goods produced by a third party who has no right to use the trademark would undermine the well-settled rule that a trademark owner's failure to sue potential infringers does not constitute abandonment. *San Diego Comic Convention v. Dan Farr Prods.*, No. 14-CV-1865 AJB (JMA), 2017 WL 4227000, at *12 (S.D. Cal. Sept. 22, 2017) ("despite Defendants' attempt to argue abandonment through third party use or failure to police, these arguments are unquestionably meritless as Defendants have not proven that Plaintiff's mark is generic") *aff'd*, 807 F. App'x 674 (9th Cir. 2020); *Century 21 Real Estate Corp. v. Sandlin*, 846

F.2d 1175, 1181 (9th Cir.1988) (stating that "discovery that revealed other potential infringers would be irrelevant under the law of this circuit"); *U.S. Jaycees v. San Francisco Junior Chamber of Commerce*, 354 F.Supp. 61, 73-74 (N.D. Cal. 1972), *aff'd* 513 F.2d 1226 (9th Cir. 1975) (noting that "numerous cases" have held that "the existence of infringers other than the defendant was irrelevant to a determination of whether the defendant should be enjoined from continuing in its infringement of plaintiffs' trademarks and in its unfair competition").

This Court previously allowed Defendants to amend their counterclaims and defenses in order to add allegations that apart from Plaintiffs' open-source distribution of the software pursuant to the GPL and AGPL, Plaintiffs otherwise failed to actually control their trademark licensees. In the amended pleadings, Defendants failed to allege that Plaintiffs licensed the Neo4j mark at all, let alone that they failed to exercise control under any such license. Rather, taking Defendants' allegations as true and construing them in a light most favorable to Defendants, the newly added allegations amount to an argument that Plaintiffs abandoned the trademark by permitting third parties to use it freely. They do not allege that Plaintiffs' actions have caused the mark to become generic or that the mark has otherwise lost its significance, as required to show abandonment under 15 U.S.C. § 1127. These allegations are insufficient to state a claim to abandonment.

ii. Control of Defendants Suhy and PureThink

Defendants' amended pleadings also add allegations related to the lack of quality control that Plaintiffs exercised over Defendant Suhy's modified version of the software. Am. Counterclaim ¶ 96. Specifically, Defendants allege that Suhy modified the software and used the Neo4j trademark to distribute the modified software to customers, "[y]et Neo4J USA did no quality assurance or verification of the source code or applications distributed." *Ibid.* Unlike the third-party modifiers discussed above, Suhy—or Suhy's company, PureThink—had an express agreement to license the Neo4j mark. *See* Partner Agreement § 4.1.

Although it is possible that Plaintiffs failed to exercise quality control over the license in the Partner Agreement, Defendants' allegations are insufficient to show abandonment for a couple of reasons. First, Plaintiffs argue that the doctrine of estoppel prevents Defendants from challenging the validity of the trademark based on Plaintiffs' alleged failure to police Defendants' own licensed use of that trademark. Motion, pp. 16-18, (citing *Monster, Inc.*, 920 F.Supp.2d at 1076-77 (licensee estoppel prevents licensee's attempt to challenge the trademark based on failure to police its own licensed use)). Defendants argue that estoppel does not apply because Suhy modified the open-source version of the software, which was licensed by Neo4j Sweden under the AGPL. But it is not Suhy's modification of the underlying software that gives rise to Plaintiffs' trademark-related claims, it is his use of the Neo4j trademark. As discussed above, the AGPL does not address trademark rights. Moreover, Defendants cannot rely on the trademark license to argue that the lack of quality control resulted in a naked license and simultaneously argue that estoppel does not apply because the trademark license was not irrelevant to Suhy's use.

The Court agrees with Plaintiffs that Defendants are estopped from asserting an abandonment claim based on Plaintiffs' alleged failure to control Defendants' own conduct. A "licensee may not challenge the licensor's mark based upon facts which arose during the term of the license." *STX, Inc. v. Bauer USA, Inc.*, 1997 WL 337578, 43 U.S.P.Q.2d 1492 (N.D. Cal. June 5, 1997). PureThink entered into an agreement to license the trademark in 2014 (*see* Partner Agreement), and allegedly used the trademark thereafter. Defendants cannot now argue that Plaintiffs failure to control Defendants' use amounts to a naked license. *Monster, Inc.*, 920 F.Supp.2d at 1076-1077; *see also TAP Mfg., LLC v. Signs*, 2015 WL 12752874, at *3 (C.D. Cal. July 23, 2015) ("a licensee may not assert that the licensor's mark is invalid because the licensor granted a naked license to the licensee").

IV. Conclusion

For the reasons stated above, Defendants fail to state a claim or affirmative defense for abandonment of trademark and the Court **GRANTS** Neo4j USA's Motion.

Defendants having already amended their pleadings on this issue, the Court finds that further leave to amend would be futile. *Low v. LinkedIn Corp.*, 900 F.Supp.2d 1010, 1033 (N.D. Cal. 2012) (the Court should not grant leave to amend "where doing so would be an exercise in futility.”).

The Tenth Cause of Action in the Second Amended Counterclaim is **DISMISSED** and the Ninth Affirmative Defense in the Amended Answer to the Second Amended Complaint is **STRICKEN** with prejudice.

IT IS SO ORDERED.

Dated: August 20, 2020

EDWARD J. DAVILA
United States District Judge

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

NEO4J, INC., a Delaware corporation, and NEO4J SWEDEN AB, a Swedish corporation,

Plaintiffs

v.

PURETHINK LLC, a Delaware limited liability company, IGOV INC., a Virginia corporation, and JOHN MARK SUHY, an individual,
Defendants.

CASE NO. 5:18-cv-7182 EJD

DEFENDANTS PURETHINK, LLC, IGOV INC AND JOHN MARK SUHY'S ANSWER TO PLAINTIFFS' THIRD AMENDED COMPLAINT

DEMAND FOR JURY TRIAL

Defendants PURETHINK, LLC, iGOV and JOHN MARK SUHY ("Defendants") answers NEO4J, INC. ("Neo4J USA") and NEO4J SWEDEN AB's ("Neo4J Sweden") Third Amended Complaint as follows:

1. Defendants admit the statement outlines the claims but otherwise deny the claims and allegations in paragraph 1.

2. Defendants admit the first and second sentence in paragraph 2. Defendants deny that plaintiff is the graph company behind an open source software product called Neo4J as the software is owned by and licensed by Neo4J Sweden AB according to the license for Neo4J-enterprise available at GitHub. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations and on that basis deny the remaining allegations.
3. Defendants deny the allegation in paragraph 3. Defendants believes that many users are using the open source version called Neo4J and not what plaintiff calls Neo4J®. This confusion arises because plaintiff Neo4J, USA claims they own Neo4J software yet the open source license is by Neo4J Sweden. Likewise, there appear over 183 contributors to the open source version of the Neo4J software and Defendants do not know if each contributor has assigned contributions or moral rights in works to either plaintiff. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations and on that basis deny the remaining allegations.
4. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 4 and on that basis deny the allegations. Defendants deny that Neo4j Sweden owns all rights to the copywright to Neo4j as rights are jointly owned by joint

authories and are subject to the terms of the GitHub and GPL AGPL licenses.

5. Defendants admit the allegations in paragraph 5 except they deny PureThink is a shell entity maintained by the other Defendants and is not currently conducting or engaged in any meaningful business activities.
6. Defendants admit the allegations in paragraph 6 except they deny iGov is the assignee and successor-in-interest to PureThink or otherwise acquired substantially all of PureThink's assets sometime in mid-2017 and deny that Neo4J is a large scale graph solution as it is limited in scalability.
7. Defendants admit that iGov does business as GraphStack, but deny the remaining allegations in paragraph 7.
8. Defendants deny the allegations in paragraph 8 except for the fact Suhy is an individual residing in Reston, Virginia and the last sentence.
9. Defendants deny the allegations in paragraph 9.
10. Defendants deny the allegations in paragraph 10.
11. Defendants deny the allegations in paragraph 11 are an example to support the allegations and deny Defendants share the same customer support number but admit the facts alleged.
12. Defendants deny the allegations in paragraph 12 are an example to support the allegations but admit the facts alleged except Defendants lack information or belief about what virtually identical means.

13. Defendants deny the allegations in paragraph 13 as the verb ported is unclear and vague.

14. Defendants deny the allegations in paragraph 14.

15. Defendants admit the allegations in paragraph 15.

16. Defendants deny the allegations in paragraph 16.

17. Defendants deny the allegations in paragraph 17.

18. Defendants admit the allegations in paragraph 18.

19. Defendants admit the allegations in paragraph 19.

20. Defendants deny the allegations in paragraph 20.

21. Defendants deny Neo4j USA is the owner for the trademark as the owner is Neo4j Sweden and Neo4J USA is not an exclusive licensee or assignee of the trademark. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 21 and on that basis deny the allegations.

22. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 22 and on that basis deny the allegations. However, defendants deny plaintiffs use the mark since 2006 since Neo4j USA did not exist at that time.

23. Defendants deny the allegations in paragraph 23. Neo4J USA is not the owner, assignee or exclusively licensee of the mark and lacks standing to assert the mark.

24. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 24 and on that basis deny the allegations. Defendants is informed and believes that both plaintiffs did not license the open source version of Neo4J software

as alleged as the open source software is owned and license only by Neo4J Sweden. Likewise the business model stated is not accurate as the business model was limited Neo4J's Sweden's election to use the GPL and AGPL licenses. Users did not require other feature sets and support was offered through independent sources such that that allegations are not true.

25. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 25 and on that basis deny the allegations. Defendants is informed and believes that both plaintiffs did not license the open source version of Neo4J software as the open source licenses is owned and license only by Neo4J Sweden. Further, Neo4J Sweden did not license a commercial product based on the open source software.

26. Defendants deny the allegations in paragraph 26.

27. Defendants deny the allegations in paragraph 27.

28. Defendants deny the allegations in paragraph 28.

29. Defendants deny they agreed to provide first and second line support to end-users of NEO4J® EE software. Defendants admit the remaining allegations paragraph 29.

30. Defendants admit the first sentence in paragraph 30 and deny the remainder.

31. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 31 and on that

basis deny the allegations. Purethink told the government the truth about using the open source version of Neo4j.

32. Defendants deny the allegations in paragraph 32.

33. Defendants admit the first sentence in paragraph 33 and deny the remainder.

34. Defendants admit the allegations paragraph 34.

35. Defendants admit the allegations paragraph 35.

36. Defendants admit the allegations paragraph 36.

37. Defendants admit the allegations in paragraph 37.

38. Defendants admit the allegations in paragraph 38.

Mr. Suhy's efforts to reveal Neo4j USA false business practices

39. Defendants deny the allegations in paragraph 39.

40. Defendants deny the allegations in paragraph 40.

41. Defendants deny the allegations in paragraph 41.

42. Defendants deny the allegations in paragraph 42.

43. Defendants deny the allegations in paragraph 43.

44. Defendants deny the allegations in paragraph 44.

45. Defendants deny the allegations in paragraph 45.

46. Defendants deny the allegations in paragraph 46.

47. Defendants deny the allegations in paragraph 47.

48. Defendants deny the allegations in paragraph 48.

49. Defendants deny the allegations in paragraph 49.

50. Defendants deny the allegations in paragraph 50.

51. Defendants deny the allegations in paragraph 51.

52. Defendants deny the allegations in paragraph 52.

53. Defendants deny the allegations in paragraph 53.

54. Defendants deny the allegations in paragraph 54.

55. Defendants deny the allegations in paragraph 55.

Mr. Suhy supports continued lawful use of open source Neo4j

56. Defendants deny the allegations in paragraph 56.

57. Defendants deny the allegations in paragraph 57.

58. Defendants deny the allegations in paragraph 58.

59. Defendants deny the allegations in paragraph 59.

60. Defendants deny the allegations in paragraph 60.

61. Defendants deny the allegations in paragraph 61.

62. Defendants admit to posting links as users are permitted to use such resources under the GitHub license.

63. Defendants deny the allegations in paragraph 63.

64. Defendants deny the allegations in paragraph 64.

65. Defendants deny the allegations in paragraph 65.

66. Defendants deny the allegations in paragraph 66.

67. Defendants deny the allegations in paragraph 67.

68. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 68 and on that basis deny the allegations. Neo4j Sweden does not have a Software license as they are using the software license for the GPL and AGPL license and such licenses are owned by a third party. Neo4J Sweden's copyright management information violates the APGL copyright and are not valid under the AGPL and are permitted to be removed under the AGPL.

Mr. Suhy's conduct was to permit users to understand they can use open source software and not be confused by plaintiffs' unfair trade practices.

69. Defendants deny allegations in paragraph 69.

70. Defendants deny the allegations in paragraph 70.

71. Defendants deny the allegations in paragraph 71.

72. Defendants deny the allegations in paragraph 72.

73. Defendants deny the allegations in paragraph 73.

74. Defendants deny the allegations in paragraph 74.

75. Defendants deny the allegations in paragraph 75.

Suhy's applying the terms of the AGPL to prevent violation of the AGPL

76. Defendants deny the allegations in paragraph 76.

77. Defendants deny the allegations in paragraph 77.

78. Defendants deny the allegations in paragraph 78.

79. Defendants admit the general allegations in paragraph 79.

80. Defendants admit the allegations in paragraph 80. But he did not actually record them. His intent was to make them think he was recording them so they would stop lying.

81. Defendants admit the allegations in paragraph 81. But he did not actually record them. His intent was to make them think he was recording them so they would stop lying.

82. Defendants admit the allegations in paragraph 82. But he did not actually record them. His intent was to make them think he was recording them so they would stop lying.

Suhy's opinions regarding plaintiffs' fraud

83. Defendants deny the allegations in paragraph 83.

84. Defendants deny the allegations in paragraph 84.

85. Defendants deny the allegations in paragraph 85.

86. Defendants admit the allegations in paragraph 86.

87. Defendants deny the allegations in paragraph 87.

88. Defendants deny the allegations in paragraph 88.

89. Defendants deny the allegations in paragraph 89.

90. Defendants deny the allegations in paragraph 90.

91. Defendants admit the allegations in paragraph 91.

92. Defendants deny the allegations in paragraph 92.

93. Defendants deny the allegations in paragraph 93.

94. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 94 and on that basis deny the allegations. Neo4j USA sued on the Partner Agreement and cited to terms in that agreement in its pleadings waiving any alleged confidentiality. None of the information appears confidential and calling it confidential does not make it so.

95. Defendants deny the allegations in paragraph 95. Having been sued on the agreement, the agreement was attached so all terms were considered in the public forum as plaintiffs have elected.

96. Defendants deny the allegations in paragraph 96.

97. Defendants deny the allegations in paragraph 97.

98. Defendants deny the allegations in paragraph 98.

99. Defendants incorporate its responses to paragraphs 1-97.

100. Defendants deny the allegations in paragraph 100. Neo4J USA did not exist in 2007. It was formed in 2011. The software has been licensed on an open source basis by Neo4J Sweden and called Neo4J by Neo4J Sweden. The ownership of the Neo4J software is claimed by Neo4J Sweden. Likewise, the software development was provided by over 100 joint authors called contributors, Github shows that there are 1,515 forks to the software with 22 branches and there is no evidence the joint authors have assigned the rights to the Neo4J open source software copyright to either plaintiff.

101. Defendants deny the allegations in paragraph 101.

102. Defendants deny the allegations in paragraph 102. The software has been licensed on an open source basis by Neo4J Sweden and called Neo4J by Neo4J Sweden.

103. Defendants deny the allegations in paragraph 103.

104. Defendants deny the allegations in paragraph 104.

105. Defendants deny the allegations in paragraph 105.

106. Defendants deny the allegations in paragraph 106.

107. Defendants deny the allegations in paragraph 107.

108. Defendants deny the allegations in paragraph 108.

109. Defendants deny the allegations in paragraph 109.

110. Defendants deny the allegations in paragraph 110.

111. Defendants deny the allegations in paragraph 111.

112. Defendants incorporate its responses to paragraphs 1-110.

113. Defendants deny the allegations in paragraph 113.

114. Defendants deny the allegations in paragraph 114.

115. Defendants deny the allegations in paragraph 115.

116. Defendants deny the allegations in paragraph 116.

117. Defendants deny the allegations in paragraph 117.

118. Defendants deny the allegations in paragraph 118.

119. Defendants deny the allegations in paragraph 119.

120. Defendants incorporate its responses to paragraphs 1-118.

121. Defendants deny the allegations in paragraph 121.

122. Defendants deny the allegations in paragraph 122.

123. Defendants deny the allegations in paragraph 123.

124. Defendants deny the allegations in paragraph 124.

125. Defendants deny the allegations in paragraph 125.

126. Defendants deny the allegations in paragraph 126.

127. Defendants incorporate its responses to paragraphs 1-125.

128. Defendants deny the allegations in paragraph 128.

129. Defendants deny the allegations in paragraph 129.

130. Defendants deny the allegations in paragraph 130.

131. Defendants deny the allegations in paragraph 131.

132. Defendants deny the allegations in paragraph 132.

133. Defendants deny the allegations in paragraph 133.

134. Defendants incorporate its responses to paragraphs 1-132.

135. Defendants admit PureThink signed the Partner Agreement but Defendants otherwise deny the allegations in paragraph 83, because plaintiff has failed to perform, clauses 4.3.1, and 4.3.2 are not

enforceable as written or applied and the limitations in the Partner Agreement violate the open source Neo4J enterprise license.

136. Defendants admit the allegations in paragraph 136. However, the open source software is not a Neo4j USA product.

137. Defendants admit the terms of the 7.3 of the Partner Agreement claims to prevent PureThink from dealing in Products which is defined as Neo4J commercial software provided by Neo Technology and licensed to the End User but otherwise deny the allegations in paragraph 137.

138. Defendants deny the allegations in paragraph 138.

139. Defendants deny the allegations in paragraph 139.

140. Defendants deny the allegations in paragraph 140.

141. Defendants deny the allegations in paragraph 141.

142. Defendants deny the allegations in paragraph 142.

143. Defendants deny the allegations in paragraph 143.

144. Defendants deny the allegations in paragraph 144.

145. Defendants deny the allegations in paragraph 145.

146. Defendants deny the allegations in paragraph 146.

147. Defendants deny the allegations in paragraph 147.

148. Defendants incorporate its responses to paragraphs 1-146.

149. Defendants deny the allegations in paragraph 149.

150. Defendants deny the allegations in paragraph 150.

151. Defendants deny the allegations in paragraph 151.

152. Defendants admit the first and second sentence in paragraph 152 and deny the remaining allegations in paragraph 152.

153. Defendants deny the allegations in paragraph 153.

154. Defendants deny the allegations in paragraph 154.

155. Defendants admit Neo4J USA seeks statutory damages but deny they are entitled to any damages as alleged in paragraph 155.

156. Defendants deny the allegations in paragraph 156.

157. Defendants incorporate its responses to paragraphs 1-155.

158. Defendants deny the allegations in paragraph 158.

159. Defendants deny the allegations in paragraph 159.

160. Defendants deny the allegations in paragraph 160.

161. Defendants deny the allegations in paragraph 161.

162. Defendants deny the allegations in paragraph 161.

163. Defendants deny the allegations in paragraph 163.

164. Defendants deny the allegations in paragraph 164.

165. Defendants deny the allegations in paragraph 165.

166. Defendants incorporate its responses to paragraphs 1-164.

167. Defendants deny the allegations in paragraph 165. The joint authors have copyright and moral rights in the Neo4j software.

168. Defendants deny the allegations in paragraph 168.

169. Defendants deny the allegations in paragraph 169.

170. Defendants deny the allegations in paragraph 170. The terms were removed as permitted by the AGPL and to avoid a copyright infringement of that license.

171. Defendants deny the allegations in paragraph 171.

172. Defendants deny the allegations in paragraph 172.

173. Defendants deny the allegations in paragraph 173.

174. Except as otherwise admitted, Defendants deny the allegations in the TAC.

Affirmative Defenses

1. Void Restriction

Section 4.3.2 of the Partner Agreement, provides:

> During the term of this Agreement and up until thirty six (36) months after the termination or expiration of this Agreement, Partner may not develop, market, distribute or offer any services related to any Neo Technology Community Edition Products, derivative works of such products, or any Partner software code made to work with Neo Technology Community Edition Products(including, without limitation, hosting services, training, technical support, configuration and customization services, etc.)

Neo4J USA seeks to prevent Defendants from licensing and supporting open source software during and for 36 months after termination of the Partner Agreement. The Partner Agreement is. by its terms, governed by California law. The restriction under Section 4.3.2 cannot be enforced against Defendants as the restriction is void under California Business and Professions Code §16600: “Except as provided in this chapter, every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void.”

2. License To Use Neo4J Open Source Software

Section 4.3.1 of the Partner Agreement provides:

4.3.1 During the term of this Agreement, Partner may not use or run on any of Partner's hardware, or have deployed for internal use, any Neo Technology Community Edition Products for commercial or production use. In no event shall Partner reverse engineer, distribute or otherwise use the Products for its own internal use. There are no implied rights. Partner will not fork or bifurcate the source code for any Neo Technology Community Edition Products into a separately maintained source code repository so that development done on the original code requires manual work to be transferred to the forked software or so that the forked software starts to have features not present in the original software.

The restrictions in Paragragraphs 4.3.1 and 4.3.2 violate the GNU AFFERO GENERAL PUBLIC LICENSED VERSION 3 for Neo4J enterprise software:

Section 2 (Basic Permissions) of the AGPL license provides, in part:

"All rights granted under this License are granted for the term of copyright on the Program, and are irrevocable provided the stated conditions are met. This License explicitly affirms your unlimited permission to run the unmodified Program. …

You may make, run and propagate covered works that you do not convey, without conditions so long as your license otherwise remains in force. You may convey covered works to others for the sole purpose of having them make modifications exclusively for you, or provide you with facilities for running those works, provided that you comply with the terms of this License in conveying all material for which you do not control copyright."

Section 4 of the AGPL license provides, in part:

"You may charge any price or no price for each copy that you convey, and you may offer support or warranty protection for a fee."

Section 10 (Automatic licensing of Downstream Recipients) of the AGPL provides, in part:

"You may not impose any further restrictions on the exercise of the rights granted or affirmed under this License."

Defendants are licensed to use the open source software version of Neo4J by Neo4J Sweden AB without restriction under the AGPL license agreement. Neo4J USA may not impose restrictions on use of Neo4J and cannot prevent or bar Defendants from using the open source Neo4J. By imposing restrictions in violation of the License, plaintiff has breached the open source license and has no rights to use or license Neo4J.

3. Right to fork and use Neo4J open source under GitHub Terms of Service

By using a public repository at GitHub, the open source versions of Neo4J are subject to the GitHub Terms of Service which allow any user to use and fork the software and other content on the NEO4J SWEDEN public GitHub repository:

> D. 5. If you set your pages and repositories to be viewed publicly, you grant each User of GitHub a nonexclusive, worldwide license to use, display, and perform Your Content through the GitHub Service and to reproduce Your Content solely on GitHub as permitted through GitHub's functionality (for example, through forking). You may grant further rights if you adopt a license. If you are uploading Content you did not create or own, you are responsible for ensuring that the Content you upload is licensed under terms that grant these permissions to other GitHub Users.

https://help.github.com/en/articles/github-terms-of-service

4. Unclean Hands

Neo4J USA should not be permitted to enforce the Partner Agreement and trademarksbecause of plaintiffs unclean hands in the use of the Partner Agreement and unlawful licensing practices. Neo4J USA told PureThink they could modify the scope of a license agreement to meet the needs of the government users such as the IRS. Neo4J USA's license model is priced for core processor charges. However, there is no per core charge on the open source version. Neo4J USA at first agreed PureThink could drop the core use pricing for the IRS, then later plaintiff refused to allow the price change. Neo4J USA also forbade its partners, such as PureThink, to discuss the available open source versions. When the IRS, faced with core pricing limitations, asked PureThink about the differences between the commercial software and the open source version of Neo4J, plaintiff told PureThink to lie stating the open source version could only be used on an open project to try to induce the IRS to purchase a commercial version of Neo4J. When Neo4J USA threatened to terminate PureThink, they agreed PureThink could remedy the breach if the IRS signed up for a commercial license through plaintiff. When the IRS wanted to use the Neo4J open source software with support from PureThink, plaintiff interfered falsely stating PureThink could not use or support Neo4J open source software. Neo4J USA is attempting to improperly use a dual licensing practice having a commercial version controlled by plaintiff and an open source software licensed under a General Public License. Because the open source software is under a GPL or AGPL license, and has over 183 contributors, plaintiff may not be able to actually convert the GPL or AGPL license to proprietary software. Under a GPL or AGPL type license, contributors' efforts to modify the software cannot be taken away and turned into privately controlled software. NEO4J SEDWEN added an invalid Commons Clause to the AGPL to improperly restrict use and support of the open source software. Defendants are informed and believe that plaintiff only provides an object code version of the Neo4J software under a commercial license while the GPL and AGPL type license requires access to the source code as well. Defendants are informed and believe that because plaintiff cannot lawfully operate a dual license model since the open source is based on GPL or AGPL, plaintiff resorts to sharp and false advertising practices with customers (lying about the difference between the commercial versions and the open source version) attempting to restrict partners, such as PureThink, from supporting the open source Neo4J version with unlawful restrictions and interfering in attempts to use open source Neo4J software during the partner term and for three years after termination. The rights of open source users to use the software without making it open, as Neo4J USA claims, is shown by the FAQs at the GNU site:

> If I only make copies of a GPL-covered program and run them, without distributing or conveying them to others, what does the license require of me?(#NoDistributionRequirements)
>
> Nothing. The GPL does not place any conditions on this activity.

The same rules apply to modified versions of the open source code:

> Does the GPL require that source code of modified versions be posted to the public? (#GPLRequireSourcePostedPublic)
>
> The GPL does not require you to release your modified version, or any part of it. **You are free to make modifications and use them privately, without ever releasing them. This applies to organizations (including companies), too; an organization can make a modified version and use it internally without ever releasing it outside the organization.**
>
> But *if* you release the modified version to the public in some way, the GPL requires you to make the modified source code available to the program's users, under the GPL.

> Thus, the GPL gives permission to release the modified program in certain ways, and not in other ways; but the decision of whether to release it is up to you.
>
> [Emphasis added]

As plaintiffs have sought to threaten open source users improperly, prevent third parties from providing services to open source code users, they come to this court with unclean hands, they should be barred from any recovery.

5. The Addition Of The Commons Clause Is Unlawful Under The AGPL

The open source license used by Neo4J Sweden AB, the AGPL, is a license copyrighted by the Free Software Foundation. The beginning of the AGPL license provides a copyright notice:

> Copyright (C) 2007 Free Software Foundation, Inc. <http://fsf.org/>
> Everyone is permitted to copy and distribute verbatim copies of this license document, but changing it is not allowed. [Emphasis added]

By its terms, the license may not be changed.

Neo4J Sweden AB's attempt to change the AGPL license violates its terms. The licensee is protected from this violation under the terms of the license: "If the Program as you received it, or any part of it, contains a notice stating that it is governed by this License along with a term that is a further restriction, **you may remove that term**." [Emphasis added]. §7 AGPL.

Defendants had the express right to remove any improper terms and such removal prevented further infringement of the APGL license's terms.

6. NEO4J USA Violated the AGPL

Neo4J USA has attempted to take the open source software under the AGPL and commercialize it in violation of the AGPL while preventing former partner from supporting the open source software. But the APGL provides "You may not impose any further restrictions on the exercise of the rights granted or affirmed under this License. For example, you may not impose a license fee, royalty, or other charge for exercise of rights granted under this License." §10 of the AGPL.

7. Cancellation of Trademark Procured by Fraud

The Registered Trademark for NEO4J, Reg. No. 4,784,280, was procured by fraud as the representation was that Neo Technology (a Delaware corporation) (changed to Neo4J, Inc.) was the owner of the trademark and it first used the trademark in 6-4-2006 and in commerce in 5-28-2007. These statements are false as Neo4J, USA is not the owner of the trademark. Neo4J USA is only a non-exclusive licensee of the mark and the ownership of the mark is owned by Neo4J Sweden. The first use representation is also false as Neo4J USA did not exist on the dates its stated to support first use. Neo4J USA was formed 7-7-2011 in Delaware under File Number 5007564. Neo4J USA's representations of ownership and first use in the Trademark application are false. Because the ownership and dates of use in the trademark application were false, the registration was procured by fraud, the registration should be cancelled pursuant to 15 U.S.C. §1119.

8. **Fair Use of Trademarks**

Defendants use of the trademarks was and is a nominative fair use to 1) identify a software product they support called Neo4J that is freely available as open source software, 2) comparative advertising (See 16 C.F.R. §14.15(b)) and 3) to advise others PureThink was no longer a partner with Neo4J USA.

9. **Naked License Abandonment of Trademark**

Neo4J USA claims they own the Neo4J trademark but they are only a non-exclusive licensee from Neo4J Sweden and that license does not include any quality control requirements for Neo4J USA's use of the licensed trademark related to the products Neo4J USA licenses. Neo4J USA's trademark license does not apply to software licensed by the trademark owner, Neo4J Sweden. Neo4J Sweden licenses the Neo4j software as open source software and has no quality controls, contractual or otherwise under the GPL or AGPL licenses while licensees have the right to modify, use and distribute modified versions of Neo4j software without any quality controls contractually or otherwise from Neo4J Sweden over the quality of such modifications. Licensees of modified versions of open source Neo4J software have used the Neo4J trademark without any effort to bar, stop or limit such use. Licensees of modified versions have a nominative fair use right to use the Neo4J trademark to identify the software distributed to third parties. As a result, Neo4J Sweden has abandoned the Neo4J trademark under the doctrine of Naked License and Neo4J USA, non-exclusive license has no trademark supporting the license and such license does not extent to the open source software in any event. Neo4J USA's trademark policies do not apply to licensees of Neo4J Sweden's software, because such software is beyond the scope of Neo4J's non-exclusive license to the mark and is licensed by Neo4J Sweden which is the owner of the Mark.

10. **Waiver**

Neo4J USA waived PureThink's conduct in modifying the open source version of Neo4J to create the government edition as they agreed PureThink could use and modify the software as required to satisfy the United States Government buyers.

11. **Setoff**

Neo4J USAs' alleged claims to damages are barred, in whole or in part, by the right of one or more Defendants to a setoff against any such damages.

12. **Failure to State a Claim**

Each claim fails to state a claim for with relief may be granted.

13. **Estoppel**

Neo4j Sweden licensed neo4j software under the GPL and AGPL license which is a licensing framework to allow free use, modification and support for the software licensed. Users, joint authors and third parties use, modify and support the software with the expectation, as provided under the terms of the GPL and AGPL, that they are free to do so on a continuous basis. John Suhy, relying on the terms of the licenses and the proper use of the GPL and AGPL licenses by Neo4j Sweden, learned the software and developed skills to support the software at a highly skilled level so he could provide professional services to users of the Neo4j open source software. Mr. Suhy did not know Neo4j Sweden was concealing that after using the open source model, it wanted to stop the open source version to commercially profit from the user and third parties efforts, Neo4j Sweden then violated the GPL and AGPL by attempting to take the software and commercialize it, preventing users for obtaining the source code for modifications as required under the GPL and AGPL, adding improper terms (Commons Clause) to prevent users from properly using the software as allowed under the terms of the GPL, the AGPL, and the Github licenses and trying to prevent third parties from supporting the software. They then forced third party service providers to sign up with Neo4j USA agreement which Neo4j USA could terminate at anytime but barred the service provider from supporting Neo4j software for years. Effectively trying to stop all third pary support for software. Then they attack third party users and supporters claiming any use of the trademark is a violation even though there is clear law allowing people to do comparative advertising and support the product using the name of the product. By virtue of Neo4j's conduct in setting up the open source model with the later intent of changing it to commercialize the software and essentially try to elminate the open source community in violation of the GitHub, GPL and AGPL licenses is a fraud on the public. Neo4J should be estopped from preventing users and third parties for using and supporting Neo4j software and the claims against defendants should be barred.

14. Truth And Information Provided To Those Who Had Reason To Know

Mr. Suhy's statements were truthful and were his opinions based on the statements made by plaintiffs and the implications if they were properly remedied by law enforcement and investors. The statement were made to people who had reason to know the information and Suhy had no information his statements were false when made. Neo4J USA has told the US government they could not use the open source version when they know that position is false. Lying to the US government on such a material issue is a fraud and a crime. Neo4j USA told Suhy to change a transaction from a support deal to a license deal. It was Suhy's understanding this was to improperly over state revenues in financials for potential investors. A license fee is generally booked as earned when made while support fees are earned over time. This would be a fraud, claiming support fees as license fees, on investors leading to potential criminal actions and shareholder suits if the authorities or investors found out and did something about it.

Prayer for Relief

Wherefore Defendants request:

1. The complaint be dismissed with prejudice;

2. That the trademark based claims be found exceptional as there is no standing and the alleged infringments are obviously nominative fair use and comparative advertising, allowing Defendants to recover attorneys fees under 15 U.S.C. §1117 (a);
3. That Defendants recover costs and attorneys fees as permitted by law;
4. And for such other relief as the Court deems just.

Dated: October 19, 2020

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DEMAND FOR JURY TRIAL

Defendants PureThink LLC, iGOV Inc. and John Mark Suhy hereby demand a trial by jury.

Dated: October 19, 2020

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

NEO4J, INC., et al.,
Plaintiffs,
v.
PURETHINK, LLC, et al.,
Defendants.

Case No. 5:18-cv-07182-EJD

ORDER GRANTING MOTION TO STRIKE

Re: Dkt. No. 93

Plaintiffs and Counter-Defendants Neo4j, Inc. ("Neo4j USA") and Neo4j Sweden AB ("Neo4j Sweden") (collectively, "Plaintiffs") bring this action for trademark infringement, among other things, against Defendants and Counter-Claimants PureThink LLC, John Mark Suhy, and iGov, Inc. (collectively, "Defendants"). Before the Court is Plaintiffs' motion to strike the Seventh Affirmative Defense for Cancellation of Trademark Procured by Fraud and Ninth Affirmative Defense for Naked License Abandonment of Trademark asserted in Defendants' Answer to the Third Amended Complaint (Dkt. No. 91) pursuant to Fed. R. Civ. P. 12(f). Dkt. No. 93 ("Motion to Strike").

The Court took the matter under submission for decision without oral argument pursuant to Civil Local Rule 7-1(b). For the reasons below, Plaintiffs' motion is **GRANTED**.

I. Background

On May 21, 2020, the Court granted Plaintiffs' Motion for Judgment on the Pleadings, dismissing with prejudice Defendants' affirmative defense and counterclaim for "cancellation of trademark procured by fraud," and dismissing without prejudice Defendants' counterclaim and affirmative defense based on abandonment of trademark by naked licensing. Dkt. No. 70 ("First

Dismissal Order"). Defendants filed a Second Amended Counterclaim and First Amended Answer, realleging the naked licensing defense and counterclaim. Plaintiffs brought another motion to dismiss and strike, and on August 20, 2020, the Court granted it, dismissing with prejudice Defendants' tenth cause of action based on naked licensing and striking the related affirmative defense. Dkt. No. 85 ("Second Dismissal Order"). The background to the underlying dispute is more thoroughly set forth in these prior orders.

The parties recently stipulated to the filing of Plaintiffs' Third Amended Complaint, which adds factual allegations to support its claims under the Lanham Act and California's Unfair Competition Law, as well as one new claim for defamation based on events and evidence discovered after the filing of the Second Amended Complaint. *See* Dkt. No. 90 ("TAC"). In that stipulation, which the Court approved, Defendants agreed that "because the scope and theory of Plaintiffs' Lanham Act claims against Defendants are not materially expanded by Plaintiffs' proposed amendments . . . they would need to seek leave to amend their operative Counterclaim if they intend to assert additional counterclaims." Dkt. No. 88 at 2:19-22.

Defendants filed an Answer to the TAC, which in relevant part, reasserts the affirmative defenses based on cancellation of trademark and abandonment by naked licensing. Dkt. No. 91 ("Answer to TAC") at 20:11-21:2; *id.* at 21:11-229. After unsuccessfully meeting and conferring, Plaintiffs brought the present motion to strike the two affirmative defenses previously dismissed by this Court with prejudice. Plaintiffs further request that the Court issue an Order to Show Cause as to why Defendants should not be subject to sanctions under Federal Rule of Civil Procedure 11(c)(3) for ignoring the Court's orders, filing a frivolous pleading that has caused unnecessary delay, and needlessly increasing the costs of litigation for Plaintiffs.

II. Legal Standard

Federal Rule of Civil Procedure 12(f) permits a court to "strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). "The function of a Rule 12(f) motion to strike is to avoid the expenditure of time and money that will arise from litigating spurious issues by dispensing with those issues prior to

trial." *Solis v. Zenith Capital, LLC*, No. 08-cv-4854-PJH, 2009 WL 1324051, at *3 (N.D. Cal. May 8, 2009) (citing *Sidney-Vinstein v. A.H. Robins Co.*, 697 F.2d 880, 885 (9th Cir. 1983)).

"[C]ourts in this district continue to require affirmative defenses to meet the *Twombly*/*Iqbal* standard." *Goobich v. Excelligence Learning Corp.*, No. 5:19-CV-06771-EJD, 2020 WL 1503685, at *2 (N.D. Cal. Mar. 30, 2020) (collecting cases). Thus, "[w]hile a defense need not include extensive factual allegations in order to give fair notice, bare statements reciting mere legal conclusions may not be sufficient." *Perez v. Gordon & Wong Law Group, P.C.*, No. 11-CV-03323-LHK, 2012 WL 1029425, at *8 (N.D. Cal. Mar. 26, 2012) (internal quotation and citation omitted). In order to satisfy the pleading requirements of Rule 8, "a defendant's pleading of affirmative defenses must put a plaintiff on notice of the underlying factual bases of the defense." *Id.* (citing *Dion v. Fulton Friedman & Gullace LLP*, No. 11-2727 SC, 2012 WL 160221, at *2 (N.D. Cal. Jan. 17, 2012)).

III. Discussion

a. Motion to Strike

Plaintiffs argue that the affirmative defenses in the Answer to the TAC are substantially similar, if not identical, to the affirmative defenses and counterclaims that the Court previously dismissed with prejudice. They argue that Defendants are precluded from reviving their theories of cancellation and abandonment of trademark by the law of the case doctrine and the guiding principles of claim preclusion.

Defendants first argue that they were permitted to file a new answer containing the dismissed defenses in response to the TAC in order to preserve those defenses for appeal. Defendants acknowledge that under *Lacey v. Maricopa County*, a party is *not* required to re-plead claims dismissed with prejudice in order to preserve those claims for appeal. 693 F.3d 896, 928 (9th Cir. 2012). The Court sees no reason why the *Lacey* principle would not apply equally to affirmative defenses. In any event, Defendants' cancellation and abandonment counterclaims, which were substantively identical to their affirmative defenses, were also dismissed with prejudice. Thus, the theories relayed in Defendants' affirmative defenses are already preserved for appeal.

Nevertheless, Defendants argue that "there appears no case discussing what happens when the plaintiff files a new amended complaint to which the defendants must answer." Dkt. No. 95 ("Opp.") at 2:22-24. This argument ignores case law from this district answering precisely that question, which was cited in Plaintiffs' Motion to Strike and brought to Defendants' attention in an email exchange before the Motion was filed. *See* Motion to Strike at 15 (citing *Synopsys, Inc. v. Magma Design Automation, Inc.*, 2005 WL 8153035, at *3 (N.D. Cal. Oct. 19, 2005); Dkt. No. 93-1, Declaration of Jeffrey M. Ratinoff ("Ratinoff Decl."), Exs. 1-2 (email from Plaintiffs' counsel to Defendants' counsel citing the same).

Synopsis held that "an answer containing new defenses or counterclaims 'may be filed without leave only when the amended complaint changes the theory or scope of the case, and then, the breadth of the changes in the amended response must reflect the breadth of the changes in the amended complaint.'" *Synopsys, Inc.*, 2005 WL 8153035, at *3 (citation omitted); *see also Adobe Sys. Inc. v. Coffee Cup Partners, Inc.*, 2012 WL 3877783, at *5 (N.D. Cal. Sept. 6, 2012). Courts in this District have rejected a more "permissive approach" because it "would allow the pleadings to be re-opened repeatedly and without limitation, even in response to the most mundane of amendments of complaints." *Adobe*, 2012 WL 3877783, at *5. The parties in this case stipulated to the fact that the TAC did not change the theory or scope of the case. *See* Dkt. No. 88 (acknowledging that "the scope and theory of Plaintiffs' Lanham Act claims against Defendants are not materially expanded by Plaintiffs' proposed amendments"). Thus, Defendants were not permitted to file a new answer absent seeking leave of court.

Defendants next argue that they "did not simply repeat the same affirmative defenses," because the defenses were amended to include "new facts" showing that Neo4j Sweden did not assign the Neo4j trademark to Neo4j USA. The new fact alleged is based on a license agreement between Neo4j Sweden and Neo4j USA, which was produced in discovery by Neo4j Sweden in March 2020. In the Court's First Dismissal Order, dated May 21, 2020, the Court found that Defendants voluntarily conceded that the cancellation affirmative defense failed as a matter of law and that amendment of the claim or defense would be futile. First Dismissal Order at 8. Defendants contend that the license agreement had not yet been produced at the time they made this concession. Even if true that Defendants discovered new evidence subsequent to their opposition to the motion, they could have brought the new evidence to the Court's attention after they discovered it, before the First Dismissal Order was issued. Alternatively, they could have brought a timely motion for reconsideration of the Court's First Dismissal Order based on their discovery of that new evidence. They did neither. Defendants cannot simply incorporate new evidence into the previously stricken affirmative defense in order to circumvent a dismissal with prejudice. Indeed, the purpose of striking a defense without leave to amend is specifically to prevent further amendments.

Defendants further acknowledge that the allegedly new evidence was in their possession when they amended their abandonment defense and briefed another motion to strike that defense, but argue that "the full impact of the license situation was not previously [pleaded]." Opp. at 3. Defendants' failure to raise allegations and arguments based on all of the facts at their disposal is not grounds for amending a defense that was stricken with prejudice.

Thus, the facts included in the Seventh and Ninth affirmative defenses in the Answer to the TAC are not new at all. Rather, these affirmative defenses assert the same theories as the Seventh and Ninth affirmative defenses in the Answer to the SAC. *Compare* Dkt. No. 54 at 18:20-19:25 *and* Dkt. No. 91 at 20:11-22:9 *and* Dkt. No. 71 at 19:7-23:17. Defendants spend the majority of their Opposition brief reasserting arguments pertaining to cancellation and abandonment that this Court has already considered and dismissed twice. *See* Opp. at 4-9. Under the law of the case doctrine, a party may neither "revisit theories that it raises but abandons," nor "offer up successively different legal or factual theories that could have been presented in a prior request for review." *Sec. Investor Prot. Corp. v. Vigman*, 74 F.3d 932, 937 (9th Cir.1996) (quotations and citations omitted). Defendants have thoroughly briefed their cancellation and abandonment theories on multiple motions over the last year, and this Court has unequivocally found those theories insufficient as a matter of law.

The Seventh and Ninth affirmative defenses in Defendants' Answer to the TAC are therefore **STRICKEN**. For the avoidance of all doubt, Defendants are not permitted to reassert any affirmative defense or counterclaim in this action based on the cancellation or abandonment theories asserted in the stricken defenses.

b. Order to Show Cause

Plaintiffs request additional relief in the form of an order to show cause why sanctions should not be levied against Defendants pursuant to Federal Rule of Civil Procedure 11 or the Court's inherent powers. Plaintiffs argue that sanctions are warranted because Defendants' improper assertion of the two affirmative defenses forced Plaintiffs to file an unnecessary motion, caused undue delay, and increased litigation costs. Specifically, Plaintiffs request that Defendants be ordered to pay the attorneys' fees incurred by Plaintiffs in filing the Motion to Strike.

Rule 11 "authorizes a court to impose a sanction on any attorney, law firm, or party that brings a claim for an improper purpose or without support in law or evidence." *Sneller v. City of Bainbridge Island*, 606 F.3d 636, 638-39 (9th Cir. 2010). Additionally, "[f]ederal courts possess certain inherent powers, not conferred by rule or statute, to manage their own affairs so as to achieve the orderly and expeditious disposition of cases. That authority includes the ability to fashion an appropriate sanction for conduct which abuses the judicial process." *Goodyear Tire & Rubber Co. v. Haeger*, 137 S. Ct. 1178, 1186 (2017) (quotations and citations omitted). The Ninth Circuit has held that a specific finding of "bad faith" is required before a district court imposes sanctions under its inherent authority. *See, e.g.*, *Christian v. Mattel, Inc.*, 286 F.3d 1118, 1131 (9th Cir. 2002); *Fink v. Gomez*, 239 F.3d 989, 992 (9th Cir. 2001).

As discussed above, there was no basis in law for Defendants' reassertion of the two affirmative defenses that the Court previously dismissed with prejudice. The Court finds it particularly notable that Plaintiffs attempted to meet and confer with Defendants on this topic, providing an opportunity for Defendants to remove the improperly asserted defenses without motion practice, but Defendants did not meaningfully engage. *See* Ratinoff Decl., Exs. 1-2. In email exchanges with Defendants, Plaintiffs communicated substantially the same arguments they later presented in their Motion to Strike and cited persuasive case law in response to Defendants' blanket assertion that they had the right to assert affirmative defenses in response to the TAC. *Id.* Defendants still did not engage, forcing Plaintiffs to file the present Motion to Strike. In their Opposition, Defendants failed to respond to Plaintiffs' arguments regarding claim preclusion or law of the case, but instead reasserted the cancellation and abandonment arguments that this Court has already considered and rejected.

Although Defendants' failure to respond to the gravamen of the motion suggests that they had no good faith grounds for reasserting the stricken defenses, the Court is not prepared to specifically find that Defendants acted in bad faith. Thus, the Court will not issue an order to show cause at this time. Moving forward, the Court expects that Defendants will only advance claims and defenses that are supported by law and evidence and will generally adhere to the proper standard of practice in Federal Court.

IV. Conclusion

For the reasons stated, Plaintiffs' Motion to Strike is hereby **GRANTED**. The Seventh and Ninth affirmative defenses are **STRICKEN** from Defendants' Answer to the TAC.

IT IS SO ORDERED.

Dated: March 3, 2021

EDWARD J. DAVILA
United States District Judge

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NEO4J, INC., a Delaware corporation, and NEO4J SWEDEN AB, a Swedish corporation,
Plaintiffs,
v.

PURETHINK LLC, a Delaware limited liability company, IGOV INC., a Virginia corporation, and JOHN MARK SUHY, an individual,
Defendants.

AND RELATED COUNTERCLAIMS

NEO4J, INC., a Delaware corporation, and NEO4J SWEDEN AB, a Swedish corporation,
Plaintiffs,
v.
GRAPH FOUNDATION, INC., an Ohio corporation, GRAPHGRID, INC., an Ohio corporation, and ATOMRAIN INC., a Nevada corporation,
Defendants.

CASE NO. 5:18-CV-7182 EJD
CASE NO. 5:19-CV-06226-EJD

DEFENDANTS' CONSOLIDATED, COMBINED OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT / NOTICE OF MOTION AND CROSS MOTION MOTION FOR SUMMARY JUDGMENT; MEMORANDUM OR POINTS AND AUTHORITIES IN SUPPORT

Date: March 25, 2021
Time: 9:00 a.m.
Dept. Courtroom 4, 5th floor
Judge: Hon. Edward J. Davila

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I. Introduction

This is defendants combined opposition to Plaintiff's Neo4J Inc.'s ("USA") motion for partial summary judgment and summary judgment, and cross motion for summary judgment on Plaintiff Neo4J Inc.'s First Causes of Action for Trademark Infringement, 15 U.S.C. 1114 and False Advertising and UCL claims in both cases. While Plaintiff Neo4J Sweden AB ("Sweden") is listed as a moving party, they are not a party to the 4 causes of action in Phase 1 and cannot bring the motion.

II. Defendants' Notice of Cross Motion and Cross Motion

Notice is hereby given that on March 25, 2021 at 9:00 a.m. before the Honorable Edward J. Davila, in Courtroom 4, 5th Floor, 280 South First Street, San Jose, CA 95113, defendants will move for Summary Judgment under Federal Rule of Civil Procedure 56 against Neo4J, Inc.'s First Cause of Action for Trademark Infringement and the Second, Third, and Fourth Causes of Action for False Advertising and related State UCL claims in each case (Case No. 5:18-cv-07182-EDJ and Case No. 5:19-CV-06226-EJD).

This motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities, Defendant's responses to Neo4J Inc.'s Separate Statement of Undisputed Facts attached as **Exhibit A**, Defendants' Separate Statement of Undisputed Facts attached as **Exhibit B**, the Declarations of Adron G. Beene, John Mark Suhy, John D. Pernick, and all pleadings records and files in the two related actions and such other evidence and argument as may be presented at the hearing on the motions.

III. Background Facts Germane to Phase 1.

Neo4j Sweden AB (FKA Network Engine for Objects in Lund AB) ("Sweden") was involved in developing a graph database called Neo4j. Sweden then released the software for free under the Free Software Foundation's open source GPL (Neo4j community) and AGPL (Neo4j Enterprise) licenses to the public. Because Neo4j was free and open source, its adoption and use grew dramatically attracting 3rd parties who wanted to work with open source. Because it was open source it also attracted joint authors called contributors who helped further add to the software. It also led to over 2000 forks/derivatives of the Neo4j software.

As Neo4j's adoption grew, Sweden decided to monetize its efforts. However, instead of offering a support model by the founders of the Neo4J software, Sweden decided to license the software as a proprietary closed version which is a violation of the GPL and AGPL licenses.

Sweden set up Neo Technology, Inc. which changed its name to Neo4J, Inc. and licensed its software and trademarks on a non-exclusive basis to USA. (D Fact[1] 126) Although not the owner of the Neo4J trademark, USA improperly filed and obtained a registration for the Neo4J trademark.

Historically, the difference between the Neo4j Enterprise AGPL open source licensed distribution and the Neo4j Enterprise Commercially licensed distribution, was via legal terms. There were not any physical differences in the software. The commercial license put restrictions on the number of computer cpu cores and number of server instances that could be used. The Neo4j Enterprise open source license had no such legal restrictions.

Neo4j Enterprise open source software under the AGPL license through version 3.4 are still in use, and available under the AGPL license terms to this day. Neo4j Enterprise versions 3.4 are also available under the AGPL License with the commons clause restriction aimed at preventing users from selling Neo4j. The services restriction is not about providing professional services but using the software as a service known as SaaS. Sweden then abandoned the open source community as Neo4j Enterprise source code was removed from the public GitHub repositories starting with version 3.5.0.

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[1] "D Fact" refers to defendants additional undisputed facts referenced in Defendants' Separate Statement of Undisputed Facts attached as **Exhibit B**

A. PureThink

USA signed PureThink as a reseller under a Solution Partner Agreement ("SPA"). PureThink had quick initial success selling Neo4j to the US government leading to PureThink being a trusted partner to USA in the US government space.

PureThink and USA then entered into an exclusivity agreement and PureThink designed and developed a government package that would streamline government procurements via sole source procurements and address requirements specific to the US government which were not provided with the standard Neo4j Enterprise commercial packages. The new offering was called Neo4j Government Edition (AKA Neo4j Enterprise Government Edition)

In total - PureThink sold commercial packages to NSA, FBI, Sandia Laboratories, IRS, and almost DHS. Neo4j USA offered to hire Mr. Suhy to continue to run the Government Edition under the Neo4j USA umbrella as it was becoming very valuable. Mr. Suhy declined.

B. The Falling out (IRS)

USA had been trying to get the Internal Revenue Service to purchase a Neo4j Enterprise commercial license for over a year. As the procurement deadline loomed - the IRS communicated that it was not interested in purchasing a commercial license with support because they needed a solution built and not support for something that was not built or ready for production.

Instead of losing the opportunity to work with the IRS, Suhy told USA that he wanted to try another approach to be able to work with IRS. The approach was to build the solution IRS needed during the first year, so that the follow up years could generate commercial license revenue. USA agreed, and Suhy / PureThink entered into an agreement with USA and signed a contract with IRS for consulting services to build out a solution for IRS.

As the initial contract was coming to an end, IRS was planning on pushing the solution built under the consulting contract to production. IRS had learned that Neo4j Enterprise was available for free with no restrictions on cores or server instances under the AGPL open source license. The US government has set a policy of using open source software to save taxpayer dollars. IRS asked Suhy about the Neo4J open source license.

For clarity, as USA obfuscates the issue, Sweden licenses Neo4J as open source under the GPL and APGL; USA does not. USA licenses Neo4j in object code on a commercial basis based on its license with Sweden. Defendants in this case are only involved in Sweden's open source version of Neo4J.

USA's sales team instructed Suhy to lie and tell IRS that they could not use the open source licensed distribution in production. On phone calls they indicated that PureThink and USA would not make any revenue from licensing if IRS used the open source license. Suhy refused to lie to the IRS.

USA then directly contacted the IRS and told them they could not use Neo4j Enterprise in production under the open source license. Suhy refuted that statement. USA's position was false and inconsistent with the AGPL. And USA knows that the position is false and that the Neo4j Enterprise open sourced licensed version was preferred and did not have limitations on cluster instances or cores, that the commercial licensed version had.

USA retaliated against PureThink and Suhy in a campaign that included interference with PureThink clients and targeting Suhy personally. USA then terminated PureThink's partner agreement and exclusivity agreement based on claims that were allowed by the IRS PT/USA agreement.

USA told the Government that PureThink could not provide any services on the open source Neo4J database as the SPA had a three year bar after termination. As USA was terminating PureThink, Suhy set up a new company called iGov Inc to focus on offering only open source solutions to the government.

iGov set up as a new company to build and sell, with the plan to support open source software including Sweden's Neo4J open source software and eventually supported the government use of the open source version of Neo4J. iGov has explained on its website and blog why people should use the free open source version of Neo4J. USA wants to stop that, even though they know its true, so they can sell licenses for basically the same software.

Suhy and GFI then worked to ensure a version of open source software survived for all the users to have access to a proper copy of Neo4J in open source.

As more people learned that Neo4j Enterprise was open source, Sweden, which owns Neo4j, tried to add commercial restrictions to the public downloads of Neo4j enterprise on USA's websites and implemented measures to make it harder for users to build the software themselves.

When the measures to deter users failed, Neo4j Sweden then changed its AGPL license to add a commons clause preventing resale of the open source software even though the copyright holder says the AGPL cannot be altered and licensees can remove the improper restrictions. And this is after all the users and joint authors relied on the AGPL agreement as third-party beneficiaries of the express terms of the AGPL.

Neo4j Sweden released new versions of Neo4j Enterprise with the modified AGPL license to attract new users, many of whom adopted it because it was open source. Finally, when that measure did not stop the enterprise licensed distribution adoption, Sweden finally abandoned releasing enterprise as open source code and has attempted to shut down all use.

By this lawsuit, USA seeks to stop the defendants from doing what they are allowed to do. They are allowed to support Neo4J open source software. They are allowed to make derivatives of Neo4J software licensed as open source software. They are allowed to use all content, which included documentation, Sweden puts on the GitHub repository and fork the Neo4J software. They are allowed to fairly use the Neo4J trademark owned by Sweden to identify to people the software they support and GFI's open source Neo4J fork called ONgDB. They are allowed to fairly use the Neo4J trademark for comparative advertisements to provide consumers the right to fairly decide whether it's worth it to pay for USA's "commercial" version or use a free version.

This motion is part of Phase 1 which is limited to Trademark issues and certain trademark defenses (Dkt. No. 68 pg. 3.)

Under the agreement to limit the issues in Phase 1, the Unclean Hand defense was reserved to Phase 2. (Dkt. No. 82 ¶3) The Unclean Hands defense is a significant defense against the Trademark and Lanham Act and UCL claims in this action and was reserved for Phase 2 because it is intertwined with the counterclaims and other defenses. See *Fuddruckers, Inc. v. Doc's B.R. Others, Inc.,* 826 F.2d 837, 847 (9th Cir.1987). ("Unclean hands is a defense to a Lanham Act infringement suit."); *Worden v. Cal. Fig Syrup Co.,* 187 U.S. 516, 528, 23 S.Ct. 161, 47 L.Ed. 282 (1903). All defenses must be considered before any final action may be taken.

On September 28, 2020 Plaintiffs filed a Third Amended Complaint. (Dkt. No. 90). The PT defendants filed a Third Amended Answer on October 19, 2020 (Dkt. No. 91) which they are allowed to do. Defendants asserted procedural issues with the answer moving to strike the 7th affirmative defense (Cancellation of Trademark Procured by Fraud) and the 9th Affirmative (Defense for Naked License Abandonment of Trademark). (Dkt. No 93.) USA claims a party may not assert affirmative defenses to a new complaint when they are dismissed with prejudice on a prior complaint. That motion is set for hearing February 11, 2021. USA does not challenge the affirmative defenses in this motion. But the evidence shows USA does not own the Neo4J trademark and did not use the trademark before it existed. (D Facts 125, 130) As USA paid Sweden under the License Agreement, there is a strong inference the Lars Nordwall, the COO of USA, knew USA did not own the Neo4J Trademark when he applied for the trademark claiming it did. (D Facts 129, 130). He also knows USA did not use the trademark since 6/04/2006 which is before USA was formed on July 7, 2011. (D Fact 130). USA provides no evidence that Sweden controlled quality on Sweden's software the years before the software and trademark was licensed to USA. (D Fact 131). While USA has mentioned the parent controls the subsidiary concept on quality control, that is not accurate in this relationship. The subsidiary, Sweden owns the mark and the software. This is not a typical parent subsidiary downstream license or relationship. And the License Agreement from Sweden to USA has no quality control provisions. (D Fact 132)

Sweden did not control quality with users of Neo4J and allowed them to use the Neo4J trademark extensively without any quality controls.

IV. Statement Of Issues To Be Decided

1. Whether there is a material fact whether USA owns the Neo4J mark which is an element of its trademark claim.

2. Whether there is a disputed material fact whether defendants use of the Neo4J mark is **not** nominative.

3. Whether there is a disputed issue of fact that USA has no standing on claims regarding defendants' use of **Sweden**'s Neo4J trademark and software.

4. Whether there is a disputed material fact that ONgDB is not falsely advertised and its origin is not falsely designating.

5. Whether there is a disputed material fact that consumers material decision is based on **price** and not defendants representations.

6. Whether a permanent injunction may issue before all defenses and claims are considered.

7. Whether a permanent injunction may issue preventing all nominative use of the Neo4J mark.

8. Whether any injunction is proper given the public consequences.

V. Standard for Summary Judgment

Because of the intensely factual nature of trademark disputes, summary judgment is generally disfavored in the trademark arena. *Rearden LLC v. Rearden Commerce, Inc.* (9th Cir. 2012) 683 F.3d 1190, 1202. Summary judgment is proper if "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Summary judgment is to be granted cautiously, with due respect for a party's right to have its factually grounded claims and defenses tried to a jury. *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). A court must view the facts and draw inferences in the manner most favorable to the non-moving party. *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1992); *Chevron Corp. v. Pennzoil Co.*, 974 F.2d ll56, 1161 (9th Cir. 1992). The moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact for trial, but it need not disprove the other party's case. *Celotex*, 477 U.S. at 323. When the non-moving party bears the burden of proving the claim or defense, the moving party can meet its burden by pointing out that the non-moving party has failed to present any genuine issue of material fact as to an essential element of its case. See *Musick v. Burke*, 913 F.2d 1390, 1394 (9th Cir. 1990).

Once the moving party meets its burden, the burden shifts to the opposing party to set out specific material facts showing a genuine issue for trial. See *Liberty Lobby*, 477 U.S. at 248-49. A “material fact” is one which “might affect the outcome of the suit under the governing law ....” *Id.* at 248. A party cannot create a genuine issue of material fact simply by making assertions in its legal papers. *S.A. Empresa de Viacao Aerea Rio Grandense v. Walter Kidde & Co., Inc.*, 690 F.2d 1235, 1238 (9th Cir. 1982). Rather, there must be specific, admissible, evidence identifying the basis for the dispute. See id. The Court need not “comb the record” looking for other evidence; it is only required to consider evidence set forth in the moving and opposing papers and the portions of the record cited therein. Fed. R. Civ. P. 56(c)(3); *Carmen v. S.F. Unified Sch. Dist.*, 237 F.3d 1026, 1029 (9th Cir. 2001). The court must view the evidence presented on the motion in the light most favorable to the opposing party: “The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor.” [*Anderson v. Liberty Lobby, Inc.*, supra, 477

US at 255, 106 S.Ct. at 2513. At the summary judgment stage, the nonmovant's version of any disputed issue of fact is presumed correct. *Eastman Kodak Co. v. Image Technical Services, Inc.* (1992) 504 US 451, 112 S.Ct. 2072. A person's state of mind (motive, intent, knowledge, etc.) may be inferred from his or her conduct. But summary judgment is improper where conflicting inferences can be drawn from such conduct (i.e., where reasonable minds could disagree as to a person's motives, etc.). See, *Braxton-Secret v. A.H. Robins Co.* (9th Cir. 1985) 769 F2d 528, 531

VI. Standing

“The federal courts are under an independent obligation to examine their own jurisdiction, and standing is perhaps the most important of the jurisdictional doctrines.” *United States v. Hays*, 515 U.S. 737, 742 (1995).

At an irreducible constitutional minimum, a plaintiff must show three elements to establish standing. *Chapman v. Pier 1 Imps. (U.S.), Inc.*, 631 F.3d 939, 956 (9th Cir. 2011). First, the plaintiff must have suffered an “injury in fact”—an invasion of a legally protected interest which is concrete, particularized, and imminent, not conjectural or hypothetical. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992); see also *Spokeo, Inc. v. Robins,* 136 S. Ct. 1540, 1548-49 (2016), as revised (May 24, 2016). In Spokeo, the Supreme Court made clear that “concrete” is not “necessarily synonymous with ‘tangible,’ ” and indicated a “risk of real harm” could satisfy the concreteness requirement. *Id.* at 1549. Second, there must be a causal connection between the injury and the challenged conduct. Lujan, 504 U.S. at 560. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. Id. Ultimately, a plaintiff, as the party invoking federal jurisdiction, has the burden of establishing these elements. See id. at 561. “Even if a claim satisfies the three elements of standing to sue for past illegal conduct, to sustain standing for injunctive relief, a claimant must also establish a 'real and immediate threat of repeated injury.' " *Chapman*, 631 F.3d at 956 (citing *Fortyune v. Am. Multi-Cinema, Inc.*, 364 F.3d 1075, 1081 (9th Cir. 2004)).

Since USA does not own the Neo4J trademark, its lacks standing to bring an infringement claim. Much of USA's claims actually revolve around defendants' use and mention of **Sweden**'s open source software and trademark. Defendants do not use or support USA's software. Defendants' mention of USA software is for comparative advertisement which legally allowed fair use. USA cannot assert claims based on Defendants use of Sweden's software and trademark. While USA litters the pleadings and the motion with plaintiffs plural, the reference is false. Plaintiff Sweden is not the plaintiff in the First, Second, Third, Fourth, Fifth, or Sixth causes of Action. (Dkt No. 90). While USA asserts claims based on Sweden's DCMA claims, USA is not the owner of the software (D Fact 125) and therefore has no standing to assert the claim. This is also a phase 2 issue and premature to address at this point.

None of defendants' conduct with respect to the use and Sweden's software is germane to USA's claims. Use of Sweden's software is governed by AGPL license. USA is not the licensor of the AGPL software and has no standing to assert claims related to that license agreement. Sweden has declined to asserted any compulsory claims based on breach of the AGPL against defendants and has, necessarily, waived them. Similarly, USA attempts to join all the defendants as one party or groups of parties. They are not. Each defendant is independent and the claims may not be maintained in a goulash.

VII. Trade Mark Causes of Action

Summary adjudication should not be granted to USA on the trademark claims as there are at least disputed issues of fact showing USA is not the owner of the Neo4J mark and defendants use of the mark is nominative.

To prove trademark infringement, a plaintiff must show ownership of a protectable trademark and a likelihood of consumer confusion. *Fuddruckers, Inc. v. Doc's B.R. Others, Inc.*, 826 F.2d 837, 841 (9th Cir.1987). But when defendants use is nominative, the consumer confusion test does not apply. The test is whether USA can show defendants use is **not** nominative. *Toyota Motor Sales, U.S.A., Inc. v. Tabari* (9th Cir. 2010) 610 F.3d 1171, 1182–1183. While defendants asserted affirmative defenses on nomanitive use, the burden is actually on USA to show the use is not nominative.

A. USA is not the owner of the Neo4j trademark and its registration does not mean USA owns the trademark to Neo4j

USA's registration does not create ownership of the Neo4J mark. Sweden owns the Neo4j mark. (D Facts 125, 126, 127, 128) As only the owner of the mark may bring a claim for trademark infringement, USA cannot meet the first element of its Trademark Claims and its motion must be denied and summary judgment granted in defendants favor.

Although USA has a registered mark, that does not mean they are the owner of the Neo4J mark. Registration confers jurisdiction but the ownership right to a trademark is not conferred by registration. *Schwinn Bicycle Co. v. Murray Ohio Mfg. Co.* (M.D. Tenn. 1971) 339 F.Supp. 973, 979, aff'd (6th Cir. 1972) 470 F.2d 975

To prevail on its Lanham Act trademark claim, a plaintiff " 'must prove: (1) that it has a protectible ownership interest in the mark…." ; [citations omitted] *Rearden LLC v. Rearden Commerce, Inc.* (9th Cir. 2012) 683 F.3d 1190, 1202–1203

There is at least a factual dispute that USA does not have a protectible ownership interest in the Neo4J mark. (D Facts 126, 126, 127, 128, 129) Under the Lanham Act, while registration of a trademark creates a rebuttable presumption that the mark is valid, the presumption evaporates as soon as evidence of invalidity is presented. 15 U.S.C. § 1051 et seq. *Hokto Kinoko Co. v. Concord Farms, Inc.* (C.D. Cal. 2011) 810 F.Supp.2d 1013, 1022, aff'd (9th Cir. 2013) 738 F.3d 1085.

USA's presumption of ownership based on registration evaporates because of overwhelming evidence it does not own the Neo4J mark. The evidence shows Sweden owns the trademark and licensed the rights to the Neo4J trademark to USA. (D Facts 125, 126). And Sweden licensed the Neo4j mark to USA only on a non-exclusive basis. (D Fact 126). "Where the license is non-exclusive the licensee does not have standing to bring an infringement action." *Quabaug Rubber Co. v. Fabiano Shoe Co.,* 567 F.2d 154, 159–160 (1st Cir.1977). Also, USA lacks standing when provisions in the contract indicate that Sweden retains exclusive ownership of the mark. *DEP Corp. v. Interstate Cigar Co.*, 622 F.2d 621, 623 (2nd Cir.1980). *Ultrapure Systems, Inc. v. Ham-Let Group* (N.D. Cal. 1996) 921 F.Supp. 659, 665. Sweden retained exclusive ownership of the mark in the License Agreement. (D Fact 127). Sweden has in fact made trademark applications claiming ownership of the Neo4J mark throughout the world further providing evidence of Sweden's ownership of the Neo4J mark. (D Fact 128). USA has paid Sweden royalties for the license. (D Fact 129). As there is at least a triable issue of fact whether USA owns the Neo4J mark, USA cannot establish the first element of its trademark claims and the motion should be denied. Since the fact of ownership is not disputable, summary judgment should, instead, be granted in defendants favor.

The related party concept does not save USA. The related party doctrine is only for registration and only allows the "owner" of the trademark to use its subsidiaries "use' of the mark in the application. *In re Wella A.G.* (Fed. Cir. 1986) 787 F.2d 1549, 1555. "A corporate parent which owns the shares of a subsidiary does not, for that reason alone, own or have legal title to the assets of the subsidiary …" *Dole Food Co. v. Patrickson* (2003) 538 U.S. 468, 475. Sweden owns the Mark, not USA.

B. Defendants' Nominative Use is Non Infringing.

Defendants have not infringed the Neo4J mark. Defendants used the Neo4J name to identify the entities, the Sweden open source software they support and used to fork ONgDB and for comparative advertising. This use is non-infringing fair use of the Neo4J mark. "We've long held that such use of the trademark is a fair use, namely nominative fair use. And fair use is, by definition, not infringement." *Toyota Motor Sales, U.S.A., Inc. v. Tabari* (9th Cir. 2010) 610 F.3d 1171, 1175

This is not the case where defendants are using a mark close to the Neo4J mark to identify a different product. Defendants are using the Neo4J mark to identify USA, the commercial Neo4J software and Sweden's open source Neo4J software.

Defendants are not attempting to capitalize on consumer confusion or to appropriate the cachet of one product for a different one. They are identifying Neo4J software products. Defendants have a freedom of speech to use the Neo4J mark. "Such nominative use of a mark—where the only word reasonably available to describe a particular thing is pressed into service—lies outside the strictures of trademark law: Because it does not implicate the source-identification function that is the purpose of trademark, it does not constitute unfair competition; such use is fair because it does not imply sponsorship or endorsement by the trademark holder." *New Kids on the Block v. News America Pub., Inc.* (9th Cir. 1992) 971 F.2d 302, 307–308

Defendants are permitted to advertise they provide services for Neo4J software product. *Volkswagenwerk Aktiengesellschaft v. Church* (9th Cir. 1969) 411 F.2d 350, 352, supplemented (9th Cir. 1969) 413 F.2d 1126. Defendants are permitted to comparatively advertise Neo4J software products. *Network Automation, Inc. v. Advanced Systems Concepts, Inc.* (9th Cir. 2011) 638 F.3d 1137, 1153. Defendants have a right to tell consumers they can use Sweden's Neo4J open source software for free instead of paying for USA's commercial license which USA advertises on its website as having the same great features as the open source software. (Beene Dec. Ex. 8)

C. USA has not met its burden to show defendants' use is not nominative fair use.

When the use is nominative, the plaintiff bears the burden of establishing that the use of the mark was not nominative fair use. *Toyota*, at 1182–1183. A defendant seeking to assert nominative fair use as a defense need only show that it used the mark to refer to the trademarked good… The burden then reverts to the plaintiff to show a likelihood of confusion. *Toyota,* at 1183. As Defendants use of Neo4J mark is to identify Neo4J software and the entities, the use is permissible nominative fair use.

Similarly, competitors may use a rival's trademark in advertising and other channels of communication if the use is not false or misleading. The Federal Trade Commission specifically supports comparative advertising. 16 C.F.R. §14.15.

The key issue on nominative fair use is whether the use suggests sponsorship or endorsement of the trademark owner. *Toyota*, at 1179. Here there is a dispute whether any of defendants' use suggests sponsorship or endorsement of Sweden (the actual trademark owner). iGov pointedly states on its website: As iGov Inc. is not a Neo4j Inc Partner, it is not prohibited from promoting open source Neo4j options such as the OngDB fork." (*see* Defendants' Response to Fact 24). Nothing in defendants' nominative use suggests sponsorship or endorsement of either USA or Sweden. "So long as the site as a whole does not suggest sponsorship or endorsement by the trademark holder, such momentary uncertainty does not preclude a finding of nominative fair use." *Toyota* at 1179. Here all the defendants' websites, taken as a whole, do not suggest sponsorship or endorsement of the trademark holder.

No defendant uses the Neo4J name as a company name or a domain name. Use of Neo4J in metatags is nomantive. *Playboy Enterprises, Inc. v. Welles* (9th Cir. 2002) 279 F.3d 796, 803. Presumable this applies to twitter as well. A reasonable consumer would not be confused that defendants' websites are a USA site or sponsored by USA or Sweden. And the reasonable consumer in this context is a person looking to obtain a sophisticated Neo4J database. The reasonable consumer can determine if they want to pay USA for Neo4J software or obtain it for free in an open source version. As there are many versions of Neo4J in open source, which is permitted under the Github Terms of Service (Beene Dec. Ex. 9) and the AGPL license, there is a disputed issue over whether any consumer is confused over the sponsorship or endorsement of Sweden. Given the tone and tenor of defendants position with respect to USA charging money for what a person can get for free, no reasonable jury could find they sponsor defendants.

While USA contends people are confused because they sought assistance from USA, that is simply the process of an open source Neo4J user, perhaps wanting more support or the commercial product which is the natural process of the dual channel distribution model Sweden set up. Defendants object to consumer confusion evidence as Hearsay, FRE §802.

Consumers can get an open source version for free or can pay USA for support and an alleged better product. The forked free version of the software offers the reasonable consumers a competitive option. Trademarks are not swords to prevent competition; USA does not have the right to eliminate the right of free speech. Defendants are using Sweden's free version of Neo4J software to provide consumers the better option of using free software. Defendants efforts are not unfair. USA's attempts to shut defendants down is unfair. The nominative fair use doctrine is designed to prevent this type of abuse of the rights granted by the Lanham Act. *Toyota* at 1180.

VIII. Contract Liability Theory.

USA seeks to enforce an unlawful restrictive covenant barring PT, Suhy and iGov from using or supporting Sweden's open source software. USA cannot rely on the 36 month contract restrictions in §4.3.2 of the Solutions Partner Agreement ("SPA"). (The SPA is Ex. 4 to Ratinoff Dec.). The SPA terminated July 11, 2017 (Plaintiffs' Fact 7). The restrictions, invalid or not, expired July 11, 2020.

Suhy and iGov were not ever bound to the SPA under an alter ego theory. The SPA was not assignable without consent unless to a parent or subsidiary or through a merger or sale of all or substantially all assets or stock. SPA 10.4 There is a dispute whether consent was asked for or given to assign the agreement to Suhy or iGov and there is no evidence of the exceptions to consent. (D Fact 9; Suhy Dec. ¶61). And the alter ego doctrine is fundamentally misapplied by USA.

An individual can be liable for the action of a company and deemed an alter ego of a corporation if: (1) there is a unity of interest and ownership such that the separate personalities of the corporation and the individual no longer exist, and (2) an inequitable result will follow if the acts are treated as those of the corporation alone. *Automotriz Del Golfo De California S.A. de C.V. v. Resnick*, 47 Cal.2d 792, 796, 306 P.2d 1 (1957) Alter Ego liability is to hold an individual or entity liable for the actions of the company. The alter ego doctrine does not bind the individual or another entity to an agreement. Contrary to USA's suggestion, there was no finding the defendant was bound by the agreement in *Ultratech, Inc. v. Ensure NanoTech (Beijing), Inc.* (N.D. Cal. 2015) 108 F.Supp.3d 816, 826. In the pleading case, the defendant was alleged to be liable for the company's breach of contract on an alter ego theory. This does not mean or imply that unlawful restrictive contract terms may be applied to Suhy or iGov. Alter Ego liability would only apply to liability for the acts of PT-if there where any. Suhy and iGov are free to use open source software without restrictions. The facts supporting Alter Ego theory are disputed too.

There is a dispute on the unity of interest element (*see* Defendants' responses to Plaintiffs' Facts 10, 11) iGov did not use PT's computers, the website format was because that was the format Suhy was familiar with. There was no sale of assets or merger either. The fact they are at the same location operated by the same person is because Suhy is an individual who set up the two different entities and operates them. Individuals and the entities they operate are not alter egos because of that fact.

There is a dispute on the second element of whether an inequitable result is achieved if Suhy and iGov are not made signatories to the PSA. Suhy and iGov deal in Sweden’s open source version of Neo4J. As Sweden is the owner of Neo4j software and trademark, USA has no right to prevent third parties or anyone from dealing with Sweden’s software and trademark. There is nothing inequitable about Suhy and iGov supporting licensee’s use of Sweden’s open source software. If there is an issue on the AGPL, that will be addressed in Phase 2 and it is Sweden’s concern, not USA. USA cannot simply side step this issue by trying to enforce a patently unlawful contract restriction.

The §4.3.2 restriction in the SPA preventing a person or entity from using or supporting Sweden’s open source software in unlawful as it violates California Business and Professions Code § 16600. Initially, the restriction is far too long at 36 months SPA 4.3.2 There is no geographic limitations. The term also seeks to prevent PT from dealing in all versions of Sweden’s Neo4J open source software when the AGPL freely allows anyone to use the software. (D Fact 136) The purpose of USA’ restriction is to prevent any terminated partner from supporting Sweden’s open source version of Neo4J. (D Fact 137). Even the commons clause addition to the AGPL, valid or not, does not prevent professional services. (D Facts 155, 156) Thus, the SPA restriction is solely to reduce the people who can support Sweden’s free software so USA can reduce competition and sell the same software for money. The restriction is patently invalid against Suhy. And the restriction is unlawful against PT or iGov as “This restriction harms competition far more than it helps rendering the restriction invalid.” *Ixchel Pharma, LLC v. Biogen, Inc.,* (2020) 9

Cal.5th 1130, 1150. USA asserted the unlawful restriction to stop PT from getting business from the IRS. (D Fact 138) USA's use of an unlawful restriction is absolutely against public policy and supports a claim for interference with prospective economic advantage. *Edwards v. Arthur Andersen LLP*, 44 Cal.4th 937 (2008). PT, Suhy and iGov's supporting the open source software is not inequitable. USA's efforts to have and enforce an illegal covenant is unconscionable. Equity should never enforce such an agreement.

The termination of the trademark license to PT does not mean PT cannot use Sweden's trademarks or engage in nominative use of the Neo4J trademark. The SPA trademark license allowed PT to use USA's sublicensed trademark rights for selling USA's "commercial" software. PT is not using the Neo4J mark to sell USA's commercial software. (D Fact 139) PT is not violating the terminated license. PT is using the Neo4J mark which Sweden owns, to reference the companies and software products. This is not infringement, it is nominative use.

IX. Licensee Estoppel

USA's claim all three PT defendants cannot attack the ownership of the mark based on licensee estoppel. As discussed above, Suhy and iGov are nor bound by the PSA. There is no dispute that USA terminated the SPA. Licensee estoppel only applies for the duration of the license. See *Donald F. Duncan, Inc. v. Royal Tops Mfg. Co.*, 343 F.2d 655, 658 (7th Cir. 1965) ("[A]n estoppel by a licensee to deny the validity of licensor's trademark expires with the license.") While a licensee, PT could not challenge USA's trademark rights. That does not mean they cannot challenge ownership after termination particularly for conduct that is after termination of the license having nothing to do with the license. A trademark license, once terminated, is not a permanent bar to challenges to the trademark on any claim made.

Finally, the doctrine of licensee estoppel is equitable in nature and not subject to rigid application. Estoppel may not be used to enforce a contract that contravenes public policy. *Navajo Air, LLC v. Crye Precision, LLC* (S.D.N.Y. 2018) 318 F.Supp.3d 640, 650–651, as amended (Aug. 2, 2018). As discussed above, the restricions violate the law. Equity should not allow USA to evade its jurisdictional requirement of trade mark ownership by estoppel.

A. USA is estopped to claim ownership in Sweden's Neo4J's Mark.

The proper use of licensee estoppel is to estop USA from claiming it owns the Neo4J mark when it is a licensee. The recitals in the License Agreement that USA owns all the intellectual property related to Neo4J, is conclusively presumed true. California Evidence Code §622. (The License Agreement is governed by California law). USA agreed Sweden owns the intellectual property, including marks for Neo4J. (D Fact 140) Under licensee estoppel, USA may not dispute that Sweden owns the Neo4J mark and they may not claim USA is the owner of the Neo4J mark. *Pacific Supply Co-op. v. Farmers Union Central Exchange Inc.* (9th Cir. 1963) 318 F.2d 894, 908.

X. False Advertising Claims

A. False Designation Of Origin Claim Is Not Valid As ONgDB Is based on Neo4J.

> To establish a false designation of origin claim, Plaintiff must show: (1) the defendants used a false designation of origin; (2) the use occurred in interstate commerce; (3) that such false designation is likely to cause confusion, mistake or deception as to the origin, sponsorship, or approval of defendants' goods or services by another person; and (4) that plaintiff has been or is likely to be damaged. See 15 U.S.C. § 1125(a).

Hokto Kinoko Co. v. Concord Farms, Inc. (C.D. Cal. 2011) 810 F.Supp.2d 1013, 1039, aff'd (9th Cir. 2013) 738 F.3d 1085

Here there is an issue of fact on the false designation of origin element as ONgDB is a fork of Sweden's open source software licensed under the AGPL. (D Fact 149) The designation of origin is, therefore, not false. USA even admits, the open source version has the same great features as the commercial version (D Fact 145). A jury can certainly determine if the origin is properly stated.

B. There are disputed issues of fact on Elements of the False Advertising claims.

A prima facie case of false advertising under section 43(a) requires the plaintiff to establish:

> (1) A false or misleading statement of fact about a product;
> (2) Such statement either deceived, or had the capacity to deceive a substantial segment of potential consumers;
> (3) The deception is material, in that it is likely to influence the consumer's purchasing decision;
> (4) The product is in interstate commerce; and
> (5) The plaintiff has been or is likely to be injured as a result of the statement at issue.

Pizza Hut, Inc. v. Papa John's Intern., Inc. (5th Cir. 2000) 227 F.3d 489, 495 [citations omitted]

[F]ailure to establish any one" of these five elements is "fatal" to a plaintiff's claim. *Id.* And importantly, [Plaintiff] must be able to point to at least one challenged statement that satisfies all five Lanham Act requirements; as the parties agree, a Lanham Act claimant may not mix and match statements, with some satisfying one Lanham Act element and some satisfying others. *Verisign, Inc. v. XYZ.COM LLC* (4th Cir. 2017) 848 F.3d 292, 299 (Summary Judgment for defendant affirmed where statements were opinions or harmless puffery)

In order to obtain monetary damages or equitable relief in the form of an injunction, "a plaintiff must demonstrate that the commercial advertisement or promotion is either literally false, or that [if the advertisement is not literally false,] it is likely to mislead and confuse consumers." [Citations omitted] *Pizza Hut, Inc.,* at 495

> Essential to any claim under 15 U.S.C. 1125 section - 43(a) of the Lanham Act is a determination of whether the challenged statement is one of fact—actionable under section 43(a)—or one of general opinion—not actionable under section 43(a). Bald assertions of superiority or general statements of opinion cannot form the basis of Lanham Act liability. [Citations omitted] Rather the statements at issue must be a "specific and measurable claim, capable of being proved false or of being reasonably interpreted as a statement of objective fact." [Citations omitted] *Coastal Abstract Serv., Inc. v. First Am. Title Ins. Co.*, 173 F.3d 725, 731 (9th Cir.1999); see also American Council, 185 F.3d at 614 (stating that "a Lanham Act claim must be based upon a statement of fact, not of opinion"). As noted by our court in Presidio: "[A] statement of fact is one that (1) admits of being adjudged true or false in a way that (2) admits of empirical verification." *Presidio*, 784 F.2d at 679; see also *Southland Sod Farms v. Stover Seed Co.*, 108 F.3d 1134, 1145 (9th Cir.1997)(stating that in order to constitute a statement of fact, a statement must make "a specific and measurable advertisement claim of product superiority").

Pizza Hut, Inc. v. Papa John's Intern., Inc. (5th Cir. 2000) 227 F.3d 489, 495–496

C. USA cannot show empirically that ONgDB is not a "Drop In" replacement for the commercial version.

USA argues that Defendants' description of certain versions of ONgDB as "drop-in replacement" for certain versions of Neo4j EE is false advertising. Given the general nature of the statement, it an opinion. USA makes two arguments in their effort to establish falsity, one technological opinion and one contractual. Both arguments fail.

Technologically, USA argues that describing ONgDB as a drop-in replacement is false advertising because, according to USA, ONgDB was not of the same quality and did not include all of the same features as Neo4j EE. That is a misleading matter of opinion which does not satisfy the legal requirements. Defendants made no statements about ONgDB's quality. Quality has nothing to do with whether a user can share data and queries on different versions of Neo4J database. Nor did Defendants claim that ONgDB had the exact same features as Neo4j EE. They just described ONgDB as a "drop-in replacement." Brad Nussbaum explained what was meant by that description, and how its accuracy was verified, during his deposition:

> I think we provided an explanation of this. Drop-in, I think as everybody understands it in development, you know, essentially functions equivalently from one version to another. So if you took a Neo4j Enterprise version, let's say 3.5.4, the database format that it creates would work with ONgDB 3.5.4, so you can essentially write your data, and with Neo4j Enterprise, you can use that same data with ONgDB.

Nussbaum Depo., 158:7-14[2]

> Drop-in replacement refers more to compatibility of features, so we were able to take a Neo4j 3.5.4 version, create a database and just show that it worked with ONgDB at that same version. So I think that's exactly what we described, and I think that's exactly what we did.

Nussbaum Depo., 160:9-14.

In a truck analogy, different engines will drop in and replace the original engine. The drop in engine will connect to the existing chassis, transmission and other drive components. One engine can be a factory new engine, the other can be a rebuilt or even used engine found on craigslist. The truck will run with any of the drop in engines. USA is arguing that they added wifi and a special muffler to their truck so the engine is not a drop-in replacement. But adding bells and whistles, which not everyone wants, to the truck does not alter the drop in ability of an engine to run the truck. People are free to pay millions of dollars for USA's added availability if they want to. But the truck will drive with either engine. ONgDB is a drop in replacement for the functions required to operate the database. While plaintiffs may attempt to disrupt the ability, defendants have not heard any ONgDB user claim the software is not drop in.

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[2] True and correct copies of the cited pages of the deposition of Brad Nussbaum are attached as Exhibit A to the Declaration of John D. Pernick ("Pernick Decl.") filed herewith.

Significantly, USA has not presented any evidence that, technologically, ONgDB does not function as a drop-in replacement for Neo4j EE. None of the statements on which USA's false advertising claims are based either explicitly or implicitly represent that tests or studies were conducted to support the statements. Consequently, USA has the burden of presenting affirmative evidence that Defendants' description of ONgDB as a "drop-in replacement" are false. See, e.g., *Castrol, Inc., v. Quaker State Corp.*, 977 F.2d 57, 62-63 (2d Cir. 1992). And they must prove that falsity with empirical evidence. *Presidio*, at 679. USA has failed to meet that burden.

All USA provides is the declaration of Philip Rathle, Neo4j USA's Vice President of Products, who describes the various tests that are performed on USA's commercial software and claims that because of the testing and other work USA performs, he believes that ONgDB is of inferior quality and has an increased potential for instability and compatibility issues. Rathle Decl., ¶¶ 29-34. Based on that, Mr. Rathle opines that ONgDB 3.5.9 is not the "exact equivalent in both function and quality as the same version of official Neo4j(r) EE v3.5.9, and this would be true for any other version of ONgDB 3.5.x that Graph Foundation claims to be the equivalent version of Neo4j EE v3.5.x." Rathle Decl., ¶ 32

But Rathle did not actually test a version of ONgDB to determine if the database format created by a version of Neo4j EE would work with the version of ONgDB with the same version number. Indeed, Rathle did no actual testing of ONgDB at all. This lack of a test is significant. ONgDB is freely available. USA can test both engines to see if they worked. Rathle's lack of statements on testing available databases implies the tests were made and USA did not like the results so they instead rely on conjecture instead of emperical results. Defendants no longer have access to the commercial version which is why GFI no longer guarantee they test out. However, there is no evidence that ONgDB is *not* a drop in replacement. Instead of providing a demonstrable test, Rathlehe merely opines that ONgDB is not the "exact equivalent in both function and quality" as Neo4j EE. But Defendants have never distributed any advertising or other statement claiming that it was. Drop in replacement is simply not "a specific and measurable advertisement claim of product superiority" *Southland Sod Farms v. Stover Seed Co.,* 108 F.3d 1134, 1145 (9th Cir.1997). The statement is to general and not actionable.

This is in stark contrast to each of the cases cited by USA: *Sun Microsystems, Inc. v. Microsoft Corp.*, 999 F. Supp. 1301 (N.D. Cal. 1998), *EFCO Corp. v. Symons Corp.,* 219 F.3d 734 (8th Cir. 2000), and *Creative Labs, Inc. v. Cyrix Corp.*, 1997 U.S. Dist. LEXIS 14492 (N.D. Cal., May 7, 1997). In each case, the plaintiff actually tested the defendant's product and presented evidence showing that the defendant's statements about its product was false. Here, USA conducted no testing of ONgDB to determine whether it operated as a drop-in replacement of Neo4j EE. Instead, USA ask the Court to just accept their assumption that because Neo4j undergoes significant testing and the creators of ONgDB do not have complete information about Neo4j EE, ONgDB could not be a drop-in replacement. There is no basis for the Court to accept that assumption and for the Court to do so on summary judgment would be entirely improper.

Defendants do not contend Sweden's open source and free software is exactly the same as USA's costly version. Defendants say nothing about quality controls. But both database engines for the versions are derived from the same source:

Sweden's Neo4J software. So they are drop in replacements. USA even concedes the two versions have the same features when they compared the open source version to the commercial versions on their website [Community Edition is open source while Enterprise is "commercial"]. Referring to Enterprise USA stated: "The same great features as Community Edition…" (D Fact 145; Beene Dec Ex. 8) Given this admission, there is a dispute whether USA will be able to convince a jury of this.

D. There is no false advertising based on the APGL

Contractually, USA's argument is based on their interpretation of the Neo4J Sweden Software License. USA is not a party to that agreement. In order to obtain summary judgment based on the interpretation of a contract, the contractual language at issue cannot be susceptible to more than one reasonable interpretation. "Where contractual language is susceptible to more than one reasonable interpretation, summary judgment is ordinarily improper because 'differing views of the intent of the parties will raise genuine issues of material fact.'" *Pardi v. KaiserPermanente Hospital, Inc.*, 389 F.3d 840, 848 (9th Cir. 2004) (quoting *San Diego Gas & Electric Co. v. Canadian Hunter Mktg Ltd.*, 132 F. 3d 1303, 1307 (9th Cir. 1997).

Here, the contractual issue is whether Section 7 of the Neo4J Sweden Software License permits GFI, as the "licensee" to remove the Commons Clause language. Section 7 states: "If the Program as you received it, or any part of it, contains a notice stating that it is governed by this License along with a term that is a further restriction, you may remove that term." To determine what is allowed under Section 7, it is necessary to review the definitions set out in the Neo4J Sweden Software License.

First, the Neo4J Sweden Software License defines the phrase "This License" as follows: "'This License' refers to version 3 of the GNU Affero General Public License." Neo4J Sweden Software License, Section 0. Thus, crucially, "This License" is defined as the AGPLv3 license, not the Neo4j Sweden Software License. This alone supports the validity of defendants' reference to the AGPL license. In other words, in the Neo4J Sweden Software License, the term "This License" means the AGPLv3 license without the Commons Clause. Neo4j Sweden could have changed this definition when it distributed software under the Neo4J Sweden Software License, but it did not.

Second, the Neo4J Sweden Software License defines "you" as the "licensee." Neo4J Sweden Software License, Section 0 ("Each licensee is addressed as 'you'.) In the First Amended Complaint, Neo4j Sweden specifically alleges that GFI received the Neo4j EE software files at issue as a licensee under the Neo4J Sweden Software License. First Amended Complaint, ¶ 120.

Third, Section 7 of the Neo4J Sweden Software License states: "If the Program as you received it, or any part of it, contains a notice stating that it is governed by this License along with a term that is a further restriction, you may remove that term." Neo4J Sweden Software License, Section 7. Substituting the matching language for the defined terms in this provision, Section 7 of the Neo4J Sweden Software License states: "If the Program as [GFI] received it, or any part of it, contains a notice stating that it is governed by [the AGPLv3 license] along with a term that is a further restriction, [GFI] may remove that term."

The Neo4J Sweden Software License states that the software is "subject to the terms of the GNU AFFERO GENERAL PUBLIC LICENSE Version 3, with the Commons Clause . . ." Therefore, the Neo4J Sweden Software License has a notice stating that the software is governed by the AGPLv3 license plus a further restriction, i.e. the Commons Clause. Because the Neo4J software, i.e. “the Program”, contained a notice stating that it is governed by “this License” (the AGPLv3 license) along with a term that is a further restriction (the Commons Clause), then, under Section 7, GFI as the licensee, i.e. “you”, may remove that term. Removal of the Commons Clause is expressly permitted under the terms of the Neo4J Sweden Software License.

Importantly, USA does not offer an alternative interpretation of Section 7. And there is no interpretation that would not conflict with the express terms of the Neo4J Sweden Software License. They do not explain how, if “the License” is defined as the AGPLv3 license, a licensee would not be permitted to remove a further restriction such as the Commons Clause from the Neo4J Sweden Software License.

USA may argue that “This License” should be read as “the Neo4J Sweden Software License” instead of being read as it is defined. But that is not the language of the Neo4J Sweden Software License. Indeed, in its communications with Defendants, the Free Software Foundation, the copyright holder for the AGPLv3 license, confirmed the interpretation that a licensee may remove further restrictions when they are added to an AGPLv3 license. “All other non-permissive additional terms are considered "further restrictions" within the meaning of section 10. If the Program as you received it, or any part of it, contains a notice stating that it is governed by this License along with a term that is a further restriction, you may remove that term." Pernick Decl., Exh. B.

Because there is a reasonable interpretation of the Neo4J Sweden Software License that permits GFI, as the "licensee," to remove the Commons Clause term, summary judgment based on USA's offered interpretation would be improper.

Therefore, because the interpretation of Section 7, and GFI's right to remove the Commons Clause from the Neo4J Sweden Software License, cannot be decided on summary judgment, then USA cannot establish, on summary judgment, that Defendants' statements regarding ONgDB being a free and open source fork of Neo4J Enterprise were false.

USA contends the Sweden was free to control licensing conditions citing *Apple Inc. v. Psystar Corp.,* 658 F.3d 1150, 1159 (9th Cir. 2011) *Jacobsen v. Katzer*, 535 F.3d 1373, 1381 (Fed. Cir. 2008). While the statement is true, Sweden chose to control is license under the AGPL license model. And, the AGPL, by its terms, allows a licensee to remove restrictive terms. If Sweden did not want the Common Clause removed, they could have used a different license form. They chose to use the well-known AGPL license form and USA cannot complain of the impact of the terms Sweden choose.

E. The Material Purchasing Issue Is The Price

If the statement is shown to be misleading, the plaintiff must also introduce evidence of the statement's impact on consumers, referred to as materiality. *American Council of Certified Podiatric Physicians and Surgeons v. American Bd. of Podiatric Surgery, Inc.*, 185 F.3d 606, 614 (6th Cir.1999). Defendants made no false claims based on pricing. Yet USA concedes customers chose ONgDB based on pricing **alone**. Dkt. No. 98, p. 2:12-13; p. 32:6-10. They must admit this; its obvious. Information Analysis Incorporated's GSA price list has a $500,000 bid for a Neo4J term license. (Beene Dec. Exhibit 5, p.1.) Since the government has no concern over the common clause-as they do not sell the software- they can decide to pay $500,000 for a term license or get a unlimited perpetual right to use a free open source fork. There is no evidence the purchasing decisions were based on representation about the Drop in capability or the license terms. There is likewise no evidence that purchaser would have paid for a commercial Neo4J version of the software given the availability of free ONgDB or other forks of Neo4J. If purchasers decide to pay money for database software, they can then look at alternative commercial options. As there is no evidence the representations by defendants were material, they are not actionable.

F. Use of Content on the Github Site is Permitted

USA complains of use of its documentation. But any user of open source software from Sweden's Neo4J GitHub repository are allowed to use all content on the site. This is permitted under the GitHub license. (D Fact 147.; Beene Dec. Ex. 9) Sweden elected to use a free GitHub repository to distribute the open source version of Neo4J. Sweden's election to use a free repository comes with obligations to allow users to use all content on that site. The content USA complains of, such a documentation, is linked on the GitHub site and by the terms of Sweden's agreement with Github, all users have the right to use the content. As there is a dispute of fact whether defendants may use the content Sweden posted on its GitHub repository, USA has no right to complain of such use or block it.

XI. Permanent Injunction

A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest. [Citations omitted] *Winter v. Natural Resources Defense Council, Inc.* (2008) 555 U.S. 7, 20. The difference between a preliminary and permanent injunction is likelihood of success is not an issue on a permanent injunction. While USA seeks a permanent injunction, they cannot until phase 2 is completed.

USA has requested a broad permanent injunction with 25 requests including one with 8 subparts. (Dkt. No. 98-4). First, USA's request for permanent injunction is premature until all affirmative defenses and claim are considered in phase 2. They have yet to succeed on all claims. Second, the request is overbroad seeking an injunction far beyond USA's licensed rights in the Neo4J trademark and the false advertising claims. Essentially, USA wants to shut defendants down with when it does not own the trademark and there is no false advertising. An injunction is never awarded as a matter of right. *Winter*, at 24. The court should pay particular regard for the public consequences. *Winter,* at 24.

USA does not want the public or the US government to know that you can get the same software for free so they can force people to pay them for the software. They want to keep defendants from tell consumers they can use free software. Under the AGPL, licensees are allowed to make copies and make derivatives of Neo4J. They have that right under the GitHub agreement too. Under the fair use standards, people can use the Neo4J name to identify the software, they can explain that USA is selling what you can get for free. They can explain that the open source version is supported to combat USA's false statements they are not. USA can tell people the AGPL does not allow restrictions which by its terms may be removed. USA can throw over a thousand of pages at defendants, but these fundamental rights may not be stopped.

USA does not have the right on the merits to an injunction, and given the public consequences no injunction should issue. In *Winter*, the District Court issued an injunction which was affirmed by the 9th Circuit. The injunction was vacated because the consideration of the public interest was not taken into account. USA seeks an injunction to prevent defendants from telling the public there is a free resource for Neo4J software. The USA government should not waste taxpayer dollars to use software that is available for free. It is against the public benefit to remove the free version out of the consumers decision by silencing defendants with an injunction.

A. Nominative Use Injunctions are Limited.

An injunction may only cover the specific harm alleged. *Toyota*, at 1172. USA has not shown that any of defendants' use is not nominative. USA may not prevent free speech with an overbroad trademark injunction. In *Toyota*, the district court enjoined the defendant from using "any ... domain name, service mark, trademark, trade name, meta tag or other commercial indication of origin that includes the mark LEXUS." This overbroad injunction was vacated in *Toyota*. The overbroad injunction vacated in *Toyota* is only part of the demand in USA's overreaching, overboard, vague and improper demand in USA's [Proposed] Permanent Injunction against Defendants (Dkt. No. 98-4). For these reasons, the injunction should be denied.

XII. Cross Motion for Summary Judgment

A. Trademark Infringment Claims

To prevail on its Lanham Act trademark claim, a plaintiff must prove they have an ownership interest in the mark and defendant infringed. *Rearden LLC v. Rearden Commerce, Inc.* (9th Cir. 2012) 683 F.3d 1190, 1202–1203. The simple fact is USA does not own the Neo4J mark. As USA does not own the Neo4J trademark, it cannot prove the first element of its Trademark infringement claims against defendants. Alternatively, as discussed above, defendants fairly used the Neo4J mark nominatively and such use is not infringing. As USA cannot prove at least one of the two elements of its trademark infringement claim, summary judgment should be granted in defendants' favor.

B. False Advertising Claims

An element of the false advertising claims is that the deception is material, in that it is likely to influence the consumer's purchasing decision. All the hodgepodge claims USA makes are not material to a database consumers purchasing decision. USA concedes consumers decide to adopt free open source software over commercial software because of price **alone**. Dkt. No. 98, p. 2:12-13; p. 32:6-10. Consumers of sophisticated databases do not read a website and decide to save $500,000 based on what the website says. There is no evidence they do. This point is obvious. Databases are complex, require sophisticated operations to load, migrate data, create queries and analysis results. Consumers can download ONgDB for free and decide if it fits there needs. They can evaluate USA's commercial Neo4J and see if its worth the money. As that is the buying process, with price the material difference, USA has no material facts to support the required element of a material deception. Accordingly, summary judgment should be granted against USA's False Advertising and UCL claims against defendants in both cases.

Dated: January 15, 2021

_____*/s/ Adron G. Beene*_________
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PURETHINK LLC,
IGOV INC.,
and JOHN MARK SUHY

Dated: January 15, 2021

BERGESON, LLP

By: *___/s/ John D. Pernick_______________*
John D. Pernick

Attorneys for Defendant
GRAPH FOUNDATION, INC.

Filer's Attestation

I, Adron G. Beene, am the ECF user whose credentials were utilized in the electronic filing of this document. In accordance with N.D. Cal. Civil Local Rule 5-1(i)(3), I hereby attest that all signatories hereto concur in this filing.
Dated: January 15, 2021

_____/s/ Adron G. Beene_________
Adron W. Beene SB# 129040

EXHIBIT A

DEFENDANTS' RESPONSE TO NEO4J INC.'S CONSOLIDATED SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS

Defendants' object to Neo4J Inc's Separate Statement of Undisputed Material Facts as it violates this Court's Standing Order for Civil Cases dated May 3, 2019, Section V. B, as it is 20 pages long which is more than the 15-page limit and is not a short and concise statement of material facts. Furthermore, there is no attestation that: "I attest that the evidence cited herein fairly and accurately supports or disputes the facts asserted." As required under the Standing Order. And they could not so attest as, for example, many of the excerpts in Mr. Nussbaum's deposition cited are not included in Exhibit 31 to Mr. Ratinoff's 1198-page declaration.

Instead, the Separate Statement it is used to burden defendants and this Court with many immaterial facts in violation of the Standing Order and FRCP Rule 1. Defendants request Neo4J Inc.'s Separate Statement be stricken for violation of the Standing Order and the motion be denied.

Claim or Defense	**Moving Party's Undisputed Facts/Supporting Evidence**	**Opposing Parties' Response/Supporting Evidence**
Claim 1: Trademark Infringement Against the PT Defendants and Their Nominative Fair Use Defense		
1. Plaintiff Neo4j Inc. ("Neo4j USA") owns a protectable trademark	Fact 1: Neo4j USA is the owner of U.S. Trademark Registration No. 4,784,280 for the word mark "NEO4J" covering the goods and services in International Classes, 009, 035, 041, 042 and 045 (the "Neo4j® Mark"). Declaration of Jeffrey M. Ratinoff, ("Ratinoff Decl."), Exh. 1.	**DISPUTED:** Neo4j is not the owner, assignee, or exclusive licensee of the Neo4j mark, and therefore its ownership of U.S. Trademark Registration No. 4,784,280 is disputed. Declaration of Adron G. Beene ("Beene Dec."), Ex. 1 at §2.1.1., 2 and 3.
2. The PT Defendants impermissibly used the Neo4j® Mark after Neo4j USA terminated the Partner Agreement	Fact 2: On September 30, 2014, Purethink and Neo4j USA entered into the Neo4j Solution Partner Agreement ("Partner Agreement"). Ratinoff Decl., Exh. 4.	**DISPUTED**: The PT defendants use of the Neo4J trademark is nominative to identify NEO4J as a company and the Neo4J software and for comparative advertisement. Declaration of John Mark Suhy ("Suhy Dec.") ¶2,
	Fact 3: Under the Partner Agreement, PureThink was granted a non-exclusive, non-transferable limited license to, *inter alia*, use the Neo4j® Mark solely to market and resell commercial licenses to Neo4j® Enterprise Edition ("Neo4j® EE") and related support services in exchange for shared revenue for the licenses that it resold. *Id.*, Exh. 4 at § 4.1; Exh. 3 at 60:10-61:17, 67:25-69:11.	**UNDISPUTED**
	Fact 4: PureThink further agreed to the terms of the limited license under the Partner Agreement to use the Neo4j® Mark in accordance	**UNDISPUTED**

EXHIBIT A

Claim or Defense	Moving Party's Undisputed Facts/Supporting Evidence	Opposing Parties' Response/Supporting Evidence
	with Neo4j USA's "then-current trademark usage guidelines." *Id.*, Exh. 4 at § 4.1.	
	Fact 5: The Partner Agreement was subject to a 1-year term, and would automatically renew at additional 1-year periods subject to the notice and termination provision therein, thereby incorporating whatever was the operative trademark guidelines at that time. Ratinoff Decl., Exh. 4 at §7.1; Exh. 3 at 67:18-24. As a result of the renewal provision, PureThink became bound by the October 13, 2015 version of Neo4j USA's trademark guidelines as of September 30, 2016. *See* Rathle Decl., ¶ 16, Exh. 5.	**UNDISPUTED**
	Fact 6: All rights and licenses to Neo4j® Software and the Neo4j® Mark would terminate upon the expiration or termination, and upon such an event, PureThink agreed to "cease using any trademarks, service marks and other designations of Plaintiffs." Ratinoff Decl., Exh. 4 at §7.3.	**UNDISPUTED**
	Fact 7: On July 11, 2017, Neo4j terminated the Partner Agreement thereby requiring PureThink to "cease using [Neo4j's] trademarks, service marks, and other designations…and remove from PureThink's website(s) marketing materials, [Neo4j's] trademarks and tradenames, including, without limitation, Neo4j" as required by Agreement. Ratinoff Decl., Exh. 12.	**DISPUTED**: Moving Party's reference to [Neo4j] is vague and misleading as the Partner Agreement provides "will cease using any trademarks, service marks and other designations of the *other party*" emphasis added. Ratinoff Decl., Exh. 4 at §7.3. Neo4J USA is not the owner, assignee or exclusively licensee of the mark and lacks standing to assert the mark. Beene Dec., Ex. 1.
	Fact 8: PureThink continued to use the Neo4j® Mark without Neo4j USA's authorization to send customers to iGov to obtain "Government Package for Neo4j" and "Government Development Package with Neo4j Enterprise." *See* Ratinoff Decl., Exh. 14. It also promoted "Neo4j Enterprise" as genuine Neo4j® EE despite being compiled by Suhy. *See id.*, Exh. 16.	**DISPUTED:** The PureThink references are to Sweden's open source versions of Neo4J and proper nominative use of Sweden's mark. Suhy Dec. ¶3
	Fact 9: Under the Partner Agreement, PureThink agreed that all contractual restrictions would apply to any successor-in-interest, assign, and acquirer of substantially all of its assets. Ratinoff Decl., Exh. 4 at § 10.	**UNDISPUTED**
		Additional Facts
		Under the Partner Agreement, assignment of the agreement, outside of a successor in interest required

EXHIBIT A

Claim or Defense	Moving Party's Undisputed Facts/Supporting Evidence	Opposing Parties' Response/Supporting Evidence
		consent of Neo4J USA. Ratinoff Decl., Exh. 4 at §7.3. No evidence of consent to the assignment exists. Suhy Dec. ¶61.
	Fact 10: Suhy and PureThink formed iGov on or about June 23, 2017 to circumvent the restrictions in Section 4.3.1 of the Partner Agreement. Ratinoff Decl., Exhs. 10-11, 14-15, 17-19; PT Dkt. No. 22, ¶¶ 18-19; *see also* Exh. 3 at 46:12-16, PT Dkt. No. 72 at 8:22-25, 9:15-23.	**DISPUTED:** iGov was formed as a separate entity by Suhy for several reasons. Suhy Dec. ¶4., Beene Dec. Ex. 4 at 45:4-47:5. The restrictions are for purposes of non-competition and void. Suhy Dec. ¶4.
	Fact 11: Suhy is sole owner and employee of PureThink and iGov, used the same website template, and initially used the same offices and support telephone number for both entities. Ratinoff, Decl, Exh. 3 at 21:23-22:22, 23:16-18, 37:3-38:16, 39:6-40:23, 47:20-49:8, 52:9-11.	**DISPUTED** - PureThink and iGov used the same office address for a mailing address until iGov could setup a new office. iGov did not "use" the office address other than for correspondence. The support telephone number is a 3rd party number that neither PureThink or iGov owned. The website template used was a commercial template. PureThink and iGov purchased the same template because Suhy was familiar with it. iGov did not use PT's computers. Suhy Dec. ¶5.
	Fact 12: Suhy used both his iGov and PureThink email accounts to solicit customers that he had previously contacted under the Partner Agreement. Ratinoff, Decl., Exhs. 19, 25, 29, 45-46, 54.	**DISPUTED:** All new business development was done using iGov Inc emails (Exhibit 19, 46, and 54). Exhibit 25, 29 were discussions and not solicitations.) The only entity who was a customer listed in this fact was Sandia National Laboratories. They were a customer of PureThink and the communication was through PureThink. (See Ratinoff, Decl. Exhibit 45). The solicitations were for use of Sweden's open source Neo4J. Suhy Dec. ¶6.
	Fact 13: iGov took over PureThink's business relationship with the IRS. Ratinoff, Decl, Exh. 3 at 53:4-54:25; Exh. 127.	**DISPUTED**: USA interfered with PT's potential business with the IRS. iGov did not take over PT's potential business relationship with the IRS. Suhy Dec. ¶7., Exhibit 1
	Fact 14: The PureThink Defendants ("PT Defendants") claimed to be "the developer of the retired Neo4j Government Edition" in close connection with touting their prior relationship with Neo4j USA. Ratinoff Decl., Exhs. 15-19, 21, 62-64.	**DISPUTED:** Suhy and PureThink did develop the Neo4j Government Edition. the PT Defendants do not "tout" PT's prior relationship; they said it was terminated. Suhy Dec. ¶8

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	Fact 15: iGov used the Neo4j® Mark on its website without authorization to promote "Government Package for Neo4j" and "Government Development Package with Neo4j Enterprise," and related support services. *See* Ratinoff Decl., Exhs. 15-18, 21, 62-64.	**DISPUTED:** A nominative use does not require authorization. iGov references Sweden's Neo4J mark to reference Sweden's open source software called Neo4J to describe the software and uses USA's company name and products to identify them in comparative advertisement. Suhy Dec. ¶9
	Fact 16: iGov's other unauthorized uses of the Neo4j® Mark on its website included: (1) using "https://igovsol.com/**neo4j**.html" as a URL to promote "Government Development Packages for **Neo4j**"; (2) prominently displaying a "Request Procurement Document Package" link with "**mailto:neo4j@igovsol.com**" embedded that creates an email addressed thereto upon activation; (3) encouraging consumers to obtain more information by sending an email to "**neo4j@igovsol.com**;" (4) using "Government Packages for Neo4j" and "Neo4j Enterprise" to describe iGov's patchwork binaries of Neo4J® EE; and (5) touting PT Defendants' prior relationship with Neo4j USA and to be "the developer of the retired Neo4j Government Edition." Ratinoff Decl., Exhs. 15-18, 21, 62-64, 67-69.	**DISPUTED:** Objection this is not a fact; it is argument. A nomantive use does not require authorization. USA does not own the trademark. D Fact . Beene Dec Exhibit 1,2,3. (4) "Government Packages for Neo4j" and "Neo4j Enterprise" were used to describe the government packages iGov provided support for around the free and open source neo4j database. Neo4j® Mark was never used. The email address is for Sweden's open source Neo4j for inquires for that product. The email address was discontinued in the hopes USA would discontinue this litigation. "Neo4j Enterprise" is needed to distinguish between the open source "Neo4j Community" and "Neo4j Enterprise" distributions, both of which are built when compiling the Neo4j source code. iGov does not "tout" PT's prior relationship; they said it was terminated. Suhy Dec. ¶10
	Fact 17: iGov continues to offer "Neo4j enterprise open source licensed distributions" and interchangeability referring to "ONgDB Enterprise" and "Neo4j Enterprise" on its website. Ratinoff Decl., Exhs. 62-70 (highlighted in yellow).	**DISPUTED:** iGov offers support for both Neo4j Enterprise open source licensed distributions, and ONgDB Enterprise open source distributions. Neo4j Enterprise distributions below 3.5 are still in use and available to the public. iGov no longer offers distributions from it's website and only recommends ONgDB Enterprise

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		distributions. iGov links to the GraphFoundation download page. Suhy Dec. ¶11
3. The PT Defendants used the Neo4j® Mark without Neo4j USA's authorization to promote ONgDB	Fact 18: After Graph Foundation ("GFI") released ONgDB in July 2018, iGov continued to use "https://igovsol.com/neo4j.html" as a URL address to promote ONgDB until it deactivated that page sometime after July 27, 2020. Ratinoff Decl., Exhs. 62-65; Exh. 13 at RFA No. 5. While iGov replaced this url with "https://igovsol.com/graph.html, the contents of the page remained the same. *Compare id.*, Exh. 65 *and* Exh. 66.	**UNDISPUTED**
	Fact 19: iGov used the neo4j@igovsol.com email address on its "neo4j.html" page (*id.*, Exhs. 62-65) and "downloads.html" page (*id.*, Exhs. 67-69) as means for consumers to inquire about ONgDB until sometime in July 2020. Ratinoff Decl., Exh. 13 at RFA Nos. 7-11.	**DISPUTED:** iGov used neo4j@igovsol.com and neo4j.html as a way to inquire about iGov support services and support for the neo4j open source database. 'neo4j' is Sweden's Github repository name for the official Sweden open source Neo4j repository. It was not just a means for consumers to inquire about ONgDB but of the services and support around open source neo4j and ongdb open source license support. Suhy Dec. ¶12
	Fact 20: GFI used a "Download Neo4j Enterprise" hyperlink on its "downloads" page to redirect consumers to download links for ONgDB until July 27, 2020. Ratinoff Decl., Exhs. 66-68 (highlighted in red), Exh. 13 at RFA Nos. 10, 14.	**UNDISPUTED**
	Fact 21: iGov continues to promote "ONgDB Enterprise," "Neo4j Enterprise" and "Neo4j Enterprise Edition" versions 3.5.x as open source Neo4j® EE that can be used for free under the AGPL. Ratinoff Decl., Exhs. 62-74.	**DISPUTED:** Neo4j Enterprise and ONgDB Enterprise are open source and free to use under the open source AGPL license. After versions 3.4.x – the term Neo4j Enterprise Edition was not applicable as Neo4j Inc stopped contributing to the enterprise code. iGov does not promote Neo4j Enterprise Edition 3.5.x as being open source. Many of the exhibits are showing the same page over and over from different snapshot dates but with

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		matching content giving the illusion that there were more pages than existed. ONgDB 3.5.5 is a drop in replacement for Neo4j 3.5.5 (Community and Enterprise commercial.) After reading this - iGov realizes that the next line needs to have the grammar cleaned up to say: "**The** AGPLv3 Open Source License, **has** no limitations on causal cluster instances, cores or production usage" Suhy Dec. ¶13
	Fact 22: iGov operated www.graphstack.io to further promote ONgDB using the Neo4j® Mark, and that "iGov Inc offers production support packages for Neo4j / ONgDB Enterprise open source distributions for US government agencies." Ratinoff Decl., Exh. 75.	**DISPUTED:** GraphStack is a graph development stack aimed at building out large scale AI and graph solutions. GraphStack is to promote iGov software packages and solution development, not specifically Neo4j. Both Neo4j and ONgDB will drop into GraphStack – so using the names is important to explain that GraphStack will work with both. Suhy Dec. ¶14
	Fact 23: The GraphStack website used hyperlinks to redirect consumers to Neo4j USA's official release notes and "What's New" page in conjunction with encouraging consumers to download ONgDB as an alleged "[d]rop in replacement for Neo4j Core and Enterprise 3.5.3." Ratinoff Decl., Exh. 75; Exh. 13 [RFA Nos. 42-43].	**UNDISPUTED**
4. The PT Defendants knew their uses of the Neo4j® Mark were unauthorized and violated Neo4j USA's Trademark Guidelines	Fact 24: The trademark guidelines the PT Defendants had agreed to be bound by in the Partner Agreement prohibited the use of the Neo4j® Mark: (1) with anything other than "the software in the exact binary form that it is distributed by [Neo4j], without modification of any kind;" and (2) "in a web page title, titletag, metatag, or other manner with the intent or the likely effect of influencing search engine rankings or results listings." Ratinoff Decl., Exh. 4 at § 4.1; Rathle Decl., ¶¶ 15-16, Exh. 5; *see also* Exh. 4 at §7.1; Exh. 3 at 67:18-24	**DISPUTED:** The Partner Agreement terminated on July 11, 2017 (Fact 7 above). Suhy and iGov are not parties to the Partner agreement. The PT defendants have not used USA's disputed trademark to market, sell or service and USA products. All marketing and services are limited to Sweden's open source Neo4J software and derivatives of such software as permitted under the GitHub Terms of Service and the AGPL. Suhy Dec. ¶15

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5. The PT Defendants did not use the Neo4j® Mark to describe Plaintiffs' products	Fact 25: The PT Defendants used the Neo4j® Mark to promote their "Government Package for Neo4j" and "Government Development Package with Neo4j Enterprise" rather than comparatively describe Plaintiffs' Neo4j® EE. Ratinoff Decl., Exhs. 14-18, 21, 62-65.	**DISPUTED:** PureThink and iGov did not use the USA's disputed Neo4j mark for promotion of USA's products. All promotions have been to marketing and service Sweden's open source Neo4J software and derivatives of such software as permitted under the GitHub Terms of Service and the AGPL. References to USA and its products are for comparative advertisement. Suhy Dec. ¶16 All exhibits referenced except for exhibit 14 (15, 16, 17, 18, 21, 62-65) are all for iGov Inc sites are iGov sites, but have been incorrectly referenced in this fact as being PT Defendants. Suhy Dec. ¶17
	Fact 26: The PT Defendants often used the Neo4® Mark to promote ONgDB instead of to comparatively describe Plaintiffs' Neo4j® EE. Ratinoff Decl., Exhs. 62-74; Exh. 13 [RFA Nos. 4-11, 14].	**DISPUTED:** PureThink and iGov did not use the USA's disputed Neo4j mark for promotion of USA's products. All promotions have been to marketing and service Sweden's open source Neo4J software and derivatives of such software as permitted under the GitHub Terms of Service and the AGPL. References to USA and its products are for comparative advertisement. Suhy Dec. ¶16
	Fact 27: The PT Defendants used the Neo4j® Mark on iGov's website as (1) an URL address for a page promoting their "Neo4j Enterprise" packages and ONgDB; (2) an email address for customers to obtain more information about their "Neo4j Enterprise" packages while referring to ONgDB; and (3) a hyperlink to redirect consumers to download ONgDB. Ratinoff Decl., Exhs. 14-18, 62-65, 67-69; Exh. 13 [RFA Nos. 4-11, 14, 33-34].	**DISPUTED:** PureThink and iGov did not use the USA's disputed Neo4j mark for promotion of USA's products. All promotions have been to marketing and service Sweden's open source Neo4J software and derivatives of such software as permitted under the GitHub Terms of Service and the AGPL. References to USA and its products are for comparative advertisement. Suhy Dec. 16
6. Defendant's product was readily identifiable without use of plaintiffs' trademark	Fact 28: Rather than naming their version of Neo4j® EE something else without using the Neo4j® Mark, the PT Defendants used the mark to name and promote their "Neo4j Enterprise" packages and while referring to ONgDB, as well as using the Neo4j® Mark to offer related	**DISPUTED:** PureThink and iGov did not use the USA's disputed Neo4j mark for promotion of USA's products. All promotions have been to marketing and service Sweden's open source Neo4J

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	support services for ONgDB. Ratinoff Decl., Exhs. 14-18, 62-65, 67-69; Exh. 13 [RFA Nos. 4-11, 14, 33-34].	software and derivatives of such software as permitted under the GitHub Terms of Service and the AGPL. References to USA and its products are for comparative advertisement. Suhy Dec. ¶16 When Sweden's Neo4j open source code is compiled from the official Sweden Neo4j Github repository - it creates 2 distributions called "Neo4j Community" and "Neo4j Enterprise". Enterprise is a standard term for software used for business as in an "Enterprise" is a generic identifier. Suhy Dec. ¶18
	Fact 29: Rather than independently promoting ONgDB as a graph database software without use of Neo4j® Mark, the PT Defendants used the mark to promote ONgDB and related support services for ONgDB. Ratinoff Decl., Exhs. 62-65, 67-74; Exh. 13 [RFA Nos. 4-11, 14].	**DISPUTED:** Objection this is not a fact its argument. ONgDB is a fork of Sweden's open source Neo4j and nominatively identified as such. Suhy Dec. ¶19
7. The PT Defendants prominently used the Neo4j® Mark beyond what was reasonably necessary	Fact 30: The PT Defendants extensively used the Neo4j® Mark (without proper trademark usage and notices) on their website, and in direct solicitations beyond describing "Neo4j Enterprise" packages and ONgDB as a forks of Neo4j® EE. Ratinoff Decl., Exhs. 14-18, 24-26, 42-47, 62-65, 67-74; Exh. 13 [RFA Nos. 4-11, 14, 33-34].	**DISPUTED:** PureThink and iGov did not use the USA's disputed Neo4j mark for promotion of USA's products. All promotions have been to marketing and service Sweden's open source Neo4J software and derivatives of such software as permitted under the GitHub Terms of Service and the AGPL. References to USA and its products are for comparative advertisement. Suhy Dec. ¶16
8. The PT Defendant's use of the Neo4j® Mark suggested sponsorship or endorsement by Neo4j USA	Fact 31: The PT Defendants claimed that (a) "By default, all Government Packages for Neo4j now comes with Neo4j Enterprise included under it's open source license!" [Ratinoff Decl., Exhs 14-15]; (b) "The packages on this page are compiled by iGov Inc using the official Neo4j source code repositories located at https://github.com/neo4j" [*id*., Exh. 16]; (c) "US Federal Government Packages for Neo4j Solutions" [*id*., Exh. 17]; (d) "Government Development Packages for Neo4j" [*id*.]; (5) "iGov Inc is now the only US Federal contractor providing Neo4j Enterprise binaries packaged with it's [sic] free Open Source license!" [*id*., Exh. 18]; (e) "Get the open source licensed Neo4j Enterprise distributions we package for our government customers" [*id*., Exh. 21]; (f) "We compile and packaged the open source licenced [sic] distributions from the same official Neo4j	**DISPUTED** Objection this fact does not suggest sponsorship or endorsement by Neo4J USA. USA claim is misleading. PT and iGov websites, taken as a whole do not suggest sponsorship or endorsement by USA. Suhy does not have a website. PureThink and iGov did not use the USA's disputed Neo4j mark for promotion of USA's products. Suhy Dec. ¶20 All promotions have been to marketing and service Sweden's open source Neo4J software and derivatives of such software as permitted under the

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	Github Repositories as Neo4j Inc uses for their paid commercial licensed builds" [*id.*]; (g) "I manage the Neo4j Enterprise open source distributions used by the Treasury, DHS, etc. If you don't know about Neo4j - here is their website: http://neo4j.com" [*id.*, Exh. 26]. *See also id.*, Exhs. 19-20, 62-66.	GitHub Terms of Service and the AGPL. References to USA and its products are for comparative advertisement. Suhy Dec. ¶16 The statements provided on the websites that PT "has ceased their partnership with Neo Technology" Ratinoff Decl. Exh. 14, that PT "has ceased their partnership with Neo4j Inc." *Id.* Exhs. 15, 17, 19, certainly reflects a total lack of sponsorship or endorsement. Suhy Dec. ¶21
	Fact 32: The PT Defendants also claimed on iGov's website that (a) "We only focus on only supporting 100% free and open source ONgDB Enterprise & Neo4j Enterprise open source licensed distributions." [Ratinoff Decl., Exh. 66]; (b) "ONgDB Enterprise is a drop In replacement for Neo4j Enterprise commercial packages downloaded from Neo4j.com" [*id.*]; (c) "The distributions we package for the federal government and community as a whole are drop in replacements for Neo4j Enterprise commercial packages you download from neo4j.com" [*id.*]; and (d) "ONgDB (AKA ONgDB Enterprise) 3.5.11 is Neo4j 3.5.11 Core + the enterprise features Neo4j Inc removed from the code base as of v3.5. All ONgDB and Neo4j Enterprise AGPL distributions can be used in production, in closed source projects, and with no limitations on # of cores or causal cluster instances." [*id.*, Exh. 74]. *See also, id.* at Exhs. 62-65, 71-73.	**DISPUTED:** Objection this fact does not suggest sponsorship or endorsement by Neo4J USA. USA claim is misleading. PT and iGov websites, taken as a whole do not suggest sponsorship or endorsement by USA. Suhy does not have a website. PureThink and iGov did not use the USA's disputed Neo4j mark for promotion of USA's products. Suhy Dec. ¶20 All promotions have been to marketing and service Sweden's open source Neo4J software and derivatives of such software as permitted under the GitHub Terms of Service and the AGPL. References to USA and its products are for comparative advertisement. Suhy Dec. ¶16 The statements provided on the websites that PT "has ceased their partnership with Neo Technology" Ratinoff Decl. Exh. 14, that PT "has ceased their partnership with Neo4j Inc." *Id.* Exhs. 15, 17, 19, certainly reflects a total lack of sponsorship or endorsement. Suhy Dec. ¶21
	Fact 33: The PT Defendants solicited customers about ONgDB stating that (a) "I can explain why the foundation was created and how we package Neo4j Enterprise (We call ONgDB) distributions that are being adopted at IRS…" [Ratinoff Decl., Exh. 24]; (b) "the Graph Foundation was setup to ensure Neo4j/ONgDB remains free and open. It is Neo4j	**DISPUTED:** Objection this fact does not suggest sponsorship or endorsement by Neo4J USA. USA claim is misleading. PT and iGov websites, taken as a whole do not suggest sponsorship or endorsement

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	Core + Enterprise feature set added back in, so it is drop in replacement for a Neo instance of the same version. (Ex: 3.5.5)" [*id.*, Exh. 44]; (c) "ONgDB (Open Native Graph Database): Neo4j Enterprise OSS distribution downloads 3.5.8 will be up next week" and "ONgDB 3.5.8 is a drop-in replacement for Neo4j Enterprise 3.5.8" [*id.*, Exh. 46]; (d) "We compile Neo4j branded distributions for agencies who added Neo4j branded distributions instead of ONgDB branded distributions to their white lists. We have all versions of the Neo4j branded distributions up to 3.5 available" [*id.*,]; and (e) "Neo4j Enterprise open source distribution licenses and basic support. Aka: ONGDB" [*id.*, Exhs. 55, 131]. *See also, id.* Exhs. 43, 47, 54.	by USA. Suhy does not have a website. PureThink and iGov did not use the USA's disputed Neo4j mark for promotion of USA's products. Suhy Dec. ¶20 All promotions have been to marketing and service Sweden's open source Neo4J software and derivatives of such software as permitted under the GitHub Terms of Service and the AGPL. References to USA and its products are for comparative advertisement. Suhy Dec. ¶16 The statements provided on the websites that PT "has ceased their partnership with Neo Technology" Ratinoff Decl. Exh. 14, that PT "has ceased their partnership with Neo4j Inc." *Id.* Exhs. 15, 17, 19, certainly reflects a total lack of sponsorship or endorsement. Suhy Dec. ¶21
	Fact 34: In its promotion of ONgDB software, iGov used hyperlinks on its website to redirect consumers to Neo4j USA's official release notes (https://neo4j.com/release-notes/neo4j-3-5-5/) and "What's New" page (https://neo4j.com/whats-new-in-neo4j/) until it removed those references sometime in July 2020. *See* Ratinoff, Exhs. 67-69 (highlighted in blue).	**DISPUTED:** Because ONgDB is a fork of Neo4j which the core code is unmodified, the release notes and whats new page are relevant and provide important information. Suhy Dec. ¶22 Objection this fact does not suggest sponsorship or endorsement by Neo4J USA. USA claim is misleading. PT and iGov websites, taken as a whole do not suggest sponsorship or endorsement by USA. Suhy does not have a website. PureThink and iGov did not use the USA's disputed Neo4j mark for promotion of USA's products. Suhy Dec. ¶20 All promotions have been to marketing and service Sweden's open source Neo4J software and derivatives of such software as permitted under the GitHub Terms of Service and the AGPL. References

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		to USA and its products are for comparative advertisement. Suhy Dec. ¶16 The statements provided on the websites that PT "has ceased their partnership with Neo Technology" Ratinoff Decl. Exh. 14, that PT "has ceased their partnership with Neo4j Inc." *Id.* Exhs. 15, 17, 19, certainly reflects a total lack of sponsorship or endorsement. Suhy Dec. ¶21 The Sweden GitHub repository for open source Neo4J provides content including USA's documentation. Under the GitHub Terms of Services, all users may use all content. Referring licensees to such documentation is permissive. Nevertheless, when Neo4j Inc complained - the links were removed. Suhy Dec. ¶23
8. The PT Defendant's use of the Neo4j® Mark caused actual consumer confusion	Fact 35: The PT Defendant's use of the Neo4j® Mark to promote ONgDB resulted in customers choosing ONgDB and encountering compatibility issues. Ratinoff Decl., Exh. 115-116; Exh 31 at 230:12-233:10; Exh. 3 at 207:12-209:3.	**DISPUTED:** Objection, the evidence is hearsay and there is no showing the use of the Name Neo4J caused consumer confusion. Consumers choose ONgDB because of price. This fact is conceded by Plaintiffs. Dkt. 98, p. 2:12-13; p. 32:6-10 PureThink and iGov did not use the USA's disputed Neo4j mark for promotion of USA's products. Suhy Dec. ¶24 All promotions have been to marketing and service Sweden's open source Neo4J software and derivatives of such software as permitted under the GitHub Terms of Service and the AGPL. References to USA and its products are for comparative advertisement. Suhy Dec. ¶16 Exhibit 115: Shows an anonymous user named "stephanie" asking about trying to use ONgDB with

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		Neo4j Desktop, it does not mention a specific version or anything more. There is no way of knowing if there was a "compatibility" issue, in fact the issue could have been caused because of an incorrect version number and could have occurred with Neo4j Enterprise distributions packaged by Neo4j. Furthermore, USA responds and in no way explains or tells the user that ONgDB is not even provided by them. The omissions in Neo4j's response would actually cause confusion because they are not saying anything about ONgDB being a 3rd party product. The confusion is caused by USA and Sweden's dual channel marketing of commercial and open source software through two different companies with the same name. Exhibit 116 is simply forwarding this post to Brad Nussbaum. Suhy Dec. ¶25
	Fact 36: Defendants' interchangeable use of "Neo4j Enterprise" and "ONgDB" in marketing ONgDB misleads consumers into mistakenly believing that ONgDB and Neo4j® EE were one and the same. *See, e.g.,* Exhs. 35, 40, 42-44, 46, 53, 55, 76, 100, 130-131, 134-135.	**DISPUTED:** Defendants only used "Neo4j Enterprise" and "ONgDB" in descriptive manners. Furthermore defendants focused on educating consumers, not misleading them. Specific versions of Neo4j and ONgDB had no difference in source code before enterprise source was closed. Suhy Dec. ¶25 Even for those distributions, defendants made all the facts clear and never misled consumers. The inference drawn is not supported by the evidence: **Exhibit 35:** shows no confusion or misleading of customers. The user is asking a question on the ongdb github issue list and the content does not lead to any confusion. **Exhibit 40:** Exhibit 40 clearly shows that there is no confusion as the user was asking about compiling the binaries himself. There is nothing in the exhibit supporting that this user was mislead.

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		"where can I find the source of the binaries you provide? could you provide instructions on how to build your binaries myself?" **Exhibit 42:** Exhibit 42 shows actually shows that iGov is helping Perspecta Engineering Inc understand the differences between Neo4j and ONgDB. Originally Perspecta had reached out to iGov and iGov responded explaining the facts and differences. The statements in exhibits are true and not misleading. Suhy Dec. ¶27
	Fact 37: The PT Defendant's use of the Neo4j® Mark to promote ONgDB as free open source and falsely it with commercially licensed Neo4j® EE created actual customer confusion. Ratinoff Decl., Exh. 48-49, 117-120, 130-131, 134-135.	**DISPUTED:** Defendants only used "Neo4j Enterprise" and "ONgDB" in descriptive manners. Furthermore defendants focused on educating consumers, not misleading them. Specific versions of Neo4j and ONgDB had no difference in source code before enterprise source was closed. Suhy Dec. ¶25 Even for those distributions, defendants made all the facts clear and never misled consumers. The inference drawn is not supported by the statement: **Exhibit 35:** shows no confusion or misleading of customers. The user is asking a question on the ongdb github issue list and the content does not lead to any confusion. **Exhibit 40:** Exhibit 40 clearly shows that there is no confusion as the user was asking about compiling the binaries himself. There is nothing in the exhibit supporting that this user was mislead. "where can I find the source of the binaries you provide? could you provide instructions on how to build your binaries myself?" **Exhibit 42:** Exhibit 42 shows actually shows that iGov is helping Perspecta Engineering Inc

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		understand the differences between Neo4j and ONgDB. Originally Perspecta had reached out to iGov and iGov responded explaining the facts and differences. The facts in exhibit are true and not misleading. Suhy Dec. ¶27
	Fact 38: Consumers who have downloaded ONgDB rather than official Neo4j® EE have experienced technical issues with ONgDB. Ratinoff Decl., Exh. 121-124, 133. In one instance, Suhy sent a user to Neo4j USA's operations manual for assistance. *Id.,* Exh. 125.	DISPUTED: Mr. Suhy believes that the technical issues could be caused by Neo4j Core code that it does not modify or simply because an end-user did not read the instructions on configuring a specific feature. Mr Suhy is not aware of a bug fix for this issue indicating it could have just been user error. The inference drawn is not supported by the statement: In many of the exhibits Neo4j tries to show a problem, but does not show any proof that the problem was simply user error or configuration or an analysis of what the problem was. Exhibit 121 does not give enough information to identify if there is a technical issue, and furthermore the user from the exhibit said that they figured out the problem on their own indicating it was user error. Exhibit 122 seems to indicate that a plugin or misconfiguration of the JVM is the problem. Exhibit 123 indicates that the user is using ONgDB 3.2.3 which would have had the same source code as the Neo4j Enterprise branded distribution. Furthermore it seems that the issue was with the a 3rd party plugin called "tinker pop" and therefore was not even specific to Neo4j or ONgDB. Because the source code for Neo4j and ONgDB was the same for that specific 3.2.3 version - if there was a technical issue - then it would have also been present in the Neo4j Enterprise 3.2.3 version as well.

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		USA charges customers and provides technical support for its commercial Neo4J products because consumers have technical issues with their "commercial" Neo4J products as well. Technical issues with software is not indicative of any difference in the software. Suhy Dec. ¶28
Claim 2: Trademark Infringement Against Graph Foundation Inc.		
1. Plaintiff Neo4j Inc. ("Neo4j USA") owns a protectable trademark	Fact 39: Neo4j USA is the owner of U.S. Trademark Registration No. 4,784,280 for the word mark "NEO4J" covering the goods and services in International Classes, 009, 035, 041, 042 and 045 (the "Neo4j® Mark"). Declaration of Jeffrey M. Ratinoff, ("Ratinoff Decl."), Exh. 1.	**DISPUTED:** Neo4j is not the owner, assignee, or exclusive licensee of the Neo4j mark, and therefore its ownership of U.S. Trademark Registration No. 4,784,280 is disputed. Beene Dec, Exh. 1 at §2.1.1., 2 and 3.
3. GFI used the Neo4j® Mark without Neo4j USA's authorization to promote ONgDB	Fact 40: Defendants copied the code, removed the commercial restrictions imposed by the Neo4j Sweden Software License from Neo4j® EE version 3.4 and began promoting ONgDB as the open source Neo4j® EE 3.4 under the AGPL. Ratinoff Decl., Exh. 24-26, 28-29, 37, 62, 86; *see also* Exh. 3 at 28:25-29:11, 171:23-172:23, 199:22-200:20; Exh. 31 at 87:24-90:9.	**DISPUTED:** Suhy did not remove commercial restrictions imposed by Neo4j. He only followed the instructions of the License.txt copyright holder (free software foundation) making it verbatim. The commons clause restrictions were still in effect and referenced in 1000s of files which Mr Suhy did not modify because the other files were copyrighted to Neo4j Sweden. Following the rules for the License.txt file did not remove any restrictions on the software. Suhy Dec. ¶29
	Fact 41: GFI copied the landing page on Plaintiffs' GitHub repository without any overt reference to ONgDB. GFI Dkt. No. 89, ¶ 18, Exh. 18; Ratinoff Decl., Exh. 31 at 81:14-20.	**DISPUTED** The referenced GFI GitHub repository page expressly describes ONgDB as follows: ONgDB (Open Native Graph DB) - Neo4j fork with enterprise code base. ONgDB integrates Neo4j Open Core commits. GFI Dkt. No. 89, Exh. 18.
	Fact 42: On January 17, 2019, GFI modified its landing page by changing the title to "ONgDB - Neo4j Enterprise Fork: Graphs for Everyone," adding references "ONgDB & Neo4j" and that "ONgDB & ***Neo4j Enterprise*** consist of modules from Neo4j Community Edition and modules licensed under AGPLv3 in this repository," but the content	**UNDISPUTED** that GFI's landing page was modified and that the modified page contained the quoted language.

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	still remained almost identical to Plaintiffs' GitHub landing page and contained wide-spread misuse of the Neo4j® Mark. Dkt. No. 89, ¶¶ 19-21, Exhs. 19-21 (emphasis added).	**DISPUTED** that the landing page contained "wide-spread misuse" of the Neo4® Mark. The Neo4j® Mark was never used, only the words neo4j and "Neo4j" were used to describe the fact that ONgDB is a fork of Neo4j which is an important descriptive element.
	Fact 43: On April 14, 2020, GFI started to remove the Neo4j® Mark and Neo4j USA's URLs from that page. *Compare* GFI Dkt. No. 89, Exh. 22 *and* Exhs. 23-28. However, GFI's landing page was still titled "ONgDB - Neo4j Enterprise Fork: Graphs for Everyone," still started off stating "Neo4j is the world's leading Graph Database," encouraged consumers to "Learn more on the Neo4j website," and continued to use the Neo4j® Mark throughout. *Id.*, ¶¶ 29-31Exhs. 29-31.	**UNDISPUTED** that GFI's landing page was modified and that the modified page contained the quoted language. **DISPUTED** that the landing page used the Neo4® Mark. The Neo4j® Mark was never used, only the words neo4j and "Neo4j" were used to describe the fact that ONgDB is a fork of Neo4j which is an important descriptive element.
	Fact 44: On April 21, 2020, GFI removed instances of the Neo4j® Mark and hyperlinks to Neo4j USA's website, but still used Plaintiffs' catch phrase "Graphs for Everyone" and mislabeling the Neo4j® Platform as the "neo4j project." GFI Dkt. No. 89, Exhs. 32-33.	**UNDISPUTED** that GFI's landing page was modified and that the modified page contained the quoted language. **DISPUTED** that the "neo4j project" is mislabeling. The term "neo4j project" is used to describe the fact that ONgDB is a fork of Neo4j which is an important descriptive element.
	Fact 45: Rather than create its support documentation for ONgDB, GFI relied upon Neo4j USA's official documentation and used hyperlinks on its website to redirect users to Plaintiffs' official documentation, including Neo4j USA's copyrighted operation and developer manuals, located on its website. Dkt. No. 89, ¶¶ 3-8, 13-16, Exhs. 3-8, 13-16; Ratinoff Decl., Exhs. 78-83, Exh. 129 [RFA Nos. 81-84, 88-89, 93-94, 98-100, 104, 108, 111, 123-126, 130-136].	**UNDISPUTED**
	Fact 46: GFI's website directed users to ***Plaintiffs'*** change logs for each new release of ONgDB until GFI finally started its own change log with ONgDB v3.5.16. Dkt. No. 89, ¶¶ 3-8, Exhs. 3-8; Ratinoff Decl., Exh. 84; Exh. 129 [RFA Nos. 87, 92, 97, 103, 107, 110].	**UNDISPUTED**
	Fact 47: Up until April 14, 2020, GFI's GitHub landing page stated "To build the documentation see the Neo4j documentation" with an	**UNDISPUTED**

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	embedded hyperlink: https://github.com/neo4j/neo4j-documentation/. Dkt. No. 89, Exhs. 18-19, 23.	
	Fact 48: GFI's document repository on GitHub also uses hyperlinks that send consumers to Neo4j USA's official documentation on Neo4j USA's corporate website. Dkt. No. 89, ¶¶ 9-16; Ratinoff Decl., Exhs. 82-83; Exh. 31 at 276:19-279:12, 284:2-285:18; Exhs. 128-129 [RFA Nos. 81-84, 115-126].	**UNDISPUTED**
	Fact 49: The Neo4j USA developer and operation manuals are copyrighted by Neo4j USA and subject to the License: Creative Commons 4.0, which contains a hyperlink to the Attribution-NonCommercial-ShareAlike 4.0 International Public License, which expressly prohibits the use of Plaintiffs' documents for commercial purposes. Ratinoff Decl., Exh. 85, Exh. 31 at 286:1-288:13.	**UNDISPUTED**
	Fact 50: GFI used the Neo4j® Mark in the title tags of webpages on its website featuring ONgDB. Ratinoff Decl., Exhs. 128-129 [RFA Nos. 85-86, 90-91, 95-96, 101-102, 105-106].	**DISPUTED** The Neo4j® Mark was never used, only the words neo4j and "Neo4j" were used to describe the fact that ONgDB is a fork of Neo4j which is an important descriptive element.
	Fact 51: GFI did not seek or obtain Neo4j USA's authorization to use the Neo4j® Mark on GFI's website and GitHub repository in the foregoing manner. Ratinoff Decl., Exh. 31 at 181:6-182:3, Exh. 129 [RFA Nos. 5-9, 22-26, 69, 71, 73-76, 78].	**UNDISPUTED**
	Fact 52: GFI used the Neo4j® Mark as a hashtag (#Neo4j) in tweets published from GFI's Twitter Account to promote ONgDB. Ratinoff Decl., Exhs. 89-92, 95-96, Exhs. 128-129 [RFA Nos. 149-150, 157-158, 165-166, 173-174, 181-182, 187-188].	**DISPUTED** The Neo4j® Mark was never used, only the words neo4j and "Neo4j" and the hashtag "#Neo4j" were used to describe the fact that ONgDB is a fork of Neo4j which is an important descriptive element.
4. GFI's ONgDB product was readily identifiable without the Neo4j® Mark	Fact 53: ONgDB can be readily identified as such or as "Open Native Graph Database" without use of the Neo4j® Mark. Ratinoff Decl., Exh. 31 at 27:17-29:9, 172:23-173:16, 175:5-20, 176:7-19, 178:13-179:25.	**DISPUTED:** ONgDB is a fork of the open source Neo4 database. It's important to explain this fact to potential end-users and is an important descriptive fact to show it is a drop in replacement for neo4j distributions. ONgDB does not modify the neo4j core code, and is therefore a superset of neo4j core and it's important to communicate this to potential end-users. Furthermore ONgDB only uses the

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		descriptive term neo4j - it does not use the Neo4j® Mark If Neo4j was not referenced then end-users would have no idea to what ONgDB forked.
	Fact 54: GFI issued tweets promoting ONgDB without using the Neo4j® mark or the mark as hashtag. Ratinoff Decl., Exhs. 86, 88.	**UNDISPUTED**
4. GFI did not use the Neo4j® Mark to describe Plaintiffs' Neo4j® products	Fact 55: GFI copied the landing page on Plaintiffs' GitHub repository without any overt reference to ONgDB and gratuitously used the Neo4j® Mark to describe and promote its own software. *See supra* Facts 41-44.	**DISPUTED**: ONgDB is a fork of the open source Neo4 database. It's important to explain this fact to potential end-users and is an important descriptive fact to show it is a drop in replacement for neo4j distributions. ONgDB does not modify the neo4j core code, and is therefore a superset of neo4j core and it's important to communicate this to potential end-users. Furthermore ONgDB only uses the descriptive term neo4j - it does not use the Neo4j® Mark If Neo4j was not referenced then end-users would have no idea to what ONgDB forked.
	Fact 56: At the time that Plaintiffs filed suit, GFI's ONgDB repository still strongly resembled the landing page for Plaintiffs repository for the Neo4j® Platform, and repeatedly referred to "ONgDB & Neo4j" as if they were one and the same, and even used "Neo4j" ***instead*** of "ONgDB." *Compare* Ratinoff Decl., Exh. 58 *and* Exh. 59.	**DISPUTED**: The GFI ONgDB depository page attached as Exhibit 58 starts with "ONgDB (Open Native Graph DB) – Neo4j fork with enterprise code base." There is not a reference to ONgDB and Neo4j being one in the same. ONgDB is a fork of the open source Neo4 database. It's important to explain this fact to potential end-users and is an important descriptive fact to show it is a drop in replacement for neo4j distributions. ONgDB does not modify the neo4j core code, and is therefore a superset of neo4j core and it's important to communicate this to potential end-users. Furthermore ONgDB only uses the descriptive term neo4j - it does not use the Neo4j® Mark

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		If Neo4j was not referenced then end-users would have no idea to what ONgDB forked.
	Fact 57: Rather than independently promoting ONgDB as a graph database software without use of Neo4j® Mark, GFI used the mark to promote ONgDB on its website and GitHub repository. *See supra* Facts 41-52.	**DISPUTED**: ONgDB is a fork of the open source Neo4 database. It's important to explain this fact to potential end-users and is an important descriptive fact to show it is a drop in replacement for neo4j distributions. ONgDB does not modify the neo4j core code, and is therefore a superset of neo4j core and it's important to communicate this to potential end-users. Furthermore ONgDB only uses the descriptive term neo4j - it does not use the Neo4j® Mark If Neo4j was not referenced then end-users would have no idea to what ONgDB forked.
	Fact 58: GFI used a hashtag, **#Neo4j** that consists of nothing more than the Neo4j® Mark with a "#" before the mark to promote ONgDB on social media. Ratinoff Decl., Exhs. 1, 89-96 and Exh. 31 at 233:17-237:21.	**DISPUTED** The Neo4j® Mark was never used, only the words neo4j and "Neo4j" and the hashtag "#Neo4j" were used to describe the fact that ONgDB is a fork of Neo4j which is an important descriptive element.
	Fact 59: GFI chose the following format that relied on using the Neo4j® Mark as a hashtag to announce its new releases of ONgDB: "**#ONgDB** (**#FOSS#Neo4j** Enterprise) 3.5.x support release is out," with no attempt to differentiate ONgDB and Neo4j® EE as separate, competing products.[1] Ratinoff Decl., Exhs. 89, 92, 94-95; Exh. 31 at 233:17-236:15, 240:12-241:25, 246:5-249:2.	**DISPUTED** The Neo4j® Mark was never used, only the words neo4j and "Neo4j" and the hashtag "#Neo4j" were used to describe the fact that ONgDB is a fork of Neo4j which is an important descriptive element. Further, as is shown in the cited exhibits, each announcement contained the following statement distinguishing ONgDB from Neo4j EE: "ONgDB is an open source fork of Neo4j Enterprise that is developed and released under AGPLv3 by The Graph Foundation."
	Fact 60: GFI issued a tweet that stated "**#ONgDB**, Open **#Neo4j** Enterprise," and in another instance "Our **#ONgDB/#Neo4j** Enterprise CI server is up and running builds…." Ratinoff Decl., Exhs. 91, 93.	**UNDISPUTED**-that the cited tweets contain the quoted language.

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[1] "FOSS" stands for free open source software. Ratinoff Decl., Exh. 31 at 233:17-234:3.

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		DISPUTED – that the cited language is the only language in the tweets. Exh. 93 contains the following additional language distinguishing ONgDB from Neo4j EE: "ONgDB is an open source fork of Neo4j Enterprise that is developed and released under AGPLv3 by The Graph Foundation." And "What is ONgDB: Open Native Graph DB is an open source fork of #Neo4j, that picks up prior to Neo4j, Inc.'s removal of enterprise code from the main Github repository."
	Fact 61: GFI used "**#Neo4j** Enterprise 3.5" to solicit end-users of official Neo4j® EE v3.5 to report bugs to GFI so that it could identify bugs in the closed enterprise directory for Neo4j® EE and attempt to mimic such fixes in ONgDB. Ratinoff Decl., Exh. 61, Exh. 31 at 161:23-163:12, 169:13-172:13	**DISPUTED** The hashtag "#Neo4j" was used to describe the fact that ONgDB is a fork of Neo4j which is an important descriptive element and to inform users who wanted to participate in the open source project where to report enterprise issues on open source. Ratinoff Decl., Exh. 31 at 170:11-22.
	Fact 62: GFI used **#Neo4j** to promote ONgDB without reference to Neo4j® EE: "Latest **#ONgDB** apoc 3.5.0.8 procedure release is out. https://github.com/graphfoundatio... **#Neo4j**." Ratinoff Decl., Exh. 96.	**UNDISPUTED** – that the language appears on the exhibit. **DISPUTED** – that there is no reference to Neo4j EE. To the contrary, Exhibit 96 tweet contains the following language distinguishing ONgDB from Neo4j EE: "ONgDB is an open source fork of Neo4j Enterprise that is developed and released under AGPLv3 by The Graph Foundation."
	Fact 63: GFI admitted intentionally used the Neo4j® Mark as a hashtag "to inform users about ONgDB" and to make it more likely that potential customers would come across ONgDB in conducting searches in relation to Neo4j® EE. Ratinoff Decl., Exh. 31 at 174:14-176:19, 236:4-11, 237:9-239:7, 242:14- 243:21.	**DISPUTED** – GFI did not use the Neo4j Mark. GFI used the hashtag "#Neo4j" was used to inform users in the neo4j community that ONgDB was available as a fork of Neo4j which is an important descriptive element and to inform users who wanted to participate in the open source project. Ratinoff Decl., Exh. 31 at 236:3-11

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7. GFI prominently used the Neo4j® Mark beyond what was reasonably necessary	Fact 64: GFI copied the landing page on Plaintiffs' GitHub repository without any overt reference to ONgDB and despite making modifications continued to use the Neo4j® Mark on its GitHub repository beyond merely describing ONgDB as a fork of Neo4j® EE. *See supra* Facts 41-55; *see also* Dkt. No. 89 at ¶¶ 17-33, Exhs. 17-33.	**DISPUTED** The referenced GFI GitHub repository page expressly describes ONgDB as follows: ONgDB (Open Native Graph DB) - Neo4j fork with enterprise code base. ONgDB integrates Neo4j Open Core commits. GFI Dkt. No. 89, Exh. 18. The Neo4j® Mark was never used, only the words neo4j and "Neo4j" were used to describe the fact that ONgDB is a fork of Neo4j which is an important descriptive element. ONgDB is a fork of the open source Neo4 database. It's important to explain this fact to potential end-users and is an important descriptive fact to show it is a drop in replacement for neo4j distributions. ONgDB does not modify the neo4j core code, and is therefore a superset of neo4j core and it's important to communicate this to potential end-users. Furthermore ONgDB only uses the descriptive term neo4j - it does not use the Neo4j® Mark If Neo4j was not referenced then end-users would have no idea to what ONgDB forked.
	Fact 65: At the time that Plaintiffs filed suit, GFI's ONgDB repository still strongly resembled the landing page for Plaintiffs repository for Neo4j® Software, and repeatedly referred to "ONgDB & Neo4j" as if they were one and the same, and even used "Neo4j" instead of "ONgDB." *Compare* Ratinoff Decl., Exh. 58 *and* Exh. 59.	**DISPUTED**: The GFI ONgDB depository page attached as Exhibit 58 starts with "ONgDB (Open Native Graph DB) – Neo4j fork with enterprise code base." There is not a reference to ONgDB and Neo4j being one in the same. ONgDB is a fork of the open source Neo4 database. It's important to explain this fact to potential end-users and is an important descriptive fact to show it is a drop in replacement for neo4j distributions. ONgDB does not modify the neo4j core code, and is therefore a superset of neo4j core and it's important to communicate this to potential end-users. Furthermore ONgDB only uses the descriptive term neo4j - it does not use the Neo4j® Mark

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		If Neo4j was not referenced then end-users would have no idea to what ONgDB forked.
	Fact 66: GFI's (1) use of "neo4j," "neo4j enterprise" and "Neo4j Enterprise" without proper trademark notices; (2) use of embedded "Neo4j" links to Neo4j USA's website and GitHub repository; (3) hyperlinking to Plaintiffs' build instructions, support documentation and change logs all containing the Neo4j® Mark rather than creating and hosting their own with the ONgDB name; and (4) interchangeable use of "Neo4j Enterprise" with "ONgDB" to promote ONgDB on its website and GitHub goes beyond what is reasonably necessary to identify ONgDB as a fork of Neoj4® EE. *See supra* Facts 41-51, 56-58; *see also* Ratinoff Decl., Exhs. 37, 57-58; Dkt. No. 89, ¶¶ 3-16.	**DISPUTED** The Neo4j® Mark was never used, only the words neo4j and "Neo4j" were used to describe the fact that ONgDB is a fork of Neo4j which is an important descriptive element. ONgDB is a fork of the open source Neo4 database. It's important to explain this fact to potential end-users and is an important descriptive fact to show it is a drop in replacement for neo4j distributions. ONgDB does not modify the neo4j core code, and is therefore a superset of neo4j core and it's important to communicate this to potential end-users. Furthermore GFI only uses the descriptive term neo4j - it does not use the Neo4j® Mark If Neo4j was not referenced then end-users would have no idea to what ONgDB forked.
	Fact 67: GFI used the Neo4j® Mark as a hashtag, **#Neo4j**, to promote ONgDB rather than to merely describe ONgDB as a fork of Neo4j® EE. *See supra* Facts 59-64.	**DISPUTED** GFI used the hashtag "#Neo4j" was used to inform users in the neo4j community that ONgDB was available as a fork of Neo4j which is an important descriptive element and to inform users who wanted to participate in the open source project. Ratinoff Decl., Exh. 31 at 236:3-11. GFI's tweets referenced in Facts 59-64 contained the following additional language distinguishing ONgDB from Neo4j EE: "ONgDB is an open source fork of Neo4j Enterprise that is developed and released under AGPLv3 by The Graph Foundation." See Responses to Facts 59-64. And Exhibit 93 also states: "What is ONgDB: Open Native Graph DB is an open source fork of #Neo4j, that picks up prior to Neo4j, Inc.'s removal of enterprise code from the main Github repository."
	Fact 68: GFI admitted that it could have referred to "Neo4j Enterprise" without using the Neo4j® Mark as a hashtag to identify the product. Ratinoff Decl., Exh. 31 at 236:4-15.	**DISPUTED** the cited testimony contains no such admission. The testimony is only that it is possible

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		to write a tweet without a hashtag. GFI did not use the Neo4j Mark. GFI used the hashtag "#Neo4j" was used to inform users in the neo4j community that ONgDB was available as a fork of Neo4j which is an important descriptive element and to inform users who wanted to participate in the open source project. Ratinoff Decl., Exh. 31 at 236:3-11
	Fact 69: GFI It also conceded that it could have used a format where it described ONgDB as being a fork of Neo4j® EE rather than simply inserting "#Neo4j Enterprise" with "#ONgDB." See id., Exh. 31 at 243:23-245:12; Exh. 93.	**DISPUTED** the cited testimony relates to a different type of tweet that still used the hashtag "#Neo4j" was used to inform users in the neo4j community that ONgDB was available as a fork of Neo4j which is an important descriptive element and to inform users who wanted to participate in the open source project.
8. GFI's use of the Neo4j® Mark suggested sponsorship or endorsement by Neo4j USA	Fact 70: GFI copied the landing page on Plaintiffs' GitHub repository without any overt reference to ONgDB and despite making modifications continued to use the Neo4j® Mark on its GitHub repository beyond merely describing ONgDB as a fork of Neo4j® EE. *See supra* Facts 41-55; *see also* Dkt. No. 89 at ¶¶ 17-33, Exhs. 17-33.	**DISPUTED** The referenced GFI GitHub repository page expressly describes ONgDB as follows: ONgDB (Open Native Graph DB) - Neo4j fork with enterprise code base. ONgDB integrates Neo4j Open Core commits. GFI Dkt. No. 89, Exh. 18. The Neo4j® Mark was never used, only the words neo4j and "Neo4j" were used to describe the fact that ONgDB is a fork of Neo4j which is an important descriptive element. ONgDB is a fork of the open source Neo4 database. It's important to explain this fact to potential end-users and is an important descriptive fact to show it is a drop in replacement for neo4j distributions. ONgDB does not modify the neo4j core code, and is therefore a superset of neo4j core and it's important to communicate this to potential end-users. Furthermore ONgDB only uses the descriptive term neo4j - it does not use the Neo4j® Mark If Neo4j was not referenced then end-users would have no idea to what ONgDB forked.

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		See also Responses to Facts 41-55.
	Fact 71: At the time that Plaintiffs filed suit, GFI's ONgDB repository still strongly resembled the landing page for Plaintiffs repository for Neo4j® Software, and repeatedly referred to "ONgDB & Neo4j" as if they were one and the same, and even used "Neo4j" instead of "ONgDB." *Compare* Ratinoff Decl., Exh. 58 *and* Exh. 59.	**DISPUTED**: The GFI ONgDB depository page attached as Exhibit 58 starts with "ONgDB (Open Native Graph DB) – Neo4j fork with enterprise code base." There is not a reference to ONgDB and Neo4j being one in the same. ONgDB is a fork of the open source Neo4 database. It's important to explain this fact to potential end-users and is an important descriptive fact to show it is a drop in replacement for neo4j distributions. ONgDB does not modify the neo4j core code, and is therefore a superset of neo4j core and it's important to communicate this to potential end-users. Furthermore ONgDB only uses the descriptive term neo4j - it does not use the Neo4j® Mark If Neo4j was not referenced then end-users would have no idea to what ONgDB forked.
	Fact 72: GFI (1) used "neo4j," "neo4j enterprise" and "Neo4j Enterprise" without proper trademark notices; (2) used embedded "Neo4j" links to Neo4j USA's website and GitHub repository; (3) stated on its GitHub repository for ONgDB for customers to "Learn more on the Neo4j website," and continued to use the Neo4j® Mark throughout that repository; (4) hyperlinked to Plaintiffs' build instructions, support documentation and change logs on GFI's website and GitHub repository all containing the Neo4j® Mark; (5) interchangeably used "Neo4j Enterprise" with "ONgDB" to promote ONgDB on its website and Github repository; and (6) used the Neo4j® as a hashtag on Twitter to promote ONgDB. *See supra* Facts 42-43, 56-70.	**DISPUTED** The Neo4j® Mark was never used, only the words neo4j and "Neo4j" were used to describe the fact that ONgDB is a fork of Neo4j which is an important descriptive element. ONgDB is a fork of the open source Neo4 database. It's important to explain this fact to potential end-users and is an important descriptive fact to show it is a drop in replacement for neo4j distributions. ONgDB does not modify the neo4j core code, and is therefore a superset of neo4j core and it's important to communicate this to potential end-users. Furthermore GFI only uses the descriptive term neo4j - it does not use the Neo4j® Mark If Neo4j was not referenced then end-users would have no idea to what ONgDB forked
	Fact 73: GFI's intended audience in using the Neoj4® Mark as a hashtag were users of Neo4j® EE. Ratinoff Decl., Exh. 31 at 174:14-176:19, 236:4-11, 237:9-239:7, 242:14- 243:21.	**DISPUTED** the cited testimony contains no such admission. The testimony is only that it is possible

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		to write a tweet without a hashtag. GFI did not use the Neo4j Mark. GFI used the hashtag "#Neo4j" was used to inform users in the neo4j community that ONgDB was available as a fork of Neo4j which is an important descriptive element and to inform users who wanted to participate in the open source project. Ratinoff Decl., Exh. 31 at 236:3-11
9. GFI's use of the Neo4j® Mark caused actual consumer confusion	Fact 74: GFI's use of the Neo4j® Mark to promote ONgDB resulted in customers choosing ONgDB and encountering compatibility issues. Ratinoff Decl., Exh. 115-116; Exh 31 at 230:12-233:10; Exh. 3 at 207:12-209:3.	**DISPUTED** – The cited emails are hearsay and do not establish compatibility issues. Rather, Exhibit 115 demonstrates an attempt to use a desktop tool inappropriately with a server application. Ratinoff Decl., Exh. 31 at 232:5-25. Nothing in the email demonstrates that there would be any compatibility issues when ONgDB is used as a server application.
	Fact 75: GFI lead consumers to believe that ONgDB and Neo4j® EE were one and the same. *See, e.g.,* Exhs. 35, 40, 42-44, 46-47, 53, 55-58, 76, 100, 130-131, 134-135.	**DISPUTED**: Defendants consistently present ONgDB as an alternative to Neo4j EE. As is set out above, in numerous statements, on the GFI website and on Twitter, GFI describes ONgDB as "an open source fork of Neo4j Enterprise that is developed and released under AGPLv3 by The Graph Foundation." Ratinoff Decl., Exhs. 89, 92, 94, 95. GFI has also described, on its website, the distinction between ONgDB and the Neo4j EE software distributed by Neo4j, Inc., while also disassociating itself from Neo4j, Inc. Open Native Graph DB (ONgDB) is a fork of the neo4j project that continues development of the neo4j enterprise code base as a fully open source project after Neo4j, Inc. Open Core Shift that closed ongoing development and removed existing source code. Ratinoff Decl., Exh. 66. .
	Fact 76: GFI's use of the Neo4j® Mark to promote ONgDB as free open source and falsely comparing it with commercially licensed Neo4j® EE created actual customer confusion, and diverted sales from Neo4j USA,	**DISPUTED**: Plaintiffs present no evidence of a single person or entity that would have made that choice. Indeed, the evidence Plaintiffs provide with

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	including the IRS and Next Century/MPO. Ratinoff Decl., Exh. 48-50, 117-120, 127, 131, 134-135; Broad Decl., ¶¶ 20-24, Exhs. 12-13.	respect to New Century, their one purported concrete example, is an email exchange showing that New Century had no response to Neo4j, Inc.'s proposal even though New Century stated in its email that it understood the issues regarding ONgDB's "legal viability." Broad Decl., Exh. 13.
Claim 3: False Advertising Against GFI and the PT Defendants		
1. Defendants made a false statement of fact about a product in a commercial advertisement, which is (a) commercial speech; (b) made in commercial competition with Neo4j USA; (c) for the purpose of influencing consumers to buy their goods or services; and (d) sufficiently disseminated to the relevant purchasing public	Fact 77: Defendants made the following false statements interstate commerce via their websites and Twitter: (1) "ONgDB distributions are licensed under AGPLv3 as a free and open drop-in replacements of Neo4j Enterprise commercial licensed distributions with the same version number" [Ratinoff Decl., Exh. 57]; (2) "ONgDB and Neo4j Enterprise consists of modules from Neo4j Community Edition and modules licensed under the AGPLv3" [*id.*, Exh. 58]; (3) "ONgDB distributions are licensed under AGPLv3 as a free and open source alternative to currently available proprietary native graph offerings such as Neo4j Enterprise Edition" [*id.*, Exhs. 60, 113-114]; (4) "download ONgDB Enterprise as a drop in replacement for an existing commercial licensed distribution of the same version number." [*id.*, Exhs. 62-66]; (5) "ONgDB Enterprise is a drop in replacement for Neo4j Enterprise commercial packages downloaded from Neo4j.com" [*id.*, Exhs. 62-66, 71]; (6) "ONgDB Enterprise 3.5.5…. Drop in replacement for Neo4j Core and Enterprise 3.5.5. AGPLv3 Open Source License, no limitations on causal cluster instances, cores, or production usage" [*id.*, Exhs. 67-69, 75]; (7) "ONgDB is a drop in replacement for the Neo4j Community and Enterprise branded distributions" [*id.*, Exh. 72-74]; (8) "[ONgDB] is an open source fork of #Neo4j" [*id.*, Exh. 93]; and (9) "You can use the ONgDB fork of Neo4j which adds enterprise code back into Neo4j core. It is 100% free and open." [*id.*, Exh. 98-104, 108].	DISPUTED: Objection none of the evidence cited supports the alleged fact they are false. The legal standard is not correct. See, *Pizza Hut, Inc. v. Papa John's Intern., Inc.* (5th Cir. 2000) 227 F.3d 489, 495. The statements are all true: (1) "ONgDB distributions are licensed under AGPLv3 as a free and open drop-in replacements of Neo4j Enterprise commercial licensed distributions with the same version number"; (2) "ONgDB and Neo4j Enterprise consists of modules from Neo4j Community Edition and modules licensed under the AGPLv3"; (3) "ONgDB distributions are licensed under AGPLv3 as a free and open source alternative to currently available proprietary native graph offerings such as Neo4j Enterprise Edition"; (4) "download ONgDB Enterprise as a drop in replacement for an existing commercial licensed distribution of the same version number."; (5) "ONgDB Enterprise is a drop in replacement for Neo4j Enterprise commercial packages downloaded from Neo4j.com" ; (6) "ONgDB Enterprise 3.5.5…. Drop in replacement for Neo4j Core and Enterprise 3.5.5. AGPLv3 Open Source License, no limitations on causal cluster instances, cores, or production usage" (7) "ONgDB is a drop in replacement for the Neo4j Community and Enterprise branded distributions"; (8)

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		"[ONgDB] is an open source fork of #Neo4j"; and (9) "You can use the ONgDB fork of Neo4j which adds enterprise code back into Neo4j core. It is 100% free and open." Suhy Dec. ¶30
	Fact 78: The PT Defendants also stated on iGov's website that "[Neo4j Enterprise] is 100% free and open source" and "Neo4j Enterprise is released only under the standard AGPLv3 open source license that is managed by the free software foundation." Ratinoff Decl., Exhs. 67-70; *see also* Exh. 21.	DISPUTED: The PT Defendants did not all say this. Only iGov's website stated: that "[Neo4j Enterprise] is 100% free and open source" and "Neo4j Enterprise is released only under the standard AGPLv3 open source license that is managed by the free software foundation." Defendants do not sell ONgDB, ONgDB is licensed under AGPL and AGPL is an open source license for free software. Suhy Dec. ¶31, Ratinoff Decl. Exh. 39, 11:635-638 ONgDB is a drop in replacement as explained in the deposition of Brad Nussbaum. Nussbaum Depo., 158:7-14, 160: 9-14. Pernick Dec. Ex. A. Plaintiffs have presented no evidence that ONgDB does not operate as a drop in replacement. With respect to ONgDB being free and open, again, Plaintiffs argument that the removal of the Commons Clause language from the Neo4J Sweden Software License was improper is incorrect. Substituting the matching language for the defined terms in this provision, Section 7 of the Neo4J Sweden Software License states: "If the Program as [GFI] received it, or any part of it, contains a notice stating that it is governed by [the AGPLv3 license] along with a term that is a further restriction, [GFI] may remove that term." Pernick Dec. Ex. B
	Fact 79: Defendants actively encourage actual and potential users of commercially licensed Neo4j® EE to adopt ONgDB and obtain support services from iGov and GraphGrid instead of Plaintiffs. Ratinoff Decl., Exhs. 23, 28-29, 40, 42-54, 76-77, 126, 134-135.	**DISPUTED:** None of the evidence cited identifies any party that would have used Neo4j EE. Further, Plaintiffs present no evidence that they competed with GraphGrid or provided similar services.

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		Plaintiffs are misidentified as if they both do the same thing. Sweden is not a party to the cause of action. Sweden licenses the open source software USA does not. See APGL license. USA does not support open source software licensed by Sweden. Suhy Dec. 32
	Fact 80: Neo4j Sweden is the owner of all copyrights in Neo4j® CE and Neo4j® EE, including the source code and has licensed said copyrights to Neo4j USA. Rathle Decl., ¶¶ 3-4.	**UNDISPUTED**
	Fact 81: Plaintiffs released Neo4j® EE v3.4 under a license that which included the terms from the AGPLv3 and additional restrictions provided by the Commons Clause ("Neo4j Sweden Software License"). Rathle Decl., ¶¶ 11-12, Exhs. 2-3.	**DISPUTED:** Neo4J USA did no such thing. Neo4J Sweden release the open source software, not Neo4J USA. Ratinoff Decl. Exh. 39, 25:11-13 Suhy Dec. ¶33
	Fact 82: The Neo4j Sweden Software License, while still allowing code to be publicly viewable and used within a certain licensed scope, prohibits commercial resale and certain commercial support services. Rathle Decl., ¶¶ 11-12, Exhs. 2-3.	**DISPUTED:** Versions of Neo4j Enterprise open source distributions using AGPL only have no terms mentioning these prohibitions. When the commons clause was added to AGPL, Sweden did not change license forms and used the AGPL form which bars additions and also allows licensees to remove non-permissive additional restriction. AGPL §7. Ratinoff Decl. Exh. 39, 6:331-7:393 Furthermore - the commons clause does not use the word "commercial". It only uses the word "sell". Ratinoff Decl. Exh. 39, 25:681-693 The author of the commons clause clarifies the intention and meaning of the commons clause as well. Support services are not barred as they do not consist entirely or substantially of the Software or Functionality of the Software as limited in the commons clause. The restriction of services is using the software as a service as in a SaaS implementation. Suhy Dec. ¶34 Ex. 2

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	Fact 83: After Plaintiffs released Neo4j® EE v3.4, the PT Defendants downloaded Neo4j's source code from Neo4j's GitHub repository, removed the commercial restrictions imposed by the Neo4j Sweden Software License, and began promoting it "free and open source" Neo4j Enterprise and offering commercial support services. Ratinoff Decl., Exh. 3 at 171:23-172:23, 199:22-200:20; Exh. 21.	DISPUTED: USA did no such thing. Sweden release the open source software not USA. Ratinoff Decl. Exh. 39, 25:11-13 Suhy Dec. ¶33 Suhy only removed the commons clause as allowed in the AGPL §7. Ratinoff Decl. Exh. 39, 6:331-7:393 Suhy did not remove any commercial restrictions. He simply ensured the LICENSE.txt file was verbatim as required by the copyright holder of the LICENSE.txt files : the free software foundation. Suhy did not modify any other files, and the commons commercial restrictions were still in effect. Following the FSF copyright instructions for the AGPL License.txt file did not remove any restrictions from the distribution - as the restrictions were documented across the repository. Following the rules for just the specific files did not remove legal terms from the distributions. Suhy Dec. ¶35
	Fact 84: Rather than develop ONgDB as an independent fork based off an earlier open source version of Neo4j® EE, Defendants stripped the commercial restrictions out of the Neo4j Sweden Software License from Neo4j® EE version 3.4 and began promoting ONgDB as the open source equivalent of Neo4j® EE 3.4 under the AGPL. Ratinoff Decl., Exh. 24-26, 28; *see also* Exh. 31 at 87:24-90:9.	DISPUTED: PT, Suhy, and iGov Inc did not use the term "equivalent" in any references. For Neo4j Enterprise versions below 3.5 - ONgDB was equivalent in features as it used the same unmodified source code. So this statement would be true for specific versions of Neo4j and ONgDB. PT, Suhy, and iGov always used the term drop in replacement which does not mean the features are all equivalent. Furthermore - ONgDB is a current fork of Neo4j open source software licensed from Sweden, it pulls in all the Neo4j community commits from the official repository regularly keeping it up to date. This is allowed under the AGPL. Suhy Dec. ¶36
	Fact 85: Plaintiffs officially released Neo4j® EE v.3.5 solely under a commercial license in November 2018, and were no longer publishing	DISPUTED: PT, Suhy, and iGov Inc did not use the term "equivalent" in any references. For Neo4j

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Claim or Defense	**Moving Party's Undisputed Facts/Supporting Evidence**	**Opposing Parties' Response/Supporting Evidence**
	source code for Neo4j® EE on GitHub under any open source license. Rathle Decl., ¶ 13, Exh. 4.	Enterprise versions below 3.5 - ONgDB was equivalent in features as it used the same unmodified source code. So this statement would be true for specific versions of Neo4j and ONgDB. PT, Suhy, and iGov always used the term drop in replacement which does not mean the features are all equivalent. Furthermore - ONgDB is a current fork of Neo4j open source software licensed from Sweden, it pulls in all the Neo4j community commits from the official repository regularly keeping it up to date. This is allowed under the AGPL. Suhy Dec. ¶36
	Fact 86: Prior to its official release, Plaintiffs published several beta versions of Neo4j® EE v3.5 via their GitHub repository subject to the Neo4j Sweden Software License, with Neo4j® v3.5.0-RC1 being the last pre-release version available to Defendants via GitHub. Rathle Decl., ¶ 14; *see also* Ratinoff Decl., Exh. 31 at 158:18-159:20.	**DISPUTED:** USA did not release version on GitHub. Only Sweden released the open source Neo4J software under the AGPL license. Ratinoff Decl. Exh. 39, 25:11-13 Suhy Dec. ¶33 There are no pre-release terms in the GitHub repository. It's possible that a pre-release agreement was added to the compiled packages - but that would be in the actual download of the package, not the GitHub source code as they state. Furthermore - enterprise code was not available in v3.5.0-RC1 but it was available in 3.5.0-beta03. Suhy Dec. ¶37 Also - the License.txt files for the above mentioned releases clearly shows the license as being AGPL, complete with the AGPL preamble - and does not say anything about a "Neo4j Sweden Software License" Decl. Exh. 39, 12-13
	Fact 87: GFI's release of ONgGB v3.5.1, which contained at least 182 source code files that had only been previously released under the Neo4j Sweden Software License in the last beta version of Neo4j® EE 3.5 made available by Plaintiffs via GitHub. Ratinoff Decl., Exh. 38 at 6:22-7:1, 8:4-16:24; *see also* Rathle Decl., ¶ 29.	Disputed. USA does not release the open source software. Ratinoff Decl. Exh. 39, 25:11-13 Suhy Dec. ¶33

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	Fact 88: In order for Defendants to call ONgDB "free and open source" Neo4j® EE, they again replaced the more restrictive Neo4j Sweden Software License with a generic copy of the AGPL and stripped out valid legal notices identifying Neo4j Sweden as the copyright holder and licensor in 28 LICENSE.txt files. Ratinoff Decl., Exhs. 39-40; Dkt. No. 91 at 19:9-25; Exh. 31 at 159:3-10; Rathle Decl., ¶ 30.	DISPUTED: The AGPL license.txt file is copyrighted to the free software foundation. Suhy followed the guidance from the free software foundation relating to the license being verbatim. By following the FSF copyright guidance he did not remove the legal terms from the distribution as a whole. There are 1000s of Neo4j files in the repository which clearly state the commons clause is still part of the license. I.E. Using the verbatim AGPL license content as instructed by the Free software foundation did not remove the commons license in any way as it was stated in many other places. There is no obligation to repeat Sweden's copyright notice on every file. And Sweden owns the copyright (undisputed Fact 80 above) USA has not standing to argue about the copyright notice. Phase 1 does not address the DCMA claim. Suhy Dec. ¶38
	Fact 89: The Neo4j Sweden Software License did not permit a licensees such as Defendants to remove "further restrictions," i.e. the Commons Clause, imposed by Neo4j Sweden as the copyright holder and original licensor. Rathle Decl., Exh. 3 at §§ 7, 10; GFI Dkt. No. 88 at 5:23-8:9.	DISPUTED: Suhy only worked on the License.txt file which he believes is copyrighted to the Free software foundation. When Suhy replaced the file with verbatim - it was following the copyright holder's instructions. All the other files which Neo4j held the copyright for were not modified by Suhy and clearly stated that the commons clause was there. Suhy Dec. ¶35 Following the copyright holder's instructions for the License.txt file did not remove restrictions as these were mentioned in many other files in the github repository. Suhy Dec. ¶35
	Fact 90: Defendants knew that they could not unilaterally replace the Neo4j Sweden Software License with the APGL without authorization. Ratinoff Decl., Exhs. 34-36, Exh. 31 at 183:14-184:24, 207:10-210:8.	DISPUTED: Suhy did not replace the Neo4j Software License - He only followed the instructions given by the AGPL license copyright holder to make the actual license verbatim. The Neo4j Sweden

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		Software License was still in effect as the commons clause was mentioned in many other neo4j files which Neo4j Inc owned the copyright for. Suhy Dec. ¶35
	Fact 91: Defendants' statements that ONgDB v3.5.x was "100% free and open" with no limitations or restrictions imposed by commercial licensed Neo4j® EE v3.5.x and the like were false because they knew that Neo4j Sweden owned the copyright for Neo4j® EE and never gave permission to remove Commons Clause and offer it as ONgDB under the AGPL. Ratinoff Decl., Exh. 55-56; Exh. 3 at 183:12-183:1, 187:12-188:5, 189:1-191:3, 235:21-237:14, 240:22-243:22.	DISPUTED: Suhy only acted on License.txt files who's copyright is owned by the free software foundation. Furthermore - Suhy only made AGPL license.txt files verbatim as the free software foundation required. The commons clause was referenced and defined in almost every one of the thousands of enterprise code headers - all of which were left untouched by Suhy. Suhy Dec. ¶35
	Fact 92: The Nussbaums also own GraphGrid and AtomRain, which share the same office and computers with GFI, and provide commercial training and consulting and support for users of ONgDB, and benefit from customers being able to use ONgDB for "free" and diverting available project funds to pay them for such services. Ratinoff Decl., Exhs. 52-53; Exh. 31 at 22:24-23:3, 31:5-32:19, 35:3-13, 57:18-58:21, 65:20-70:16, 194:14-17; *see also* Exh. 28 ("If you are looking for a full shield of liability, we recommend using one of our supporters such as GraphGrid") and Exhs. 76, 134-135.	DISPUTED: GFI does not "share the same office" with GraphGrid and AtomRain. GFI uses 111 South Buckeye Street for receiving mail and 111 Buckeye Street is leased by AtomRain and is used by AtomRain and GraphGrid for business activities. Nussbaum Depo., 65:18-67:3. Pernick Dec. Ex. A
	Fact 93: Defendants removed the Commons Clause without Neo4j Sweden's authorization as the copyright holder in an attempt to allow iGov, AtomRain and GraphGrid to commercially use and support ONgDB. Ratinoff Decl., Exh. 23-26, 28-29, 39, 76-77, 126, 134-135; Exh. 3 at 28:25-29:11; Rathle Decl., ¶¶ 29-30.	DISPUTED: The free software foundation owns the copyright for the AGPL License.txt file and clearly states that the license must be verbatim. Suhy Dec. 35. Suhy's commit message for the changes to the license files to be in line with the FSF requirements clearly states the reason for the change. Suhy Dec. 47. Furthermore - the commons clause does not say anything about commercial use and support, the commons clause author Heather Meaker clarifies the commons clause in her article and states they do not cover professional services: Suhy Dec. ¶34 Ex. 2

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	Fact 94: ONgDB v3.5.1 and later versions are not 100% identical to equivalent version numbers of Neo4j® EE. Ratinoff Decl., Exh. 31 at 158:18-163:5, 163:13-165:6; Exh. 3 at 124:2-126:2. Rather, ONgDB is a patchwork of code from the last public beta, Neo4j® EE 3.5.0-RC1, and Neo4j® Community Edition held together by "glue code" authored by Suhy, Brad Nussbaum and other GFI contributors. *See id.*	UNDISPUTED: ONgDB 3.5 and later versions are not 100% identical to equivalent Neo4j enterprise versions and that claim was never made. DISPUTED: ONgDB is not a "patchwork" or "glue" of code - it has been proven in large production deployments. After the enterprise code was closed - Suhy and other contributors continued it's development. The enterprise code came from Neo4j - so it is calling the code it developed a patchwork of code. Suhy Dec. ¶39
	Fact 95: By splicing together source code for ONgDB in that manner, GFI is creating software that is not of the same quality as if it were compiled by Plaintiffs because GFI does not have access to the same rigorous build infrastructure for official Neo4j® Software, which goes beyond what is built into Neo4j® CC and carries out tens of thousands of functional, performance, load, stress, and other tests to ensure quality. Rathle Decl. ¶¶ 31-34; Ratinoff Decl., Exh. 31 at 168:14-169:6.	**UNDISPUTED**: GFI does not have access to Neo4j software build infrastructure and ONgDB 3.5 and later versions are not 100% identical to equivalent Neo4j enterprise versions and that claim was never made. **DISPUTED**: That GFI does not do its own quality testing of ONgDB. To the contrary, GFI conducts about 64,000 tests for each build. Nussbaum Depo., 166:18-168:13.
	Fact 96: GFI is dependent on what patches are made available in Neo4j® CE and sought to redirect users of official Neo4j® EE to GFI and identify bugs in the closed enterprise directory for Neo4j® EE. Ratinoff Decl., Exh. 61, Exh. 31 at 161:23-163:12, 169:13-172:12.	**UNDISPUTED** – GFI uses information from users of Neo4j software to identify bugs and uses open source patches made available in Neo4j CE. **DISPUTED** – GFI is not dependent on information about Neo4j EE bugs to develop ONgDB. To the contrary, GFI is no longer developing ONgDB versions as drop in replacements for Neo4j EE (and does not describe versions after 3.5.4 as such. Indeed, GFI has developed ONgDB 3.6 even though there is no Neo4j EE 3.6 and is developing ONgDB 4 independent from Neo4j EE 4. Nussbaum Depo., 190:17-191:6.
	Fact 97: Since GFI introduced modifications and patches to ONgDB 3.5.x in an attempt to keep pace with the closed Neo4j® EE releases,	**DISPUTED** – GFI conducts tests on ONgDB to ensure its quality and compatibility.

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	the potential for stability and compatibility issues with ONgDB increases. Rathle Decl., ¶ 34; Ratinoff Decl., Exh. 31 at 161:23-163:12.	**UNDISPUTED** GFI has not verified that ONgDB versions after 3.5.4 are drop in replacements for the equivalent version of Neo4j EE
	Fact 98: Defendants had no way of knowing this after Plaintiffs closed off public access to the source code for enterprise-only features in November 2018 and had no visibility into Neo4j Sweden's proprietary testing and patches. Ratinoff Decl., Exh. 31 at 158:18-160:5; Exh. 3 at 223:1-224:9; Exh. 40; Rathle Decl., ¶¶ 31-34.	**DISPUTED:** Defendants are not sure what "this" means in the context of this statement. If it is referencing Fact 97 then it would be true. Furthermore, defendants believe that the older approach for the enterprise features (which include the tests) is more stable and higher quality than newer re-implementations. See GitHub bug tickets. Suhy has not been advised by any user of ONgDB that is it incompatible with Neo4J commercial software. Suhy Dec. ¶40
	Fact 99: Defendants knew that ONgDB 3.5.x does not include every closed enterprise feature in equivalent Neo4j® EE 3.5.x. Ratinoff Decl., Exh. 38 at 2:12-17, 4:15-22, 5:4-6:21; Exh. 3 at 127:19-128:17.	**UNDISPUTED:** Defendants did know that ONgDB did not include every closed enterprise feature and did not ever say that the 2 were equivalent. The defendants used the term "Drop in replacement" which has nothing to do with feature by feature equivalency.
	Fact 100: GFI admitted that ONgDB v3.5.4 is not 100% identical to official Neo4j® EE v3.5.4. Ratinoff Decl., Exh. 31 at 158:18-163:5, 163:13-165:6; Exh. 3 at 124:2-126:23.	**UNDISPUTED**: ONgDB 3.5.4 is not 100% identical to equivalent Neo4j enterprise versions and that claim was never made.
	Fact 101: GFI admitted that after ONgDB v3.5.4, it could not "reliably guarantee that it was a drop-in replacement" for the same version number of Neo4j® EE and was unwilling to do the testing to make such integration and compatibility guarantees because it became "too hard to demonstrate." Ratinoff Decl., Exh. 31 at 186:24-188:17, 188:23-189:23.	**DISPUTED** – GFI conducts tests on ONgDB to ensure its quality and compatibility. **UNDISPUTED** GFI has not verified that ONgDB versions after 3.5.4 are drop in replacements for the equivalent version of Neo4j EE. Suhy has not been advised by any user of ONgDB that is it incompatible with Neo4J commercial software. Suhy Dec. ¶40
	Fact 102: As a result, Defendants were leading consumers to believe they were downloading an exact copy of the same version of commercial-only releases of NEO4J® EE, which in actuality they were	DISPUTED: Suhy, PureThink and iGov never lead consumers into believing they were downloading an exact copy of the same commercial only releases.

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	receiving an inferior ONgDB product that was not a true "drop in" replacement. *See supra* Facts 80-101.	For versions when the enterprise code was present and no modifications were made in the source code - defendents made clear that Neo4j did not compile the code, even though the code was the same for Neo4j Enterprise and ONgDB. The defendants knew that knowledgeable users only needed to know specific facts such as the code being unchanged in specific versions. Furthermore ONgDB is a drop in replacement for Neo4j community and enterprise for all versions including 3.5. Drop in replacement has nothing to do with feature parity. Suhy believes that the original code for causal clustering and other features is actual superior to the feature rewrites Neo4j Inc made when it closed the Neo4j Enterprise code in 3.5 To the contrary, the statements are true. First, ONgDB is a drop in replacement as explained in the deposition of Brad Nussbaum. Nussbaum Depo., 158:7-14, 160: 9-14. Pernick Dec. Ex. A. Plaintiffs have presented no evidence that ONgDB does not operate as a drop in replacement. With respect to ONgDB being free and open, again, Plaintiffs argument that the removal of the Commons Clause language from the Neo4J Sweden Software License was improper is incorrect. Pernick Dec. Ex. B Substituting the matching language for the defined terms in this provision, Section 7 of the Neo4J Sweden Software License states: "If the Program as [GFI] received it, or any part of it, contains a notice stating that it is governed by [the AGPLv3 license] along with a term that is a further restriction, [GFI] may remove that term." Ratinoff Decl. Exh. 39, 6:331-7:393

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		Suhy has not been advised by any user of ONgDB that is it incompatible with Neo4J commercial software. Suhy Dec. ¶40
	Fact 103: Neo4j® EE has been subject to trademark policies and guidelines published on Plaintiffs' website, which along with the terms of the GPL, AGPL and Neo4j Sweden Software License, made clear that to the extent any authorized modifications are made to Neo4j® Software, such modified software should indicate so and no longer bear the Neo4j® Mark. Rathle Decl., ¶¶ 15-18. Exhs. 5-7.	DISPUTED: Those terms were only recently added. Furthermore - Neo4j Inc never provided us with trademark policies and these policies were not found on their websites until recently. Furthermore - The neo4j word is only used in a descriptive manner. The Neo4j® Mark was not used. Suhy Dec.41 USA trademark policies only cover its limited license to the trademark covering the commercial version of Neo4J. See Beene Dec. Exhibit 1.
2. Defendants' statements actually deceive or has the tendency to deceive a substantial segment of its audience	Fact 104: Defendants intentionally made the false statements publicly on their website and on Twitter that ONgDB is a "free and open" drop-in replacement/equivalent under the AGPL to convince customers to adopt ONgDB over Neo4j® EE, and pay iGov, Graph Grid and/or AtomRain for related consulting and support services. *See supra* Facts 78-80, 83-84, 86-93.	**DISPUTED:** The statements referenced are true. The statements made by Suhy and iGov were made to educate the community about ONgDB and Neo4j. Furthermore - the word drop-in replacement was used which is still true for all versions of ONgDB. The term "drop in replacement/equivalent" not used in combination the way Neo4j fact suggests. The term "drop in replacement" was used on its own. Suhy Dec.42 To the contrary, the statements are true. First, ONgDB is a drop in replacement as explained in the deposition of Brad Nussbaum. Nussbaum Depo., 158:7-14, 160: 9-14. Pernick Dec. Ex. A. Plaintiffs have presented no evidence that ONgDB does not operate as a drop in replacement. With respect to ONgDB being free and open, again, Plaintiffs argument that the removal of the Commons Clause language from the Neo4J Sweden Software License was improper is incorrect. Pernick Dec. Ex. B Substituting the matching language for the defined

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		terms in this provision, Section 7 of the Neo4J Sweden Software License states: "If the Program as [GFI] received it, or any part of it, contains a notice stating that it is governed by [the AGPLv3 license] along with a term that is a further restriction, [GFI] may remove that term." Ratinoff Decl. Exh. 39, 6:331-7:393 The cited deposition testimony also demonstrates GFI's belief in the truth of these statements. Pernick Dec. Ex. A
	Fact 105: Consumers chose ONgDB over Neo4j® EE based on Defendants' misrepresentations about ONgDB being "free and open" drop-in replacement/equivalent under the AGPL, including NextCentury and the MPO, Tufin, the IRS, Department of Homeland Security (DHS) and others. Ratinoff Decl., Exhs. 35, 40, 48-51, 53, 100, 120, 127, 133-135; Exh. 3 at 54:17-55:1, 142:15-144:20, 227:3-8, Exh. 31 at 191:15-24, 194:23-25, 195:13-18, 196:22-197:24; Broad Decl., ¶¶ 20-24; Exhs. 12-13.	DISPUTED: the representations made about being a drop-in replacement are true. The term "drop in replacement/equivalent" was not used together in the manner Neo4j referenced. Only the term "drop-in replacement" was used. Suhy Dec.42 To the contrary, the statements are true. First, ONgDB is a drop in replacement as explained in the deposition of Brad Nussbaum. Nussbaum Depo., 158:7-14, 160: 9-14. Pernick Dec. Ex. A. Plaintiffs have presented no evidence that ONgDB does not operate as a drop in replacement. With respect to ONgDB being free and open, again, Plaintiffs argument that the removal of the Commons Clause language from the Neo4J Sweden Software License was improper is incorrect. Pernick Dec. Ex. B Substituting the matching language for the defined terms in this provision, Section 7 of the Neo4J Sweden Software License states: "If the Program as [GFI] received it, or any part of it, contains a notice stating that it is governed by [the AGPLv3 license] along with a term that is a further restriction, [GFI] may remove that term." Ratinoff Decl. Exh. 39, 6:331-7:393 The cited deposition testimony also

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		demonstrates GFI's belief in the truth of these statements. Pernick Dec. Ex. A Neo4j and ONgDB are highly technical products and the end-users who use them are knowledgeable about the technology. Furthermore, defendants focused on educating the community with facts. In the case of the IRS - defendants laid out the facts including differences, license, features, and future of ONgDB were all taken into consideration. The agencies mentioned in this fact would not have have been effected by the commons clause restriction as they are using ONgDB for their projects and not creating or selling anything. Suhy Dec. 42 Plaintiffs present no evidence of a single person or entity that would have made that choice. Indeed, the evidence Plaintiffs provide with respect to New Century, their one purported concrete example, is an email exchange showing that New Century had no response to Neo4j, Inc.'s proposal even though New Century stated in its email that it understood the issues regarding ONgDB's "legal viability." Broad Decl., Exh. 13.
3. Defendants' deception is material	Fact 106: Defendants' false statements that ONgDB is a drop-in replacement/equivalent to paid-for, commercial licensed Neo4® EE was material to potential consumers' purchasing decision because Defendants were offering it for free under the AGPL, and unbeknownst to consumers, in violation of the Neo4j Sweden Software License and Neo4j Sweden's copyright. *See supra* Facts 78-93.	DISPUTED: ONgDB is a drop-in replacement for any Neo4j (community or enterprise) with the same version number. ONgDB is a superset of Neo4j Core. Furthermore: the term "drop-in replacement/equivalent" was not used together as Neo4j says in the fact.

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	Fact 107: Defendants intentionally made the false statements publicly on their website and on Twitter that ONgDB is a "free and open" drop-in replacement/equivalent under the AGPL to convince customers to adopt ONgDB over Neo4j® EE. *See supra* Facts 78-93.	DISPUTED: The statements mentioned are true statements, not false. Suhy and iGov clearly state that there are no limitations to cores and causal clustering - free and open would still apply to the AGPL with commons clause as all the terms in AGPL are still present. Had Neo4j removed some terms from AGPL - then it may be harder to use the term free and open Furthermore: the term "drop-in replacement/equivalent" was not used together as Neo4j says in the fact. To the contrary, the statements are true. First, ONgDB is a drop in replacement as explained in the deposition of Brad Nussbaum. Nussbaum Depo., 158:7-14, 160: 9-14. Pernick Dec. Ex. A. Plaintiffs have presented no evidence that ONgDB does not operate as a drop in replacement. With respect to ONgDB being free and open, again, Plaintiffs argument that the removal of the Commons Clause language from the Neo4J Sweden Software License was improper is incorrect. Pernick Dec. Ex. B Substituting the matching language for the defined terms in this provision, Section 7 of the Neo4J Sweden Software License states: "If the Program as [GFI] received it, or any part of it, contains a notice stating that it is governed by [the AGPLv3 license] along with a term that is a further restriction, [GFI] may remove that term." Ratinoff Decl. Exh. 39, 6:331-7:393 The cited deposition testimony also demonstrates GFI's belief in the truth of these statements. Pernick Dec. Ex. A
4. Defendants caused the false	Fact 108: Defendants' false statements entered interstate commerce through the internet via their websites and Twitter, as well as emails	DISPUTED: Defendants statements were / are true.

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Claim or Defense	**Moving Party's Undisputed Facts/Supporting Evidence**	**Opposing Parties' Response/Supporting Evidence**
statement to enter interstate commerce	sent to consumers. Ratinoff Decl., Exhs. 18, 21, 25, 29, 42-46, 49-51, 54-55, 57-58, 60, 62-66, 67-70, 72-74, 93, 99-104, 108, 113-114.	To the contrary, the statements are true. First, ONgDB is a drop in replacement as explained in the deposition of Brad Nussbaum. Nussbaum Depo., 158:7-14, 160: 9-14. Pernick Dec. Ex. A. Plaintiffs have presented no evidence that ONgDB does not operate as a drop in replacement. With respect to ONgDB being free and open, again, Plaintiffs argument that the removal of the Commons Clause language from the Neo4J Sweden Software License was improper is incorrect. Pernick Dec. Ex. B Substituting the matching language for the defined terms in this provision, Section 7 of the Neo4J Sweden Software License states: "If the Program as [GFI] received it, or any part of it, contains a notice stating that it is governed by [the AGPLv3 license] along with a term that is a further restriction, [GFI] may remove that term." Ratinoff Decl. Exh. 39, 6:331-7:393 The cited deposition testimony also demonstrates GFI's belief in the truth of these statements. Pernick Dec. Ex. A
5. Neo4j USA has been or is likely to be injured as a result of the false statement	Fact 109: Defendants' false statements diverted sales from Neo4j USA. Ratinoff Decl., Exhs. 35, 40, 47-51, 53, 100, 120, 127, 133-135; Exh. 3 at 54:17-55:1, 142:15-144:20, 227:3-8, Exh. 31 at 191:15-24, 194:23-25, 195:13-18, 196:22-197:24; Broad Decl., ¶¶ 20-24; Exhs. 12-13.	DISPUTED: Defendants statements were / are true. To the contrary, the statements are true. First, ONgDB is a drop in replacement as explained in the deposition of Brad Nussbaum. Nussbaum Depo., 158:7-14, 160: 9-14. Pernick Dec. Ex. A. Plaintiffs have presented no evidence that ONgDB does not operate as a drop in replacement. With respect to ONgDB being free and open, again, Plaintiffs argument that the removal of the Commons Clause language from the Neo4J Sweden Software License was improper is incorrect. Pernick Dec. Ex. B Substituting the matching language for the defined terms in this provision, Section 7 of the Neo4J Sweden Software License states: "If the Program as [GFI] received it, or any part of it, contains a notice

Claim or Defense	Moving Party's Undisputed Facts/Supporting Evidence	Opposing Parties' Response/Supporting Evidence
		stating that it is governed by [the AGPLv3 license] along with a term that is a further restriction, [GFI] may remove that term." Ratinoff Decl. Exh. 39, 6:331-7:393 The cited deposition testimony also demonstrates GFI's belief in the truth of these statements. Pernick Dec. Ex. A Plaintiffs present no evidence of a single person or entity that would have made that choice. Indeed, the evidence Plaintiffs provide with respect to New Century, their one purported concrete example, is an email exchange showing that New Century had no response to Neo4j, Inc.'s proposal even though New Century stated in its email that it understood the issues regarding ONgDB's "legal viability." Broad Decl., Exh. 13.
	Fact 110: Neo4j USA lost multi-year deal with the IRS. Broad Decl., ¶¶ 20-21.	DISPUTED: PureThink lost a multi-year deal with IRS, not Neo4j USA. Suhy Dec. ¶7, Ex. 1 Furthermore - IRS created a competitive procurement which Neo4j or Resellers could have competed on. Mr. Suhy is not aware of Neo4j Inc or other resellers providing competitive responses to the procurement. Suhy Dec. ¶49
	Fact 111: Neo4j USA lost multi-year deal with Next Century/MPO adopting ONgDB, amounting to over over $2.2 million in lost revenue. Broad Decl., ¶¶ 22-24, Exhs. 12-13.	DISPUTED: Mr Suhy is not aware of Neo4j USA having a multi-year deal with Next Centry / MPO which it could have lost in the first place. The evidence Plaintiffs provide with respect to New Century, their one purported concrete example, is an email exchange showing that New Century had no response to Neo4j, Inc.'s proposal even though New Century stated in its email that it understood the issues regarding ONgDB's "legal viability." Broad Decl., Exh. 13.
Claim 4: False Designation of Origin Against GFI and the PT Defendants		

Claim or Defense	Moving Party's Undisputed Facts/Supporting Evidence	Opposing Parties' Response/Supporting Evidence
1. used in commerce any word, false designation of origin, false or misleading description, or representation of fact	Fact 112: Defendants' false and misleading statements that ONgDB is a "free and open" drop-in replacement under the AGPL for equivalent versions of paid-for commercially licensed Neo4® EE were made in commerce through the internet via their websites and Twitter, as well as emails sent to consumers. Ratinoff Decl., Exhs. 18, 21, 25, 29, 42-46, 49-51, 54-55, 57-58, 60, 62-66, 67-70, 72-74, 93, 99-104, 108, 113-114; *see also* Facts 78-80.	DISPUTED: The statements made are not misleading or false. ONgDB is a drop in replacement for Neo4j distributions. ONgDB is free and open - it has no limitations on number of cores, number of cluster instances, etc - while Neo4j Enterprise commercial packages have legal terms limiting these features making them not free and open. To the contrary, the statements are true. First, ONgDB is a drop in replacement as explained in the deposition of Brad Nussbaum. Nussbaum Depo., 158:7-14, 160: 9-14. Pernick Dec. Ex. A. Plaintiffs have presented no evidence that ONgDB does not operate as a drop in replacement. With respect to ONgDB being free and open, again, Plaintiffs argument that the removal of the Commons Clause language from the Neo4J Sweden Software License was improper is incorrect. Pernick Dec. Ex. B Substituting the matching language for the defined terms in this provision, Section 7 of the Neo4J Sweden Software License states: "If the Program as [GFI] received it, or any part of it, contains a notice stating that it is governed by [the AGPLv3 license] along with a term that is a further restriction, [GFI] may remove that term." Ratinoff Decl. Exh. 39, 6:331-7:393 The cited deposition testimony also demonstrates GFI's belief in the truth of these statements. Pernick Dec. Ex. A
	Fact 113: Defendants' statements that ONgDB is a "free and open" drop-in replacement under the AGPL for equivalent versions of paid-for commercially licensed Neo4® EE were false and misleading because Defendants did not have the right to replace the Neo4j Sweden Software License with the AGPL. *See* Facts 78-93.	DISPUTED: ONgDB is a free and open drop-in replacement. iGov or Suhy talk about free and open meaning that there were no limitations on the number of cores or cluster instances.

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Claim or Defense	**Moving Party's Undisputed Facts/Supporting Evidence**	**Opposing Parties' Response/Supporting Evidence**
		Furthermore - Neo4j Sweden still uses the AGPL license with the AGPL preamble. They added the commons clause restriction which defendants question - but they added this to the AGPL license which is known as a free and open source license. Had they removed the preamble or just copied the terms they liked from the AGPL into a new license then the story may be different. To the contrary, the statements are true. First, ONgDB is a drop in replacement as explained in the deposition of Brad Nussbaum. Nussbaum Depo., 158:7-14, 160: 9-14. Pernick Dec. Ex. A. Plaintiffs have presented no evidence that ONgDB does not operate as a drop in replacement. With respect to ONgDB being free and open, again, Plaintiffs argument that the removal of the Commons Clause language from the Neo4J Sweden Software License was improper is incorrect. Pernick Dec. Ex. B Substituting the matching language for the defined terms in this provision, Section 7 of the Neo4J Sweden Software License states: "If the Program as [GFI] received it, or any part of it, contains a notice stating that it is governed by [the AGPLv3 license] along with a term that is a further restriction, [GFI] may remove that term." Ratinoff Decl. Exh. 39, 6:331-7:393 The cited deposition testimony also demonstrates GFI's belief in the truth of these statements. Pernick Dec. Ex. A
	Fact 114: Defendants' statements ONgDB is a "free and open" drop-in replacement under the AGPL for equivalent versions of paid-for commercially licensed Neo4® EE were false and misleading because ONgDB was not of the same quality as if it were compiled by Plaintiffs. Rathle Decl. ¶¶ 19-22, 29-34; Ratinoff Decl., Exh. 3 at 216:2-218:6; Exh. 31 at 161:23-163:12, 168:14-169:6.	DISPUTED: These statements are true. They are also not misleading. ONgDB is a superset of Neo4j as it forks and does not modify the core code. All versions of ONgDB (even 3.5) are drop in replacements for neo4j community and enterprise versions of the same version number.

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Claim or Defense	**Moving Party's Undisputed Facts/Supporting Evidence**	**Opposing Parties' Response/Supporting Evidence**
		If different people compile the same code using the same build configuration - then there will not be any quality differences between the 2 compiled distributions. In fact - Neo4j does not technically compile their code, the build system they use from atlassian does the job. It should be noted that the GFI build system also uses atlassian tooling and automation. To the contrary, the statements are true. First, ONgDB is a drop in replacement as explained in the deposition of Brad Nussbaum. Nussbaum Depo., 158:7-14, 160: 9-14. Pernick Dec. Ex. A. Plaintiffs have presented no evidence that ONgDB does not operate as a drop in replacement. With respect to ONgDB being free and open, again, Plaintiffs argument that the removal of the Commons Clause language from the Neo4J Sweden Software License was improper is incorrect. Pernick Dec. Ex. B Substituting the matching language for the defined terms in this provision, Section 7 of the Neo4J Sweden Software License states: "If the Program as [GFI] received it, or any part of it, contains a notice stating that it is governed by [the AGPLv3 license] along with a term that is a further restriction, [GFI] may remove that term." Ratinoff Decl. Exh. 39, 6:331-7:393 The cited deposition testimony also demonstrates GFI's belief in the truth of these statements. Pernick Dec. Ex. A When ONgDB and Neo4j Enterprise share the same code base - the compiled distributions are identical from a functionality and feature perspective. Only the metadata timestamps of the compile time differ which has no effect on the quality.

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Claim or Defense	**Moving Party's Undisputed Facts/Supporting Evidence**	**Opposing Parties' Response/Supporting Evidence**
		ONgDB ensures that the same JVM and other parameters are used as the Neo4j compiled binaries - there are no quality differences because of the fact that the source code across versions using the same code are the same.
	Fact 115: Since GFI introduced modifications to ONgDB in an attempt to keep pace with the closed Neo4j® EE releases, the potential for stability and compatibility issues with ONgDB increases. *See* Rathle Decl., ¶¶ 29-24; *see also* Ratinoff Decl., Exh. 31 at 158:18-160:5, 161:23-163:12; Exh. 3 at 223:1-224:9; Exh. 40.	DISPUTED: GFI does not modify the core code it keeps in sync from the Neo4j official GitHub repository. The same can be said about Neo4j - and historically they have had many stability and other issues across different releases. ONgDB skipped over some 4.x releases as it waited for Neo4j Inc to address issues and tickets relating to the releases before GFI felt it was stable enough to upgrade. GFI conducts about 64,000 tests for each build. Nussbaum Depo., 166:18-168:13.
	Fact 116: ONgDB does not include every closed enterprise feature in the equivalent version of Neo4j® EE. Ratinoff Decl., Exh. 38 at 2:12-17, 4:15-22, 5:4-6:21; Exh. 3 at 127:19-128:17.	DISPUTED: Versions of Neo4j Enterprise below 3.5 had the same code and therefore has every equivalent feature of the corresponding ONgDB version that did not change the source code. Only ONgDB 3.5 and higher do not include every enterprise feature and defendants don't claim that ongdb 3.5 and above have every feature. See fact 32. ONgDB (AKA ONgDB Enterprise) 3.5.11 is Neo4j 3.5.11 Core + the enterprise features Neo4j Inc removed from the code base as of v3.5. This shows we are not saying we have every feature - the features are only the ones removed from the code base as of v3.5
	Fact 117: GFI admitted that after ONgDB v3.5.4, it could not "reliably guarantee that it was a drop-in replacement" for the same version number of Neo4j® EE and was unwilling to do the testing to make such integration and compatibility guarantees. Ratinoff Decl., Exh. 31 at 186:24-188:17, 188:23-189:23.	**DISPUTED** – GFI conducts tests on ONgDB to ensure its quality and compatibility. **UNDISPUTED** GFI has not verified that ONgDB versions after 3.5.4 are drop in replacements for the equivalent version of Neo4j EE
2. which is likely to cause confusion or mistake, or to		

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Claim or Defense	**Moving Party's Undisputed Facts/Supporting Evidence**	**Opposing Parties' Response/Supporting Evidence**
deceive, as to sponsorship, affiliation, or the origin of the goods or services in question.		
(a) strength of the mark	The Neo4j® Mark is inherently distinctive and Plaintiffs have used it in commerce since 2007, and as a result has gained strong brand recognition via various awards and recognition in the graph database software market. Broad Decl., ¶¶ 2-19, Exhs. 1-11.	**DISPUTED**: The word Neo4J is used to describe various software versions and companies, so it is not distinct, and the recognition is not as a company brand but as a type of graph database widely distributed on GitHub under open source licenses. Suhy Dec. 50
(b) relatedness of the goods and similarity of sight, sound and meaning	Defendants promote ONgDB as Neo4j® EE except that they are free and licensed without restrictions under the AGPL. Ratinoff Decl., Exhs. 18, 21, 25, 29, 42-46, 49-51, 54-55, 57-58, 60, 62-66, 67-70, 72-74, 93, 99-104, 108, 113-114.	DISPUTED: The website content clearly says that there are no restrictions in usage of cores or number of instances, something the commercial edition enforced via legal terms. These features have no usage restrictions in ONgDB. Exhibit 19 states: "**They have no restrictions on the number of cluster instances or cores** that the commercial licensed packages impose!" Exhibit 42 states: "More agencies are adopting it as they learn about it. ONgDB takes Neo4j core (which is open source) and adds enterprise features into it, all 100% free and open, with no **limits on cores or cluster instances** that 'commercial subscriptions' impose. Exhibit 43 states: 1. You do not have to pay any licensing fees for the software you requested. Neo4j Enterprise < 3.5 and ONgDB (Open Native Graph Database) Enterprise (all versions) are available to use 100% free, in production. Exhibit 43 states:

Claim or Defense	Moving Party's Undisputed Facts/Supporting Evidence	Opposing Parties' Response/Supporting Evidence
		More agencies are adopting ONgDB over Neo4j as they learn that it is just the free and open Neo4j enterprise alternative. ONgDB takes Neo4j core (which is open source) and adds enterprise features into it, **all 100% free and open, with no limits on cores or cluster instances that 'commercial subscriptions' impose.** The exhibits cited do not support the proposition. To the contrary, GFI consistently uses language distinguishing ONgDB from Neo4j EE such as "ONgDB is an open source fork of Neo4j Enterprise that is developed and released under AGPLv3 by The Graph Foundation." See Responses to Facts 59-64. And Exhibit 93 also states: "What is ONgDB: Open Native Graph DB is an open source fork of #Neo4j, that picks up prior to Neo4j, Inc.'s removal of enterprise code from the main Github repository."
(c) evidence of actual confusion;	Fact 118: Defendants' interchangeable use of "Neo4j Enterprise" and "ONgDB" misleads consumers into mistakenly believing that ONgDB and Neo4j® EE were one and the same. Ratinoff Decl., Exhs. 35, 40, 42-44, 46-47, 53, 55-58, 76, 100, 130-131, 134-135.	**DISPUTED:** Defendants to do mislead consumers about ONgDB and Neo4j Enterprise. The statements are true for some versions of Neo4j Enterprise and ONgDB. Defendants clearly communicate what ONgDB is, what it's origin is. GFI consistently uses language distinguishing ONgDB from Neo4j EE such as "ONgDB is an open source fork of Neo4j Enterprise that is developed and released under AGPLv3 by The Graph Foundation." See Responses to Facts 59-64. And Exhibit 93 also states: "What is ONgDB: Open Native Graph DB is an open source fork of #Neo4j, that picks up prior to Neo4j, Inc.'s removal of enterprise code from the main Github repository."

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Claim or Defense	**Moving Party's Undisputed Facts/Supporting Evidence**	**Opposing Parties' Response/Supporting Evidence**
		Defendants have never mislead and tried to confuse people into thinking ONgDB is just another name for Neo4j Enterprise. In fact defendants work hard at educating the community about the facts. The cited emails are hearsay and do not establish compatibility issues. Rather, Exhibit 115 demonstrates an attempt to use a desktop tool inappropriately with a server application. Ratinoff Decl., Exh. 31 at 232:5-25. Nothing in the email demonstrates that there would be any compatibility issues when ONgDB is used as a server application.
	Fact 119: Defendants' misrepresentations about ONgDB being "free and open" drop-in replacement/equivalent under the AGPL caused actual confusion over Defendants' unauthorized modification to the Neo4j Sweden Software License and justification for doing so. *See* Ratinoff Decl., Exhs. 40, 49, 55, 118-119, 131, 133-134.	DISPUTED: the statements made are not misrepresentations. ONgDB is a drop in replacement of Neo4j community and enterprise versions with the same version number. ONgDB is a superset of Neo4j and does not modify the Neo4j core code. Furthermore - the combined term "drop-in replacement/equivalent" is not used. To the contrary, the statements are true. First, ONgDB is a drop in replacement as explained in the deposition of Brad Nussbaum. Nussbaum Depo., 158:7-14, 160: 9-14. Pernick Dec. Ex. A. Plaintiffs have presented no evidence that ONgDB does not operate as a drop in replacement. With respect to ONgDB being free and open, again, Plaintiffs argument that the removal of the Commons Clause language from the Neo4J Sweden Software License was improper is incorrect. Pernick Dec. Ex. B Substituting the matching language for the defined terms in this provision, Section 7 of the Neo4J Sweden Software License states: "If the Program as [GFI] received it, or any part of it, contains a notice stating that it is governed by [the AGPLv3 license] along with a term that is a further restriction, [GFI] may remove that term." Ratinoff Decl. Exh. 39, 6:331-7:393 The cited deposition testimony also

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Claim or Defense	Moving Party's Undisputed Facts/Supporting Evidence	Opposing Parties' Response/Supporting Evidence
		demonstrates GFI's belief in the truth of these statements. Pernick Dec. Ex. A The cited emails are hearsay and do not establish compatibility issues. Rather, Exhibit 115 demonstrates an attempt to use a desktop tool inappropriately with a server application. Ratinoff Decl., Exh. 31 at 232:5-25. Nothing in the email demonstrates that there would be any compatibility issues when ONgDB is used as a server application.
	Fact 120: GFI's use of the Neo4j® Mark to promote ONgDB resulted in customers choosing ONgDB over Neo4j® EE and encountering compatibility issues. Ratinoff Decl., Exh. 115-116; Exh 31 at 230:12-233:10; Exh. 3 at 207:12-209:3.	To the contrary, the statements are true. First, ONgDB is a drop in replacement as explained in the deposition of Brad Nussbaum. Nussbaum Depo., 158:7-14, 160: 9-14. Pernick Dec. Ex. A. Plaintiffs have presented no evidence that ONgDB does not operate as a drop in replacement. With respect to ONgDB being free and open, again, Plaintiffs argument that the removal of the Commons Clause language from the Neo4J Sweden Software License was improper is incorrect. Pernick Dec. Ex. B Substituting the matching language for the defined terms in this provision, Section 7 of the Neo4J Sweden Software License states: "If the Program as [GFI] received it, or any part of it, contains a notice stating that it is governed by [the AGPLv3 license] along with a term that is a further restriction, [GFI] may remove that term." Ratinoff Decl. Exh. 39, 6:331-7:393 The cited deposition testimony also demonstrates GFI's belief in the truth of these statements. Pernick Dec. Ex. A The cited emails are hearsay and do not establish compatibility issues. Rather, Exhibit 115 demonstrates an attempt to use a desktop tool inappropriately with a server application. Ratinoff Decl., Exh. 31 at 232:5-25. Nothing in the email

Claim or Defense	Moving Party's Undisputed Facts/Supporting Evidence	Opposing Parties' Response/Supporting Evidence
		demonstrates that there would be any compatibility issues when ONgDB is used as a server application.
	Fact 121: Consumers chose ONgDB over Neo4j® EE based on Defendants' misrepresentations about ONgDB being "free and open" drop-in replacement/equivalent under the AGPL, including NextCentury and the MPO, Tufin, the IRS, Department of Homeland Security (DHS) and others. Ratinoff Decl., Exhs. 35, 40, 47-51, 53, 100, 120, 127, 133-135; Exh. 3 at 54:17-55:1, 142:15-144:20, 224:13-23, 227:3-8, Exh. 31 at 191:15-24, 194:23-25, 195:13-18, 196:22-197:24; Exh. 38 at 23:14-24:4; Broad Decl., ¶¶ 20-24, Exhs. 12-13.	DISPUTED: USA concedes consumers decided to use ONgDB because it was free. Dkt. 98, p. 2:12-13; p. 32:6:10. Price is the material concern on the purchase, not the license or drop in capability. This is obvious in the analysis. Consumers can test whether the software is drop in and review the license. As users of ONgDB do not sell the software, whether the commons clause is valid or not has no impact. Under the AGPL, if you use the open source software internally, as for example what the IRS does, there is no issue with the commons clause. Consumers do not face any copyright infringement claim from Sweden as they are licensed under the AGPL. Suhy Dec. ¶44 The terms mentioned are not misrepresentations about ONgDB. They are true. Defendants do not use the term "drop-in replacement/equivalent". ONgDB is free and open - it still contains all the AGPL terms that make it so. All the agencies listed use ONgDB for free. Furthermore - the commons clause would have no effect on the agencies mentioned from Mr Suhy's knowledge. Suhy Dec. ¶43 Plaintiffs present no evidence of a single person or entity that would have made that choice based on the statements in defendants' websites. Most people do not make million dollar decision to decide on the use of a database from website statements. Indeed, the evidence Plaintiffs provide

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Claim or Defense	**Moving Party's Undisputed Facts/Supporting Evidence**	**Opposing Parties' Response/Supporting Evidence**
		with respect to New Century, their one purported concrete example, is an email exchange showing that New Century had no response to Neo4j, Inc.'s proposal even though New Century stated in its email that it understood the issues regarding ONgDB's "legal viability." Broad Decl., Exh. 13.
(d) marketing channels and likelihood of expansion	Fact 122: Defendants continue to target the same potential users of graph database platforms and software and use the same channels via the internet. *See, e.g.,* Ratinoff Decl., Exhs. 14-15, 18, 25, 29, 37, 45-55, 57, 60-61, 65-66, 76-77, 118-119, 120, 127, 130-132, 134-135.	UNDISPUTED: Objection this fact does not support the claim. Because ONgDB is an unmodified fork of Neo4j Core code, and a superset of Neo4j Core - then anyone who is currently using Neo4j commercial or open source distributions can switch over to ONgDB. In other words - people that use Neo4j are the people who would want to switch to ONgDB if they wanted enterprise features with no limitations on cores or cluster instances for free. Suhy Dec. ¶45
	Fact 123: Neo4j USA and the PT Defendants competed for the same contracts in the government sector. Ratinoff Decl., Exhs. 42-51, 54-55, 100, 120, 127, 130-135; Broad Decl., ¶¶ 20-24, Exhs. 12-13.	DISPUTED: To Mr Suhy's knowledge, Neo4j USA does not directly respond to contracts. Neo4j partners bid on a contracts. Purthink has no contracts with the government. Igov does not license software to the government. Suhy Dec. ¶46
(e) intent	Fact 124: Defendants' use of the Neo4j® Mark to promote Plaintiffs' software with an improperly modified copyright license shows that they intend to copy them and confuse the public. *See supra* Facts 78-102.	DISPUTED: Defendants do not use the Neo4j® Mark, they use the neo4j word in a descriptive manner. Suhy Dec. ¶41 Defendants aim at educating the public not causing confusion. Mr. Suhy did not modify any copyrighted content which is owned by USA, it only updated Sweden's License.txt file which the free software foundation owns the copyright for under the express terms of the AGPL. Suhy Dec. ¶29 Furthermore - when Suhy made the AGPL license verbatim - the commit message clearly states the intention:

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Claim or Defense	**Moving Party's Undisputed Facts/Supporting Evidence**	**Opposing Parties' Response/Supporting Evidence**
		The commit which replaced the modified License.txt file copyrighted to the FSF has a commit message which clarifies the intent of replacing the modified license with the verbatim. **"Updated the LICENSE.txt file to be pure AGPL as to not violate the fsf copyright and to be in line with the AGPL license."** ONgDB is a drop in replacement as explained in the deposition of Brad Nussbaum. Nussbaum Depo., 158:7-14, 160: 9-14. Plaintiffs have presented no evidence that ONgDB does not operate as a drop in replacement. With respect to ONgDB being free and open, again, Plaintiffs argument that the removal of the Commons Clause language from the Neo4J Sweden Software License was improper is incorrect. Substituting the matching language for the defined terms in this provision, Section 7 of the Neo4J Sweden Software License states: "If the Program as [GFI] received it, or any part of it, contains a notice stating that it is governed by [the AGPLv3 license] along with a term that is a further restriction, [GFI] may remove that term." The cited deposition testimony also demonstrates GFI's belief in the truth of these statements.

Attestations

I attest that the evidence cited by defendants John Mark Suhy, Purethink, LLC and iGov, Inc. herein fairly and accurately supports or disputes the facts asserted.

Dated: 1/15/2021

/s/ Adron G. Beene
Adron G. Beene

I attest that the evidence cited by defendants Graph Foundation, Inc. herein fairly and accurately supports or disputes the facts asserted.

Dated: 1/15/2021

/s/ John D. Pernick
John D. Pernick

FILER'S ATTESTATION

I, Adron G. Beene, am the ECF user whose credentials were utilized in the electronic filing of this document. In accordance with N.D. Cal. Civil Local Rule 5-1(i)(3), I hereby attest that all signatories hereto concur in this filing.
Dated: January 15, 2021

/s/ Adron G. Beene
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EXHIBIT A

EXHIBIT B

DEFENDANTS' CONSOLIDATED SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS

Claim or Defense	Moving Party's Undisputed Facts/Supporting Evidence	Opposing Parties' Response/Supporting Evidence
Claim 1: Neo4J USA's Trademark Infringement Claim		
Plaintiff Neo4j Inc. ("USA") Does not own a protectable trademark in Neo4J which is a required element of a trademark claim	Fact 125: **USA Fka, Neo Techonolgy, Inc. does not own the trademark to Neo4J. Neo4J Sweden AB, Fka Network Engine for Objects in Lund AB) ("Sweden") owns the trademark to Neo4J.** Beene Dec ¶ 2-7 Exhibits 1, (recital 1, Section 1.6. (b), 1.7, 2.1 (non-exclusive license) Article 3 (Reservation of Rights [to Sweden]) 2 Royalty report on license, 3 (Sweden Neo4J trademark applications and registrations). Dkt. No 56 ¶91 (Neo Technologies, Inc. was incorporated in July 7, 2011 and changed its name to Neo4j, Inc. on August 7, 2017)	
	Fact 126: Sweden licensed its Neo4J software and trademarks on a **non-exclusive basis** to USA. Beene Dec ¶ 2-7 Exhibits 1, (recital 1, Section 1.6. (b), 1.7, 2.1 (non-exclusive license) Article 3 (Reservation of Rights [to Sweden]) 2 Royalty report on license, 3 (Sweden Neo4J trademark applications and registrations).	
	Fact 127: Sweden retained exclusive ownership of the mark in the license agreement. Beene Dec ¶ 2-7 Exhibit 1, (recital 1, Section 1.6. (b), 1.7, Article 3 (Reservation of Rights [to Sweden])	
	Fact 128: Sweden has in fact made trademark applications claiming ownership of the Neo4J mark throughout the world further providing evidence of Sweden's ownership of the Neo4J mark. Beene Dec ¶ 7, Exhibit 3.	
	Fact 129: USA has paid Sweden royalties for the license. Beene Dec ¶ 6, Exhibits 2.	
Fraud on the PTO defense	Fact 130: Lars Nordwall, as the COO of USA, knew USA did not own the NEO4J trademark and did not use the trademark since 6/04/2006 which is before USA was formed on July 7, 2011. Beene Dec. Ex. 6 (NEO4J trademark application, principle register) and Dkt. No 56 ¶91 (Neo Technologies, Inc. was incorporated in July 7, 2011 and changed its name to Neo4j, Inc. on August 7, 2017)	

EXHIBIT B

Claim or Defense	Moving Party's Undisputed Facts/Supporting Evidence	Opposing Parties' Response/Supporting Evidence
Naked license defense	Fact 131: USA provides no evidence that Sweden controlled quality on Sweden's software the years before the software and trademark was licensed to USA. Declaration of John Mark Suhy (Suhy Dec.) ¶51.	
	Fact 132: The License Agreement from Sweden to USA has no quality control provisions. Beene Dec ¶ 2-7 Exhibit 1 (no quality control provision in license agreement.)	
Defendants did not infringe on USA's limited trademark license when referring to the open source software	Fact 133: Sweden is the licensor of the open source version of Neo4J under the AGPL and the owner of the Neo4J trademark. Fact 125 and Ratinoff Dec. Ex 39 at 25:11-13	
Defendants use of Neo4J was nominative which is not infringing.	Fact 134: Defendants references Sweden's Neo4J mark to reference Sweden's open source software called Neo4J to describe the software and uses USA's company name and products to identify them in comparative advertisement. Suhy Dec. ¶9	
Defendants use of Neo4J does not suggest sponsorship or endorsement	Fact 135 Defendants websites, taken as a whole do not suggest sponsorship or endorsement by USA. Suhy does not have a website. Defendants did not use the USA's disputed Neo4j mark for promotion of USA's products. All promotions have been for marketing and service Sweden's open source Neo4J software and derivatives of such software as permitted under the GitHub Terms of Service and the AGPL. References to USA and its products are for comparative advertisement. Suhy Dec. ¶9, 16	
PT defendants engaged in no conduct leading to an inequitable result to support Alter Ego Liability	Fact 136: The Partner Agreement seeks to prevent PT from dealing in all versions of Sweden's Neo4J open source software when USA is not the licensor under the AGPL and the AGPL freely allows anyone to use the software. Fact 133; Suhy Dec. ¶52	
	Fact 137: The purpose of USA' restriction in the Partner Agreement is to prevent any terminated partner from supporting Sweden's open source version of Neo4J which is unlawful. Suhy Dec. ¶4, 53	
	Fact 138: USA wrongfully and successfully asserted the unlawful restriction to interfere with PT efforts to get business from the IRS. Suhy Dec. ¶7, 54, Ex. 1	

Claim or Defense	Moving Party's Undisputed Facts/Supporting Evidence	Opposing Parties' Response/Supporting Evidence
The PT Defendants did not used the Neo4j® Mark without Neo4j USA's authorization to promote ONgDB	Fact 139: The PT defendants are not using the Neo4J mark to sell USA's commercial software. Suhy Dec. ¶31	
	Fact 140: USA agreed Sweden owns the intellectual property, including marks for Neo4J. Fact 125.	
	Fact 141: Here there is an issue of fact on the false designation of origin element as ONgDB is a fork of Sweden's open source software licensed under the AGPL. Suhy Dec. ¶19	
	Fact 142: USA even admits, the open source version has the same great features as the commercial version. Suhy Dec. ¶55; Beene Dec. Ex. 8	
	Fact 143: Whether ONgDB is a "drop in" replacement for USA's "commercial" Neo4J software, is a disputed issue of fact.	
	Fact 144: Data and queries, the key function of a databases, from either version work on both versions. Suhy Dec. ¶56	
ONgDB is a Drop in replacement to versions of Neo4J	Fact 145: USA, in its website, stated that its commercial Enterprise version of Neo4J has "same great features" as the open source version of Neo4j. Suhy Dec. ¶55, Ex 3	
	Fact 146: ONgBD allows users of other versions of Neo4J (including older versions of commercial and open source) to drop in the files from the same version number and operate the same data and run queries on it, which is the core functionality of a database. Defendants have not heard of any consumer suggest otherwise. Suhy Dec. ¶57	
Use of USA documentation is licensed Content and is not actionable on any claim.	Fact 147: Any user of open source software from Sweden's Neo4J GitHub repository are allowed to use all content on the site. This is permitted under the GitHub Terms of Service. GitHub Terms of service A. 4 definition of Content and ¶ D 5 license. (including "You may grant further rights… " inferring rights to End Users under the GitHub license may **not** be limited.) Suhy Dec. ¶58 Beene Dec. Ex. 9.	
Defendants product and services are not readily identifiable without use of the Neo4J trademark	Fact. 148: Neo4J is a type of database that must be identified so consumers looking for the database may find it. Defendants properly used Neo4J to identify companies and products in marketing and	

Claim or Defense	Moving Party’s Undisputed Facts/Supporting Evidence	Opposing Parties’ Response/Supporting Evidence
	comparative advertisements to provide knowledgeable consumers with information for fair competition. Suhy Dec. ¶2, 59	
2. False Advertising Claims 2nd, 3rd and 4th causes of action.		
ONgDB is based on the open source version of Neo4J licensed under the AGPL and is free.	Fact 149: ONgDB is a free fork of Neo4J software licensed under the Sweden’s AGPL. Suhy Dec. ¶36	
	Fact 150: The AGPL is a free open source license. AGPL Preamble, Ratinoff Dec. Ex. 39, 1-2	
Consumer did not materially rely on the defendants’ representations to determine to use ONgDB software for free instead of paying USA money for a commercial version of Neo4J.	Fact 151: Sophisticated consumers of databases make purchase decisions based on price. Suhy Dec. ¶44; USA concedes consumers decided to use ONgDB because it was free. Dkt. 98, p.2:12-13 p. 32:6:10. Information Analysis Incorporated’s GSA price list has a $500,000 bid for a Neo4J term license. (Beene Dec. Exhibit 5, p.1.) Beene Dec Ex. 7	
An ONgDB licensee that only internally uses the software does not violate the commons clause- valid or not.	Fact 152: The common clause, valid or not, only restricts licensees from selling the software. It does not prevent a licensee from internally using the software. Ratinoff Dec. Ex 39 at 25:11-13, Suhy Dec. ¶36, 60, Ex. 2	
	Fact 153: Not all versions of Sweden’s open source software are subject to the common clause. Suhy Dec. ¶61	
	Fact 154: A licensee who wants to sell an open source Neo4J fork, may do so with a prior version of Neo4j where the license does not include the added common clause if they have concerns of the validity of the commons clause. Suhy Dec. ¶62	

Claim or Defense	**Moving Party's Undisputed Facts/Supporting Evidence**	**Opposing Parties' Response/Supporting Evidence**
The commons clauses added to the AGPL does not bar professional services.	Fact 155: Even if valid, the commons clause only bars services that "consists, entirely or substantially of the Software or the functionality of the Software." Ratinoff Dec. Ex 39 at 25:681-693	
	Fact 156: Professional services to support a licensee of open source Neo4j do not "consists, entirely or substantially of the Software or the functionality of the Software." Ratinoff Dec. Ex 39 at 25:681-693, Suhy Dec. ¶36, 60, Ex.2	

Attestation

I attest that the evidence cited by herein fairly and accurately supports or disputes the facts asserted. Dated:

1/15/2021

/s/ Adron G. Beene
Adron G. Beene

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

NEO4J, INC., et al.,
Plaintiffs,
v.
PURETHINK, LLC, et al.,
Defendants.

Case No. 5:18-cv-07182-EJD

ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT; DENYING DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT

Re: Dkt. Nos. 98, 100

Plaintiffs Neo4j, Inc. ("Neo4j USA") and Neo4j Sweden AB ("Neo4j Sweden," and collectively, "Plaintiffs") brought the present lawsuit against Defendants PureThink LLC, iGov Inc., and John Mark Suhy ("Defendants") alleging trademark and copyright infringement, among other claims, related to Plaintiffs' proprietary software. Currently before the Court is Plaintiffs' Motion for Partial Summary Judgment as to Neo4j USA's Lanham Act and related California Unfair Competition Law ("UCL") claims against Defendants. Dkt. No. 98 ("Motion"). Also, before the Court is Defendants' Consolidated Cross-Motion for Summary Judgment as to the same subset of claims. Dkt. No. 100 ("Cross-Motion").

Both the Motion and Cross-Motion were originally filed on a consolidated basis with the corresponding motions in the related action against Defendants Graph Foundation, Inc., GraphGrid, Inc., and AtomRain, Inc. *See Neo4j, Inc. v. Graph Foundation, Inc.*, Case No. 5:19-cv-06226-EJD ("GFI Action"). Before the Motions were fully briefed, however, the parties to the GFI Action reached a settlement and the Court entered a stipulated judgment terminating the case.

See GFI Action, Dkt. No. 110.

The Court took the Motion and Cross-Motion under submission for decision without oral argument pursuant to Civil Local Rule 7-1(b). Having considered all the papers filed in support of or in opposition to the Motion and Cross-Motion, the Court GRANTS Plaintiffs' Motion and DENIES Defendants' Cross-Motion.

I. Background

A. Plaintiffs' Business

Neo4j USA is a Delaware corporation with its principal place of business in San Mateo, California, specializing in graph database management systems. Neo4j USA's platform helps organizations make sense of their data by revealing how people, processes and digital systems are interrelated. Declaration of John Broad ("Broad Decl."), ¶¶ 2-3. Neo4j USA has more than 400 commercial customers, including global enterprises such as Walmart, Comcast, Cisco, and eBay, and also does substantial business with government agencies, including agencies within the United States Government. *Id.* ¶ 4.

Neo4j USA is the parent corporation of Neo4j Sweden, which in turn is a wholly owned subsidiary of Neo4j USA. Declaration of Philip Rathle ("Rathle Decl."), ¶ 3. Neo4j Sweden owns of all copyrights related to the Neo4j graph database platform, including the source code, and has licensed those copyrights to Neo4j USA. *Id.* ¶¶ 3-4. In conjunction with its business, Neo4j USA filed for and obtained several federally registered trademarks, including U.S. Trademark Registration No. 4,784,280 for the word mark "NEO4J" covering the goods and services in International Classes, 009, 035, 041, 042 and 045 (the "Neo4j Mark"). Dkt. No. 98-1, Declaration of Jeffrey M. Ratinoff in Support of Neo4j, Inc. and Neo4j Sweden AB's Consolidated Motion for Summary Judgment ("Ratinoff Decl."), Ex. 1. In its registration application, Neo4j USA claimed first use of the Neo4j Mark was in June 2006 and first use in commerce in May 2007 based on the use of that mark by Neo4j Sweden, Neo4j USA's predecessor-in-interest and related company. *See id.*

Plaintiffs originally offered a free and open source version of the Neo4j platform, meaning that the source code was available to the public on GitHub pursuant to the GNU General Public License version 3 ("GPL"). Rathle Decl., ¶¶ 4-5. This version was known as the Neo4j Community Edition ("Neo4j CE"). *Id.* Neo4j CE is limited in its feature set and does not come with technical or administrative support. *Id.* ¶¶ 5-6. Plaintiffs also offered a more advanced commercial version with included additional features and support services, known as the Neo4j Enterprise Edition ("Neo4j EE"). *Id* ¶ 8. Neo4j EE was originally offered under both a paid-for commercial license and the free GNU Affero General Public License, version 3 ("APGL"). *Id.* ¶ 9. In May 2018, Plaintiffs released Neo4j EE version 3.4, which they continued to offer under an open source license; however, they replaced the AGPL with a stricter license, which included the terms from the AGPLv3 and additional restrictions provided by the Commons Clause ("Neo4j Sweden Software License"). *Id.*, ¶ 11, Ex. 3. The new terms prohibited the non-paying public from engaging in commercial resale and certain commercial support services. In November 2018, Plaintiffs released Neo4j EE version 3.5 under a commercial license only. From that point on, Plaintiffs were no longer providing Neo4j EE on an open source basis. Rathle Decl., ¶ 13 Ex. 4.

B. Plaintiffs Partnership with PureThink

PureThink is a software and information technology consulting company founded by Mr. Suhy, which specializes in supporting agencies within the U.S. Government. *See* Ratinoff Decl., Ex. 2. Neo4j USA contracted with PureThink to sell and support the commercial version of Neo4j pursuant to a Solution Partner Agreement ("SPA"). *Id.*, Ex. 4. Under this agreement, PureThink had a non-exclusive, non-transferable limited license to, inter alia, use the Neo4j Mark solely to market and resell commercial licenses to Neo4j EE and related support services in exchange for shared revenue for the licenses that it resold. *Id.*, Ex. 4 at § 4.1. The SPA was subject to a 1-year term and would automatically renew at additional 1-year periods subject to the notice and termination provision therein, thereby incorporating whatever was the Neo4j USA's "then-current trademark usage guidelines." *Id.*, Ex. 4 at §7.1; Ex. 3 at 67:18-24. All rights and licenses to the

Neo4j Platform and the Neo4j Mark under the SPA terminate upon the expiration or termination, and upon such an event, PureThink expressly agreed to "cease using any trademarks, service marks and other designations of Plaintiffs." *Id.*, Ex. 4 at §7.3.

In the hopes of increased sales, PureThink developed the Neo4j Government Edition ("Gov't Edition"), which was a package designed to streamline government procurements. *See Id.*, Ext. 5-6. PureThink focused mainly on selling Gov't Edition packages to various government agencies. *Id.* PureThink initially marketed Gov't Edition to the IRS, however, the IRS indicated that it would require a prototype before purchasing a full subscription. To secure the IRS's business, Mr. Suhy told the IRS that it could use the open source version of Neo4j EE and pay PureThink for consulting services instead of buying a commercial subscription from Neo4j USA. *Id.*, Ex. 8. The facts regarding what PureThink said and offered to the IRS are disputed and are relevant to the breach of contract claims which are not at issue in this motion.

It is undisputed that on May 30, 2017, Neo4j USA sent PureThink notice that Mr. Suhy's use, distribution, and marketing of Neo4j's open source products and his marketing of consulting services focused on those products constitute a material breach of the SPA. *Id.*, Ex. 9. The notice triggered a 30-day cure period, during which Mr. Suhy incorporated a new company, iGov Inc., in order to support open source Neo4j software without being bound by restrictions in the SPA that he believed to be unlawful. *Id.*, Ex 11; Dkt. No. 72, Second Amended Counterclaim, ¶ 20. On July 11, 2017, Neo4j USA terminated the SPA, demanding that PureThink "cease using [Neo4j's] trademarks, service marks, and other designations . . . and remove from PureThink's website(s) marketing materials, [Neo4j's] trademarks and tradenames, including, without limitation, Neo4j." Ratinoff Decl., Ex. 12.

C. Defendants' Use of the Neo4j Mark

After the partnership agreement terminated, Mr. Suhy and iGov continued marketing the Gov't Edition to government agencies. *See id.*, Exs. 14-15. Around this time, PureThink and iGov put the following statement on their websites:

> The principle [sic] behind PureThink and the Government Package has created a new corporate entity called iGov Inc, which is not a Neo4j Solution Partner. Because iGov Inc is not a solution partner, it can offer packages at great cost savings to US Government Agencies as it has no restrictions on working with Neo4j Enterprise open source licenses!
>
> * * *
>
> iGov Inc's new Government Package for Neo4j can be added to any Neo4j instance making it a "Government Edition". By default, all Government Packages for Neo4j now comes with Neo4j Enterprise included under it's [sic] open source license!

Id. The iGov website contained numerous uses of the Neo4j Mark, including references to "Government Package for Neo4j" and "Government Development Package with Neo4j Enterprise." *Id.*, Exs. 14-19. iGov advertised itself as "the only US Federal contractor providing Neo4j Enterprise binaries packaged with it's free Open Source license!" *See id.*, Ex. 17 ("iGov Inc's Government Development Package with Neo4j Enterprise . . . Comes with same physical Neo4j Enterprise software").

The website also (1) uses "https://igovsol.com/neo4j.html" as a URL to promote "Government Development Packages for Neo4j"; (2) displays "Request Procurement Document Package" link with "mailto:neo4j@igovsol.com" embedded that creates an email addressed thereto upon activation; (3) encourages consumers to obtain more information by sending an email to "neo4j@igovsol.com;" and (4) uses "Government Packages for Neo4j" and "Neo4j Enterprise" to describe iGov's modified version of the Neo4j EE software. Ratinoff Decl., Exs. 15-18, 21, 62-64, 67-69. The parties do not dispute that the website used the Neo4j Mark in these ways, however, they disagree about whether the uses were authorized.

The "Neo4j Enterprise" software that iGov packaged and sold was a modified version of the open source Neo4j EE software, which was only publicly available through Neo4j EE v3.3. It did not include several "closed-source" features of Neo4j EE that were only available under the Neo4j USA's commercial license. In May 2018, Plaintiffs released Neo4j EE v3.4 but replaced the AGPL with the Neo4j Sweden Software License, a stricter license which included additional restrictions provided by the Commons Clause. Rathle Decl. ¶ 11, Ex. 2. The Commons Clause prohibited resale and commercial support services. *Id.*

Following the release of version 3.4, Mr. Suhy told Plaintiffs that he was forming a non-profit "for a community fork of Neo4j to get things started, and to ensure it's [sic] long term success." Ratinoff Decl., Ex. 27. He worked with Brad and Ben Nussbaum, owners of Atom Inc. and GraphGrid, Inc., to form Graph Foundation, Inc. *Id.*, Ex. 29 ("Our team: iGov Inc, GraphGrid [], and AtomRain []. We work together as one company. We all are the founders of the Graph Foundation."). Once formed, GFI began promoting a software called "ONgDB." *Id.*, Ex. 28. Defendants and GFI used Neo4j EE version 3.4, which was openly available subject to the Neo4j Sweden Software License, as a base for ONgDB, but they replaced the Neo4j Sweden Software License with the AGPL. *See id.*, Exs. 24-26, 28; see also Ex. 3 at 28:25-29:11; Ex. 31 at 87:24-90:9. After Graph Foundation ("GFI") released ONgDB in July 2018, iGov continued to use "https://igovsol.com/neo4j.html" as a URL address to promote ONgDB until it deactivated that page sometime after July 27, 2020. Ratinoff Decl., Exs. 62-65; Ex. 13 at RFA No. 5. While iGov replaced this URL with "https://igovsol.com/graph.html," the contents of the page remained the same. Compare *id.*, Ex. 65 and Ex. 66. GFI further used a "Download Neo4j Enterprise" hyperlink on its "downloads" page, which redirected consumers to download links for ONgDB until July 27, 2020. *Id.*, Exs. 66-68.

In November 2018, Plaintiffs released Neo4j EE v3.5 solely under a commercial license. *Id.*, Ex. 4. In January 2019, GFI released ONgDB v3.5.1, which contained at least 182 source code files that had only been previously released under the Neo4j Sweden Software License in a publicly available beta version of Neo4j EE 3.5. Defendants continued to promote ONgDB as "free and open source" by replacing the Neo4j Sweden Software License with the AGPL in certain LICENSE.txt files alongside the source code. *Id.*, Exs. 39-40; Dkt. No. 91 at 19:9-25; Ex. 31 at 159:3-10; Rathle Decl. ¶ 30. Doing so removed certain legal notices identifying Neo4j Sweden as the copyright holder and licensor, and removed the Commons Clause, effectively allowing Defendants to commercially use and support ONgDB. The "landing page" for ONgDB on GitHub was very similar to that of Neo4j EE. It was titled "ONgDB – Neo4j Enterprise Fork: Graphs for Everyone," and contained numerous references to Neo4j throughout. Defendants communicated to potential customers that ONgDB v3.5.x was "100% free and open" with no limitations or restrictions imposed by commercial licensed Neo4j EE v3.5.x. *See* Ratinoff Decl., Exs. 42-47; *see also* Ex. 126. Defendants made various representations about ONgDB relevant to Plaintiffs' copyright and contract claims that are not pertinent to the trademark claims at issue here.

Defendants do not claim that ONgDB is identical to its Neo4j counterpart versions. Rather, it combines the last public Neo4j EE code (beta version of Neo4j EE 3.5), the Neo4j CE code, and "glue code" authored by Mr. Suhy and other contributors. *Id.*, Ex. 31 at 158:18-163:5, 163:13-165:6; Ex. 3 at 124:2-126:23. Nevertheless, the GFI website stated "ONgDB distributions are licensed under AGPLv3 as a free and open drop-in replacements of Neo4j Enterprise commercial licensed distributions with the same version number." *Id.*, Ex. 57. On its "downloads" page, GFI specifically described "ONgDB Enterprise 3.5.5" as a "Drop in replacement for Neo4j Core and Enterprise 3.5.5." *Id.*, Exs. 67- 69. GFI instructed potential users of Neo4j EE on its "neo4j" page to "simply download ONgDB Enterprise as a drop in replacement for an existing commercial licensed distribution of the same version number" and still does so on the successor "graph" page. *Id.*, Exs. 63-66.

Similarly, iGov also continues to assert that "ONgDB is a drop in replacement for the Neo4j Community and Enterprise branded distributions." *Id.*, Ex. 71-74. iGov also continues to offer "commercial equivalent support packages for Neo4j Enterprise open source licensed distributions," and interchangeability refers to "ONgDB Enterprise" and "Neo4j Enterprise" on its website. *See id.*, Exs. 62-70. Defendants have made similar statements directly to potential customers, such as "[ONgDB] is 100% open source and a drop in replacement for the same Neo4j version." *Id.*, Ex. 43; *see also* Exs. 44-46, 76-77.

GFI used hyperlinks on its website to redirect users to Plaintiffs' operation and developer manuals located on Plaintiffs' website. Dkt. No. 89, ¶¶ 3-8, 13-16; Ratinoff Decl., Exs. 78-83.

For example, GFI's webpage for ONgDB v3.5.3 stated, "Look for 3.5 Operations manual here" with an embedded hyperlink to https://neo4j.com/docs/operations-manual/3.5. Dkt. No. 89, ¶ 7; Ratinoff Decl., Exs. 82-83. Similarly, on GFI's GitHub repository the word "ONgDB 3.5" under the heading "LTS release" contains an embedded hyperlink that redirects users to Neo4j USA's copyrighted "Neo4j Operations Manual v3.5" located on Neo4j, USA's website. *Id.*, ¶¶ 9-10; Exs. 82-83; Ex. 31 at 276:19-279:15, 284:2-285:18.

Defendants also regularly used the Neo4j Mark as a hashtag on twitter. For example, GFI announced its release of a new ONgDB version by tweeting "#ONgDB (#FOSS#Neo4j Enterprise) 3.5.x support release is out." *Id.*, 89, 92, 94-95; Ex. 31 at 233:17-236:15, 240:12-241:25. Mr. Suhy regularly retweeted those posts, increasing their circulation. *See id.* Exs. 105-111.

D. Customer Response

By December 2020, just under two years after the release of ONgDB v3.5.1, the ONgDB software had been downloaded over 14,000 times, signaling its widespread success. *See id.*, Exs. 113-114. Plaintiffs generally contend that Defendants' actions with respect to ONgDB and use of the Neo4j Mark have caused significant consumer confusion.

For example, consumers have encountered compatibility issues, technical problems or glitches with ONgDB and sought assistance from Plaintiffs. *See e.g.*, *id.*, Ex. 115; Ex. 121 ("Unable to connect to Neo4j/ONgDB Browser when port forwarding"); Ex. 122 ("ONgDB neoj not starting up"); Ex. 123 ("I also tried ONgdb (neo4j) with different gremlin server versions"); Ex. 124 ("I'm having some difficulty loading a Cypher file into Neo4J . . . note that I am using an recent ONGDB build, rather than straight Neo4J; I do not believe this will make any substantial difference."); *see also* Ex. 133.

Furthermore, consumers have expressed uncertainty about the propriety of Defendants' modification to the Neo4j Sweden Software License. This has caused some confusion about whether and when a commercial license from Neo4j USA is necessary to use, modify or redistribute the software in a commercial setting. *See id.*, Exs. 49, 117, 118.

E. Relevant Procedural Background

On April 10, 2020, the Court granted the parties' stipulation concerning the claims, counterclaims and affirmative defenses ("Phase 1 Issues") that would be subject to the first motions for summary judgment/adjudication filed by each party. Dkt. No. 68. The Phase 1 Issues include Plaintiffs' claims for trademark infringement, false designation of origin and false advertising, and unfair competition, as well as Defendants' counterclaims and affirmative defenses related to abandonment of trademark, cancellation of trademark, and fair use. *Id.* The parties have since clarified the scope of and have modified that schedule several times.

On May 21, 2020, the Court granted Plaintiffs' Motion for Judgment on the Pleadings, dismissing with prejudice Defendants' affirmative defense and counterclaim for "cancellation of trademark procured by fraud," and dismissing without prejudice Defendants' counterclaim and affirmative defense based on abandonment of trademark by naked licensing. Dkt. No. 70. Defendants filed a Second Amended Counterclaim and First Amended Answer, realleging the naked licensing defense and counterclaim. Plaintiffs brought another motion to dismiss and strike, and on August 20, 2020, the Court granted it, dismissing with prejudice Defendants' tenth cause of action based on naked licensing and striking the related affirmative defense. Dkt. No. 85.

The parties stipulated to the filing of Plaintiffs' Third Amended Complaint. Defendants filed an Answer to the TAC, which reasserted the affirmative defenses based on cancellation of trademark and abandonment by naked licensing. Dkt. No. 91. Plaintiffs filed a motion to strike those affirmative defenses, which the Court granted on March 3, 2021. Dkt. No. 110.

On December 11, 2020, Plaintiffs filed the present Motion for Summary Judgment as to the Phase 1 Issues ("Motion"). On January 15, 2021, Defendants filed a combined Cross-Motion for Summary Judgment and Opposition ("Cross-Motion"). Both of those motions applied to this action as well as the GFI Action, however, the parties to the GFI Action reached a settlement before the motions were fully briefed. Plaintiffs then filed a combined Reply in support of their

Motion and Opposition to Defendants' Cross-Motion ("Plaintiffs' Reply"), and Defendants' filed a final Reply in support of their Cross-Motion ("Defendants' Reply").

II. Legal Standard

Summary judgement is appropriate where the moving party "shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A dispute is "genuine" if there is sufficient evidence that a reasonable fact finder could find for the nonmoving party. *eOnline Glob., Inc. v. Google LLC*, 387 F. Supp. 3d 980, 984 (N.D. Cal. 2019). A fact is "material" if it could change the outcome of the case. *Id.* The Court must read the evidence and draw all reasonable inferences in the light most favorable to the nonmoving party. *Torres v. City of Madera*, 648 F.3d 1119, 1123 (9th Cir. 2011).

Where the moving party will bear the ultimate burden of proof at trial, such as with Plaintiffs' Motion in this case, the moving party "must prove each element essential of the claims upon which it seeks judgment by undisputed facts" in order to succeed. *eOnline Global, Inc.*, 387 F. Supp. 3d at 984 (citing *First Pac. Networks, Inc. v. Atl. Mut. Ins. Co.*, 891 F. Supp. 510, 513 (N.D. Cal. 1995). This showing "must be sufficient for the court to hold that no reasonable trier of fact could find other than for the moving party." *t'Bear v. Forman*, 359 F. Supp. 3d 882, 905 (N.D. Cal. 2019) (quoting *First Pacific Networks, Inc.*, 891 F. Supp. at 513). Only then must the nonmoving party "present significant probative evidence tending to support its claim or defense" to defeat the motion. *C.A.R. Transp. Brokerage Co. v. Darden Restaurants, Inc.*, 213 F.3d 474, 480 (9th Cir. 2000).

If the moving party will not bear the ultimate burden of persuasion at trial, like Defendants on their Cross-Motion, then it must carry both the burden of production and the burden of persuasion on its motion for summary judgment. *Friedman v. Live Nation Merch., Inc.*, 833 F.3d 1180, 1188 (9th Cir. 2016) (citing *Nissan Fire & Marine Ins. Co. v. Fritz Companies, Inc.*, 210 F.3d 1099, 1102 (9th Cir. 2000)). To carry the burden of production, the moving party "must either produce evidence negating an essential element of the nonmoving party's claim . . . or show that the nonmoving party does not have enough evidence of an essential element to carry its ultimate burden of persuasion at trial." *Nissan Fire & Marine Ins. Co.*, 210 F.3d at 1102–03. To successfully carry the burden of persuasion, the moving party must show the court that no genuine dispute of material fact exists. *Id.* at 1102. "If the moving party does not carry its initial burden of production, then the nonmoving party need not produce any evidence to defeat the motion. But, if the moving party does carry the burden of production, then the nonmoving party must identify with reasonable particularity enough evidence supporting its claim or defense to create a genuine dispute of material fact to defeat the motion." *eOnline Global, Inc.*, 387 F. Supp. 3d at 984 (citations omitted) (citing *Nissan Fire & Marine Ins. Co.*, 210 F.3d at 1102–03). Otherwise, the moving party will win on its motion. *Nissan Fire & Marine Ins. Co.*, 210 F.3d at 1103.

In both types of motions, the evidence presented by the nonmoving party must be enough for a jury to return a verdict for the nonmoving party. *In re Oracle Corp. Sec. Litig.*, 627 F.3d 376, 387 (9th Cir. 2010). "If the nonmoving party's 'evidence is merely colorable or is not significantly probative,' then summary judgment may be granted." *eOnline Global, Inc.*, 387 F. Supp. 3d at 984.

III. Discussion

A. Standing

"To establish standing to sue for trademark infringement under the Lanham Act, a plaintiff must show that he or she is either (1) the owner of a federal mark registration, (2) the owner of an unregistered mark, or (3) a nonowner with a cognizable interest in the allegedly infringed trademark." *Halicki Films, LLC v. Sanderson Sales & Mktg.*, 547 F.3d 1213, 1225 (9th Cir. 2008) (citing 5 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition §§ 27:20–21, 32:3, 32:12 (4th ed.2008) (noting that standing to sue for trademark infringement under the Lanham Act extends to owners of registered and unregistered marks, and nonowners with a protectable interest in the mark)). Trademark claims under 15 U.S.C. § 1114(1) may be brought by the registrant of the trademark, and the registrant's "legal representatives, predecessors, successors, and assigns." 15 U.S.C. § 1127.

Neo4j USA is the registrant of the Neo4j Mark. Defendants argue that despite being the registrant of the mark, Neo4j USA does not actually own the mark. As discussed further in Section B(i) *infra*, the Court disagrees with that assessment. As it pertains to standing, Defendants argue that because "[Neo4j] USA does not own the Neo4J trademark, its lacks standing to bring an infringement claim." Cross-Motion at 11. Defendants do not cite any case law to support this argument, nor do they address the fact that 15 U.S.C. § 1114 expressly contemplates that the registrant of a trademark may bring suit for infringement.

Moreover, even if Neo4j USA was not the owner of the mark, Defendants do not raise any argument that Neo4j USA is not a "nonowner with a cognizable interest in the allegedly infringing trademark." *See Halicki Films, LLC*, 547 F.3d at 1225. As the registrant of the Neo4j Mark and parent company of Neo4j Sweden—which, according to Defendants, is the true owner of the mark—Neo4j USA undoubtedly has a cognizable interest in the mark. *See Hem & Thread, Inc. v. Wholesalefashionsquare.com*, No. 2:19-CV-283-CBM-AFM, 2019 WL 3017669, at *2 (C.D. Cal. Mar. 27, 2019) (finding standing to bring claim under 15 U.S.C. § 1125 where plaintiff was not the owner or registrant but had "express authority and permission" to use the mark in commerce and therefore had a cognizable interest in the trademark).

Defendant further argues that "[n]one of defendants' conduct with respect to the use [of] [Neo4j] Sweden's software is germane to [Neo4j] USA's claims" because "[u]se of [Neo4j] Sweden's software is governed by AGPL license" and because Neo4j USA is not the licensor, it "has no standing to assert claims related to that license agreement." Cross-Motion at 11. Defendants' use of the software and any dispute about the terms or limitations of the AGPL are relevant to Plaintiffs' copyright claims, which are not at issue in this summary judgment motion. Defendants' use of the trademark, not the software, is pertinent to Plaintiffs' trademark infringement and false advertising claims, and Defendants' do not contend that the AGPL constituted a trademark license.

Thus, the Court concludes that Neo4j USA has standing to pursue its trademark claims.

B. Trademark Infringement

To prevail on its claim under 15 U.S.C. § 1114, Neo4j USA must prove (1) an ownership interest in a protectable mark; and (2) that Defendants' use of the mark is likely to cause consumer confusion. *Network Automation, Inc. v. Advanced Sys. Concepts, Inc.*, 638 F.3d 1137, 1144 (9th Cir. 2011). "The core element of trademark infringement is the likelihood of confusion, i.e., whether the similarity of the marks is likely to confuse customers about the source of the products." *E. & J. Gallo Winery v. Gallo Cattle Co.*, 967 F.2d 1280, 1290 (9th Cir. 1992).

Furthermore, although disfavored in trademark infringement cases, summary judgment may be entered when no genuine issue of material fact exists. *See Surfvivor Media, Inc. v. Survivor Prods.*, 406 F.3d 625, 630 (9th Cir. 2005). Whether likelihood of confusion is more a question of law or one of fact can depend on the circumstances of each particular case. *DC Comics v. Towle*, 989 F. Supp. 2d 948, 956 (C.D. Cal. 2013), *aff'd,* 802 F.3d 1012 (9th Cir. 2015) (citing *Alpha Indus., Inc. v. Alpha Steel Tube & Shapes, Inc.*, 616 F.2d 440, 443 (9th Cir. 1980)). A question of fact may be resolved as a matter of law if reasonable minds cannot differ and the evidence permits only one conclusion. *Id.* (citing *Sanders v. Parker Drilling Co.*, 911 F.2d 191, 194 (9th Cir. 1990).

i. Ownership

"Registration of a mark is prima facie evidence of the validity of the mark, the registrant's ownership of the mark, and the registrant's exclusive right to use the mark in connection with the goods specified in the registration." *Pom Wonderful LLC v. Hubbard*, 775 F.3d 1118, 1124 (9th Cir. 2014) (citing 15 U.S.C. § 1115(a)); *see also Align Tech., Inc. v. Strauss Diamond Instruments, Inc.*, No. 18-CV-06663-TSH, 2019 WL 1586776, at *4 (N.D. Cal. Apr. 12, 2019) (same). Under the Lanham Act, registration of a trademark creates a rebuttable presumption that the mark is valid, but the presumption evaporates as soon as evidence of invalidity is presented. 15 U.S.C. § 1051. This "presumption of validity is a strong one, and the burden on the defendant necessary to overcome that presumption at summary judgment is heavy." *Zobmondo Ent., LLC v. Falls Media, LLC*, 602 F.3d 1108, 1115 (9th Cir. 2010).

The parties do not dispute that Neo4j USA is the registrant of the mark. *See* Cross-Motion at 5 ("Defendants are not attacking the registration."). Thus, there is no dispute that Neo4j USA benefits from a presumption of ownership and a presumption that the mark is valid. *Pom Wonderful LLC*, 775 F.3d at 1124. Nevertheless, Defendants argue that Neo4j USA is not the *owner* of the trademark. Under section 1 of the Lanham Act, only the owner of a mark is entitled to apply for registration. 15 U.S.C. § 1051 ("The owner of a trademark . . . may request registration of its trademark on the principal register hereby established by paying the prescribed fee and filing in the Patent and Trademark Office an application and a verified statement"). If one who is not the owner seeks registration, the application must be denied and any registration which issues is invalid. *Smith v. Tobacco By-Prod. & Chem. Corp.*, 243 F.2d 188 (C.C.P.A. 1957). Thus, although Defendants state that they challenge ownership and not registration, the distinction is without difference.

Defendants contend that Neo4j Sweden is the actual owner of the Neo4j Mark because it was undisputedly the first to use the mark. Defendants point to a License Agreement between Neo4j Sweden and Neo4j USA ("License Agreement"), by which Neo4j Sweden granted Neo4j USA a non-exclusive license to use the mark in the United States. Dkt. No. 101, Declaration of Adron G. Beene In Support Of Defendants And Counterclaimants' Administrative Motion To File Exhibits Under Seal ("Beene Decl."), Ex. 1 ("Neo-Sweden has agreed to grant to Neo-US and Neo-US has agreed to receive, a non-exclusive license under such Neo-Sweden Intellectual Property Rights on the terms and conditions of this Agreement"). The License Agreement was executed in August 2010, approximately six years before Neo4j USA's registration of the Neo4j Mark in the United States.

Plaintiffs argue that "the [License] Agreement relied upon by Defendants simply reflects the intercompany division of assets, including trademarks, between Neo4j USA and Neo4j

Sweden as parent and wholly-owned subsidiary, and does not damage the validity of the mark either at the time of registration or thereafter." Plaintiffs' Reply at 8. Plaintiffs cite 15 U.S.C. § 1055, also referred to as the related companies doctrine, in support of their general proposition that Neo4j USA was entitled to rely on Neo4j Sweden's first use of the mark in its registration. Section 1055 states:

> "Where a registered mark or a mark sought to be registered is or may be used legitimately by related companies, such use shall inure to the benefit of the registrant or applicant for registration, and such use shall not affect the validity of such mark or of its registration, provided such mark is not used in such manner as to deceive the public. If first use of a mark by a person is controlled by the registrant or applicant for registration of the mark with respect to the nature and quality of the goods or services, such first use shall inure to the benefit of the registrant or applicant, as the case may be."

Id. "The term 'related company' means any person whose use of a mark is controlled by the owner of the mark with respect to the nature and quality of the goods or services on or in connection with which the mark is used." 15 U.S.C. § 1127. Given that the registrant of a trademark must be the owner of the trademark and given that "related companies" specifically refers to entities under the control of the owner, Section 1055 only benefits the owner of a mark. Thus, Neo4j USA was only entitled to rely on Neo4j Sweden's prior use if Neo4j USA was the owner of the Neo4j Mark at the time. Likewise, Neo4j USA must have been the owner of the Neo4j Mark at the time it registered for the registration to be valid.

Both Plaintiffs and Defendants rely on and dispute the relevance of *In re Wella A.G.*, 787 F.2d 1549, 1555 (Fed. Cir. 1986) (*Wella I*) and *In re Wella A.G.*, 858 F.2d 725 (Fed. Cir. 1988) ("*Wella II*"). In *Wella I*, the Federal Circuit considered whether a foreign parent corporation, Wella A.G., could properly register a trademark which was "the same or similar" to trademarks already registered in the U.S. by Wella A.G.'s subsidiary, Wella U.S. The registration had been rejected by the examining attorney and TTAB because it was "confusingly similar" to the existing Wella U.S. registered marks under Section 2(d). The Federal Circuit reversed and remanded, finding that the Board had misinterpreted and misapplied Section 2(d). *Wella I*, 787 F. 2d at 1553. Specifically, the Circuit held that the correct question under Section 2(d) is whether there is any likelihood of consumer confusion from allowing both the parent and the subsidiary companies to register the same or similar marks. *Id.* at 1552–53. Given the fact that Wella A.G. wholly controlled Wella U.S., and that the entities operated as one brand in the view of consumers, the registration was unlikely to result in any consumer confusion. *Id.*

Judge Nies wrote separately in *Wella I* to express certain "additional views." *Id.* at 1554. Judge Nies agreed with the majority's analysis regarding Section 2(d) but felt there was a different potentially dispositive question regarding ownership of U.S. rights in the Wella marks. According to Judge Nies, Wella A.G.'s registration could also properly be denied because Wella U.S., and not Wella A.G., appeared to own the U.S. rights to the marks. *Id.* She explained that the registrant must be the owner of the marks, that there could only be one owner of the marks, and that therefore, Wella A.G. had no right to register the marks unless it was the owner, despite its status as the parent company of Wella U.S. *Id.* at 1555.

On remand, the Board held that there was no likelihood of confusion, but nonetheless rejected the application again based on Judge Nies' concurrence, finding that the parent and subsidiary could not both own the Wella trademarks. On a second appeal, the Federal Circuit chastised the Board for considering the ownership issue. *Wella II*, 858 F.2d at 728 ("the unusual nature of our limiting instruction to the Board--we did not merely reverse the Board's denial of registration but explicitly told the Board what it could consider on remand--should have led the Board to realize that the majority of the court did not view the additional issue Judge Nies had raised as something for the Board to address on remand."). The Federal Circuit, therefore, rejected the idea that a trademark registered by a parent company could be invalidated simply based on the fact that the company's wholly owned subsidiary technically owned the marks. While the facts of the *Wella* cases are not precisely similar to the facts at issue in this case, the Court finds it instructive that the Federal Circuit did not find it necessary to determine ownership of a mark as between a parent and wholly owned subsidiary when deciding whether registration of the mark was valid. *See W. Fla. Seafood, Inc. v. Jet Restaurants, Inc.*, 31 F.3d 1122, 1126–27 (Fed. Cir. 1994) (separate entities operating as a single entity in the eyes of the consuming public may be treated as such for trademark purposes).

The Trademark Manual of Examining Procedure ("TMEP"), which governs the application for trademark registrations, is also instructive. The TMEP expressly states that "[e]ither a parent corporation or a subsidiary corporation may be the proper applicant, depending on the facts concerning ownership of the mark." § 1201.03(c) Wholly Owned Related Companies, TMEP5th 1201.03(c). Furthermore, it states that the PTO "will consider the filing of the application in the name of either the parent or the subsidiary *to be the expression of the intention of the parties as to ownership* in accord with the arrangements between them." *Id.* (emphasis added). Under these rules, the fact that Neo4j USA registered the Neo4j Mark can, therefore, be understood as evidence of the intention of the parties as to ownership of the mark. Thus, while the License Agreement tends to show that Plaintiffs considered Neo4j Sweden to be the owner of the Neo4j Mark in 2010, the fact that Neo4j USA registered the mark tends to show that the parties considered Neo4j USA to be the owner of the mark in 2015. It is also clear that Defendants understood Neo4j USA to be the owner of the mark when they signed the SPA, by which Neo4j USA granted PureThink a non-exclusive license to use the mark.

The TMEP further explains that "[w]here the mark is used by a related company, the owner is the party who controls the nature and quality of the goods sold or services rendered under the mark." § 1201.01 Claim of Ownership May Be Based on Use By Related Companies, TMEP5th 1201.01. It is undisputed that Neo4j USA wholly owns and controls Neo4j Sweden and did so at the time of the registration. *See* Fact 1; Dkt. No. 98-2 at 1:17-18; Neo4j USA is also the only party who exercises control over the mark in the United States. Thus, the Court finds that the License Agreement alone is insufficient to rebut the presumption of ownership from which Neo4j USA benefits as the registrant of the Neo4j Mark, especially where significant evidence supports that presumption.

ii. Customer Confusion and Nominative Fair Use

Typically, Plaintiffs would need to establish that Defendants' use of the mark is likely to confuse consumers, under the eight factor analysis in *Sleekcraft*. *See Fortune Dynamic, Inc. v. Victoria's Secret Stores Brand Mgmt., Inc.*, 618 F.3d 1025, 1030 (9th Cir. 2010); *AMF Inc. v. Sleekcraft Boats*, 599 F.2d 341, 348-49 (9th Cir. 1979)). When a nominative fair use defense is raised, however the fair-use analysis replaces the likelihood-of-consumer confusion analysis set forth in *Sleekcraft*. *See Playboy Enterprises, Inc. v. Welles*, 279 F.3d 796, 801 (9th Cir. 2002).

A defendant may raise a nominative fair use defense if "the use of the trademark does not attempt to capitalize on consumer confusion or to appropriate the cachet of one product for a different one." *New Kids on the Block v. News Am. Pub., Inc.*, 971 F.2d 302, 308–09 (9th Cir. 1992). The nominative fair use analysis is appropriate where a defendant has used the plaintiff's mark to describe the plaintiff's product, *even if the defendant's ultimate goal is to describe his own product*." *Cairns v. Franklin Mint Co.*, 292 F.3d 1139, 1151 (9th Cir. 2002). To establish a nominative fair use defense, a defendant must prove the following three elements:

> First, the [plaintiff's] product or service in question must be one not readily identifiable without use of the trademark; second, only so much of the mark or marks may be used as is reasonably necessary to identify the [plaintiff's] product or service; and third, the user must do nothing that would, in conjunction with the mark, suggest sponsorship or endorsement by the trademark holder.

Id. (citing *New Kids on the Block*, 971 F.2d at 308). "This test 'evaluates the likelihood of confusion in nominative use cases.'" *Toyota Motor Sales, U.S.A., Inc. v. Tabari*, 610 F.3d 1171, 1176 (9th Cir. 2010) (quoting *Horphag Rsch. Ltd. v. Garcia*, 475 F.3d 1029, 1041 (9th Cir. 2007). Plaintiffs need only negate one of these elements to defeat Defendants' reliance on the nominative fair defense. *See Playboy Enterprises, Inc. v. Netscape Commc'ns Corp.*, 354 F.3d 1020, 1030 (9th Cir. 2004) (because defendants use of plaintiff's mark ran afoul of the first prong for nominative use, no need to consider the other two); *see also Horphag Research Ltd. v. Garcia*, 475 F.3d 1029, 1041 (9th Cir. 2007) (defendant's use must meet all three fair use prongs).

In this case, Defendants claim to be "using the Neo4J mark to identify [Neo4j] USA, the commercial Neo4J software and Sweden's open source Neo4J software." Cross-Motion at 14. Plaintiffs first argue that Defendants cannot rely on a fair use defense because PureThink was a licensee of the Neo4J Mark under the SPA, until the SPA terminated. Plaintiffs cite to several cases in which courts found a likelihood of confusion where a former licensee continued using a trademark after the license agreement terminated. *See, e.g.*, *State of Idaho Potato Comm'n v. G & T Terminal Packaging, Inc.*, 425 F.3d 708, 721 (9th Cir. 2005) ("courts have held that an ex-licensee's continued use of a trademark is enough to establish likelihood of confusion"). None of those cases, however, involved a nominative fair use defense, and the Court is not persuaded that nominative fair use cannot apply in the context of a dispute between a licensor and former licensee.

Plaintiffs next argue that Defendants have not engaged in nominative fair use because Defendants used the Neo4j Mark to refer to Defendants' own products, rather than Plaintiffs' products. It is undisputed that PureThink and iGov initially marketed a product called "Neo4j Enterprise," and a "Government Package for Neo4j," before rebranding Neo4j Enterprise as ONgDB. *See* Cross-Motion, Ex. A Defendants' Response to Neo4j Inc.'s Consolidated Separate Statement Of Undisputed Material Facts ("Defendants' Statement of Facts"), at 4 (disputing Fact 16 by explaining that "'Government Packages for Neo4j' and 'Neo4j Enterprise' were used to describe the government packages iGov provided support for around the free and open source neo4j database."). While Defendants claim that these products consisted of genuine open source Neo4j EE software, neither product was in fact a Neo4j USA product. Rather, "Neo4j Enterprise" consisted of the last public Neo4j EE code (beta version of Neo4j EE 3.5), the Neo4j CE code, and "glue code" authored by Mr. Suhy and other contributors. Ratinoff Decl., Ex. 31 at 158:18-163:5, 163:13-165:6; Ex. 3 at 124:2-126:23. Moreover, Defendants assured potential customers both on iGov's website and in direct email communications that "Neo4j Enterprise" was the "same official

Neo4j Github Repositories as Neo4j Inc uses for their paid commercial licensed builds" except distributed under an open source license. *See, e.g.*, *id.*, Exs. 15, 18-19, 21.

Thus, Defendants were not using "Neo4j" to refer to Plaintiffs' products, they were using it to create the misleading perception that Defendants' products *were* Plaintiffs' products. *See Adobe Sys. Inc. v. A & S Elecs., Inc.*, 153 F. Supp. 3d 1136, 1143 (N.D. Cal. 2015) (not fair use because defendant's use of Adobe's marks was not intended to describe Adobe's product, but rather to make it appear that the software was sanctioned by Adobe for sale and distribution). Any reasonable consumer reading about "Neo4j Enterprise" would conclude that they are getting official Neo4j EE, or in the case of the "Government Package for Neo4j," consumers would conclude they are getting Neo4j EE in a specialized government package. Thus, because Defendants used "Neo4j Enterprise" and "Government Package for Neo4j" to refer to their own products, they do not benefit from a nominative fair use defense as to those uses. *Align Technology, Inc.*, 2019 WL 1586776, at *5 ("[i]n nominative fair use, the defendant uses the trademarked term not to describe its product but to describe the plaintiff's [product]").

The same is true of iGov's use of the Neo4j Mark in its email address and URL. Defendants do not refute their use of the Neo4j Mark in the URL https://igovsol.com/neo4j.html to promote "Neo4j Enterprise," and later to promote ONgDB. *See* Defendants' Statement of Facts at 4 (failing to substantively refute Fact 16); *id.* at 5 (not disputing that "iGov continued to use 'https://igovsol.com/neo4j.html' as a URL address to promote ONgDB until it deactivated that page sometime after July 27, 2020."). Similarly, Defendants do not refute that they used neo4j@igovsol.com as means for consumers to inquire about ONgDB. *Id.* (Fact 19). Instead, they argue that the email address is for inquiries about "Sweden's open source Neo4j," as "a way to inquire about iGov support services and support for the neo4j open source database," and "a means to inquire about ONgDB" and "[ONgDB] open source license support." *Id.*

Nothing about the use of the Neo4j Mark in the URL or email can be reasonably interpreted to refer to Plaintiffs' products. Indeed, the URL brings users to a page marketing

Defendants' products, and the email address is offered to answer questions about Defendants' products. Thus, Defendants' use of the Neo4j Mark in their URLs or email addresses are not protected by the nominative fair use defense. S*ee Brookfield Commc'ns, Inc. v. W. Coast Ent. Corp.*, 174 F.3d 1036, 1064–65 (9th Cir. 1999) ("[u]sing another trademark in one's metatags is much like posting a sign with another's trademark in front of one's store"); *see also Experience Hendrix, L.L.C. v. Hendrixlicensing.com, Ltd.*, No. C09-285Z, 2010 WL 2104239, at *6 (W.D. Wash. May 19, 2010) (use of plaintiff's HENDRIX mark in defendants' URL addresses and business names did not describe plaintiffs' products but rather defendants' products); *State St. Glob. Advisors Tr. Co. v. Visbal*, 431 F. Supp. 3d 322, 342 (S.D.N.Y. 2020) (holding that use of a trademark in a URL is not fair use).

By contrast, to the extent Defendants offer "support services" targeted at software that Neo4j Sweden or Neo4j USA provide on an open source basis, use of the Neo4j Mark to explain those services could potentially benefit from a fair-use defense because such uses reference Plaintiffs' products, not Defendants'. Likewise, Defendants are permitted to describe their product as an unaffiliated or independent "fork" of Neo4j source code because that phrasing makes clear that the product is not itself a Neo4j product. Defendants can also comparatively advertise ONgDB in relation to Neo4J USA's products, however, the trademark guidelines provided on Neo4j USA's website would likely apply to these uses. *Network Automation, Inc.*, 638 F.3d at 1153.

Defendants further argue that they "have a right to tell consumers they can use Sweden's Neo4J open source software for free instead of paying for USA's commercial license." Cross-Motion at 15. Although Defendants have the right to comparatively advertise their products and refer to Plaintiffs' products in the process, they still cannot use the Neo4j Mark more than necessary and cannot falsely suggest endorsement by Neo4j USA. *See Toyota Motor Sales, U.S.A., Inc.*, 610 F.3d at 1176. Defendants' use goes beyond what is necessary to identify ONgDB as a fork of Neo4j by (1) extensively using of "Neo4j' and "Neo4j Enterprise" on iGov and PureThink websites without proper trademark notices; (2) using embedded "Neo4j" links to Neo4j USA's website and GitHub repository on their websites; (3) hyperlinking to Plaintiffs' build instructions, support documentation and change logs containing the Neo4j Mark rather than creating and hosting their own with the ONgDB name; and (4) using of "Neo4j Enterprise" and "ONgDB" interchangeably to promote ONgDB on their websites. The Court finds that these embedded links to Plaintiffs' sites and links to Plaintiffs' documentation, along with the repeated references to "Neo4j," including in the title of the products themselves, create the misleading perception that Defendants and Plaintiffs are affiliated. Thus, the Court finds these undisputed facts sufficient to establish that Defendants' use of the Neo4j Mark falsely suggests endorsement by Neo4j USA, and therefore, is not nominative fair use.

Finally, Plaintiffs argue that Defendants' use of the Neo4j Mark on Twitter constitutes infringement and not nominative fair use because Defendants' tweets do not differentiate between Plaintiffs' products and Defendants' products. For example, on January 23, 2019, GFI tweeted ""#ONgDB (Open #Neo4j Enterprise) 3.4.12 support release is out." Ratinoff Decl., Ex. 105. All of the tweets that Plaintiffs point to, however, are from GFI, not Defendants. The GFI Action have settled and there are no arguments that the tweets may be attributed to Defendants in this action.

The Court finds that Plaintiffs have satisfied their burden of proving each essential element of their trademark infringement claim. Defendants have not produced sufficient evidence that a jury could find in their favor. Thus, the Court GRANTS Plaintiffs' Motion as to trademark infringement and DENIES Defendants' Cross-Motion as to the same.

C. False Advertising Under the Lanham Act and UCL

The elements of a Lanham Act false advertising claim are: "(1) a false statement of fact by the defendant in a commercial advertisement about its own or another's product; (2) the statement actually deceived or has the tendency to deceive a substantial segment of its audience; (3) the deception is material, in that it is likely to influence the purchasing decision; (4) the defendant caused its false statement to enter interstate commerce; and (5) the plaintiff has been or is likely to be injured as a result of the false statement, either by direct diversion of sales from itself to defendant or by a lessening of the goodwill associated with its products." *Align Technology, Inc.*, 2019 WL 1586776, at *13 (citing *Southland Sod Farms v. Stover Seed Co.*, 108 F.3d 1134, 1139 (9th Cir. 1997)).

Defendants do not dispute that statements made via their websites, email, and social media qualify as commercial advertisements under element one. Likewise, they do not raise any argument to dispute that statements made through these channels were placed into interstate commerce, as required under element four. *See Healthport Corp. v. Tanita Corp. of Am.*, 563 F. Supp. 2d 1169, 1178 (D. Or. 2008), *aff'd,* 324 F. App'x 921 (Fed. Cir. 2009) (holding that statements made on website were advertisements placed into interstate commerce); *SuccessFactors, Inc. v. Softscape, Inc.*, 544 F. Supp. 2d 975, 982 (N.D. Cal. 2008) (likelihood of success on interstate commerce element met where defendant had disseminated the misleading statement via email and on its website).

Proof establishing these Lanham Act claims will also establish Neo4j USA's UCL claim. "State common law claims of unfair competition and actions pursuant to California Business and Professions Code § 17200 are 'substantially congruent' to claims made under the Lanham Act." *Cleary v. News Corp.*, 30 F.3d 1255, 1262–63 (9th Cir. 1994); *Acad. of Acad. of Motion Picture Arts & Scis. v. Creative House Promotions, Inc.*, 944 F.2d 1446, 1457 (9th Cir. 1991) (same).

i. False Statement

"To demonstrate falsity within the meaning of the Lanham Act, a plaintiff may show that the statement was literally false, either on its face or by necessary implication, or that the statement was literally true but likely to mislead or confuse consumers." *Southland Sod Farms*, 108 F.3d at 1139. Plaintiffs argue that Defendants have made the following misrepresentations in the advertisement and promotion of ONgDB in interstate commerce via their websites and Twitter.

Plaintiffs argue that Defendants have made numerous misrepresentations in their advertisement and promotion of ONgDB. These statements generally fall into two groups: (1) statements that ONgDB and Neo4j Enterprise are "free and open source" versions of or alternatives to commercially licensed Neo4j EE; and (2) statements that ONgDB is a "drop-in replacement for an existing commercial licensed distribution of the same version number" of Neo4j EE. *See* Motion at 29-30 (listing ten discreet statements that Plaintiffs allege are false).

With respect to the first group of statements, Plaintiffs argue that Defendants' representations that ONgDB is "free and open source" is false because "the Neo4j Sweden Software License did not permit Defendants to remove the commercial restrictions imposed by the Commons Clause." Motion at 30. The parties agree that the truth or falsity of Defendants' statements hinge on "the interpretation of Section 7 [of the Neo4j Sweden Software License], and GFI's right to remove the Commons Clause from the Neo4j Sweden Software License." Cross-Motion at 30; *see also* Plaintiffs' Reply at 18 ("Defendants do not dispute that their marketing of ONgDB as 'free and open source' Neo4j® EE is primarily based on their (mis)interpretation of the Neo4j Sweden Software License and the form AGPLE upon which it was based.").

Defendants argue that there is a reasonable interpretation of the Neo4j Sweden Software License that permits licensees, like GFI or Defendants, to remove the Commons Clause and redistribute the software under the standardized AGPL license. Cross-Motion at 27-30. The Court disagrees. In fact, the Court considered precisely this question in the GFI Action and found as follows:

> Neither of the two provisions in the form AGPLv3 that Defendants point to give licensees the right to remove the information at issue. Section 10 of the AGPLv3, which is incorporated into the Neo4J Sweden Software License, states: "You may not impose any further restrictions on the exercise of rights granted or affirmed under this License." . . . Section 7 states: "[i]f the Program as you received it, or any part of it, contains a notice stating that it is governed by this License along with a term that is a further restriction, you may remove that term." [] Defendants argue that these provisions mean that "there can be no liability for removing the further licensing restrictions which Neo4j incorporated into the license," namely the Commons Clause. [] As Plaintiffs point out, however, the AGPLv3 defines "you" as the licensee, not the licensor. Ex. 1 at § 0 ("Each licensee

> is addressed as 'you'"). Thus, read correctly, Sections 7 and 10 prohibit a *licensee* from imposing further restrictions, but do not prohibit a *licensor* from doing so.
>
> Indeed, it would be contrary to principles of contract and copyright law to interpret these provisions as limiting Neo4J Sweden's exclusive right to license its copyrighted software under terms of its choosing. *See Apple Inc. v. Psystar Corp.*, 658 F.3d 1150, 1159 (9th Cir. 2011) ("copyright owners may choose to simply exclude others from their work" or "use their limited monopoly to leverage the right to use their work on the acceptance of specific conditions"). Even "[c]opyright holders who engage in open source licensing have the right to control the modification and distribution of copyrighted material." *Jacobsen v. Katzer*, 535 F.3d 1373, 1381 (Fed. Cir. 2008). The Court, therefore, rejects the notion that the terms drawn from the AGPLv3, on which the Neo4j Sweden Software License is based, somehow limit the rights of Neo4j Sweden to include the Commons Clause or any other additional restriction in its own copyright license.

Neo4j, Inc. v. Graph Found., Inc., No. 5:19-CV-06226-EJD, 2020 WL 6700480, at *4 (N.D. Cal. Nov. 13, 2020).

Despite this Court's prior ruling on point, Defendants maintain that because the definition of "License" in the Neo4j Sweden Software License is actually the AGPL, licensees may remove any terms in the license that are not in the AGPL pursuant to Section 7. Defendants do not raise any new evidence or arguments to support their interpretation. Defendants also fail to address the Court's reasoning that "further restriction" refers only to further restrictions imposed by a licensee, not the licensor. Thus, the Court finds that Plaintiffs have established that Defendants' statements regarding ONgDB as "free and open source" versions of Neo4j EE are false.

The next group of statements Plaintiffs challenge are those that refer to ONgDB as a "drop-in replacement" for Neo4j EE. Plaintiffs argue that ONgDB is not a true drop-in replacement for equivalent versions of Neo4j EE because ONgDB contains source code filed that were wrongly licensed under the AGPL in violation of Neo4j Sweden's copyright and because the software was not of the same quality and did not contain all of the features of Neo4j EE. Motion at 31. Defendants do not argue that ONgDB was of the same quality or that it did offer all of the features of Neo4j EE, rather, they argue that the phrase "drop-in replacement" was not meant to signify that the two products were identical. Cross-Motion at 23-24.

In response to an interrogatory, iGov asserted that "no claim is made that ONgDB matches every feature of Neo4j Enterprise Edition." Ratinoff Decl., Ex. 38 (Defendant iGov Inc.'s Amended Response to Neo4j Sweden AB's Second Set of Interrogatories to iGov Inc) at 17. iGov further explains that "'[d]rop-in replacement' as used by [iGov] means the ability for a user to copy their data from a neo4j instance and place into an ONgDB instance of the same version and have it function with ONgDB using the cypher language version defined in neo4j core for that version." *Id.* Similarly, in his deposition, GFI representative Brad Nussbaum explained that "Drop-in replacement refers more to compatibility of features, so we were able to take a Neo4j 3.5.4 version, create a database and just show that it worked with ONgDB at that same version." Ratinoff Decl., Ex. 31 at 160:9-14.

Plaintiffs first argue that even if "drop-in replacement" merely indicates compatibility, iGov's representations related to ONgDB versions 3.5 and later are still false. Mr. Nussbaum admitted in his deposition that after Neo4j EE 3.5 was released entirely closed source, GFI "no longer could . . . reliably guarantee that [ONgDB] was a drop-in replacement" and was unwilling to do the testing to make such compatibility guarantees because it was "too hard to demonstrate" with the Neo4j EE code becoming more divergent. Fact 101 (Dkt. No. 98-1, Ex. 31 at 188:5-17, 188:23-189:23). Despite GFI's admission that there is no way to prove compatibility without access to the Neo4j EE source code of the same version, iGov continues to make drop-in replacement claims for later versions. *See, e.g.*, Ratinoff Decl., Ex. 46 ("ONgDB 3.5.8 is a drop-in replacement for Neo4j Enterprise 3.5.8 and so on"). The Court agrees that in light of the undisputed fact that Neo4j EE v3.5 and later versions were all closed source, ONgDB's representations that the equivalent versions of ONgDB were "drop-in replacements" could not be verified and were therefore false or misleading.

With respect to Defendants' "drop-in replacement" statements about earlier versions, Plaintiffs argue that Defendants' interpretation of what "drop-in replacement" implies is irrelevant.

For the purpose of this false advertising claim, Plaintiffs can prove either that the statement was "literally false" or that the statement was "likely to mislead or confuse consumers." *See Southland Sod Farms*, 108 F.3d at 1139;. The Court therefore considers whether there is a genuine dispute of fact about whether Defendants' "drop in replacement" claims were likely to mislead or confuse consumers.

Although the phrase "drop-in replacement" on its own may not necessarily indicate that the software systems were identical, in context, that is precisely what Defendants' statements implied. For example, in an email to a Northwestern University representative, Mr. Suhy stated: "I would recommend using the Neo4j Enterprise fork called ONgDB (Open Native Graph Database) if you want all the enterprise features with no limitations on cores, cluster instances, etc. . . . It is Neo4j Core + Enterprise feature set added back in, so it is drop in replacement for a Neo instance of the same version." *Id.*, Ex. 44.[1] Similarly, on the "Downloads" page of the iGov website, iGov provides a link to download ONgDB Enterprise 3.5.5, calling it a "[d]rop in replacement for Neo4j Core and Enterprise 3.5.5 AGPLv3 Open Source License, no limitations on causal cluster instances, cores, or production usage." *Id.*, Ex. 67. The site links to Neo4j USA's release notes and website for the same version. Elsewhere on the website, iGov asserts that "commercial packages available from Neo4j Inc and their partners are essentially support offerings . . . [i]f you do not need support for your ONgDB Enterprise or Neo4j Enterprise open source licensed distribution, then simply download ONgDB Enterprise as a drop in replacement for an existing commercial licensed distribution of the same version number." *Id.*, Ex. 62. It further provides a chart comparing Neo4j EE and "Neo4j Enterprise open source license," which is captioned: "There are no physical differences between Neo4j Enterprise commercial and AGPL open source licenses!" *Id.*, Ex. 67. The chart purports to show the differences between the two software products but does not identify or disclaim that there may be source code differences or that ONgDB is not an identical replica of Neo4j EE.

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[1] *See also*, *id.*, Ex. 43 (email sent by Mr. Suhy to a representative from the Securities and Exchange Commission, Mr. Suhy represented that ONgDB "is just the Neo4j code (https://github.com/neo4j/neo4j) combined with the enterprise code. It is 100% open source and a drop in replacement for the same Neo4j version."); Ex. 46 (emails with U.S. army, in which Mr. Suhy states that "[a]ll ONgDB distributions are drop-in replacements for Neo4j Enterprise and Neo4j Community as they use the same code base and versioning. Ex: ONgDB 3.5.8 is a drop-in replacement for Neo4j Enterprise 3.5.8 and so on."); Ex. 19 (Sending comparison chart to the National Geospatial Intelligence Agency, asserting that the open source version packaged by iGov is the "same physical software" as Neo4j EE); Ex 21 ("We compile and packaged the open source licen[sed] distributions from the same official Neo4j Github Repositories as Neo4j Inc uses for their paid commercial licensed builds.").

The Court finds that the use of "drop-in replacement" in these instances clearly implies that ONgDB "has all the enterprise features" and is essentially the same software as Neo4j EE. No reasonable consumer would understand these statements to indicate mere compatibility with Neo4j EE. Thus, the Court concludes that the "drop-in replacement" claims are false or likely to mislead consumers for the purposes of Plaintiffs' false advertising claim.

ii. Actual Deception or Tendency to Deceive

For the same reasons that Defendants' statements regarding ONgDB as "free and open source" and as a "drop-in replacement" for Neo4j are likely to mislead consumers, they also have a tendency to deceive. Moreover, Plaintiffs offer evidence that consumers who chose ONgDB and encountered technical issues reached out to Neo4j USA for help, indicating that those consumers thought they were operating genuine Neo4j EE. *See, e.g.*, Ratinoff Decl. Ex. 115, 121-124. Thus, the Court finds sufficient evidence that Defendants' misstatements caused actual deception or had a tendency to deceive.

iii. Materiality

"A finding of consumer deception does not amount to a Lanham Act violation unless the deception 'is material, in that it is likely to influence the purchasing decision.'" *R & A Synergy LLC v. Spanx, Inc.*, No. 2:17-CV-09147-SVW-AS, 2019 WL 4390564, at *12 (C.D. Cal. May 1, 2019) (quoting *Southland Sod Farms*, 108 F.3d at 1139).

It is undisputed that Defendants made the statements at issue to convince customers to adopt ONgDB over Neo4j EE. Because Defendants misrepresented ONgDB as a free version of Neo4j EE licensed under the APGL, there is no doubt that this price differential (free versus paid) was likely to influence customers purchasing decisions. *See Hinojos v. Kohl's Corp.*, 718 F.3d 1098, 1106–1107 (9th Cir. 2013), *as amended on denial of reh'g and reh'g en banc* (July 8, 2013) (recognizing under the UCL that price is material to purchasing decisions). Thus, the Court finds that Defendants' statements suggesting that customers could obtain a "free and open source drop in replacement" for Neo4j EE were material.

iv. Injury

"Under the Lanham Act, the plaintiff must "plead (and ultimately prove) an injury to a commercial interest in sales or business reputation proximately caused by the defendant's misrepresentations." *Clorox Co. v. Reckitt Benckiser Grp. PLC*, 398 F. Supp. 3d 623, 644 (N.D. Cal. 2019). "Lost sales for the plaintiff because of the defendant's false advertising is the 'paradigmatic direct injury from false advertising.'" *Id.* (quoting *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 134 S. Ct. 1377, 1393, 188 L. Ed. 2d 392 (2014)).

Plaintiffs maintain that there is undisputed evidence that Defendants' false statements diverted sales from Neo4j USA. *See, e.g.*, Ratinoff Decl., Exs. 47-50, 53, 120, 127; Ex. 3 at 53:4-54:25, 224:13-23; Broad Decl., ¶¶ 20-24. Indeed, Neo4j USA lost multi-year deal when Next Century adopted ONgDB via the Maryland Procurement Office, amounting to over $2.2 million in lost revenue. Broad Decl., ¶¶ 22-24, Exs. 12-13. Defendants claim that Plaintiffs have failed to establish that customers like Next Century would have purchased a Neo4j subscription but for Defendants' offering ONgDB as a "free and open source drop-in replacement." The Court does not find this argument persuasive. Commercial injury is generally presumed "in false comparative advertising cases, where it's reasonable to presume that every dollar defendant makes has come directly out of plaintiff's pocket." *TrafficSchool.com, Inc. v. Edriver Inc.*, 653 F.3d 820, 831 (9th Cir. 2011); *see also Lexmark Intern., Inc.*, 134 S. Ct. at 1393 ("diversion of sales to a direct competitor may be the paradigmatic direct injury from false advertising"). Defendants provide no evidence to dispute Plaintiffs' evidence that customers chose ONgDB based on Defendants misrepresentations at the commercial detriment to Plaintiffs.

Thus, the Court finds that Plaintiffs have established each element of their claims for false advertising under the Lanham Act and that Defendants have not raised any disputed issues of material fact on which a jury could find in Defendants' favor. The Court GRANTS Plaintiffs' Motion as to the false advertising claim.

Because the Court finds that summary judgment is appropriate as to the Lanham Act claims, the Court also GRANTS Plaintiffs' Motion as to the related UCL claim. *See Cleary*, 30 F.3d at 1262–63.

D. False Designation of Origin

Similar to the a false advertising claim, a false designation of origin claim under Section 1125(a)(1)(A) requires that Plaintiffs show: (1) the defendants used a false designation of origin; (2) the use occurred in interstate commerce; (3) that such false designation is likely to cause confusion, mistake or deception as to the origin, sponsorship, or approval of defendants' goods or services by another person; and (4) that plaintiff has been or is likely to be damaged. *Hokto Kinoko Co. v. Concord Farms, Inc.*, 810 F. Supp. 2d 1013, 1039 (C.D. Cal. 2011), *aff'd,* 738 F.3d 1085 (9th Cir. 2013) (citing 15 U.S.C. § 1125(a)).

Plaintiffs argue that Defendants' holding out of ONgDB as free and open source Neo4j EE constitutes a false designation of origin under the first element. Defendants argue that "there is an issue of fact on this element because "ONgDB is a fork of Sweden's open source software licensed under the AGPL . . . [and] [t]he designation of origin is, therefore, not false." Cross-Motion at 22. Plaintiffs, however, do not challenge statements in which Defendants refer to

ONgDB as a "fork" or Neo4j core source code. Rather, Plaintiffs take issue with Defendants identifying ONgDB as "free and open source" Neo4j EE. As discussed above, Defendants' claim that ONgDB *is* free and open source Neo4j is false because it relies on an interpretation of the Neo4j Sweden Software License that this Court has rejected. *See* Section C(i) *supra*.

Defendants do not raise any arguments regarding the remaining elements of a false designation of origin claim. Nevertheless, Plaintiffs must still establish each element of the claim to warrant summary judgment. There is no dispute that Defendants used the Neo4j Mark to falsely imply origin in interstate commerce (element 2). Plaintiffs have also established that they have been or are likely to be damaged, as discussed in Section C(iv) *supra* (element 4).

As to the likelihood of confusion, "[t]he Ninth Circuit has held that the *Sleekcraft* test is appropriate to determine likelihood of confusion regarding a claim for false designation of origin. *Cisco Sys., Inc. v. Shenzhen Usource Tech. Co.*, No. 5:20-CV-04773-EJD, 2020 WL 5199434, at *7 (N.D. Cal. Aug. 17, 2020) (citing *Accuride Int'l, Inc. v. Accuride Corp.*, 871 F.2d 1531, 1536 (9th Cir. 1989)). The *Sleekcraft* factors include: "(1) [T]he similarity of the marks; (2) the strength of the plaintiff's mark; (3) the proximity or relatedness of the goods or services; (4) the defendant's intent in selecting the mark; (5) evidence of actual confusion; (6) the marketing channels used; (7) the likelihood of expansion into other markets; and (8) the degree of care likely to be exercised by purchasers of the defendant's product. *Align Technology, Inc.*, 2019 WL 1586776, at *8 (citing *Fortune Dynamic, Inc.*, 618 F.3d at 1030).

For reasons similar to why the Court rejected Defendants' nominative fair use defense, the Court also finds that the *Sleekcraft* factors weigh in favor of finding a likelihood of confusion to establish the third element of Plaintiffs' false designation of origin claim. Specifically, it is undisputed that the Defendants used the Neo4j Mark (factor 1), which Plaintiffs' have used in commerce since 2007 and which enjoys strong brand recognition in the graph database software market (factor 2). *See* Broad Decl. ¶¶ 2-19; Ratinoff Decl., Ex. 72 (iGov website recognizing that Neo4j is the "world's leading Graph Database"). There is also no dispute as to the relatedness of

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the products, given that Defendants hold out ONgDB as a free and open source drop-in replacement for Neo4j EE (factor 3). Although Defendants may assert that their intent was to describe their own products, the evidence also makes clear that Defendants intended to convince consumers to buy Defendants' products instead of Neo4j EE commercial licenses; in other words, Defendants used the Neo4j Mark to unfairly compete with Plaintiffs (factor 4). As noted above, Plaintiffs have introduced evidence of actual customer confusion (factor 5). The evidence also shows that both Plaintiffs and Defendants were attempting to gain the business of various government entities, and even bid for the same contracts. This particularly weighs in Plaintiffs' favor because, as Defendants recognize, government entities prefer cost-effective and open source products where possible (factor 6-8).

Thus, the Court finds that Plaintiffs have established each element of their false designation of origin claim. Defendants have not offered any evidence of a factual dispute sufficient to withstand summary judgment. The Court, therefore, GRANTS Plaintiffs' Motion as to the false designation of origin claim.

E. Injunctive Relief

The Lanham Act vests the Court with the "power to grant injunctions according to principles of equity and upon such terms as the court may deem reasonable, to prevent the violation of any right" of the trademark owner. 15 U.S.C. § 1116(a); *see Century 21 Real Est. LLC v. Ed/Var Inc.*, No. 5:13-CV-00887 EJD, 2014 WL 3378278, at *6 (N.D. Cal. July 10, 2014) (issuing a permanent injunction after granting summary judgment on plaintiff's Lanham Act claims). To obtain an injunction, a plaintiff must show: "(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction." *La Quinta Worldwide LLC v. Q.R.T.M., S.A. de C.V.*, 762 F.3d 867, 879 (9th Cir. 2014). "The decision to grant or deny such relief is an act of equitable discretion by the district court." *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 388, 126 S. Ct. 1837, 1838, 164 L. Ed. 2d 641 (2006).

Plaintiffs argue that they have established all the necessary elements and are entitled to injunctive relief. First, Neo4j USA has suffered and will continue to suffer irreparable harm because Defendants' trademark infringement, false advertising, and false designation of origin damage Plaintiffs' reputation and the goodwill of the Neo4j Mark. When a plaintiff demonstrates a likelihood of confusion, it is generally presumed that the plaintiff will suffer irreparable injury if injunctive relief is not granted." *Sun Microsystems, Inc. v. Microsoft Corp.*, 999 F. Supp. 1301, 1311 (N.D. Cal. 1998). Thus, the Court agrees that Plaintiffs face irreparable harm, not compensable by money damages alone, in the absence of injunctive relief.

The balance of hardships and public interest factors are less straightforward. Plaintiffs argue that requiring Defendants to comply with the law will impose no cognizable hardship on Defendants and that the public interest is served by preventing consumer confusion. Motion at 35 (citing *Diller v. Barry Driller, Inc.*, No. CV 12-7200 ABC EX, 2012 WL 4044732, at *10 (C.D. Cal. Sept. 10, 2012) ("no hardship to cease intentionally infringing someone else's trademark rights"); *Stark v. Diageo Chateau & Est. Wines Co.*, 907 F. Supp. 2d 1042, 1067 (N.D. Cal. 2012) ("Preventing consumer confusion serves the public interest")). Indeed, "[t]he public has an interest in avoiding confusion between two companies' products." *Internet Specialties W., Inc. v. Milon-DiGiorgio Enterprises, Inc.*, 559 F.3d 985, 993 (9th Cir. 2009). However, Defendants argue that they have a legitimate First Amendment interest in using the Neo4j Mark to identify Plaintiffs' products and to comparatively advertise their own products. Cross-Motion at 32. Indeed, iGov's business depends on marketing ONgDB, which does include some or all Neo4j CE open source code.

Given the First Amendment interests involved, the Court "may not enjoin nominative use of the mark altogether." *Toyota Motor Sales, U.S.A., Inc.*, 610 F.3d at 1176. In *Toyota*, the Court held that if a defendant fails to satisfy all the *New Kids* factors for a nominative fair use defense, "the district court may order defendants to modify their use of the mark so that all three factors are satisfied." *Id.* In other words, the Court may order that if Defendants' products are not "readily identifiable" without use of the Neo4j Mark, Defendants may not use more of the mark than necessary, nor use the mark in any way that suggests sponsorship or endorsement by Plaintiffs. *See New Kids on the Block*, 971 F.2d at 308–09). But the Court "must [e]nsure that [the injunction] is tailored to eliminate only the specific harm alleged." *Toyota Motor Sales, U.S.A., Inc.*, 610 F.3d at 1176 (striking down overbroad injunction which prevented "truthful and non-misleading speech").

Moreover, the Court recognizes that there are still additional "Phase 2" claims, issues, and defenses to be adjudicated in this case. Among other defenses, Defendants have raised an "unclean hands" defense, which was reserved for Phase 2 summary judgment motions. Defendants argue that "[a]ll defenses must be considered before any final action may be taken." Cross-Motion at 6. The Court agrees that it would be improper to impose permanent relief at this stage in the case.

Thus, the Court GRANTS Plaintiffs' request for injunctive relief and issues a preliminary injunction enjoining Defendants' use of the Neo4j Mark only to the extent necessary to prevent unlawful use, as detailed below, without prejudice to Plaintiffs renewing their request for a permanent injunction at the conclusion of the case.

IV. Conclusion

For the reasons stated above, the Court hereby GRANTS Plaintiffs' Motion for Partial Summary Judgment as to Neo4j USA's first, second, third, and fourth causes of action for trademark infringement, false designation of origin and false advertising, federal unfair competition, and state unfair competition, respectively.

IT IS FURTHER ORDERED that the Court DENIES Defendants' Cross-Motion as to the same claims.

IT IS FURTHER ORDERED that the Court enters the following PRELIMINARY

INJUNCTION against Defendants as follows.

Defendants and their owners, principals, agents, managers, officers, directors, members, servants, employees, successors, assigns, and all other persons acting in concert and participation with them (collectively, the "Enjoined Parties") ARE HEREBY ENJOINED from:

1. Infringing U.S. Trademark Registration No. 4,784,280 for the word mark "NEO4J" covering the goods and services in International Classes, 009, 035, 041, 042 and 045 (the "Neo4j Mark").
2. Advertising, promoting, representing or referring to ONgDB as a free and open source drop-in replacement of Neo4j Enterprise Edition distributions with the same version number, and any similar statement that may lead consumers to believe that ONgDB is a Neo4j USA or Neo4j Sweden product, or is identical to a Neo4j USA or Neo4j Sweden product.
3. Advertising, promoting, representing, or referring to Neo4 Enterprise or Neo4j Enterprise Edition being released only under the AGPL.
4. Representing that Neo4j Sweden AB's addition of the Commons Clause to the license governing Neo4j Enterprise Edition violated the terms of AGPL or that removal of the Commons Clause is lawful, and similar statements.
5. Advertising, displaying or distributing products, literature or any other materials that use the Neo4j Mark to advertise or promote ONgDB in any way that suggests sponsorship or endorsement by Neo4j USA or Neo4j Sweden or that may lead consumers to believe that ONgDB is a Neo4j USA or Neo4j Sweden product, or is identical to a Neo4j USA or Neo4j Sweden product.
6. Affixing, applying, annexing, or using in connection with the sale of any goods, a false description or representation including words or other symbols tending to falsely describe or represent such goods as being Neo4j products and from offering such goods in commerce.

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7. Assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities referred to in Paragraphs 1-6 above.

Within three business days of the date of this Order, the Enjoined Parties shall remove all infringing material and enjoined uses of the Neo4j Mark from all websites, webpages, and GitHub repositories owned or managed by the Enjoined Parties.

IT IS SO ORDERED.

Dated: May 18, 2021

EDWARD J. DAVILA
United States District Judge

ALLEGATION IN NOTICE OF OPPOSITION	**ALLEGATIONS IN NEO4J V. PURE THINK LITIGATION**
The applicant Neo4j Inc, is not (and was not, at the time of the filing of its application for registration) the rightful owner of the Neo4j mark; Neo4j Sweden AB is the owner of the trademark. Opp. at 3:1-5.	Neo4J, USA is not the owner of the trademark. Neo4J USA is only a non-exclusive licensee of the mark and the ownership of the mark is owned by Neo4J Sweden. Patel Decl., Ex. 13 at 20:11-19; *see also* Patel Decl. Ex. 15 at 12:15-14:9.
Neo4j Sweden AB set up Neo Technology, Inc. which changed its name to Neo4J, Inc. and licensed its software and trademarks on a nonexclusive basis to applicant. (Neo4j Inc). (See Exhibit G) Opp. at 3:6-10.	Neo4J USA claims they own the Neo4J trademark but they are only a non-exclusive licensee from Neo4J Sweden. Patel Decl., Ex. 13 at 21:11-13; *see also* Patel Decl. Ex. 15 at 12:15-14:9.
Neo4j Sweden AB, not the applicant, is listed as the applicant and owner for trademark registrations outside of the USA. The following NEO4J mark registrations outside the USA show Neo4j Sweden AB, not applicant as being the owner of the mark. (See Exhibit E) Opp. at 3:11-16.	Exhibit 3 is a true and correct printout of the Neo4J trademarks Neo4J Sweden AB has registered or applied for the word mark Neo4J in the European Union, Canada, Australia, Israel, International, and Sweden (Neo4J logo). These printout were downloaded on 1-6-2021 from publically available websites throught [sic] the Swedish Trademark Database website, the EUIPO property office website, and the WIPO website. These are government websites or agencies which are reliable. The printouts have not been altered. These printouts show that Neo4J Sweden AB is the owner, applicant and/or holder of the trademark in these jurisdictions. Opp., Exhibit G [Beene Declaration in Opposition to MSJ] at ¶ 7
Exhibit E to Opposition consisting of the following foreign trademark applications by Neo4j Sweden AB: - EUIPO (European Union) EUTM application - Canadian word mark for NEO4J - Australian word mark for NEO4J - Israel word mark for NEO4J - International word mark for NEO4J - Swedish logo mark for NEO4J	Opp., Exhibit G [Beene Declaration in Opposition to MSJ] at Ex. 3, consisting of the following foreign trademark applications by Neo4j Sweden AB: - EUIPO (European Union) EUTM application - Canadian word mark for NEO4J - Australian word mark for NEO4J - Israel word mark for NEO4J - International word mark for NEO4J - Swedish logo mark for NEO4J
Applicant has provided false first use dates including first use in commerce dates. Another application by the applicant (Serial # 86267006) has the first use date anywhere as: “At least as early as 06/04/2006”, and the first use in	The Registered Trademark for NEO4J, Reg. No. 4,784,280, was procured by fraud as the representation was that Neo Technology (a Delaware corporation) (changed to Neo4J, Inc.) first used the trademark in 6-4-2006 and in commerce

ALLEGATION IN NOTICE OF OPPOSITION	ALLEGATIONS IN NEO4J V. PURE THINK LITIGATION
commerce date as "At least as early as 05/28/2007". The current application being opposed has the first use date anywhere as "At least as early as 00/00/2014" and the first use in commerce date as "At least as early as 00/00/2014". These dates are over 6 years apart. The application should be considered void. Opp. at 4:3-12.	in 5-28-2007. These statements are false as Neo Technology did not exist on those dates represented as the company was formed 7-7-2011 in Delaware under File Number 5007564. Because the registration was procured by fraud, the registration should be cancelled pursuant to 15 U.S.C. §1119 Patel Dec., Ex. 5 at 18:21-19:3 and Ex. 6 at ¶¶ 88-92.
The applicant's COO, Lars Nordwall, asked a past partner, PureThink, to sign false documents intended to deceive investors by making consulting revenue look as if it was software license revenue. Applicant provided false information to a US government agency (Internal Revenue Service), when asked about applicant's open source usage rights. This information was given to attempt to get the Internal Revenue service to purchase a license instead of using Neo4j database software for free under the open source license. Opp., ¶¶ 6-7.	PureThink and IRS entered into a contract which for the first time, was done completely outside the Partner Agreement, and under the Government Edition agreement. The contract included consulting services to build out a solution IRS requested around the Neo4j Government Edition. NEO4J USA told PureThink to make whatever decisions were needed regarding the much smaller license portion of the contract. During the performance of the contract, when the IRS asked PureThink the difference between Neo4j open source and NEO4J USA's commercial version, NEO4J USA told PureThink to tell the IRS the open source version had to be an open use. When PureThink would not make this statement to IRS, NEO4J USA then proceeded to reach out directly to IRS personel directly with this false message. Opp., Exhibit C ("SACC"), ¶ 20; *see also* SACC, ¶¶ 117-119.
Opposer, upon information and belief, allege that applicant filed the application being opposed, representing that it was the owner of the mark, in order to avoid having the dismissal of ongoing civil litigation claims involving trademark infringement for the mark between oppose and applicant (Neo4j Inc). Application was submitted after applicant filed trademark infringement claims against opposer. Opposer alleges that as a result, the applicant committed fraud in the procurement / submission of the application, as applicant knowingly made a false, material representation with the intent to deceive the USPTO of its registration or during the prosecution of its application for registration. Opp., ¶ 8.	The Registered Trademark for NEO4J, Reg. No. 4,784,280, was procured by fraud as the representation was that Neo Technology (a Delaware corporation) (changed to Neo4J, Inc.) was the owner of the trademark …. These statements are false as Neo4J, USA is not the owner of the trademark. Neo4J USA is only a non-exclusive licensee of the mark and the ownership of the mark is owned by Neo4J Sweden. [] Neo4J USA's representations of ownership and first use in the Trademark application are false. Because the ownership and dates of use in the trademark application were false, the registration was procured by fraud, the registration should be cancelled pursuant to 15 U.S.C. §1119. Patel Decl., Ex. 13 at 20:11-21:2.
Neo4J was released as an open source project by Neo4J Sweden AB in 2006. Neo4J Sweden AB allowed the unfettered and uncontrolled use of the Neo4J trademarks to successfully launch the Neo4J software and gain a large user and development base. In 2006, Applicant (Neo4J Inc). did not exist. Neo4J Inc,	Neo4J was released as an open source project by Neo4J Sweden in 2006. Neo4J Sweden allowed the unfettered and uncontrolled use of the Neo4J trademarks to successfully launch the Neo4J software and gain a user and development base. In 2006, Neo4J USA did not exist. Neo4J USA, under a different name,

ALLEGATION IN NOTICE OF OPPOSITION	ALLEGATIONS IN NEO4J V. PURE THINK LITIGATION
under a different name, incorporated on 7-7-2011. When Neo4J Inc obtained some rights to the Neo4J trademark years later, the Neo4J trademark was already abandoned by Neo4J Sweden AB's lack of contractual and actual or adequate quality control for third party's extensive use of the Neo4J trademark. Opp., ¶ 9.	incorporated on 7-7-2011. When Neo4J USA obtained rights to the Neo4J trademark years later, the Neo4J trademark was already abandoned by Neo4J Sweden's lack of contractual and actual or adequate quality control for third party's extensive use of the Neo4J trademark. SACC, ¶ 86; Patel Decl., Ex. 9 at 19:8-16
Neo4J Sweden AB allowed the unfettered use of the Neo4J trademarks to successfully launch their open source product and gain a user and development base. Opp., ¶ 10.	Neo4J Sweden allowed the unfettered and uncontrolled use of the Neo4J trademarks to successfully launch the Neo4J software and gain a user and development base. SACC, ¶ 86; Patel Decl., Ex. 9 at 19:8-11.
But Neo4J Sweden AB and, years later, applicant (Neo4J Inc) did not actually or adequately exercise control of the quality for the modified versions of the Neo4J software to maintain the trademark. Opp., ¶ 10.	Neo4J Sweden and, years later, Neo4J USA did not actually or adequately exercise control of the quality for the third party modified versions of Neo4J software to maintain the trademark. SACC, ¶ 91; Patel Decl., Ex. 9 at 21:1-3.
While applicant, Neo4J Inc., may presently be the parent of Neo4J Sweden AB, the corporate structure is reverse as the parent was born after the subsidiary. Neo4J Sweden AB was created first and operated for years before applicant was created and Neo4J Inc's corporate relationship could not establish a trademark control as Neo4J Inc did not exist. Opp., ¶ 11.	While Neo4J USA may presently be the parent of Neo4J Sweden, the corporate structure is reverse as the parent was born after the subsidiary. Neo4J Sweden was created first and operated for years before Neo4J USA was created and Neo4J's corporate relationship could not establish a trademark control as Neo4J USA did not exist. SACC, ¶ 87; Patel Decl., Ex. 9 at 19:18-22.
For a period of 5 years before the applicant (Neo4j Inc) existed and thereafter, Neo4J Sweden AB licensed the Neo4J software as open source software under GPL and AGPL licenses. Neo4J Sweden AB used the GPL and AGPL licenses to proliferate the free use, development and modification of Neo4J software. Opp., ¶ 12.	For a period of 5 years before the plaintiff existed and thereafter, Neo4J Sweden licensed Neo4J software as open source software under GPL and AGPL licenses. Neo4J Sweden used the GPL and AGPL licenses to proliferate the free use, development and modification of Neo4J software. SACC, ¶ 88; Patel Decl., Ex. 9 at 19:24-20:3.
Neo4J Sweden AB has not exercise contractual control over GPL and AGPL licensee's use of the Neo4J trademark. The GPL and AGPL provide that a licensee must carry prominent notices stating that you modified it and giving a relevant date. ¶5 GPL. This copyright notice requirement for licensees who modify the source code and convey new versions of Neo4J software and does not control quality to maintain the Neo4J trademark. Likewise, under the GPL	Neo4J Sweden has not exercise contractual control over GPL and AGPL licensee's use of the Neo4J trademark. The GPL and AGPL provide that a licensee must carry prominent notices stating that you modified it and giving a relevant date. ¶5 GPL. This copyright notice requirement for licensees who modify the source code and convey new versions of Neo4J software and does not control quality to maintain the Neo4J trademark. Likewise, under the GPL

ALLEGATION IN NOTICE OF OPPOSITION	ALLEGATIONS IN NEO4J V. PURE THINK LITIGATION
and AGPL, trademark rights may be limited by a licensee when the licensee conveys a modified version of Neo4J. ¶7GPL This restriction applies to the licensee's trademarks and does not exercise any contractual control over Neo4J Sweden AB or applicant's (Neo4J Inc) trademarks in Neo4J. Opp., ¶ 12.	and AGPL, trademark rights may be limited by a licensee when the licensee conveys a modified version of Neo4J. ¶7GPL This restriction applies to the licensee's trademarks and does not exercise any contractual control over Neo4J Sweden or Neo4J's USA's trademarks in Neo4J. SACC, ¶ 89; Patel Decl., Ex. 9 at 20:5-15.
Neo4J Sweden AB was the only entity to license the Neo4J software under the GPL and AGPL licenses. Applicant (Neo4j Inc) is not the licensor of Neo4J under the GPL or the AGPL. As applicant has no privity of contract and no special relationship with GPL and AGPL licensees, Applicant (Neo4J Inc) cannot rely on contract terms to show any quality control to maintain the trademark. Opp., ¶ 13.	Neo4J Sweden was the only entity to license the Neo4J software under the GPL and AGPL licenses. Plaintiff is not the licensor of Neo4J under the GPL or the AGPL. As Plaintiff has no privity of contract and no special relationship with GPL and AGPL licensees, Neo4J USA cannot rely on contract terms to show any quality control to maintain the trademark. SACC, ¶ 90; Patel Decl., Ex. 9 at 20:17-22.
PureThink LLC , a past partner of Neo4j Inc, modified the Neo4J open source software for a special government use and called it "Neo4J Government Edition." Neo4J Government Edition was distributed to U.S. government agencies. Yet Applicant (Neo4J Inc) did no quality assurance or verification of the source code or applications distributed as "Neo4J Government Edition." Neo4J Inc knew PureThink LLC modified Neo4J and allowed it to call the product Neo4J Government Edition yet Neo4J Inc did no quality assurance on the modified version. Opp., ¶ 14.	Defendant John Suhy modified Neo4J for a special government use and called it "Neo4J Government Edition." John Suhy's Neo4J Government Edition was was distributed to U.S. government agencies. Yet Neo4J USA did no quality assurance or verification of the source code or applications distributed as "Neo4J Government Edition." Neo4J USA knew John Suhy modified Neo4J and allowed him to call the product Neo4J Government Edition yet Neo4J did no quality assurance on the modified version. SACC, ¶ 96; Patel Decl., Ex. 9 at 23:4-11.
Because Neo4J Sweden and Neo4J USA had no contractual controls and did not exercise actual and adequate controls over the prolific use of the Neo4J trademark by third parties who modified and conveyed modified versions of Neo4J software, Opp., ¶ 15.	Because Neo4J Sweden and Neo4J USA had no contractual controls and did not exercise actual and adequate controls over the prolific use of the Neo4J trademark by third parties who modified and conveyed modified versions of Neo4J software, the trademark should be deemed abandoned. SACC, ¶ 97; Patel Decl., Ex. 9 at 23:13-17.
Neo4J Sweden AB and, years later, Neo4J Inc did not actually or adequately exercise control of the quality for the third party modified versions of Neo4J software to maintain the trademark. Opp., ¶ 16.	Neo4J Sweden and, years later, Neo4J USA did not actually or adequately exercise control of the quality for the third party modified versions of Neo4J software to maintain the trademark. SACC, ¶ 91; FAA at 21:1-3.

ALLEGATION IN NOTICE OF OPPOSITION	**ALLEGATIONS IN NEO4J V. PURE THINK LITIGATION**
There is confusion whether Neo4j is a company name trademark or a product name trademark. This confusion is exacerbated by Neo4J Sweden AB's open source license for the Neo4J software. Neo4J Sweden AB's license states: "The software ("Software") is developed and owned by Neo4J Sweden AB (referred to in this notice as "Neo4J"). Opp., ¶ 17.	PureThink, iGov and John Mark Suhy claim there is confusion whether Neo4j is a company name trademark or product name trademark. This confusion is exacerbated by NEO4J SWEDEN' open source license for a product called Neo4j. NEO4J SWEDEN's license states: "The software ("Software") is developed and owned by NEO4J SWEDEN (referred to in this notice as "Neo4j"). Patel Decl., Ex. 6 at ¶ 85; *see also* Patel Decl., Ex. 5 at 19:12-15.
Neo4J Sweden AB asserts they own the software called Neo4j - and not applicant (Neo4J Inc) - and yet both companies use Neo4J name as part of the company name and call the open source software product Neo4J as well. Furthermore another related company NEO4J UK LIMITED also uses the Neo4j mark in its name. Opp., ¶ 17.	Neo4j Sweden asserts they own the software-and not NEO4J Inc.- and they use Neo4j name as part of the company name and call the open source software product Neo4j too. Patel Decl., Ex. 5 at 19:18-21; Patel Decl., Ex. 6 at ¶ 85.
As the Neo4J software is licensed as open source software, there is no ability to maintain quality control of how licensees modify, use or distributed or conveyed. No trademark guidance, or instructions were provided in the public git repositories for years, and only recently has the repository been updated with trademark guidance. Opp., ¶ 18.	As the Neo4j trademark is used and licensed as open source software there is no ability to maintain quality control over the software product called Neo4j as any licensees may modify combine the software with other code and distributed or convey Neo4j without required quality control by NEO4J USA. Patel Decl., Ex. 6 at ¶ 85; *see also* Patel Decl., Ex. 5 at 19:21-23.
Many of third party versions of Neo4J freely use Neo4J trademarks. However, opposer is informed and believe, Neo4J Sweden AB and Neo4J Inc have not actually exercised any or adequate control over the quality of the software on the third party repositories and projects that use the Neo4J trademark. Applicant has no actual control of distribution of modified versions of Neo4J. There are significant downloads and use of applications using the neo4j name and modified versions of Neo4j. Opp., ¶ 19.	Many of these third party modified versions of Neo4J freely use Neo4J trademarks. However, Neo4J Sweden and Neo4J USA did not have express contractual terms or actually exercise any or adequate controls over the quality of the modified Neo4J software on the third party repositories, projects or modified versions of Neo4J software that use the Neo4J trademark. The above list is not an exclusive list of modified versions as there is no actual control of distribution of modified versions of Neo4J. SACC, ¶ 93; Patel Decl., Ex. 9 at 21:18-25.
Opposer is informed and believe, Neo4J Sweden and Neo4J Inc have not actually exercised any or adequate control over the quality of software on the third party repositories and projects that still currently use the Neo4J trademark.	Since Neo4J Sweden licensed Neo4J software as open source software, any person could modify the source code to Neo4J software and convey the modified Neo4J software to third parties. That right is expressly included in the GPL and AGPL licenses. But Neo4J Sweden did not actually maintain quality

ALLEGATION IN NOTICE OF OPPOSITION	**ALLEGATIONS IN NEO4J V. PURE THINK LITIGATION**
There are significant downloads and use of applications using the neo4j trademark name that have had no policing action. Opp., ¶ 20.	control of how licensees modify, use or conveyed the Neo4J software while Neo4J Sweden freely allowed licensees to use the Neo4J trademark. The GPL and AGPL free license rights were used to proliferate users and third party developers of Neo4J software. And it worked. There are over 10,564 (June 1, 2020) third party repositories on github and 99+ projects at GitLab alone…. SACC, ¶ 92; Patel Decl., Ex. 9 at 21:5-14.
The following companies use the Neo4j trademark for their products. 10M+ Downloads: https://hub.docker.com/r/bitnami/neo4j 4.4k Downloads : https://hub.docker.com/u/neo4jchina 5M+ Downloads: https://hub.docker.com/r/discsports/neo4j-apoc 500k+ Downloads: https://hub.docker.com/r/phenompeople/neo4j 100k+ Downloads: https://hub.docker.com/r/frodenas/neo4j 100k+ Downloads: https://hub.docker.com/r/amd64/neo4j 50k+ Downloads: https://hub.docker.com/r/tpires/neo4j 10k+ Downloads: https://hub.docker.com/r/primedio/neo4j-cluster-ecs 100k+ Downloads: https://hub.docker.com/r/ryguyrg/neo4j-importer 100k+ Downloads: https://hub.docker.com/r/c12e/neo4j 100k+ Downloads: https://hub.docker.com/r/trollin/neo4j 100k+ Downloads: https://hub.docker.com/r/mmorga/neo4j-3.2.5 100k+ Downloads https://hub.docker.com/r/centular/neo4j-enterprise 3.8k+ Downloads https://hub.docker.com/r/builddoctor/neo4j Opp., ¶ 20.	There are also significant consumer downloads and use of these third party modified Neo4J versions which use the Neo4J trademark: 1.8k Downloads : https://hub.docker.com/u/neo4jchina 1M+ Downloads: https://hub.docker.com/r/discsports/neo4j-apoc 1M+ Downloads: https://hub.docker.com/r/bitnami/neo4j 500k+ Downloads: https://hub.docker.com/r/phenompeople/neo4j 100k+ Downloads: https://hub.docker.com/r/frodenas/neo4j 100k+ Downloads: https://hub.docker.com/r/amd64/neo4j 50k+ Downloads: https://hub.docker.com/r/tpires/neo4j 10k+ Downloads: https://hub.docker.com/r/primedio/neo4j-cluster-ecs 100k+ Downloads: https://hub.docker.com/r/ryguyrg/neo4j-importer 100k+ Downloads: https://hub.docker.com/r/c12e/neo4j 100k+ Downloads: https://hub.docker.com/r/trollin/neo4j 100k+ Downloads: https://hub.docker.com/r/mmorga/neo4j-3.2.5 100k+ Downloads https://hub.docker.com/r/centular/neo4j-enterprise 3.8k+ Downloads https://hub.docker.com/r/builddoctor/neo4j 647 Downloads https://hub.docker.com/r/picnicsoftware/neo4j 788 Downloads https://hub.docker.com/r/digitalcloudsa/neo4j SACC, ¶ 94; Patel Decl., Ex. 9 at 22:2-19.

ALLEGATION IN NOTICE OF OPPOSITION	ALLEGATIONS IN NEO4J V. PURE THINK LITIGATION
There are millions of copies of modified versions of Neo4J downloaded where the modified version of the software uses the Neo4J trademark while Neo4J Sweden and Neo4J USA exercise no actual or adequate quality control of these modified versions of software using the Neo4J trademark. Opp., ¶ 20.	There are millions of copies of modified versions of Neo4J downloaded where the modified version of the software uses the Neo4J trademark. While plaintiff's build infrastructure may carry out tens of thousands of functional, performance, load stress and other tests to ensure quality, Neo4J USA and Neo4J Sweden did not require any of these quality controls for the millions of copies of third party modified Neo4J software which use the Neo4J trademarks for well over a decade. SACC, ¶ 95; Patel Decl., Ex. 9 at 22:19-23:2.
Applicant (Neo4j Inc) allowed then partner, PureThink LLC, to create a product using the mark called "Neo4J Government Edition". This product was distributed to U.S. government agencies, Applicant (Neo4J Inc) or Neo4j Sweden AB did **no** quality assurance or verification of the source code or applications distributed as Neo4J Government Edition. Opp., ¶ 21.	Defendant John Suhy modified Neo4J for a special government use and called it "Neo4J Government Edition." John Suhy's Neo4J Government Edition was distributed to U.S. government agencies. Yet Neo4J USA did **no** quality assurance or verification of the source code or applications distributed as "Neo4J Government Edition." Neo4J USA knew John Suhy modified Neo4J and allowed him to call the product Neo4J Government Edition yet Neo4J did no quality assurance on the modified version. SACC, ¶ 96; Patel Decl., Ex. 9 at 23:4-11.
Neo4j is the name of an open source graph database which has many forks and distributions because of its open source nature. Applicant is not the licensor of Neo4J under the GPL and AGPL licenses. Neo4j Sweden AB is the licensor. As Applicant has no privity of contract to control GPL and AGPL licensees use of the Neo4J trademark, they cannot rely on contract terms to show any control. Furthermore, until recently – no trademark guidelines or usage rights were provided with the open source software. Opp., ¶ 22.	Neo4J Sweden was the only entity to license the Neo4J software under the GPL and AGPL licenses. Plaintiff is not the licensor of Neo4J under the GPL or the AGPL. As Plaintiff has no privity of contract and no special relationship with GPL and AGPL licensees, Neo4J USA cannot rely on contract terms to show any quality control to maintain the trademark. SACC, ¶ 90; Patel Decl., Ex. 9 at 20:17-22. Neo4J USA's trademark policies do not apply to licensees of Neo4J Sweden's software, because such software is beyond the scope of Neo4J's non-exclusive license to the mark and is licensed by Neo4J Sweden which is the owner of the Mark. Patel Decl., Ex. 13 at 22:5-9.

ALLEGATION IN NOTICE OF OPPOSITION	ALLEGATIONS IN NEO4J V. PURE THINK LITIGATION
	PureThink further agreed to the terms of the limited license under the Partner Agreement to use the Neo4j® Mark in accordance with Neo4j USA's "then-current trademark usage guidelines." Patel Decl, Ex. 15 at Exhibit A, Undisputed Fact 4. The Partner Agreement was subject to a 1-year term, and would automatically renew at additional 1-year periods subject to the notice and termination provision therein, thereby incorporating whatever was the operative trademark guidelines at that time. PureThink became bound by the October 13, 2015 version of Neo4j USA's trademark guidelines as of September 30, 2016 Patel Decl, Ex. 15 at Exhibit A, Undisputed Fact 5.
The neo4j team told people not to use the Bitnami docker application called "Neo4j by Bitnami", which has over 10+ Million downloads as of this opposition's filing date. One of applicant's employees stated: "We don't recommend using Neo4j by Bitnami – it is not produced through Neo4j nor supported." Applicant failed to police this misuse which is still ongoing. Neo4J Sweden and USA has abandoned the Neo4J trademark under the doctrine of Naked License. (See Exhibit F). Opp., ¶ 23.	There are also significant consumer downloads and use of these third party modified Neo4J versions which use the Neo4J trademark …. [including] 1M+ Downloads: https://hub.docker.com/r/**bitnami**/neo4j... SACC, ¶ 94 (emphasis added); *see also* Patel Decl., Ex. 9 at 22:2-6.
The Neo4j Mark previous registration, Serial Number: 86267006 Filing Date: 04/30/2014, states a first use date FIRST USE ANYWHERE DATE At least as early as 06/04/2006, FIRST USE IN COMMERCE DATE At least as early as 05/28/2007. The current application being apposed states FIRST USE ANYWHERE DATE At least as early as 00/00/2014, FIRST USE IN COMMERCE DATE At least as early as 00/00/2014. During this 6 year period in time – the Neo4j mark was allowed to be used unfettered and was not policed by Neo4j Inc or Neo4j Sweden AB. Mark was used by mcompanies forking, or offering neo4j software or services using the mneo4j mark. Opp., ¶ 24	The Registered Trademark for NEO4J, Reg. No. 4,784,280, was procured by fraud as the representation was that Neo Technology (a Delaware corporation) (changed to Neo4J, Inc.) first used the trademark in 6-4-2006 and in commerce in 5-28-2007. Patel Dec., Ex. 5 at 18:21-19:3 and Ex. 6 at ¶¶ 88-92. Neo4J Sweden was created first and operated for years before Neo4J USA was created and Neo4J's corporate relationship could not establish a trademark control as Neo4J USA did not exist. [] For a period of 5 years before the plaintiff existed and thereafter, Neo4J Sweden licensed Neo4J software as open source software under GPL and AGPL licenses. Neo4J Sweden used the GPL and AGPL licenses to proliferate the free use, development and modification of Neo4J software.

ALLEGATION IN NOTICE OF OPPOSITION	ALLEGATIONS IN NEO4J V. PURE THINK LITIGATION
	Patel Dec., Ex. 9 at 19:18-20:3; SACC, ¶¶ 87-88.
Neo4j allows users to take a free online tests and receive an official certification bearing the trademark. Any user passing the unsupervised test could then call themselves a "Neo4j Certified Professional". The tests have none or limited functionality to prevent cheating or otherwise allowing someone without the knowledge necessary to be considered a competent Neo4j professional to receive the certification. Neo4j Inc then allows the recipients to use the Neo4j trademark name when advertising to potential employers. There are no guidelines on how these newely [sic] certified professionals can use the neo4j mark. Opp., ¶ 25.	PureThink further agreed to the terms of the limited license under the Partner Agreement to use the Neo4j® Mark in accordance with Neo4j USA's "then-current trademark usage guidelines." Patel Decl, Ex. 15 at Exhibit A, Undisputed Fact 4. The Partner Agreement was subject to a 1-year term, and would automatically renew at additional 1-year periods subject to the notice and termination provision therein, thereby incorporating whatever was the operative trademark guidelines at that time. PureThink became bound by the October 13, 2015 version of Neo4j USA's trademark guidelines as of September 30, 2016 Patel Decl, Ex. 15 at Exhibit A, Undisputed Fact 5.

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EXHIBIT A

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TERMS AND CONDITIONS

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EXHIBIT A

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1. Source Code.

The "source code" for a work means the preferred form of the work for making modifications to it. "Object code" means any non-source form of a work.

A "Standard Interface" means an interface that either is an official standard defined by a recognized standards body, or, in the case of interfaces specified for a particular programming language, one that is widely used among developers working in that language.

The "System Libraries" of an executable work include anything, other than the work as a whole, that (a) is included in the normal form of packaging a Major Component, but which is not part of that Major Component, and (b) serves only to enable use of the work with that Major Component, or to implement a Standard Interface for which an implementation is available to the public in source code form. A "Major Component", in this context, means a major essential component (kernel, window system, and so on) of the specific operating system (if any) on which the executable work runs, or a compiler used to produce the work, or an object code interpreter used to run it.

The "Corresponding Source" for a work in object code form means all the source code needed to generate, install, and (for an executable work) run the object code and to modify the work, including scripts to control those activities. However, it does not include the work's System Libraries, or general-purpose tools or generally available free programs which are used unmodified in performing those activities but which are not part of the work. For example, Corresponding Source includes interface definition files associated with source files for the work, and the source code for shared libraries and dynamically linked subprograms that the work is specifically designed to require, such as by intimate data communication or control flow between those subprograms and other parts of the work.

The Corresponding Source need not include anything that users can regenerate automatically from other parts of the Corresponding Source.

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EXHIBIT A

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You may convey a work based on the Program, or the modifications to produce it from the Program, in the form of source code under the terms of section 4, provided that you also meet all of these conditions:

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6. Conveying Non-Source Forms.

You may convey a covered work in object code form under the terms of sections 4 and 5, provided that you also convey the machine-readable Corresponding Source under the terms of this License, in one of these ways:

a) Convey the object code in, or embodied in, a physical product (including a physical distribution medium), accompanied by the Corresponding Source fixed on a durable physical medium customarily used for software interchange.

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                            Preamble

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```
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```

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Frequently Asked Questions

How much does it cost to take the exam?

No cost – it's completely free!

What areas are tested in the exam?

The Neo4j Certified Professional exam tests you in using **Neo4j 4.x** in the following areas:

- Neo4j property graph model
- Neo4j components used for development
- Cypher queries
- Creating nodes and relationships
- Importing data

How long is the exam?

The exam includes 80 questions in 60 minutes.

What score do I need in order to pass?

You must score 80% or above in order to be certified.

Can I retake the exam?

Yes, if you fail to achieve an 80% score, you can retake the certification exam later after learning a bit more about Neo4j. Note that you can retake the exam after a 24-hour period.

Will I get a certificate document?

Yes, you will receive an email with a link to your certificate to print or save that indicates your achievement.

Where can I learn the required skills?

You can take these free online training courses:

1. Overview of Neo4j 4.x ↗
2. Querying with Cypher in Neo4j 4.x ↗
3. Creating Nodes and Relationships in Neo4j 4.x ↗
4. Using Indexes and Query Best Practices in Neo4j 4.x ↗
5. Importing Data with Neo4j 4.x ↗
6. Graph Data Modeling for Neo4j ↗

Here are other resources to learn more:

- Neo4j Documentation ↗
- Neo4j developer pages ↗
- Free Neo4j e-books: Graph Databases ↗ and Learning Neo4j ↗
- Classroom training sessions ↗
- The Neo4j Cypher Manual ↗
- Neo4j Webinars ↗

Are there other types of free Neo4j certifications available?

- Neo4j 4.x Certified Exam tests you on Neo4j 4.x features exclusively and focuses on Neo4j in production (RBAC and Fabric).
- Neo4j Graph Data Science Certification Exam tests you using the graph algorithms of the Neo4j Graph Data Science Library.

If you have questions around the Neo4j Certification Program or the exam, please send us an email to certification@neo4j.com ↗ .

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