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10 Attorneys for defendants:
11 PURETHINK LLC, a Delaware limited
12 liability company, IGOV INC., a Virginia
13 corporation, and JOHN MARK SUHY

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15
16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA

18
19 NEO4J, INC., a Delaware corporation,
20 Plaintiff,

21
22 v.
23 PURETHINK LLC, a Delaware limited
24 liability company, IGOV INC., a
25 Virginia corporation, and JOHN MARK
SUHY, an individual,
Defendants.

CASE NO. 5:18-cv-7182 EJD

**DEFENDANTS' ANSWER TO
NEO4J, INC.'S COMPLAINT**

DEMAND FOR JURY TRIAL

20
21 Defendants PURETHINK LLC, a Delaware limited liability company, IGOV
22 INC., a Virginia corporation, and JOHN MARK SUHY, an individual
23 (“Defendants”) answer NEO4J, INC.’s complaint as follows:

24 1. Defendants admit the statement outlines the claims but otherwise deny
25 the claims and allegations in paragraph 1.

- 1 2. Defendants admit the first and second sentence in paragraph 2.
- 2 Defendants' deny that plaintiff is the graph company behind an open
- 3 source software product called Neo4j as the software is owned by and
- 4 licensed by Neo4j Sweden AB according to the license for Neo4j-
- 5 enterprise available at GitHub. Defendants lack knowledge or
- 6 information sufficient to form a belief about the truth of the remaining
- 7 allegations and on that basis deny the remaining allegations.
- 8 3. Defendants deny the allegation in paragraph 3. Defendants' belief that
- 9 many users are using the open source version called Neo4j and not
- 10 what plaintiff calls Neo4j®. This confusion arises because plaintiff
- 11 claims they own Neo4j yet the open source license is by another entity.
- 12 Likewise, there appear over 100 contributors to the open source version
- 13 of Neo4j and defendants do not know if each contributor has assigned
- 14 contributions to plaintiff. Defendants lack knowledge or information
- 15 sufficient to form a belief about the truth of the remaining allegations
- 16 and on that basis deny the remaining allegations.
- 17 4. Defendants admit the allegations in paragraph 4 except they deny
- 18 PureThink is a shell entity maintained by the other defendants and is
- 19 not currently conducting or engaged in any meaningful business
- 20 activities.
- 21 5. Defendants admit the allegations in paragraph 5 except they deny iGov
- 22 is the assignee and successor-in-interest to PureThink or otherwise
- 23 acquired substantially all of PureThink's assets sometime in mid-2017
- 24 and deny that Neo4j is a large scale graph solution as it is limited in
- 25 scalability.

- 1 6. Defendants deny the allegations in paragraph 6 except for the fact
- 2 Suhy is an individual and the last sentence.
- 3 7. Defendants deny the allegations in paragraph 7.
- 4 8. Defendants deny the allegations in paragraph 8.
- 5 9. Defendants deny the allegations in paragraph 9 are an example to
- 6 support the allegations and deny defendants share the same customer
- 7 support number but admit the facts alleged.
- 8 10. Defendants deny the allegations in paragraph 10 are an example
- 9 to support the allegations but admit the facts alleged except defendants
- 10 lack information or belief about what virtually identical means.
- 11 11. Defendants deny the allegations in paragraph 11 as the verb
- 12 ported is unclear and vague.
- 13 12. Defendants deny the allegations in paragraph 12.
- 14 13. Defendants admit the allegations in paragraph 13.
- 15 14. Defendants deny the allegations in paragraph 14.
- 16 15. Defendants deny the allegations in paragraph 15.
- 17 16. Defendants admit the allegations in paragraph 16.
- 18 17. Defendants admit the allegations in paragraph 17.
- 19 18. Defendants deny the allegations in paragraph 18.
- 20 19. Defendants lack knowledge or information sufficient to form a
- 21 belief about the truth of the allegations in paragraph 19 and on that
- 22 basis deny the allegations.
- 23 20. Defendants lack knowledge or information sufficient to form a
- 24 belief about the truth of the allegations in paragraph 20 and on that
- 25 basis deny the allegations.

- 1 21. Defendants lack knowledge or information sufficient to form a
- 2 belief about the truth of the allegations in paragraph 21 and on that
- 3 basis deny the allegations.
- 4 22. Defendants admit the allegations paragraph 22.
- 5 23. Defendants admit the allegations paragraph 23.
- 6 24. Defendants admit the first sentence in paragraph 24 and deny
- 7 the remainder.
- 8 25. Defendants admit the allegations paragraph 25.
- 9 26. Defendants admit the allegations paragraph 26.
- 10 27. Defendants admit the allegations paragraph 27.
- 11 28. Defendants deny the allegations in paragraph 28.
- 12 29. Defendants admits the allegations in paragraph 29.
- 13 30. Defendants admit the allegations in paragraph 30.
- 14 31. Defendants admit plaintiff made the warning but deny the
- 15 allegations in paragraph 31 as 4.3.2 is unenforceable under California
- 16 Business and Professions Code §16600 and the restriction, if it is
- 17 applied to Neo4j enterprise owned by Neo4j Sweden AB, violates the
- 18 terms of the open source license agreement.
- 19 32. Defendants admit plaintiff made the warning but deny the
- 20 allegations in paragraph 32.
- 21 33. Defendants deny the allegations in paragraph 33.
- 22 34. Defendants deny the allegations in paragraph 34.
- 23 35. Defendants deny the allegations in paragraph 35.
- 24 36. Defendants deny the allegations in paragraph 36.
- 25 37. Defendants deny the allegations in paragraph 37.

1 38. Defendants deny the allegations in paragraph 38.

2 39. Defendants deny the allegations in paragraph 39.

3 40. Defendants deny the allegations in paragraph 40.

4 41. Defendants deny the allegations in paragraph 41.

5 42. Defendants deny the allegations in paragraph 42.

6 43. Defendants deny the allegations in paragraph 43.

7 44. Defendants admit the allegations in paragraph 44.

8 45. Defendants admit the allegations in paragraph 45 to the extent
9 Suhy stated in an email he had recorded him, otherwise denied. The
10 statement was to avoid the changes of instructions on the employees
11 part. Suhy felt if the employee thought his calls were being recorded, he
12 would temper his fluxuations and false changes in instructions.

13 46. Defendants admit the allegations in paragraph 46 to the extent
14 Suhy stated in an email he had recorded him, otherwise denied. The
15 statement was to avoid the changes of instructions on the employees
16 part. Suhy felt if the employee thought his calls were being recorded, he
17 would temper his fluxuations and false changes in instructions.

18 47. Defendants admit the allegations in paragraph 47 to the extent
19 Suhy told him he had recorded phone calls, otherwise denied. The
20 statement was to avoid the changes of instructions on the employees
21 part. Suhy felt if the employee thought his calls were being recorded, he
22 would temper his fluxuations and false changes in instructions.

23 48. Defendants incorporate its responses to paragraphs 1-47.

24

25

1 49. Defendants lack knowledge or information sufficient to form a
2 belief about the truth of the allegations in paragraph 49 and on that
3 basis deny the allegations.

4 50. Defendants deny the allegations in paragraph 50. The software
5 has been licensed on an open source basis by Neo4j Sweden AB and
6 called Neo4j by Neo4j Sweden AB and ownership of the software is
7 claimed by Neo4j Sweden AB. Likewise, the software development was
8 provided by over 100 contributors, Github shows that there are 1,515
9 forks to the software with 22 branches and defendants do not know if
10 the contributors have assigned the rights to the Neo4j open source
11 software copyright to plaintiff.

12 51. Defendants deny the allegations in paragraph 51. The software
13 has been licensed on an open source basis by Neo4j Sweden AB and
14 called Neo4j by Neo4j Sweden AB and ownership of the software is
15 claimed by Neo4j Sweden AB. Likewise, software development was
16 provided by over 100 contributors, Github shows that there are 1,515
17 forks to the software with 22 branches and defendants do not know if
18 the contributors have assigned the rights to the Neo4j open source
19 software copyright to plaintiff.

20 52. Defendants deny the allegations in paragraph 52. The software
21 has been licensed on an open source basis by Neo4j Sweden AB and
22 called Neo4j by Neo4j Sweden AB and ownership of the software is
23 claimed by Neo4j Sweden AB. Likewise, software development was
24 provided by over 100 contributors, Github shows that there are 1,515
25 forks to the software with 22 branches and defendants do not know if

1 the contributors have assigned the rights to the Neo4j open source
2 software copyright to plaintiff. Defendants deny that goodwill in the
3 name Neo4j is exclusively held by Plaintiff.

4 53. Defendants deny the allegations in paragraph 53.

5 54. Defendants deny the allegations in paragraph 54.

6 55. Defendants deny the allegations in paragraph 55.

7 56. Defendants deny the allegations in paragraph 56.

8 57. Defendants deny the allegations in paragraph 57.

9 58. Defendants deny the allegations in paragraph 58.

10 59. Defendants deny the allegations in paragraph 59.

11 60. Defendants deny the allegations in paragraph 60.

12 61. Defendants incorporate its responses to paragraphs 1-60.

13 62. Defendants deny the allegations in paragraph 62.

14 63. Defendants deny the allegations in paragraph 63.

15 64. Defendants deny the allegations in paragraph 64.

16 65. Defendants deny the allegations in paragraph 65.

17 66. Defendants deny the allegations in paragraph 66.

18 67. Defendants deny the allegations in paragraph 67.

19 68. Defendants deny the allegations in paragraph 68.

20 69. Defendants incorporate its responses to paragraphs 1-68.

21 70. Defendants deny the allegations in paragraph 70.

22 71. Defendants deny the allegations in paragraph 71.

23 72. Defendants deny the allegations in paragraph 72.

24 73. Defendants deny the allegations in paragraph 73.

25 74. Defendants deny the allegations in paragraph 74.

1 75. Defendants deny the allegations in paragraph 75.

2 76. Defendants incorporate its responses to paragraphs 1-75.

3 77. Defendants deny the allegations in paragraph 77.

4 78. Defendants deny the allegations in paragraph 78.

5 79. Defendants deny the allegations in paragraph 79.

6 80. Defendants deny the allegations in paragraph 80.

7 81. Defendants deny the allegations in paragraph 81.

8 82. Defendants incorporate its responses to paragraphs 1-81.

9 83. Purethink admits it signed the Partner Agreement but
10 defendants otherwise deny the allegations in paragraph 83, because
11 plaintiff has failed to perform, clauses 4.3.1, and 4.3.2 are not
12 enforceable as written or applied and the limitations in the Partner
13 Agreement violate the open source Neo4j enterprise license.

14 84. Defendants admit the allegations in paragraph 84.

15 85. Defendants admit the terms of the 7.3 of the Partner Agreement
16 claims to prevent PureThink from dealing in Products which is defined
17 as Neo4j commercial software provided by Neo Technology and licensed
18 to the End User but otherwise deny the allegations in paragraph 85.

19 86. Defendants deny the allegations in paragraph 86.

20 87. Defendants deny the allegations in paragraph 87.

21 88. Defendants deny the allegations in paragraph 88.

22 89. Defendants deny the allegations in paragraph 89.

23 90. Defendants deny the allegations in paragraph 90.

24 91. Defendants deny the allegations in paragraph 91.

25 92. Defendants deny the allegations in paragraph 92.

- 1 93. Defendants deny the allegations in paragraph 93.
- 2 94. Defendants deny the allegations in paragraph 94.
- 3 95. Defendants incorporate its responses to paragraphs 1-47.
- 4 96. Defendants deny the allegations in paragraph 96.
- 5 97. Defendants deny the allegations in paragraph 97.
- 6 98. Defendants deny the allegations in paragraph 98.
- 7 99. Defendants admit the second sentence in paragraph 99 and deny
the remaining allegations in paragraph 99.
- 8 100. Defendants deny the allegations in paragraph 100.
- 9 101. Defendants deny the allegations in paragraph 101.
- 10 102. Defendants admit the plaintiff seek statutory damages but deny
they are entitled to any damages as alleged in paragraph 102.
- 11 103. Defendants deny the allegations in paragraph 103.
- 12 104. Except as otherwise admitted, defendants deny the allegations in
the complaint.

16 **Affirmative Defenses**

17 1. **Void Restriction**

18 Section 4.3.2 of the Partner Agreement, provides:

20 During the term of this Agreement and up until thirty six (36)
21 months after the termination or expiration of this Agreement,
22 Partner may not develop, market, distribute or offer any services
23 related to any Neo Technology Community Edition Products,
24 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.)

1 Plaintiff seeks to prevent defendants from licensing and supporting
2 open source software during and for 36 months after termination of the
3 Partner Agreement. The Partner Agreement is, by its terms, governed
4 by California law. The restriction under Section 4.3.2 cannot be
5 enforced against defendants as it is void under California Business and
6 Professions Code §16600: “Except as provided in this chapter, every
7 contract by which anyone is restrained from engaging in a lawful
8 profession, trade, or business of any kind is to that extent void.”
9

10 **2. License To Use Neo4j Open Source Software**

11 Section 4.3.1 of the Partner Agreement provides:

12 **4.3.1** During the term of this Agreement, Partner may not use or run
13 on any of Partner’s hardware, or have deployed for internal use, any
14 Neo Technology Community Edition Products for commercial or
15 production use. In no event shall Partner reverse engineer, distribute
16 or otherwise use the Products for its own internal use. There are no
17 implied rights. Partner will not fork or bifurcate the source code for any
18 Neo Technology Community Edition Products into a separately
19 maintained source code repository so that development done on the
20 original code requires manual work to be transferred to the forked
21 software or so that the forked software starts to have features not
22 present in the original software.

23 The restrictions in Paragraphs 4.3.1 and 4.3.2 violate the GNU
24 AFFERO GENERAL PUBLIC LICENSED VERSION 3 for Neo4j
25 enterprise software:

26 Section 2 (Basic Permissions) of the AGPL license provides, in part:
27
28 “All rights granted under this License are granted for the term of
29 copyright on the Program, and are irrevocable provided the stated
30 conditions are met. This License explicitly affirms your unlimited
31 permission to run the unmodified Program. ...

32 You may make, run and propagate covered works that you do not
33 convey, without conditions so long as your license otherwise
34 remains in force. You may convey covered works to others for the

1 sole purpose of having them make modifications exclusively for
2 you, or provide you with facilities for running those works,
3 provided that you comply with the terms of this License in
4 conveying all material for which you do not control copyright.”

5 Section 4 of the AGPL license provides, in part:

6 “You may charge any price or no price for each copy that you
7 convey, and you may offer support or warranty protection for a
8 fee.”

9 Section 10 (Automatic licensing of Downstream Recipients)

10 of the AGPL provides, in part:

11 “You may not impose any further restrictions on the exercise of the
12 rights granted or affirmed under this License.”

13 Defendants are licensed to use the open source software version of
14 Neo4j by Neo4j Sweden AB without restriction under the AGPL license
15 agreement. Plaintiff may not impose restrictions on use of Neo4j and
16 cannot prevent or bar defendants from using the open source Neo4j. By
17 imposing restrictions in violation of the License, plaintiff has breached
18 the open source license and has no rights to use or license Neo4j.

19 3. Unclean Hands

20 Plaintiff should not be permitted to enforce the Partner Agreement
21 because of plaintiff’s unclean hands in the use of the Partner
22 Agreement. Plaintiff told PureThink they could modify the scope of a
23 license agreement to meet the needs of the government users such as
24 the IRS. Plaintiff’s license model is priced for core processor charges.
25 However, there is no per core charge on the open source version.
Plaintiff at first agreed PureThink could drop the core use pricing for
the IRS, then later plaintiff refused to allow the price change. Plaintiff

1 also forbade its partners, such as PureThink, to discuss the available
2 open source versions. When the IRS, faced with core pricing
3 limitations, asked Purethink about the differences between the
4 commercial software and the open source version of Neo4j, plaintiff
5 told Purethink to lie stating the open source version could only be used
6 on an open project to try to induce the IRS to purchase a commercial
7 version of Neo4j. When plaintiff threatened to terminate PureThink,
8 they agreed Purethink could remedy the breach if the IRS signed up
9 for a commercial license through plaintiff. When the IRS wanted to
10 use the Neo4j open source software with support from Purethink,
11 plaintiff interfered falsely stating Purethink could not use or support
12 Neo4j open source software. Plaintiff is attempting to improperly use a
13 dual licensing practice having a commercial version controlled by
14 plaintiff and an open source software licensed under a General Public
15 License. Because the open source software is under a GPL or AGPL
16 license, and has over 100 contributors, plaintiff may not be able to
17 actually convert the GPL or AGPL license to proprietary software.
18 Under a GPL or AGPL type license, contributors' efforts to modify the
19 software cannot be taken away and turned into privately controlled
20 software. Defendants are informed and believe that plaintiff only
21 provides an object code version of the Neo4j software under a
22 commercial license while the GPL and AGPL type license requires
23 access to the source code as well. Defendants are informed and believe
24 that because plaintiff cannot lawfully operate a dual license model
25 since the open source is based on GPL or AGPL, plaintiff resorts to

sharp and false 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. As plaintiff comes to this court with unclean hands, they should be barred from recovery.

4. Fair Use of Trademarks

Defendants use of the trademarks was and is a nominative fair use to 1) identify a software product 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 plaintiff.

5. Naked License Abandonment of Trademark

Plaintiff 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 AB' 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").... . 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 Neo4j is licensed as open source software, there is no

1 ability to maintain quality control of how licensees modify, use or
2 distributed or conveyed. As a result, plaintiff has abandoned the Neo4j
3 trademark under the doctrine of Naked License.

4

5 **6. Waiver**

6 Plaintiff waived Purethink's conduct in modifying the open source
7 version of Neo4j to create the government edition as they agreed
8 PureThink could use and modify the software as required to satisfy the
9 United States Government buyers.

10

11 **7. Setoff**

12 Plaintiffs' alleged claims to damages are barred, in whole or in part, by
13 the right of one or more Defendants to a setoff against any such
14 damages.

15

16 **Prayer for Relief**

17 Wherefore defendants request:

18 1. The complaint be dismissed with prejudice;

19 2. That the first three trademark based claims be found exceptional as the
20 alleged infringements are obviously nominative fair use, allowing
21 defendants iGov Inc. and John Mark Suhy to recover attorneys fees
22 under 15 U.S.C. §1117 (a);

23 3. That defendants recover costs;

24 4. And for such other relief as the Court deems just.

1 Dated: January 9, 2019

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15 liability company, IGOV INC., a Virginia
16 corporation, and JOHN MARK SUHY

17 **DEMAND FOR JURY TRIAL**

18 Defendants PURETHINK LLC, IGOV INC., and JOHN MARK SUHY
19 hereby demand a trial by jury.

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