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10

11   UNITED STATES DISTRICT COURT

12   NORTHERN DISTRICT OF CALIFORNIA

13 NEO4J, INC., a Delaware corporation,   CASE NO. 5:18-cv-07182-EJD
    NEO4J SWEDEN, AB,
14   **PLAINTIFF AND COUNTER-**
                   Plaintiffs,   **DEFENDANT NEO4, INC.'S ANSWER TO**
15   **DEFENDANTS PURETHINK LLC, IGOV,**
           v.   **INC. AND JOHN MARK SUHY'S SECOND**
16   **AMENDED COUNTERCLAIM**
    PURETHINK LLC, a Delaware limited
17 liability company, IGOV INC., a Virginia   **DEMAND FOR JURY TRIAL**
    corporation, and JOHN MARK SUHY, an
18 individual,

19   Defendants.

20
    AND RELATED COUNTERCLAIMS.
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PLAINTIFF AND COUNTER-DEFENDANT NEO4J, INC.'S ANSWER TO SECOND AMENDED COUNTERCLAIM
CASE NO. 5:18-CV-07182-EJD

1   Plaintiff and Counter-Defendant Neo4j, Inc. ("Neo4j") responds to Defendants and

2   Counterclaimants PureThink, LLC ("PureThink"), iGov, Inc. ("iGov") and John Mark Suhy

3   ("Suhy") (collectively, "Counterclaimants") Second Amended Counterclaim, Dkt. No. 72 (the

4   "Counterclaims"), as follows:

5   **ANSWER TO COUNTERCLAIM**

6   **I.   Jurisdiction**

7   1.   The allegations in Paragraph 1 call for a legal conclusion; therefore no response is

8   required. To the extent an answer is required, Neo4j denies the allegations contained in this

9   paragraph.

10   **II.   Parties**

11   2.   Neo4j lacks knowledge or information sufficient to form a belief about the truth of

12   the allegations in Paragraph 2 and on that basis denies them.

13   3.   Neo4j lacks knowledge or information sufficient to form a belief about the truth of

14   the allegations in Paragraph 3 and on that basis denies them.

15   4.   Neo4j admits that John Mark Suhy is an individual and admits the Second

16   Amended Counterclaim is the operative counterclaim.

17   5.   On information and belief, Neo4j Inc. admits that it is a Delaware corporation.

18   6.   Neo4j admits that Neo4j Sweden AB is a Swedish corporation.

19   **III.   Introduction**

20   7.   Neo4j admits that the GNU General Public License "GPL" license has several

21   distinct versions. Neo4j further admits that GNU Affero General Public License "AGPL" license

22   has several distinct versions. The remaining allegations lack specificity and are vague as to the

23   particular software and version thereof, as well as which particular license applies a particular

24   version of software, and on that basis Neo4j denies the allegations in Paragraph 7. Except as

25   expressly admitted, Neo4j denies the remaining allegations contained in Paragraph 7.

26   8.   Neo4j admits that Github.com is an open source software repository. The

27   allegations in Paragraph 8 lack specificity and are vague as to the particular software and version

28   thereof referenced as "Neo4j open source software," and on that basis Neo4j denies the

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

1   allegations related thereto in Paragraph 8. Except as expressly admitted, Neo4j denies the

2   remaining allegations contained in Paragraph 8.

3   9.   The allegations in Paragraph 9 lack specificity and are vague as to which version

4   or versions of the GPL and/or AGPL license, as well as which version or versions of "the Neo4j

5   source code" and "source code" are referred to therein, and on that basis Neo4j denies the

6   allegations related thereto in Paragraph 9. Neo4j lacks knowledge or information sufficient to

7   form a belief about the truth of the remaining allegations in this paragraph and on that basis

8   denies them.

9   10.   The allegations in Paragraph 10 lack specificity and are vague as to which version

10   or versions of the NEO4J® software and GPL and AGPL licenses are being referred to, and on

11   that basis Neo4j denies the allegations related thereto in Paragraph 10. Neo4j denies the

12   remaining allegations contained in Paragraph 10.

13   11.   Neo4j denies the allegations contained in Paragraph 11.

14   12.   Neo4j denies the allegations contained in Paragraph 12.

15   13.   The allegations in Paragraph 13 call for a legal conclusion; therefore no response

16   is required. To the extent any further answer is required, however, Neo4j denies the allegations

17   contained in Paragraph 13.

18   14.   On information and belief, Neo4j admits that during 2014 it was in discussions

19   with the Maryland Procurement Office (MPO) about NEO4J® software products. Neo4j lacks

20   knowledge or information sufficient to form a belief about the truth of the remaining allegations

21   in Paragraph 14 and on that basis denies them.

22   15.   On information and belief, Neo4j admits that it signed a Neo4j Solution Partner

23   Agreement with Neo Technology, Inc., effective 9-30-2014.   On information and belief, Neo4j

24   admits that Exhibit B appears to be a copy of the Neo4j Solution Partner Agreement, which

25   Counterclaimants attached to their Counterclaim in complete disregard and breach of the

26   confidentiality provision contained therein.

27   / / /

28   / / /

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PLAINTIFF AND COUNTER-DEFENDANT NEO4J, INC.'S ANSWER TO SECOND AMENDED COUNTERCLAIM
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16.   On information and belief, Neo4j admits that John Mark Suhy had discussions with Lars Nordwall concerning obtaining business with entities within the United States Government. Neo4j denies the remaining allegations in Paragraph 16.

17.   Neo4j denies the allegations in Paragraph 17.

18.   On information and belief, Neo4j admits that PureThink provided Neo4j Enterprise Edition subscriptions to the Maryland Procurement Office, Sandia National Laboratories, and the FBI at one time with Neo4j USA's approval. Based on public filings, it appears that PureThink provided Neo4j Enterprise Edition subscriptions to the IRS without the authorization of Neo4j. Neo4j denies the remaining allegations in Paragraph 18.

19.   Neo4j denies the allegations contained in Paragraph 19.

20.   Neo4j admits that PureThink breached the Neo4j Solution Partner Agreement in conjunction with PureThink's dealings with IRS. Neo4j denies the remaining allegations in Paragraph 20.

21.   Neo4j admits that John Mark Suhy and PureThink formed iGov to evade PureThink's obligations under the Neo4j Solution Partner Agreement. On information and belief, Neo4j admits that Exhibit D appears to contain, in part, a July 11, 2017 email sent by Jason Zagalsky of Neo4j to Michael Dunn of the IRS that speaks for itself. Neo4j denies Counterclaimants' interpretation thereof and denies the remaining allegations in Paragraph 21.

IV.   Counterclaims
First Cause of Action
Interference With Prospective Economic Advantage
(Against NEO4J, Inc.)

22.   Neo4j incorporates by reference its responses to Paragraphs 1 through 21 of the Counterclaims as though fully set forth herein.

23.   Neo4j, denies the allegations contained in this paragraph.

24.   Neo4j denies the allegations contained in this paragraph.

25.   Neo4j denies the allegations contained in this paragraph.

26.   Neo4j denies the allegations contained in this paragraph.

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PLAINTIFF AND COUNTER-DEFENDANT NEO4J, INC.'S ANSWER TO SECOND AMENDED COUNTERCLAIM
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1   27.   Neo4j denies the allegations contained in this paragraph.

2   28.   Neo4j denies the allegations contained in this paragraph.

3   29.   Neo4j denies the allegations contained in this paragraph.

4   30.   Neo4j denies the allegations contained in this paragraph.

5   31.   Neo4j denies the allegations contained in this paragraph.

6   32.   Neo4j denies the allegations contained in this paragraph.

7   33.   Neo4j denies the allegations contained in this paragraph.

8   34.   Neo4j denies the allegations contained in this paragraph.

9   **Second Cause of Action**

10   **Interference With Contract**

11   **(Against NEO4J, Inc.)**

12   35.   Neo4j incorporates by reference its responses to Paragraphs 1 through 34 of the

13   Counterclaims as though fully set forth herein.

14   36.   Neo4j denies the allegations contained in this paragraph.

15   37.   Neo4j denies the allegations contained in this paragraph.

16   38.   Neo4j denies the allegations contained in this paragraph.

17   39.   Neo4j denies the allegations contained in this paragraph.

18   40.   Neo4j denies the allegations contained in this paragraph.

19   41.   Neo4j denies the allegations contained in this paragraph.

20   42.   Neo4j denies the allegations contained in this paragraph.

21   43.   Neo4j denies the allegations contained in this paragraph.

22   **Third Cause of Action**

23   **Breach of Contract**

24   **(Against NEO4J, Inc.)**

25   44.   Neo4j incorporates by reference its responses to Paragraphs 1 through 43 of the

26   Counterclaims as though fully set forth herein.

27   45.   Neo4j denies the allegations contained in this paragraph.

28   46.   Neo4j denies the allegations contained in this paragraph.

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47. Neo4j denies the allegations contained in this paragraph.

48. Neo4j denies the allegations contained in this paragraph.

Fourth Cause of Action

Breach of Exclusive Contract to Government

(Against NEO4J, Inc.)

49. Neo4j incorporates by reference its responses to Paragraphs 1 through 48 of the Counterclaims as though fully set forth herein.

50. Neo4j denies the allegations contained in this paragraph.

51. Neo4j denies the allegations contained in this paragraph.

52. Neo4j denies the allegations contained in this paragraph.

53. Neo4j denies the allegations contained in this paragraph.

Fifth Cause of Action

Declaratory Relief

(Void Restrictions)

(Against NEO4J, Inc.)

54. Neo4j incorporates by reference its responses to Paragraphs 1 through 53 of the Counterclaims as though fully set forth herein.

55. Neo4j denies the allegations contained in this paragraph.

56. Neo4j denies the allegations contained in this paragraph.

57. Neo4j denies the allegations contained in this paragraph.

Sixth Cause of Action

Declaratory Relief

(Restrictions Violate AGPL License)

(Against NEO4J, Inc.)

58. Neo4j incorporates by reference its responses to Paragraphs 1 through 57 of the Counterclaims as though fully set forth herein.

59. Neo4j denies the allegations contained in this paragraph.

60. Neo4j denies the allegations contained in this paragraph.

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PLAINTIFF AND COUNTER-DEFENDANT NEO4J, INC.'S ANSWER TO SECOND AMENDED COUNTERCLAIM
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1   61.   Neo4j denies the allegations contained in this paragraph.

2   **Seventh Cause of Action**

3   **Declaratory Relief**

4   **(Commons Clause in AGPL is void)**

5   **(Against NEO4J SWEDEN AB)**

6   62.   This cause of action is not asserted against Neo4j, and therefore no response is

7   required. To the extent that any response is required, however, Neo4j incorporates by reference

8   its responses to Paragraphs 1 through 61 of the Counterclaims as though fully set forth herein.

9   63.   This cause of action is not asserted against Neo4j, and therefore no response is

10   required. To the extent that any response is required, however, Neo4j denies that there is a

11   present controversy as alleged in this paragraph and that Counterclaimants lack standing to seek

12   declaratory relief based thereon. To the extent an answer is required, Neo4j denies the remaining

13   allegations contained in this paragraph.

14   64.   This cause of action is not asserted against Neo4j, and therefore no response is

15   required. The Commons Clause License Condition to the license governing certain versions of

16   NEOJ4® software speaks for itself. To the extent an answer is required, Neo4j denies the

17   remaining allegations contained in this paragraph.

18   65.   This cause of action is not asserted against Neo4j, and therefore no response is

19   required. To the extent an answer is required, Neo4j denies the allegations contained in this

20   paragraph.

21   66.   This cause of action is not asserted against Neo4j, and therefore no response is

22   required. To the extent an answer is required, Neo4j denies the allegations contained in this

23   paragraph.

24   67.   This cause of action is not asserted against Neo4j, and therefore no response is

25   required. To the extent an answer is required, Neo4j denies the allegations contained in this

26   paragraph.

27   / / /

28   / / /

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1   68.   This cause of action is not asserted against Neo4j, and therefore no response is

2 required. To the extent an answer is required, Neo4j denies the allegations contained in this

3 paragraph.

4   69.   This cause of action is not asserted against Neo4j, and therefore no response is

5 required. To the extent an answer is required, Neo4j denies the allegations contained in this

6 paragraph.

7   **Eighth Cause of Action**

8   **Declaratory Relief**

9   **(The Commons Clause in AGPL does not apply to Professional**

10   **Services for the open source versions of Neo4j)**

11   **(Against NEO4J SWEDEN AB)**

12   70.   This cause of action is not asserted against Neo4j, and therefore no response is

13 required. To the extent that any response is required, however, Neo4j incorporates by reference

14 its responses to Paragraphs 1 through 69 of the Counterclaims as though fully set forth herein.

15   71.   This cause of action is not asserted against Neo4j, and therefore no response is

16 required. To the extent that any response is required, however, Neo4j denies that there is a

17 present controversy as alleged in this paragraph and that Counterclaimants lack standing to seek

18 declaratory relief based thereon. To the extent an answer is required, Neo4j denies the remaining

19 allegations contained in this paragraph.

20   72.   This cause of action is not asserted against Neo4j, and therefore no response is

21 required. To the extent that any response is required, however, Neo4j denies that there is a

22 present controversy as alleged in this paragraph and that Counterclaimants lack standing to seek

23 declaratory relief based thereon. To the extent an answer is required, Neo4j denies the remaining

24 allegations contained in this paragraph.

25   73.   This cause of action is not asserted against Neo4j, and therefore no response is

26 required. To the extent an answer is required, Neo4j denies the allegations contained in this

27 paragraph.

28 / / /

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74. This cause of action is not asserted against Neo4j, and therefore no response is required. To the extent that a response is required, Neo4j is also unable to verify the source or authenticity of the contents of this paragraph from the allegations made therein, and it does not appear that the statements referred to therein were made on behalf of either Neo4j, Inc. or Neo4j Sweden. It also does not appear that the cited statement is not in reference to the specific license or licenses identified in this cause of action. Therefore Neo4j, denies the allegations contained in this paragraph.

75. This cause of action is not asserted against Neo4j, and therefore no response is required. To the extent an answer is required, Neo4j denies the allegations contained in this paragraph.

76. This cause of action is not asserted against Neo4j, and therefore no response is required. To the extent an answer is required, Neo4j denies the allegations contained in this paragraph.

77. This cause of action is not asserted against Neo4j, and therefore no response is required. To the extent an answer is required, Neo4j denies the allegations contained in this paragraph.

<div align="center">

Ninth Cause of Action

Declaratory Relief

(Users may use a fork content NEO4J SWEDEN put on a public GitHub repository)

(Against NEO4J SWEDEN AB)

</div>

78. This cause of action is not asserted against Neo4j, and therefore no response is required. To the extent that any response is required, however, Neo4j incorporates by reference its responses to Paragraphs 1 through 77 of the Counterclaims as though fully set forth herein.

79. Neo4j denies that there is a present controversy as alleged in this paragraph and that Counterclaimants lack standing to seek declaratory relief based thereon. This cause of action is not asserted against Neo4j, and therefore no response is required. To the extent an answer is required, Neo4j denies the remaining allegations contained in this paragraph.

///

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80.   This cause of action is not asserted against Neo4j, and therefore no response is required. To the extent an answer is required, Neo4j denies the allegations contained in this paragraph.

81.   This cause of action is not asserted against Neo4j, and therefore no response is required. To the extent an answer is required, Neo4j denies the allegations contained in this paragraph.

82.   This cause of action is not asserted against Neo4j, and therefore no response is required. Neo4j is also unable to verify the source or authenticity of the contents of this paragraph from the allegations made therein, and it does not appear that the statements referred to therein were made on behalf of either Neo4j, Inc. or Neo4j Sweden. Therefore Neo4j, denies the allegations contained in this paragraph to the extent that an answer is required.

83.   This cause of action is not asserted against Neo4j, and therefore no response is required. To the extent an answer is required, Neo4j denies the allegations contained in this paragraph.

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Tenth Cause of Action

Declaratory Relief

(Abandonment of Trademark)

(Against NEO4J USA)

</div>

84.   The Court dismissed this cause of action with prejudice (Dkt. No. 85), therefore no response is required. To the extent that any response is required, however, Neo4j incorporates by reference its responses to Paragraphs 1 through 83 of the Counterclaims as though fully set forth herein.

85.   The Court dismissed this cause of action with prejudice (Dkt. No. 85), therefore no response is required. To the extent that any response is required, however, Neo4j denies the allegations contained in this paragraph.

86.   The Court dismissed this cause of action with prejudice (Dkt. No. 85), therefore no response is required. To the extent that any response is required, however, Neo4j denies the allegations contained in this paragraph.

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1   87.   The Court dismissed this cause of action with prejudice (Dkt. No. 85), therefore no

2   response is required. To the extent that any response is required, however, Neo4j denies the

3   allegations contained in this paragraph.

4   88.   The Court dismissed this cause of action with prejudice (Dkt. No. 85), therefore no

5   response is required. To the extent that any response is required, however, Neo4j denies the

6   allegations contained in this paragraph.

7   89.   The Court dismissed this cause of action with prejudice (Dkt. No. 85), therefore no

8   response is required. To the extent that any response is required, however, Neo4j denies the

9   allegations contained in this paragraph.

10   90.   The Court dismissed this cause of action with prejudice (Dkt. No. 85), therefore no

11   response is required. To the extent that any response is required, however, Neo4j denies the

12   allegations contained in this paragraph.

13   91.   The Court dismissed this cause of action with prejudice (Dkt. No. 85), therefore no

14   response is required. To the extent that any response is required, however, Neo4j denies the

15   allegations contained in this paragraph.

16   92.   The Court dismissed this cause of action with prejudice (Dkt. No. 85), therefore no

17   response is required. To the extent that any response is required, however, Neo4j denies the

18   allegations contained in this paragraph.

19   93.   The Court dismissed this cause of action with prejudice (Dkt. No. 85), therefore no

20   response is required. To the extent that any response is required, however, Neo4j denies the

21   allegations contained in this paragraph.

22   94.   The Court dismissed this cause of action with prejudice (Dkt. No. 85), therefore no

23   response is required. To the extent that any response is required, however, Neo4j denies the

24   allegations contained in this paragraph.

25   95.   The Court dismissed this cause of action with prejudice (Dkt. No. 85), therefore no

26   response is required. To the extent that any response is required, however, Neo4j denies the

27   allegations contained in this paragraph.

28   / / /

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1   96.   The Court dismissed this cause of action with prejudice (Dkt. No. 85), therefore no

2   response is required. To the extent that any response is required, however, Neo4j denies the

3   allegations contained in this paragraph.

4   97.   The Court dismissed this cause of action with prejudice (Dkt. No. 85), therefore no

5   response is required. To the extent that any response is required, however, Neo4j denies the

6   allegations contained in this paragraph.

7   98.   The Court dismissed this cause of action with prejudice (Dkt. No. 85), therefore no

8   response is required. To the extent that any response is required, however, Neo4j denies the

9   allegations contained in this paragraph.

10   **Eleventh Cause of Action**

11   No response required as the claim was dismissed with prejudice (Dkt. No. 70), and thus

12   omitted by Counterclaimants.

13   **Twelfth Cause of Action**

14   **Unfair Business Practices**

15   **(Against NEO4J SWEDEN and NEO4J USA)**

16   99.   Neo4j incorporates by reference its responses to Paragraphs 1 through 98 of the

17   Counterclaims as though fully set forth herein.

18   100.   Neo4j denies the allegations contained in Paragraph 100.

19   101.   Neo4j denies the allegations contained in Paragraph 101.

20   102.   It is unclear what Counterclaimants mean by "people who contributed to the

21   development of the Neo4J open source software" and "there have been 183 contributors to

22   Neo4J" as alleged in this paragraph, and on that basis Neo4j denies the allegations contained in

23   Paragraph 102.

24   103.   Neo4j denies the allegations contained in Paragraph 103.

25   104.   Neo4j denies the allegations contained in Paragraph 104.

26   105.   Neo4j denies the allegations contained in this paragraph.

27   / / /

28   / / /

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1   106.   The allegations in Paragraph 106 lack specificity and are vague as to which

2   versions of NEO4J® software and the AGPL license are being referred to therein, and on that

3   basis Neo4j denies the allegations in this paragraph.

4   107.   Neo4j admits the allegations contained in Paragraph 107.

5   108.   Neo4j denies the allegations contained in Paragraph 108.

6   109.   Neo4j denies the allegations contained in Paragraph 109.

7   110.   Neo4j lacks knowledge or information sufficient to form a belief about the truth of

8   the allegations in Paragraph 110 and on that basis denies them.

9   111.   Neo4j denies the allegations contained in Paragraph 111.

10   112.   Neo4j denies the allegations contained in Paragraph 112.

11   113.   Neo4j lacks knowledge or information sufficient to form a belief about the truth of

12   the allegations in Paragraph 113 and on that basis denies them.

13   114.   The allegations in Paragraph 114 are unintelligible, and therefore Neo4j cannot

14   form a belief about the truth of the allegations in this paragraph and on that basis denies them. To

15   the extent an answer is required, Neo4j denies the allegations contained in this paragraph.

16   115.   The allegations in Paragraph 115 lack specificity and are vague as to whether it is

17   referring to Neo4j, Inc. or Neo4j Sweden in reference to user preferences, and on that basis Neo4j

18   denies such allegations. Neo4j lacks knowledge or information sufficient to form a belief about

19   the truth of the remaining allegations in Paragraph 115 and on that basis denies them.

20   116.   Neo4j denies the allegations contained in Paragraph 116.

21   117.   Neo4j denies the allegations contained in Paragraph 117.

22   118.   Neo4j lacks knowledge or information sufficient to form a belief about the truth of

23   the remaining allegations in Paragraph 118.

24   119.   The allegations in Paragraph 119 are unintelligible, and therefore Neo4j cannot

25   form a belief about the truth of the allegations in this paragraph and on that basis denies them. To

26   the extent an answer is required, Neo4j denies the allegations contained in this paragraph.

27   120.   Neo4j denies the allegations contained in Paragraph 120

28   121.   Neo4j denies the allegations contained in Paragraph 121.

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1   122.   Neo4j denies the allegations contained in Paragraph 122.

2   123.   Neo4j denies the allegations contained in Paragraph 123.

3   124.   Neo4j denies the allegations contained in Paragraph 124.

4   125.   Neo4j denies the allegations contained in Paragraph 125.

5   126.   Neo4j denies the allegations contained in Paragraph 126.

6   127.   Neo4j denies that Counterclaimants are entitled to the injunctive relief requested in

7   Paragraph 127 and 127(a) (i)-(iv) inclusive therein.

8   128.   Neo4j denies that Counterclaimants are entitled to the relief and remedy requested

9   in Paragraph 128.

V.   Prayer for Relief

11   Neo4j denies that Counterclaimants are entitled to any relief as to any claim or

12   counterclaim, and specifically denies any and all allegations and prayers for relief contained in

13   Paragraphs 1 through 7 (and sub-paragraphs therein) of the "Prayer for Relief" section of the

14   Counterclaims.

15   WHEREFORE, Neo4j prays for relief, as follows:

16   1.   That Counterclaimants take nothing by the Counterclaims;

17   2.   To the extent there is any bases for declaratory relief, a declaratory judgment in

18   favor of Neo4j; and

19   3.   For such other and further relief as the Court deems just and proper.

AFFIRMATIVE DEFENSES

21   Neo4j alleges the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

24   The Counterclaims fail to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

(Lack of Jurisdiction)

27   The Court lacks subject matter jurisdiction over Counterclaimants' causes of action for

28   Declaratory Judgement as there is no actual case and controversy.

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THIRD AFFIRMATIVE DEFENSE

(Lack of Standing re AGPL version 3)

Counterclaimants' declaratory relief claim relating to the AGPL version 3 is barred, in whole or in part, on the grounds that they lack standing to create a justiciable controversy over a third party license agreement and/or a copyright owned by a third party.

FOURTH AFFIRMATIVE DEFENSE

(Lack of Standing re GitHub Terms of Service)

Counterclaimants' declaratory relief claim relating to GitHub's terms of service is barred, in whole or in part, on the grounds that they lack standing to create a justiciable controversy over a third party agreement.

FIFTH AFFIRMATIVE DEFENSE

(Lack of Standing re Partner Solution Agreement)

To the extent iGov claims that it is not subject to the Neo4j Partner Solution Agreement, it lacks standing to assert the causes of action contained in the Counterclaim.

SIXTH AFFIRMATIVE DEFENSE

(Lack of Privity re Partner Solution Agreement)

To the extent iGov claims that it is not subject to the Neo4j Partner Solution Agreement, it lacks privity to assert the causes of action contained in the Counterclaim.

SEVENTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

The claims as alleged in the Counterclaim are barred by the applicable statutes of limitations.

EIGHTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

Counterclaimants have unreasonably failed to mitigate, prevent and/or or reduce their alleged damages and injuries, if any, of which Neo4j denies.

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NINTH AFFIRMATIVE DEFENSE

(Intervening Cause/Lack of Causation)

The damages claimed in the Counterclaim, if any be found, are barred by the reason of the acts of others which proximately caused said damages. Counterclaimants cannot demonstrate that they suffered any losses as a result of any alleged wrongful conduct. Further, any injuries sustained by Counterclaimants were the results of its own acts or omissions and/or the acts or omissions of its agents, employees, managers, officers and directors, as well as any number of intervening and superseding causes, including the acts of Counterclaimants' agents, employees, managers, officers and directors.

TENTH AFFIRMATIVE DEFENSE

(Laches)

The claims as alleged in the Counterclaim are barred by the doctrine of laches in that Counterclaimants either knew or should have known about the alleged wrongdoing by Neo4j well before the filing of the Counterclaim in this action, but unreasonably delayed in bringing said claims and severely prejudiced Neo4j by doing so.

ELEVENTH AFFIRMATIVE DEFENSE

(Estoppel)

The claims as alleged in the Counterclaim are barred by the doctrine of estoppel. In particular, Counterclaimants' claims are based upon a failure to comply with their obligations under the Neo4j Partner Solution Agreement and their attempts to circumvent the licensing restrictions on certain NEO4J® software, and thus are estopped from claiming any alleged damages resulting therefrom. Further, Counterclaimants are estopped from asserting their claims because they have wrongfully withheld monies due and owing under the Neo4j Partner Solution Agreement. Finally, Counterclaimants are estopped from asserting that any provision in the Neo4j Partner Solution Agreement allegedly violates Bus. & Prof. Code § 16600 as they were fully advised of the nature of the transaction and with full knowledge thereof voluntarily participated in said transaction and agreed to the terms thereof, and as such Counterclaimants are estopped from obtaining the relief prayed for in the Counterclaims.

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TWELFTH AFFIRMATIVE DEFENSE

(Unclean Hands)

Neo4j alleges that any recovery on the claims asserted in the Counterclaims is barred by reason of Counterclaimants' unclean hands based on their wrongdoing as set forth in Neo4j's Second Amended Complaint, which Neo4j incorporates herein by reference.

THIRTEENTH AFFIRMATIVE DEFENSE

(Waiver)

The claims as alleged in the Counterclaim are barred by the doctrine of waiver, as alleged in the foregoing affirmative defenses and incorporated herein by reference.

FOURTEENTH AFFIRMATIVE DEFENSE

(Negligence)

Neo4j alleges that Counterclaimants were careless and negligent in and about the matters referred to in the Counterclaim and that such negligence and carelessness on the part of Counterclaimants proximately caused and contributed to the damages complained of, if any.

FIFTEENTH AFFIRMATIVE DEFENSE

(Set-Off)

To the extent Counterclaimants have suffered any alleged damages, which Neo4j specifically denies, any alleged damages suffered by Counterclaimants must be set-off by (1) the amounts Counterclaimants are wrongfully withholding from Neo4j; (2) Counterclaimants' ill-gotten gains from their wrongful conduct; and/or (3) the damages suffered by Neo4j as a result of Counterclaimants' acts and/or omissions as alleged in the Complaint.

SIXTEENTH AFFIRMATIVE DEFENSE

(Unjust Enrichment)

Neo4j alleges that the causes of action alleged in the Counterclaim are barred, in whole or in part, as Counterclaimants would be unjustly enriched if allowed to recover any of the sums alleged in the Counterclaim because they have wrongfully withheld funds and/or payments due and owing to Neo4j under the Neo4j Partner Solution Agreement, as well as profited off the infringement of Neo4j's trademark and goodwill and from removing Neo4j Sweden's copyright

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1   management information from copies of Neo4j Sweden's copyrighted software.

2   Counterclaimants have wrongfully withheld payments from Neo4j in amounts similar to what

3   they have claimed as their alleged damages. As a result, Counterclaimants suffered no damages

4   and would be unjustly enriched if they were to recover on their counterclaims.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Performance of Contract Excused)

7   Neo4j alleges that it performance under the Neo4j Partner Solution Agreement was

8   excused and/or prevented by the acts and omissions of Counterclaimants, their non-performance

9   under the Neo4j Partner Solution Agreement, and Counterclaimant's material breaches thereof as

10 alleged in the Complaint.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Privilege/Justification)

13   The claims as alleged in the Counterclaim are based, in whole or in part, on acts that are

14 and were privileged and/or justified, and, therefore, not actionable. In particular, to the extent

15 Neo4j purportedly interfered Counterclaimants' alleged prospective economic relationships,

16 which Neo4j specifically denies, there can be no intentional interference therewith because Neo4j

17 acted only to protect its legitimate business and financial interests, and/or in furtherance of lawful

18 competition. Likewise, to the extent Neo4j purportedly interfered Counterclaimants' contractual

19 relationships, which Neo4j specifically denies, there was no intentional interference therewith

20 because Neo4j acted only to protect its legitimate business and financial interests, and/or in

21 furtherance of lawful competition.

NINETEENTH AFFIRMATIVE DEFENSE

(First Amendment Freedom of Petition)

24   The claims as alleged in the Counterclaim are based, in whole or in part, on acts that are

25 and were subject to Neo4j's constitutional right of freedom to petition under the First

26 Amendment, U.S. Const. amend. I, and the *Noerr-Pennington* doctrine based thereon, and,

27 therefore, not actionable.

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TWENTIETH AFFIRMATIVE DEFENSE

(Speculative Damages)

Neo4j alleges that the purported causes of action in the Counterclaim are barred, in whole or in part, because the Counterclaimants' purported damages are speculative and uncertain and there is no reasonable basis to assume any of the alleged prospective economic relationships were allegedly disrupted by Neo4j and/or would otherwise been consummated. Counterclaimants' damages theories also fail because they are based upon uncertain future benefits that are too speculative to be ascertainable.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Extent of Punitive Damages)

The Counterclaim fails to state a cause of action for recovery or punitive damages. To the extent the amount of punitive damages sought by Counterclaimants is unconstitutionally excessive under the United States Constitution, it violates Excessive Fines Clause of the Eighth Amendment, U.S. Const. amend. VIII, and the Due Process Clause of the Fourteenth Amendment, U.S. Const. amend. XIV, Section 1.

JURY DEMAND

Neo4j demands a jury trial on all issues related to these counterclaims that are triable by jury.

Dated: July 16, 2021

HOPKINS & CARLEY
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