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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION**

Case No:

**CLASS ACTION FOR:**

DIEISHA HODGES, an individual, and  
SIMONE RICHARDSON, an individual,  
on behalf of themselves, all others  
similarly situated, and the general public,

Plaintiffs,

v.

VIZIO, INC., a California Corporation,  
and COGNITIVE MEDIA NETWORKS,  
INC., a Delaware corporation,

Defendants.

- (1) VIOLATIONS OF THE FEDERAL VIDEO PRIVACY PROTECTION ACT, 18 U.S.C. § 2710;
- (2) VIOLATIONS OF CAL. CIV. CODE § 1799.3;
- (3) VIOLATIONS OF CALIFORNIA'S CUSTOMER RECORDS ACT, CAL. CIV. CODE §§ 1798.80, *et seq.*;
- (4) VIOLATIONS OF CALIFORNIA'S CONSUMERS LEGAL REMEDIES ACT, CAL. CIV. CODE §§ 1750, *et seq.*;
- (5) FALSE ADVERTISEMENT, CAL. BUS. & PROF. CODE §§ 17500, *et seq.*;
- (6) UNFAIR COMPETITION, CAL BUS. & PROF. CODE §§ 17200, *et seq.*;
- (7) FRAUDULENT CONCEALMENT, CAL. CIV. CODE §§ 1709, 1710(3);

- (8) INTENTIONAL MISREPRESENTATION, CAL. CIV. CODE §§ 1709, 1710(1);
- (9) NEGLIGENT MISREPRESENTATION, CAL. CIV. CODE §§ 1709, 1710(2);
- (10) VIOLATIONS OF ILLINOIS' CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT, AND UNIFORM DECEPTIVE TRADE PRACTICES ACT, 815 ILCS § 505/1, *et seq.*, 815 ILCS § 510/2
- (11) BREACH OF COVENANT OF GOOD FAITH & FAIR DEALING;
- (12) INTRUSION INTO PRIVATE AFFAIRS;
- (13) UNJUST ENRICHMENT.

1 Plaintiffs Dieisha Hodges and Simone Richardson (collectively, “Plaintiffs”), on  
2 behalf of themselves, all others similarly situated, and the general public, allege against  
3 Defendants Vizio, Inc. (“Vizio”) and Cognitive Media Networks, Inc. (“Cognitive Media”)  
4 (collectively, “Defendants”), the following upon their own personal knowledge, or where  
5 there is no personal knowledge, upon information and belief and the investigation of their  
6 counsel.

## 7 **I. NATURE OF THE ACTION**

8 1. This is a class action against Defendants Vizio, Inc. and Cognitive Media  
9 Networks, Inc. arising out of their joint collection and dissemination of private consumer  
10 information to third parties for the gain of profit, all without consumers’ consent or  
11 knowledge, and in violation of their privacy rights and several federal and state regulations.

12 2. Defendant Vizio is an American privately held consumer electronics company  
13 based in Irvine, California, and one of the leading manufacturers, distributors, and sellers  
14 of High-Definition Televisions (“HDTVs”) in the United States. Vizio also manufactures,  
15 distributes, and sells a line of Smart Televisions (“Smart TVs”), which have integrated  
16 internet capability that supports direct streaming of movies and shows from internet and  
17 application-based content providers such as Netflix, Amazon, Hulu, YouTube, Pandora,  
18 and Spotify.

19 3. Beginning on or around October 31, 2015, Vizio implemented a feature into  
20 its internet-capable Smart TVs called “Smart Interactivity,” which allows Vizio to collect  
21 viewing data related to the content displayed on a user’s Smart TV, such as the identity of  
22 user’s broadcast, cable, or satellite television provider; the television programs and  
23 commercials viewed by the user (including time, date, channel, and whether the user  
24 viewed them live or at a later time); the specific Internet Protocol (“IP”) address associated  
25 with the user’s Vizio Smart TV; Media Access Control (“MAC”) addresses; product model  
26 and serial numbers; hardware and software versions; chipset IDs; and region and language  
27 settings. For older Vizio Smart TV models, the Smart Interactivity feature is installed via  
28 automatic update.

1           4.     The Smart Interactivity feature then uses that collected data to subsequently  
2 display accompanying interactive features on a user's Vizio Smart TV, including pop-ups,  
3 bonus features relating to viewed content, voting polls, and advertisements that match a  
4 user's interests based upon viewing behaviors.

5           5.     Defendant Cognitive Media Networks, Inc., the leading provider of real-time  
6 services powered by Automatic Content Recognition ("ACR") technology, provides Vizio  
7 the software used to track and collect consumers' information and viewing data. In August  
8 2015, Vizio acquired Cognitive Media.

9           6.     Unbeknownst to purchasers of Vizio Smart TVs, including Plaintiffs and  
10 putative Class Members, Defendants have systematically shared, and continue to share,  
11 this collected viewing data—together with the specific IP addresses associated with the  
12 corresponding Vizio Smart TVs and other private consumer information—with third-party  
13 media and data analytics companies for the sake of financial gain. Those third parties then  
14 combine this shared information with other information about devices associated with  
15 Smart TVs IP address in order to customize the advertisements displayed on those other  
16 devices, including smart phones, computers, tablets, and laptops.

17           7.     Unlike its competitors who utilize similar content tracking software, Vizio's  
18 Smart Interactivity feature is turned on by default without prior consent of Vizio  
19 purchasers. In order to turn off the feature, a user must either navigate the TV's Menu to  
20 manually disable the function or contact Vizio directly for assistance. Even when turned  
21 off, users continue to see tailored ads on other devices that were targeted on the basis of  
22 viewing data that was shared before the feature was disabled. If the Vizio Smart TV is  
23 ever reset to factory settings (whether or not done intentionally), the TV will return to its  
24 default settings, thereby reactivating the Smart Interactivity feature.

25           8.     Because Vizio's Smart Interactivity feature is activated by default, Defendants  
26 have, and continue to, invade the privacy rights of hundreds, if not thousands, of unwitting  
27 consumers by unlawfully collecting and sharing their personal information and habits  
28 without prior consent or express disclosure, and to Defendants' unjust benefit.

9. Accordingly, Plaintiffs assert claims on their own behalf and on behalf of a Nationwide Class, as defined herein, of individuals who, within the relevant statute of limitations period, purchased an Internet-capable Vizio Smart TV.

## II. PARTIES

10. Plaintiff Dieisha Hodges, a natural person, is, and at all times relevant hereto was, a citizen and resident of the state of California.

11. Plaintiff Simone Richardson (“Plaintiff Richardson”), a natural person, is, and at all times relevant hereto was, a citizen and resident of the state of Illinois.

12. Defendant Vizio, Inc. is an active California corporation that maintains its principal place of business at 39 Tesla, Irvine, California 92618, and is registered to do business in California under Entity Number C2471722. Vizio designs, manufactures, and markets High-Definition and Smart Televisions, as well as other home entertainment products, throughout the U.S., Mexico, and Canada, including the state of California and this District.

13. Defendant Cognitive Media Networks, Inc. (formerly TV Interactive Systems, Inc.) is an active Delaware corporation that is registered to do business in California under Entity Number C3507629 and maintains its principal place of business at 39 Tesla, Irvine, California 92618. Cognitive Media develops and delivers Automatic Content Recognition (“ACR”) software platforms for Smart TVs that identify content displayed on the TVs for licensed third parties, which allow them to send synchronized and targetable applications to enhance their content and advertising. On August 10, 2015, Vizio acquired Cognitive Media<sup>1</sup> Cognitive Media Networks, Inc. does business throughout the United States, including the state of California and this District.

14. Plaintiffs are informed and believe, and based thereon allege, that Defendants, and each of them, acted, and continue to act, on behalf of each other and, in doing the things herein alleged, were, at all times material hereto, acting within the course and scope

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<sup>1</sup> Vizio, Inc., *Prospectus* filed with the U.S. Securities and Exchange Commission, at 78 (Oct. 22, 2015) (hereinafter, “*Prospectus*”), available at <http://www.sec.gov/Archives/edgar/data/1648158/000119312515350398/d946612ds1a.htm>

1 of their authorities as representatives, partners, and/or alter egos of each other, with the full  
2 knowledge, permission, consent, and authorization of each defendant, each co-defendant  
3 having ratified or promoted the acts of the other co-defendant, such that each of them are  
4 jointly and severally liable to Plaintiffs and putative Class Members, as defined herein.

### 5 **III. JURISDICTION AND VENUE**

6 15. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2), as  
7 amended by the Class Action Fairness Act of 2005, because the matter in controversy,  
8 exclusive of interests and costs, exceeds the sum value of \$5,000,000.00 and is a class  
9 action in which some of Members of the Class are citizens of states different than  
10 Defendants, including Plaintiff Richardson who is a citizen and resident of the state of  
11 Illinois. On information and belief, more than two-thirds of the members of the Class are  
12 citizens of a state different than Defendants.

13 16. This Court also has original jurisdiction pursuant to 28 U.S.C. § 1331 over the  
14 federal claim under the Video Privacy Protection Act.

15 17. This Court has supplemental jurisdiction over the state law claims asserted  
16 herein pursuant to 28 U.S.C. § 1367.

17 18. The Court has personal jurisdiction over Defendants because Defendants  
18 conduct substantial business within the state of California and this judicial district and  
19 maintain their headquarters and principal places of business in this judicial district.

20 19. Venue is proper within this district pursuant to 28 U.S.C. § 1391(b) because a  
21 substantial part of the events, omissions, or transactions giving rise to this action occurred  
22 within this judicial district, and because Defendants (i) are authorized to conduct business  
23 within this judicial district, (ii) have intentionally availed themselves of the laws and  
24 markets within this judicial district through the promotion, marketing, distribution, and  
25 sales of its products in this district, (iii) do substantial business within this judicial district,  
26 and (iv) are subject to personal jurisdiction in this judicial district.

#### IV. GENERAL ALLEGATIONS

##### Vizio Smart TVs with Integrated Smart Interactivity Tracking Software

20. Defendant Vizio, Inc. is an American privately held consumer electronics company founded in October 2002 as V, Inc. in Fountain Valley, California by William Wang and co-founders Laynie Newsome and Ken Lowe.<sup>2</sup> Vizio maintains its headquarters in Irvine, California.<sup>3</sup> Currently, Vizio is one of the leading manufacturers, distributors, and sellers of HDTVs in the nation.”<sup>4</sup>

21. Since its founding, Vizio has sold over 65 million televisions and other products.<sup>5</sup> For the years ended December 31, 2013 and 2014 and the nine months ended September 30, 2015, Vizio generated net sales of \$3.0 billion, \$3.1 billion, and \$2.2 billion, and reported net income of \$25.7 million, \$45.0 million, and \$44.3 million respectively.<sup>6</sup> Substantially all of these amounts were generated from the sale of televisions and sound bars.<sup>7</sup> In 2014, Vizio held the #1 unit share position in the U.S. sound bar industry and the #2 unit share position in the U.S. Smart, HDTV industry.<sup>8</sup> According to Forbes.com, Vizio is the 142nd largest private company in America.<sup>9</sup>

22. Vizio’s products are sold in over 8,000 retail stores across the U.S.,<sup>10</sup> as well as through its online store where consumers can purchase Vizio products directly.<sup>11</sup>

23. In addition to HDTVs and other audio and visual electronic goods, Vizio also manufactures, distributes, and sells a line of Smart TVs.

24. A Smart TV is a television with integrated Internet connectivity capability—typically through wireless networking (“Wifi”)—that offers more advanced computing

<sup>2</sup> Forbes, *America’s Largest Private Companies* (2015), available at <http://www.forbes.com/companies/vizio/>

<sup>3</sup> <http://www.vizio.com/about>

<sup>4</sup> *Id.*

<sup>5</sup> Prospectus, at 63.

<sup>6</sup> *Id.* at 2.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Forbes, *America’s Largest Private Companies* (2015), available at <http://www.forbes.com/largest-private-companies/list/#tab:rank>

<sup>10</sup> Prospectus, at 2.

<sup>11</sup> <http://www.vizio.com/store>



1 ability and connectivity than a contemporary basic television set. Aside from the  
2 traditional functions of basic television sets provided through traditional broadcasting  
3 media, Smart TVs can also provide Internet TV, online interactive media, over-the-top  
4 content, on-demand streaming media, and home networking access.

5 25. Smart TVs also deliver content (such as photos, movies, shows, and music)  
6 from other computers or network-attached storage devices on a network, and provide  
7 access to Internet-based services including traditional broadcast TV channels, catch-up  
8 services, video-on-demand, electronic program guide, interactive advertising,  
9 personalization, voting, games, social networking, and other multimedia applications.

10 26. Smart TVs run complete operating system or mobile operating  
11 system software. The software applications, or “apps,” can be preloaded into the device, or  
12 updated or installed on demand through the Internet via an app store or app marketplace.

13 27. In 2014, Vizio had 35% U.S. unit share for Smart TVs and was a unit share  
14 leader in the overall U.S. HDTV market, creating a community of over 10 million Vizio  
15 Connected Units (“VCUs”), defined by Vizio as Smart TVs that have been connected to  
16 the Internet and have transmitted data collected by Vizio’s Inscape data services.<sup>12</sup>

17 **Defendants’ Collection and Dissemination of Consumers’ Private Information**

18 28. Vizio utilizes a platform that combines its connected media entertainment  
19 products (including its Smart TVs), discovery and engagement software, and Inscape data  
20 services.<sup>13</sup>

21 29. Vizio’s discovery and engagement software connects consumers to a wide  
22 range of premium entertainment content, providing an interface that enables viewers to  
23 discover and engage with entertainment and other content on Vizio Smart TVs from  
24 traditional and streaming content providers, such as Netflix, Hulu, YouTube, and Amazon  
25 Instant Video.<sup>14</sup> Since 2009, users have streamed more than 3.5 billion hours of content  
26

27 <sup>12</sup> *Prospectus*, at 2.

28 <sup>13</sup> *Id.*

<sup>14</sup> *Id.*



1 through Vizio's discovery and engagement software.<sup>15</sup>

2 30. Vizio's Inscape data services capture real-time viewing behavior data from  
 3 their VCUs, enabling Vizio to provide the data to advertisers and media content  
 4 providers.<sup>16</sup> Vizio's "Inscape data services capture, in real time, up to 100 billion  
 5 anonymized viewing data points each day from our over 10 million VCUs. Inscape  
 6 collects, aggregates and stores data regarding most content displayed on VCU television  
 7 screens, including content from cable and satellite providers, streaming devices and  
 8 gaming consoles."<sup>17</sup> As summarized by Vizio, "*Inscape provides highly specific viewing*  
 9 *behavior data on a massive scale with great accuracy, which can be used to generate*  
 10 *intelligent insights for advertisers and media content providers and to drive their delivery*  
 11 *of more relevant, personalized content through our VCUs.*"<sup>18</sup>

12 31. According to Vizio, its "connected entertainment products and discovery and  
 13 engagement software increase usage of [its] platform, enabling Inscape to gather more  
 14 anonymized data on viewing behaviors, which [Vizio] can deliver to advertisers and media  
 15 content providers."<sup>19</sup>

16 32. In sum, Vizio's platform allows it to collect a "*large amount of real-time data*  
 17 *. . . from [its] VCUs about viewing behaviors and preferences.*"<sup>20</sup>

18 33. On August 10, 2015, Vizio acquired Defendant Cognitive Media Networks,  
 19 Inc., a San Francisco-based software provider that enables Vizio's Inscape data services.<sup>21</sup>  
 20 Prior to the acquisition, Vizio owned approximately 10% of Cognitive Media on a fully-  
 21 diluted basis.<sup>22</sup> The consideration paid for the remaining ownership interest was  
 22 approximately \$50 million in cash, subject to working capital adjustments.<sup>23</sup>

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24 <sup>15</sup> *Id.*

25 <sup>16</sup> *Id.* at 3.

26 <sup>17</sup> *Id.*

27 <sup>18</sup> *Id.* (emphasis added).

28 <sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 4 (emphasis added).

<sup>21</sup> *Id.* at 78.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

1 34. Vizio refers to the feature that recognizes on-screen content and collects  
2 consumer data on its Internet-connected Vizio Smart TVs as “Smart Interactivity.”<sup>24</sup>

3 35. The Smart Interactivity feature integrated into Vizio Smart TVs is turned on  
4 by default.<sup>25</sup> In order to disable the Smart Interactivity feature, a user must either (1)  
5 navigate the Smart TV’s Menu, access the Menu’s Settings or System tab, select the Smart  
6 Interactivity option, and physically disable the function, or (2) contact Vizio’s customer  
7 service and/or technical support departments for assistance.<sup>26</sup> Even when turned off, users  
8 may continue to see tailored ads on other devices that were targeted on the basis of viewing  
9 data that was shared before the feature was disabled.<sup>27</sup> Additionally, if the Vizio Smart TV  
10 is ever reset to factory settings (whether intentionally or involuntarily), the television will  
11 return to its default settings, and the Smart Interactivity feature will be reset to the “on”  
12 position.<sup>28</sup>

13 36. For older Vizio Smart TV models purchased before the Smart Interactivity  
14 feature was integrated directly into the TVs, firmware updates occur automatically when  
15 the Smart TV is connected to the Internet.<sup>29</sup> Vizio does not offer firmware updates upon  
16 request; rather, the Vizio Smart TV merely has to be connected to the Internet for the  
17 automatic update to occur.<sup>30</sup>

18 37. Vizio Smart TVs that have Smart Interactivity enabled collect data related to  
19 publicly available content displayed on users’ televisions, such as the identity of their  
20 broadcast, cable, or satellite television provider, and the television programs and  
21 commercials viewed (including time, date, channel, and whether users viewed them live or  
22 at a later time).<sup>31</sup> Vizio refers to this data as “Viewing Data.”<sup>32</sup>

24 <sup>24</sup> <http://www.vizio.com/privacy>

25 <sup>25</sup> *Id.*

26 <sup>26</sup> *Id.*

27 <sup>27</sup> *Id.*

28 <sup>28</sup> *Id.*

29 <sup>29</sup> <https://support.vizio.com/s/article/The-Latest-Firmware-Updates-Software-Downloads>

30 <sup>30</sup> *Id.*

31 <sup>31</sup> <http://www.vizio.com/privacy>

32 <sup>32</sup> *Id.*

1 38. On or around October 31, 2015, Vizio began using the collected Viewing  
2 Data, together with users' IP addresses associated with their corresponding Vizio TVs and  
3 other information, to inform third party selection and delivery of targeted and re-targeted  
4 advertisements, which are then delivered to smartphones, tablets, PCs or other internet-  
5 connected devices that share an IP address or other identifier with the corresponding Vizio  
6 Smart TVs.<sup>33</sup>

7 39. Specifically, Vizio shares the data with media and data analytics companies  
8 with a business need to analyze television viewing behaviors in the aggregate, who then  
9 combine this information with other information about devices associated with that IP  
10 address in order to customize the advertisements displayed on those other devices.<sup>34</sup>

11 40. Vizio claims that it only disseminates users' Viewing Data, IP addresses, and  
12 other Non-Personal Information to third parties in connection with its Smart Interactivity  
13 feature.<sup>35</sup> Vizio defines "Non-Personal Information" as "data in a form that does not, on its  
14 own, permit direct association with any specific individual," including, but not limited to,  
15 the IP addresses users use to connect their Internet-connected products, their zip codes, the  
16 online services they visit, information about their Vizio products (such as MAC addresses,  
17 product model numbers, hardware and software versions, chipset IDs, and region and  
18 language settings), as well as information about the products users request or purchase, the  
19 presence of other devices connected to their local networks, and the number of users and  
20 frequency of use of Vizio products and services.<sup>36</sup>

21 41. Although Vizio asserts that "[t]he Viewing Data collected by Vizio is  
22 anonymous and does not contain Personal Information" (information that can be used to  
23 identify or contact a specific person directly from purchasers and users of Vizio's  
24 consumer products and services), IP addresses, Wifi routers, device names, and MAC  
25 addresses can be used to identify a users' personal information, and are thus private  
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27 <sup>33</sup> *Id.*

28 <sup>34</sup> *Id.*

<sup>35</sup> <http://www.vizio.com/privacy>

<sup>36</sup> *Id.*

1 information. To overcome this legal obstacle, Vizio categorizes this information as “Non-  
2 Personal Information” because the data arguably does not, *on its own*, permit direct  
3 association with any specific individual.

4 42. The Article 29 Data Protection Working Party of the European Union  
5 (“Working Party”)—an independent European advisory body on data protection and  
6 privacy set up to provide expert opinion about data protection affecting the rights and  
7 freedoms of natural persons with regard to the processing of personal data and privacy—  
8 has specifically determined that IP addresses do, in fact, qualify as personal data because  
9 they contain a unique ID.<sup>37</sup>

10 43. Similarly, the U.S. National Institute of Standards and Technology has  
11 identified IP addresses as Personally Identifiable Information, including in its list of  
12 Examples of PII data “[a]sset information, such as Internet Protocol (IP) or Media Access  
13 Control (MAC) address or other host-specific persistent static identifier that consistently  
14 links to a particular person or small, well defined group of people.”<sup>38</sup>

15 44. A MAC address, also called physical address, is a unique identifier assigned  
16 to network interfaces for communications on a physical network segment. Because MAC  
17 addresses are unique to each device, a device’s MAC address can be used to identify a  
18 person and track his or her location whenever that person passes a Wi-Fi hotspot.<sup>39</sup> As  
19 such, the FTC has filed complaints against entities who mislead consumers over their  
20 ability to opt out of device-tracking technology that collects MAC addresses because they  
21 were never informed that they were being tracked at all.<sup>40</sup>

22  
23 <sup>37</sup> Article 29 Data Protection Working Party, *Opinion 4/2007 on the Concept of Personal Data*, 16,  
24 01248/07/EN/WP 136 (June 20, 2007), available at  
[http://ec.europa.eu/justice\\_home/fsj/privacy/docs/wpdocs/2007/wp136\\_en.pdf](http://ec.europa.eu/justice_home/fsj/privacy/docs/wpdocs/2007/wp136_en.pdf).

25 <sup>38</sup> National Institute of Standards and Technology, U.S. Dept. of Commerce, *Guide to Protecting the*  
26 *Confidentiality of Personally Identifiable Information* (April 2010), available at  
<http://csrc.nist.gov/publications/nistpubs/800-122/sp800-122.pdf>.

27 <sup>39</sup> Lee Munson, *FTC sanctions phone location tracking company for not allowing customer opt-out*,  
28 NAKED SECURITIES (Apr. 24, 2015), available at [https://nakedsecurity.sophos.com/2015/04/24/ftc-](https://nakedsecurity.sophos.com/2015/04/24/ftc-sanctions-phone-location-tracking-company-for-not-allowing-customer-opt-out/)  
[sanctions-phone-location-tracking-company-for-not-allowing-customer-opt-out/](https://nakedsecurity.sophos.com/2015/04/24/ftc-sanctions-phone-location-tracking-company-for-not-allowing-customer-opt-out/)

<sup>40</sup> *Id.* (citing *In the Matter of Nomi Technologies, Inc.*, available at  
<https://www.ftc.gov/system/files/documents/cases/150423nomicmpt.pdf>).

## **Defendants' Concealment of Their Data Collection and Dissemination Practices**

45. At no time were Plaintiffs and putative Class Members ever informed by Defendants that their viewing behavior and personal information, including unique IP and MAC addresses, were being collected and disseminated to interested third parties through the use of their Internet-connected Vizio Smart TVs. Nor did Plaintiffs and putative Class Members ever consent to having their information collected and disseminated.

46. Defendants derive profit from the collection and dissemination of consumer information and viewing data. Indeed, Vizio claims that its discovery and engagement software (made possible through Cognitive Media's software) "enhances the value of its products"<sup>41</sup> and "provides an attractive value proposition to advertisers and media content providers which will enable [Vizio] to further monetize it in the future."<sup>42</sup> As such, Vizio is dedicated to "developing strong partnerships with content and analytics providers, advertisers and brands to monetize [Vizio's] connected platform."<sup>43</sup>

47. Defendant Vizio actively conceals the fact that its Smart TVs collect and disseminate users' information without prior informed consent because consumers may disagree with this practice which could detrimentally affect Vizio's profits. As stated by Vizio itself, "[o]ur customers may also object to or opt out of the collection and use of their data, which may harm our business."<sup>44</sup>

48. Indeed, Defendant Vizio has admitted that "*some individuals may be reluctant or unwilling to connect to the Internet through our Smart TVs because they have concerns regarding the risks associated with data privacy and security.*"<sup>45</sup> As such, Vizio has expressed concern that "[i]f the wider public perceives data privacy or security concerns with respect to [Vizio's] Smart TVs, this could negatively impact the growth potential for the net sales of [its] Smart TVs and [its] Inscape data services."<sup>46</sup>

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<sup>41</sup> *Prospectus*, at 2.

<sup>42</sup> *Id.* at 3.

<sup>43</sup> *Id.* at 7.

<sup>44</sup> *Id.* at 37.

<sup>45</sup> *Id.* at 28 (emphasis added).

<sup>46</sup> *Id.*

## Vizio's Acknowledgment of Potential Liability Under Governing Privacy Laws

49. Although Vizio acknowledges that the success of its Inscape data services “depends on various factors including *uncertain and evolving consumer expectations and legal requirements related to the collection, use, sharing and security of data collected or processed from or about consumers*,” Vizio has also recognized that the “failure to successfully monetize [its] Inscape data services could materially and adversely harm [its] growth prospects.”<sup>47</sup>

50. Indeed, Defendant Vizio has expressed the following concern regarding federal and state regulations governing consumer privacy: “*We collect, process, store, use and to some extent disclose information collected from or about purchasers and users of our products, and from the devices themselves. The collection and use of personal information, and analysis and sharing of anonymous user data and unique identifiers to inform advertising or analyze viewing behaviors subject us to legislative and regulatory burdens, may expose us to liability, and our actual or perceived failure to adequately protect consumer data could harm our brand, our reputation in the marketplace and our business.*”<sup>48</sup>

51. As expressed by Vizio: “Privacy laws and regulations, if drafted or interpreted broadly, could be deemed to apply to the technologies we use to collect, analyze and share viewing behaviors or other data collected from our Smart TVs or consumers, and could restrict our information collection methods or decrease the amount and utility of the information that we would be permitted to collect and share. . . . In addition, a determination by a court or government agency that any of our practices, or those of our agents, do not meet these standards could result in liability, or result in negative publicity, and adversely affect our business.”<sup>49</sup>

52. Although Vizio attempts to shield itself from admittedly foreseeable liability via its privacy policy, Vizio itself is not entirely confident in the sufficiency of that policy,

<sup>47</sup> *Id.* at 10 (emphasis added).

<sup>48</sup> *Id.* at 37.

<sup>49</sup> *Id.* at 38.



as illustrated through its following statement:

[W]hile we strive to publish and prominently display privacy policies that are accurate, comprehensive, and fully implemented, we cannot assure you that our privacy policies and other statements regarding our practices will be sufficient to protect us from liability or adverse publicity relating to the privacy and security of information about consumers or their devices. Any failure or perceived failure by us to comply with our privacy policies, our privacy-related obligations to consumers or other third parties, or our privacy-related legal obligations, including laws and regulations regulating privacy, data security, or consumer protection, or any compromise of security that results in the unauthorized release or transfer of personally identifiable information or other consumer data, may result in proceedings or actions against us, legal liability, governmental enforcement actions, and litigation. Any proceeding or action brought against us by a governmental entity or others relating to noncompliance with U.S. federal, state, or international laws, self-regulatory requirements, policies, or other legal obligations relating to privacy or data protection could hurt our reputation, force us to spend significant amounts in defense of these proceedings, distract our management, increase our costs of doing business, adversely affect the demand for our products, and ultimately result in the imposition of monetary liability.<sup>50</sup>

53. Vizio claims that it “requir[es] the third parties who analyze or use the Viewing Data to employ reasonable security measures” and “imposes strict conditions of confidentiality and use on such third parties” with respect to IP addresses.<sup>51</sup> Yet, Vizio also admits: “if third parties we work with, such as customers, advertisers, vendors or developers, violate our contractual limitations on data use or sharing, applicable laws or

<sup>50</sup> *Id.* at 39 (emphasis added).

<sup>51</sup> <http://www.vizio.com/privacy>



our policies, such violations *may also put consumers' information at risk* and could in turn have an adverse effect on our business.”<sup>52</sup>

54. Defendants make no mention of what measures it imposes regarding the dissemination of consumers' MAC addresses and other collected information.

55. Nevertheless, Defendants collect and disclose users' information without their prior informed consent, despite having knowledge of similar lawsuits against competitors who, unlike Defendants, actually provide consumers an option regarding the collection and dissemination of their information *before* doing so. Indeed, Vizio has admitted that

other businesses have been criticized by privacy groups and governmental bodies for attempts to link personal identities and other information to data collected on the Internet regarding users' browsing and other habits. We are aware of several ongoing lawsuits filed against companies in the electronics or digital advertising industries alleging various violations of consumer protection and computer crime laws, asserting various privacy-related theories. *Any such proceedings brought against us could hurt our reputation, force us to spend significant amounts to defend ourselves, distract our management, increase our costs of doing business, lower demand for our services and ultimately result in the imposition of monetary liability or restrict our ability to conduct our Inscape data services.*<sup>53</sup>

56. Despite these concerns, Vizio has “spent the last several years and significant resources building out technology integrations with marketing technology companies to facilitate the collection of data that [Vizio] ultimately intend[s] to be used for the delivery of digital advertisements to television and online content audiences.”<sup>54</sup>

#### **Plaintiffs' Purchases and Experience with the Vizio Smart TVs**

57. In or around December 2013, Plaintiff Dieisha Hodges purchased a Vizio 55” Smart TV for approximately \$1,000.00 from a Walmart store located in Oakland,

<sup>52</sup> *Prospectus*, at 39 (emphasis added).

<sup>53</sup> *Id.* at 37 (emphasis added).

<sup>54</sup> *Id.* at 32.

1 California. When setting up her Vizio Smart TV, Plaintiff Hodges did not see any form of  
2 privacy notice, and does not recall clicking on any button or link stating that she agreed to  
3 any terms or conditions. Nor was Plaintiff Hodges made aware prior to the time the Smart  
4 Interactivity feature was downloaded to or installed on her Vizio Smart TV that either the  
5 TV or the Smart Interactivity feature would track, monitor, collect, and disseminate her  
6 personal information to third parties, including, but not limited to, her Viewing Data, IP  
7 address, MAC address, product model numbers, hardware and software versions, chipset  
8 IDs, and router and device names. At no time did Plaintiff Hodges ever consent to having  
9 her information collected and disseminated to third parties. Since purchasing her Vizio  
10 Smart TV, and after the Smart Interactivity feature was installed on her Vizio Smart TV,  
11 Plaintiff Hodges has connected the TV to a wireless internet connection through an Internet  
12 Service Provider, and uses the TV to stream media content. Plaintiff Hodges would not  
13 have purchased the Vizio Smart TV, or would not have paid as much for it, had she known  
14 that the Vizio Smart TV tracks, monitors, collects, and disseminates her personal  
15 information to third parties for financial gain, and without her prior informed consent or  
16 knowledge.

17 58. On or around August 23, 2015, Plaintiff Simone Richardson purchased a 40”  
18 Vizio Smart TV for approximately \$398.00 from a Walmart store located in Lake of the  
19 Hills, Illinois. When setting up her Vizio Smart TV, Plaintiff Richardson did not see any  
20 form of privacy notice, and does not recall clicking on any button or link stating that she  
21 agreed to any terms or conditions. Nor was Plaintiff Richardson made aware prior to the  
22 time the Smart Interactivity feature was downloaded to or installed on her Vizio Smart TV  
23 that either the TV or the Smart Interactivity feature would track, monitor, collect, and  
24 disseminated her personal information to third parties, including, but not limited to, her  
25 Viewing Data, IP address, MAC address, product model numbers, hardware and software  
26 versions, chipset IDs, and router and device names. At no time did Plaintiff Richardson  
27 ever consent to having her information collected and disseminated to third parties. Since  
28 purchasing her Vizio Smart TV, and after the Smart Interactivity feature was installed on

her Vizio Smart TV, Plaintiff Richardson has connected the TV to a wireless internet connection through an Internet Service Provider, and uses the TV to stream media content. Plaintiff Richardson would not have purchased the Vizio Smart TV, or would not have paid as much for it, had she known that the Vizio Smart TV tracks, monitors, collects, and disseminates her personal information to third parties for financial gain, and without her prior informed consent or knowledge.

## **V. CLASS ALLEGATIONS**

59. Pursuant to Rules 23(a), 23(b)(3), or 23(b)(2) of the Federal Rules of Civil Procedure, Plaintiffs bring this class action on behalf of themselves and all Members of the Nationwide Class (the “Nationwide Class”), which shall initially be defined as:

All persons in the United States who purchased Vizio Smart TVs with Smart Interactivity tracking technology installed or downloaded for personal or household use and not for resale, during the applicable statute of limitations period. Excluded from the Class are governmental entities, Defendants, any entity in which Defendants have a controlling interest, their employees, officers, directors, legal representatives, heirs, successors, and wholly or partly owned subsidiaries or affiliated companies, including all parent companies, and their employees; and the judicial officers, their immediate family members, and court staff assigned to this case.

60. Additionally, or in the alternative, pursuant to Rules 23(a), 23(b)(3), or 23(b)(2) of the Federal Rules of Civil Procedure, Plaintiffs bring this class action on behalf of themselves and all Members of the California Class (the “California” Class”), which shall initially be defined as:

All persons in California who purchased Vizio Smart TVs with Smart Interactivity tracking technology installed or downloaded for personal or household use and not for resale, during the applicable statute of limitations period. Excluded from the Class are governmental entities, Defendants, any entity in which Defendants have a controlling interest, their employees, officers, directors, legal representatives, heirs,

1 successors, and wholly or partly owned subsidiaries or affiliated companies,  
2 including all parent companies, and their employees; and the judicial officers, their  
3 immediate family members, and court staff assigned to this case.

4 61. The Classes described in this Complaint may be jointly referred to as the  
5 “Class” and proposed Members of the Classes may be jointly referred to as “Class  
6 Members.”

7 62. Plaintiffs reserve the right to amend or modify the Class and/or Subclass  
8 definitions with greater specificity or further division into subclasses or limitation to  
9 particular issues as discovery and the orders of this Court warrant.

10 63. The Court can define the Class and create additional subclasses as may be  
11 necessary or desirable to adjudicate common issues and claims of the Class Members if,  
12 based on discovery of additional facts, the need arises.

13 64. Pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, Defendants  
14 have acted or refused to act on grounds generally applicable to the Class, thereby making  
15 final injunctive relief or corresponding declaratory relief and damages appropriate with  
16 respect to the Class as a whole. Specifically, Defendants have failed to disclose the true  
17 nature of the Vizio Smart TVs with integrated Smart Interactivity technology, including  
18 that the TVs collect and disseminate consumers’ personal information.

19 **Numerosity and Ascertainability**

20 65. The Members of the proposed Class are so numerous that individual joinder  
21 of all Class Members is impracticable, if not impossible. Due to the nature of the trade and  
22 commerce involved, however, Plaintiffs believe that the total number of Class Members is  
23 at least in the thousands, if not tens of thousands, and Members of the Class are numerous  
24 and geographically dispersed throughout the United States. While the exact number and  
25 identities of the Class Members are unknown at this time, such information can be  
26 ascertained through appropriate investigation and discovery. The disposition of the claims  
27 of Class Members in a single action will provide substantial benefits to all parties and this  
28 Court.

**Typicality**

66. Plaintiffs' claims are typical of the Class Members' claims. Plaintiffs and Class Members have been similarly affected by Defendants' common course of conduct because they all had the personal information collected and disseminated to third parties without their consent or knowledge. As such, Plaintiffs have the same interest in this matter as all Members of the Class, and have no interests antagonistic to the interests of other Members of the Class.

**Commonality and a Well-Defined Community of Interest**

67. There is a well-defined community of interest in the questions of law and fact involved that affected Plaintiffs and Members of the Class, and these common questions of law and fact include, but are not limited to:

- i. Whether Defendants unlawfully collected and disseminated Plaintiffs and Class Members' personal information;
- ii. Whether Defendants disclosed to Plaintiffs and Class Members before the tracking software was installed on their Vizio Smart TVs that their personal information would be collected and disseminated to third parties;
- iii. Whether Plaintiffs and Class Members consented to the collection and disclosure of their personal information to third parties;
- iv. Whether Plaintiffs and Class Members' have a reasonable expectation of privacy in the information collected and disseminated by Defendants;
- v. Whether Defendants' conduct constitutes violations of the laws and statutes asserted herein;
- vi. Whether Defendants' conduct is unlawful, unfair, or fraudulent;
- vii. Whether Defendants' conduct violates public policy;
- viii. Whether Defendants' conduct was willful, intentional, or knowing;
- ix. Whether, as a result of Defendants' conduct, Plaintiffs and Class Members sustained monetary loss, and, if so, the proper measure of that loss;

- 1           x.     Whether, as a result of Defendants' conduct, Plaintiffs and Class Members are  
2           entitled to restitution and/or monetary relief and, if so, the amount and nature of  
3           such relief;
- 4           xi.    Whether, as a result of Defendants' conduct, Plaintiffs and Class Members are  
5           entitled to declaratory and/or injunctive relief and, if so, the nature of such  
6           relief;
- 7           xii.   Whether, as a result of Defendants' conduct, Plaintiffs and Class Members are  
8           entitled to an award of punitive damages; and
- 9           xiii.   Whether Defendants were unjustly enriched by their conduct.

10   **Superiority**

11           68.   This action is brought as a class action because this method is superior for the  
12   fair and efficient adjudication of the controversy. The amount of damages suffered by  
13   individual Class Members, while not inconsequential, makes individual actions  
14   impracticable given the expenses and burdens associated with seeking individual relief, as  
15   each individual Class Member may lack the resources to undergo the burden and expense  
16   of individual prosecution of the complex and extensive litigation necessary to establish  
17   Defendants' liability. A class action is the only practicable method by which Plaintiffs and  
18   Members of the Class can achieve redress from Defendants and prevent Defendants from  
19   unjustly benefitting from its course of unlawful conduct, as alleged herein. The  
20   prosecution of individual actions would present a risk of inconsistent judgments, even  
21   though each Class Member has an effectively identical claim of right against Defendants.  
22   Inconsistent judgments could be dispositive to the interests of other Class Members who  
23   are not parties to the individual adjudication and/or may substantially impede their ability  
24   to adequately protect their interests. If separate actions were brought, or are required to be  
25   brought, by individual Class Members, the resulting multiplicity of lawsuits would cause  
26   an undue hardship and burden on the parties and the judicial system. In contrast, the class  
27   action device presents far fewer management difficulties and provides the benefits of  
28   single adjudication, economy of scale, and comprehensive supervision by a single court on

the issue of Defendants' liability. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

### **Adequacy**

69. Plaintiffs are adequate representatives of the Class. Plaintiffs' claims are typical of those of Members of the Class. Plaintiffs and Class Members have no unique claims, have no conflicts of interest, and share the same interests in the litigation of this matter. Plaintiffs retained competent counsel experienced in the prosecution of class actions who are committed to the vigorous prosecution of this action, and have the financial resources to do so. Accordingly, Plaintiffs are adequate representatives of the Class, and will fairly and adequately protect the interests of the Class and Subclasses.

## **VI. CAUSES OF ACTION**

### **FIRST CAUSE OF ACTION**

#### **Violation of the federal Video Privacy Protection Act**

#### **18 U.S.C. § 2710**

#### **(On behalf of Plaintiffs and the Class against Defendants)**

70. Plaintiffs and Class Members re-allege and incorporate by reference each and every allegation set forth in this Complaint with the same force and effect, and further allege as follows:

71. Pursuant to the federal Video Privacy Protection Act ("VVPA"), 18 U.S.C. § 2710(b), "A video tape service provider who knowingly discloses, to any person, personally identifiable information concerning any consumer of such provider shall be liable to the aggrieved person for the relief provided in subsection (d)."

72. 18 U.S.C. § 2710(c) provides that "[a]ny person aggrieved by any act of a person in violation of this section may bring a civil action in a United States district court."

73. Plaintiffs are "consumers" as defined by 18 U.S.C. ¶ 2710(a)(1) because they are purchasers or subscribers of goods (Vizio Smart TVs with integrated Smart Interactivity tracking technology) from a video service provider (Vizio).

74. Defendant Vizio is a "video service provider" as defined by 18 U.S.C. §



2710(a)(4) because it is “engaged in the business, in or affecting interstate or foreign commerce, of rental, sale, or delivery of prerecorded video cassette tapes or *similar audio visual materials*.” (emphasis added). Specifically, Vizio’s Smart TVs integrated with Smart Interactivity tracking technology deliver prerecorded audio visual materials (i.e., shows, movies, music, and other media content), which affects both interstate and foreign commerce, as the Smart TVs are sold throughout the U.S. and internationally. *See e.g., In re Hulu Privacy Litig.*, 86 F. Supp. 3d 1090, 1095 (N.D. Cal. 2015) (“Hulu is a ‘video tape service provider,’ . . . within the VVPA’s meaning”).

75. Defendant Cognitive Media is also liable under the VVPA because it is a subsidiary of Vizio and an “entity to whom a disclosure is made . . .” 18 U.S.C. § 2710(a)(4); *see also Dirkes v. Borough of Runnemede*, 936 F. Supp. 235, 240 (D.N.J. 1996) (“[T]hose parties who are in possession of personally identifiable information as a direct result of an improper release of such information are subject to suit under the Act . . .”).

76. The consumer data collected and tracked by Defendants—including IP addresses, MAC addresses, product serial codes, device and router names, and program viewing behavior—constitutes “personally identifiable information” under 18 U.S.C. § 2710(a)(3) because the collected and disseminated data identifies persons who requested or obtained specific video materials or services from Defendant Vizio (a video tape service provider). Incorporating the word “includes” into the definition of “personally identifiable information” implies that the VVPA is not confined to the statutory text of that definition, but is rather meant to encompass a more expansive interpretation.

77. Defendants willfully violated, and continue to violate, the VVPA by knowingly and unlawfully disseminating Plaintiffs and Class Members’ personally identifiable information (including IP addresses, MAC addresses, identifiable product serial codes, device and router names, etc.) to third party entities and persons, without the prior written informed consent of Plaintiffs and Class Members.

78. Defendants further willfully violated, and continue to violate, the VVPA by

1 failing to destroy the collected personally identifiable information as soon as practicable  
2 from the date the information is no longer necessary for the purpose for which it was  
3 collected. 18 U.S.C. § 2710(e).

4 79. As a direct and proximate result of Defendants' concerted unlawful conduct,  
5 Plaintiffs and Class Members have suffered injury, including, but not limited to, invasion  
6 of their statutorily protected privacy rights.

7 80. Accordingly, Plaintiffs and Class Members are entitled to, and hereby seek,  
8 injunctive relief enjoining Defendants from continuing to engage in the unlawful conduct  
9 alleged herein, actual damages, punitive damages, reasonable attorneys' fees and costs, and  
10 any and all other preliminary and equitable relief that this Court deems appropriate under  
11 18 U.S.C. § 2710(c).

## 12 **SECOND CAUSE OF ACTION**

### 13 **Violation of Cal. Civ. Code § 1799.3**

#### 14 **(On behalf of Plaintiffs and the Class against Defendants)**

15 81. Plaintiffs and Class Members re-allege and incorporate by reference each and  
16 every allegation set forth in this Complaint with the same force and effect, and further  
17 allege as follows:

18 82. California Civil Code Section 1799.3 provides that "[n]o person providing  
19 video recording sales or rental services shall disclose any personal information or the  
20 contents of any record, including sales or rental information, which is prepared or  
21 maintained by that person, to any person, other than the individual who is the subject of the  
22 record, without the written consent of that individual."

23 83. Defendant Vizio provides video recording sales or rental services by  
24 providing users, including Plaintiffs and putative Class Members, the ability to stream  
25 videos, shows, music, and other internet-based content directly from their Smart TVs  
26 integrated with Smart Interactivity technology.

27 84. Defendants Vizio and Cognitive Media jointly knowingly collect and  
28 disseminate the personal information of purchasers of Vizio Smart TVs integrated with

Smart Interactivity technology, including, but no limited to, sales and rental information related to users' viewing data, IP addresses, MAC addresses, device and router names, and product serial codes.

85. Defendants willfully violated, and continue to violate, California Civil Code Section 1799.3 by knowingly and unlawfully disseminating Plaintiffs and Class Members' personal information (including sales and rental information, IP addresses, MAC addresses, identifiable product serial codes, device and router names, etc.) to third party entities and persons, without the written informed consent of Plaintiffs and Class Members.

86. As a direct and proximate result of Defendants' concerted unlawful conduct, Plaintiffs and Class Members have suffered injury, including, but not limited to, invasion of their statutorily protected privacy rights.

87. Accordingly, Plaintiffs and Class Members are entitled to, and hereby seek, injunctive relief enjoining Defendants from continuing to engage in the unlawful conduct alleged herein, actual damages, punitive damages, reasonable attorneys' fees and costs, civil penalties in the amount of \$500 for each violation under Cal Civ. Code § 1799.3(c), and any and all further equitable relief that this Court deems appropriate.

### **THIRD CAUSE OF ACTION**

#### **Violation of California's Customer Records Act**

#### **Cal. Civ. Code §§ 1798.80, *et seq.***

#### **(On behalf of Plaintiffs and the Class against Defendants)**

88. Plaintiffs and Class Members re-allege and incorporate by reference each and every allegation set forth in this Complaint with the same force and effect, and further allege as follows:

89. California Civil Code Section 1798.81 provides that "[a] business shall take all reasonable steps to dispose, or arrange for the disposal, of customer records within its custody or control containing personal information when the records are no longer to be retained by the business by (a) shredding, (b) erasing, or (c) otherwise modifying the personal information in those records to make it unreadable or undecipherable through any

1 means.”

2 90. Pursuant to California Civil Code Section 1798.80(e), “‘Personal  
3 information’ means any information that identifies, relates to, describes, or is capable of  
4 being associated with, a particular individual, including, but not limited to, his or her name,  
5 signature, social security number, physical characteristics or description, address,  
6 telephone number, passport number, driver’s license or state identification card number,  
7 insurance policy number, education, employment, employment history, bank account  
8 number, credit card number, debit card number, or any other financial information, medical  
9 information, or health insurance information. ‘Personal information’ does not include  
10 publicly available information that is lawfully made available to the general public from  
11 federal, state, or local government records.”

12 91. The consumer data collected and disseminated by Defendants constitutes  
13 “personal information” under California Civil Code Section 1798.80(e) because the  
14 collected information identifies, relates to, describes, or is *capable of being associated*  
15 specifically with Plaintiffs and Class Members, including, but not limited to, their unique  
16 IP addresses, MAC addresses, product serial codes, and device and router names.  
17 Incorporating the phrase “included, but not limited to” into the definition of “personal  
18 information” implies that personal information is not confined to the examples included in  
19 Section 1798.80(e), but is rather meant to encompass a more expansive interpretation.

20 92. Defendants willfully violated, and continue to violate, California’s Customer  
21 Records Act by failing to take any steps to dispose, or arrange for the disposal, of customer  
22 records within their custody or control containing personal information of Plaintiffs and  
23 Class Members.

24 93. As a direct and proximate result of Defendants’ concerted unlawful conduct,  
25 Plaintiffs and Class Members have suffered injury, including, but not limited to, invasion  
26 of their statutorily protected privacy rights.

27 94. Accordingly, Plaintiffs and Class Members are entitled to, and hereby seek,  
28 injunctive relief enjoining Defendants from continuing to engage in the unlawful conduct

alleged herein, actual damages, punitive damages, reasonable attorneys' fees and costs under Cal. Civ. Proc. Code § 1021.5, civil penalties, and any and all further equitable relief that this Court deems appropriate.

#### **FOURTH CAUSE OF ACTION**

##### **Violation of California's Consumers Legal Remedies Act**

##### **Cal. Civ. Code §§ 1750, *et seq.***

##### **(On behalf of Plaintiffs and the Class against Defendants)**

95. Plaintiffs and Class Members re-allege and incorporate by reference each and every allegation set forth in this Complaint with the same force and effect, and further allege as follows:

96. California's Consumers Legal Remedies Act ("CLRA") prohibits "unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer . . ." Cal. Civ. Code § 1770(a).

97. Pursuant to California Civil Code Section 1760, the CLRA "shall be liberally construed and applied to promote its underlying purposes, which are to protect consumers against unfair and deceptive business practices and to provide efficient and economical procedures to secure such protection."

98. Defendants are "persons" within the meaning of the CLRA, because each Defendant is an "individual, partnership, corporation, limited liability company, association, or other group, however organized." Cal. Civ. Code § 1761(c).

99. Plaintiffs and Class Members are "consumers" within the meaning of the CLRA because they are individuals who sought or acquired, by purchase or lease, goods or services (Vizio Smart TVs integrated with Smart Interactivity tracking technology) for personal, family, or household purposes. Cal. Civ. Code § 1761(d). Prior to the filing of this action, Plaintiffs and Class Members each purchased one or more Vizio Smart TVs integrated with Smart Interactivity technology for personal, family, and/or household use.

100. The Vizio Smart TVs integrated with Smart Interactivity tracking technology

1 purchased by Plaintiffs and Class Members are “goods” within the meaning of the CLRA  
2 because they are “tangible chattels bought or leased for use primarily for personal, family,  
3 or household purposes.” Cal. Civ. Code §1761(a).

4 101. Plaintiffs and Class Members’ purchases of the Vizio Smart TVs integrated  
5 with Smart Interactivity tracking technology constitute “transactions” within the meaning  
6 of the CLRA because each purchase was “an agreement between a consumer and another  
7 person” which was intended to result, and did result, in the sale of goods to Plaintiffs and  
8 Class Members. Cal. Civ. Code § 1761(e). Further, Defendants’ sale of the Smart TVs to  
9 wholesalers and retailers constitute “transactions” within the meaning of the CLRA  
10 because each sale was intended to result, and did result, in the sale of goods to Plaintiffs  
11 and Class Members. Cal. Civ. Code § 1770(a).

12 102. Defendants willfully violated, and continue to violate, the CLRA by engaging  
13 in the following practices prohibited by Cal. Civ. Code § 1770(a) in its transactions with  
14 Plaintiffs and Class Members:

15 103. Cal. Civ. Code § 1770(a)(5) prohibits “[r]epresenting that goods or services  
16 have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which  
17 they do not have . . . .” Defendants violated this provision by representing that their Smart  
18 TVs with integrated Smart Interactivity tracking technology are intended to be used as  
19 personal entertainment goods, when in fact the Smart TVs are actually used to track,  
20 monitor, and disseminate users’ personal information without their informed consent or  
21 knowledge for financial gain, and in violation of their protected privacy rights.

22 104. Cal. Civ. Code § 1770(a)(7) prohibits “[r]epresenting that goods or services  
23 are of a particular standard, quality, or grade, or that goods are of a particular style or  
24 model, if they are of another.” Defendants violated this provision by representing that the  
25 Vizio Smart TVs with integrated Smart Interactivity tracking technology complies with all  
26 governing federal and state privacy laws, when in fact the Smart TVs actually track,  
27 monitor, and disseminate users’ personal information without their informed consent or  
28 knowledge for financial gain, and in violation of their protected privacy rights.



1        105. Cal. Civ. Code § 1770(a)(9) prohibits “[a]dvertising goods or services with  
2 intent not to sell them as advertised.” Defendants violated this provision by representing  
3 that the Vizio Smart TVs with integrated Smart Interactivity tracking technology complies  
4 with all governing federal and state privacy laws, when in fact the Smart TVs actually  
5 track, monitor, and disseminate users’ personal information without their informed consent  
6 or knowledge for financial gain, and in violation of their statutorily protected privacy  
7 rights. By selling the Smart TVs with integrated Smart Interactivity technology through  
8 various mediums throughout the U.S. and California, Defendants represent that the Smart  
9 TVs are sold lawfully and in compliance with all governing consumer protection and  
10 privacy laws. However, because Defendants know that the Smart TVs track, monitor, and  
11 disseminate users’ personal information without their informed consent or knowledge,  
12 Defendants intended not to sell the Smart TVs as advertised (i.e. lawful electronic  
13 entertainment goods that protect and comply with users’ statutorily protected rights to  
14 privacy).

15        106. Cal. Civ. Code § 1770(a)(14) prohibits “[r]epresenting that a transaction  
16 confers or involves rights, remedies, or obligations which it does not have or involve, or  
17 which are prohibited by law.” Defendants violated this provision by representing that  
18 Plaintiffs and Class Members’ purchases (transactions) of Vizio Smart TVs with integrated  
19 Smart Interactivity tracking technology would not result in an invasion of their statutorily  
20 privacy rights, and comply with all governing federal and state consumer protection and  
21 privacy laws. At a minimum, Defendants knowingly and intentionally withheld material  
22 information from Plaintiffs and Class Members that their Vizio Smart TV purchases would  
23 result in the monitoring, tracking, and dissemination of their personal information for  
24 profit, and in violation of their statutorily protected rights to privacy.

25        107. Cal. Civ. Code § 1770(a)(16) prohibits “[r]epresenting that the subject of a  
26 transaction has been supplied in accordance with a previous representation when it has  
27 not.” Defendants violated this provision by representing that Plaintiffs and Class  
28 Members’ purchases (transactions) of Vizio Smart TVs with integrated Smart Interactivity



1 tracking technology were executed in full compliance with all governing federal and state  
2 consumer protection and privacy laws, when in fact Plaintiffs and Class Members’  
3 transactions actually resulted in the collection and dissemination of their personal  
4 information without their informed consent or knowledge for financial gain, and in  
5 violation of their statutorily protected privacy rights.

6 108. Defendants violated the CLRA by making false, deceptive, or misleading  
7 representations or omissions about the Vizio Smart TVs with integrated Smart Interactivity  
8 tracking technology as described above, when they knew, or should have known, that the  
9 representations, omissions, and advertisements were false, deceptive, and/or misleading.

10 109. Defendants’ representations and omissions regarding the qualities and  
11 attributes of the Vizio Smart TVs with integrated Smart Interactivity tracking technology  
12 are misleading and have a capacity, likelihood, or tendency to, and did, deceive and/or  
13 confuse the public.

14 110. Plaintiffs and Class Members reasonably relied upon Defendants’  
15 representations and omissions regarding the qualities and attributes of the Vizio Smart TVs  
16 with integrated Smart Interactivity tracking technology.

17 111. Plaintiffs and Class Members were deceived by Defendants’ representations  
18 and omissions about the quality and attributes of the Vizio Smart TVs with integrated  
19 Smart Interactivity tracking technology. Plaintiffs and Class Members would not have  
20 purchased the Vizio Smart TVs, or would not have paid as much for them, had they known  
21 the true nature of these Smart TVs, including, but not limited to, that the Vizio Smart TVs  
22 track, monitor, collect, and disseminate personal information to third parties for financial  
23 gain, and without the informed consent or knowledge of Plaintiffs and Class Members.  
24 However, Plaintiffs and Class Members would still be interested in potentially purchasing  
25 the Vizio Smart TVs in the future if they were represented properly and truthfully.

26 112. As a direct and proximate result of Defendants’ concerted unlawful conduct,  
27 Plaintiffs and Class Members have suffered injury, including, but not limited to, monetary  
28 loss in connection with purchases of products they may not have purchased absent

Defendants' false and/or misleading representations and omissions, as well as invasion of their statutorily protected privacy rights.

113. Defendants unjustly profited from the sales of the deceptively and unlawfully represented Vizio Smart TVs with integrated Smart Interactivity tracking technology to unwary consumers by disseminating Plaintiffs and Class Members' personal information without their informed consent or knowledge for financial gain.

114. Defendants' wrongful business practices regarding the Vizio Smart TVs with integrated Smart Interactivity tracking technology constituted, and constitute, a continuing course of conduct in violation of the CLRA since Defendants are still representing that the Vizio Smart TVs have characteristics, uses, benefits, and abilities which are false and/or misleading, and have injured Plaintiffs and Class Members.

115. Accordingly, Plaintiffs and Class Members are entitled to, and hereby seek, prospective and retrospective injunctive relief under California Civil Code Section 1782(d) enjoining Defendants from continuing to engage in the unlawful conduct alleged herein, attorneys' fees and costs, and applicable civil penalties, as allowed by statute.

116. Plaintiffs and Class Members are not seeking actual damages or punitive damages at this time for their CLRA claim, but will amend this Complaint thirty (30) days after Defendants have received Plaintiffs' CLRA notice letter to seek damages and punitive damages.

### **FIFTH CAUSE OF ACTION**

#### **Violation of California's False Advertising Law**

#### **Cal. Bus. & Prof. Code §§ 17500, *et seq.***

#### **(On behalf of Plaintiffs and the Class against Defendant Vizio)**

117. Plaintiffs and Class Members re-allege and incorporate by reference each and every allegation set forth in this Complaint with the same force and effect, and further allege as follows:

118. California Business & Professions Code Section 17500 provides in pertinent part:

1 It is unlawful for any person, firm, corporation or association . . . to make or  
2 disseminate or cause to be made or disseminated before the public in this  
3 state, in any newspaper or other publication, or any advertising device . . . or  
4 in any other manner or means whatever, including over the Internet, any  
5 statement concerning . . . personal property or services, professional or  
6 otherwise, or performance or disposition thereof, which is untrue or  
7 misleading and which is known, or which by the exercise of reasonable care  
8 should be known, to be untrue or misleading, or for any person, firm, or  
9 corporation to so make or disseminate or cause to be so made or disseminated  
10 any such statement as part of a plan or scheme with the intent not to sell that  
11 personal property or those services, professional or otherwise, so advertised at  
12 the price stated therein, or as so advertised.

13 119. Defendant Vizio willfully violated, and continues to violate, California's False  
14 Advertising Law ("FAL") by intentionally and knowingly disseminating advertisements  
15 concerning its Vizio Smart TVs with integrated Smart Interactivity tracking technology  
16 which are misleading, deceptive, and/or untrue. Specifically, Defendant Vizio knowingly  
17 and intentionally withheld material information from Plaintiffs and Class Members that its  
18 Smart TVs with integrated Smart Interactivity technology track, monitor, collect, and  
19 disseminate users' personal information without their informed consent or knowledge for  
20 financial gain.

21 120. Defendant Vizio disseminating untrue, deceptive, and/or misleading  
22 advertisements concerning its Vizio Smart TVs with integrated Smart Interactivity tracking  
23 technology as part of a plan or scheme with the intent not to sell the Vizio Smart TVs as  
24 advertised (i.e., lawful electronic entertainment goods that protect and comply with users'  
25 statutorily protected rights to privacy).

26 121. Additionally, or in the alternative, Defendant Vizio knew, or should have  
27 known through the exercise of reasonable care, that its disseminated advertisements  
28 (including representations and omissions) concerning the Vizio Smart TVs with integrated

Smart Interactivity tracking technology were untrue, deceptive, and/or misleading.

122. Defendant Vizio's representations and omissions regarding the qualities and attributes of its Vizio Smart TVs with integrated Smart Interactivity tracking technology are misleading and have a capacity, likelihood, or tendency to, and did, deceive and/or confuse the public.

123. Plaintiffs and Class Members reasonably relied upon Defendant Vizio's representations and omissions regarding the qualities and attributes of its Vizio Smart TVs with integrated Smart Interactivity tracking technology.

124. Plaintiffs and Class Members would not have purchased the Vizio Smart TVs, or would not have paid as much for them, had they known the true nature of these products, including, but not limited to, that the Vizio Smart TVs track, monitor, collect, and disseminate personal information to third parties for financial gain, and without the informed consent or knowledge of Plaintiffs and Class Members. However, Plaintiffs and Class Members would still be interested in potentially purchasing the Vizio Smart TVs in the future if they were represented properly and truthfully.

125. As a direct and proximate result of Defendant Vizio's unlawful conduct, Plaintiffs and Class Members have suffered injury, including, but not limited to, monetary loss in connection with purchases of products they may not have purchased absent Vizio's false and/or misleading representations and omissions, as well as invasion of their statutorily protected privacy rights.

126. Defendant Vizio unjustly profited from the sales of the deceptively and unlawfully advertised Vizio Smart TVs with integrated Smart Interactivity tracking technology to unwary consumers by disseminating Plaintiffs and Class Members' personal information without their informed consent or knowledge for financial gain.

127. Accordingly, Plaintiffs and Class Members are entitled to, and hereby seek, an order of this Court enjoining Defendant Vizio from continuing to engage in deceptive business practices, false advertising, and any other act prohibited by law, including those set forth in this Complaint, pursuant to Section 17535 of the FAL.

128. Plaintiffs and Class Members are further entitled to, and hereby seek, an order for disgorgement and restitution of all monies acquired from the sales of Defendant Vizio's Smart TVs with integrated Smart Interactivity tracking technology, which were unjustly acquired through its wrongful business practices, as well as any other further equitable relief this Court may deem necessary, just, and proper under the circumstances. Additionally, Plaintiffs and the Class seek attorneys' fees and costs as allowed by statute. *See e.g.*, Cal. Civ. Proc. Code § 1021.5.

### **SIXTH CAUSE OF ACTION**

#### **Violation of California's Unfair Competition Law**

#### **Cal. Bus. & Prof. Code §§ 17200, *et seq.***

#### **(On behalf of Plaintiffs and the Class Against Defendants)**

129. Plaintiffs and Class Members re-allege and incorporate by reference each and every allegation set forth in this Complaint with the same force and effect, and further allege as follows:

130. California's Unfair Competition Law ("UCL") prohibits unfair competition, defined as "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by [the FAL]." Cal. Bus. & Prof. Code § 17200.

131. Defendants willfully violated, and continue to violate, the "unlawful" prong of the UCL by violating the federal Video Privacy Protection Act, as well as California's Consumers Legal Remedies Act, False Advertising Law, Customer Records Act, and other applicable statutes and laws alleged herein.

132. Defendants willfully violated, and continue to violate, the "fraudulent" prong of the UCL through misrepresentations, omissions, and non-disclosures which are false, misleading, and have a tendency to deceive, and did deceive, Plaintiffs, Class Members, and the general public, as detailed herein. Defendants' business practices were, and are, further fraudulent by intentionally and knowingly installing content tracking software (Smart Interactivity) onto its Vizio Smart TVs which surreptitiously tracks, monitors,

1 collects, and disseminates users' personal information (including, but not limited to, unique  
2 IP addresses, MAC addresses, identifiable product serial codes, device and router names,  
3 etc.) to third parties for financial gain, without the informed consent or knowledge of its  
4 users, including Plaintiffs and Class Members, and in violation of their statutorily protected  
5 rights to privacy.

6 133. Defendants willfully violated, and continue to violate, the "unfair" prong of  
7 the UCL by gaining unjust profits from the surreptitious dissemination of Plaintiffs and  
8 Class Members' personal information without their informed consent or knowledge and in  
9 violation of their statutorily protected privacy rights, so as to allow them to gain an unfair  
10 competitive advantage over law-abiding competitors. The acts, omissions,  
11 misrepresentations, and non-disclosures of Defendants, as described herein, further  
12 constitute "unfair" business acts and practices under the UCL in that Defendants' conduct  
13 offends public policy against deceptive advertising and invasion of privacy. Defendants'  
14 conduct is also immoral, unethical, and unscrupulous by seeking to profit and capitalize on  
15 consumers' desire for internet-capable Smart TVs without disclosure that the Vizio Smart  
16 TVs track, monitor, collect, and disseminate consumers' private information without their  
17 informed consent or knowledge.

18 134. The gravity of Defendants' conduct and the injuries suffered by Plaintiffs and  
19 Class Members outweigh any conceivable benefit to consumers or competition that may  
20 derive from Defendants' conduct.

21 135. Plaintiffs and Class Members would not have purchased the Vizio Smart TVs,  
22 or would not have paid as much for them, had they known the true nature of these  
23 products, including, but not limited to, that the Vizio Smart TVs track, monitor, collect,  
24 and disseminate personal information to third parties for financial gain of profit, and  
25 without the informed consent or knowledge of Plaintiffs and Class Members. However,  
26 Plaintiffs and Class Members would still be interested in potentially purchasing the Vizio  
27 Smart TVs in the future if they were represented properly and truthfully.

28 136. As a direct and proximate result of Defendants' unlawful, unfair, and



1 fraudulent business practices, Plaintiffs and putative Class Members have suffered injury,  
 2 including, but not limited to, monetary loss in connection with purchases of products they  
 3 may not have purchased absent Defendant's false and/or misleading representations and  
 4 omissions, as well as invasion of their statutorily protected privacy rights.

5 137. Accordingly, Plaintiffs and putative Class Members are entitled to, and hereby  
 6 seek, an order of this Court enjoining Defendants from continuing to conduct business  
 7 through unlawful, unfair, and/or fraudulent acts and practices, and to commence a  
 8 corrective advertising campaign pursuant to Section 17203 of the UCL.

9 138. Plaintiffs and putative Class Members are further entitled to, and hereby seek  
 10 an order for disgorgement and restitution of all monies acquired from the sales of the  
 11 Vizio's Smart TVs with integrated Smart Interactivity technology, which were unjustly  
 12 acquired through acts of unlawful, unfair, and/or fraudulent competition by Defendants, as  
 13 well as any other further equitable relief this Court may deem necessary, just, and proper  
 14 under the circumstances. Additionally, Plaintiffs and the Class seek attorneys' fees and  
 15 costs as allowed by statute. *See e.g.*, Cal. Civ. Proc. Code § 1021.5.

## 16 **SEVENTH CAUSE OF ACTION**

### 17 **Fraudulent Concealment/Intentional Omission of Material Facts**

#### 18 **Cal. Civ. Code §§ 1709, 1710(3)**

#### 19 **(On behalf of Plaintiffs and the Class Against Defendant Vizio)**

20 139. Plaintiffs and Class Members re-allege and incorporate by reference each and  
 21 every allegation set forth in this Complaint with the same force and effect, and further  
 22 allege as follows:

23 140. California Civil Code Section 1709 provides that "[o]ne who willfully  
 24 deceives another intent to induce him to alter his position to his injury or risk, is liable for  
 25 any damage which he thereby suffers."

26 141. "Deceit," within the meaning of Section 1709, includes "[t]he suppression of a  
 27 fact, by one who is bound to disclose it, or who gives information of other facts which are  
 28 likely to mislead for want of communication of that fact." Cal. Civ. Code § 1710(3).



1        142. Defendant Vizio intentionally and knowingly concealed material facts to  
2 Plaintiffs and Class Members that were known only to Defendant prior to Plaintiffs and  
3 Class Members' purchases of the Vizio Smart TVs, including that that the Smart TVs  
4 track, monitor, collect, and disseminate personal information (including, but not limited to,  
5 unique IP addresses, MAC addresses, product serial codes, device and router names, and  
6 program viewing behavior) to third parties for financial gain, and without the informed  
7 consent or knowledge of Plaintiffs and Class Members.

8        143. Defendant Vizio intentionally and knowingly concealed the aforementioned  
9 material facts to Plaintiffs and Class Members with the intent to induce them to purchase  
10 the Vizio Smart TVs.

11        144. Defendant Vizio had, and has, a duty to disclose the concealed information  
12 because Plaintiffs and Class Members did not know of the concealed facts prior to  
13 purchasing the Vizio Smart TVs, or prior to the installation of the Smart Interactivity  
14 feature on their Vizio Smart TVs, nor could they reasonably be expected to learn or  
15 discover such concealed facts prior to their purchases or installation of the Smart  
16 Interactivity feature on their TVs. Further, the packaging of the Vizio Smart TVs (which  
17 Defendant Vizio controls) does not disclose that the products track, monitor, collect, and  
18 disseminate users' personal information to third parties.

19        145. Plaintiffs and Class Members would not have purchased the Vizio Smart TVs,  
20 or would not have paid as much for them, had they known of the concealed information,  
21 including, but not limited to, that the Vizio Smart TVs track, monitor, collect, and  
22 disseminate personal information to third parties for financial gain, and without the  
23 informed consent or knowledge of Plaintiffs and Class Members. However, Plaintiffs and  
24 Class Members would still be interested in potentially purchasing the Vizio Smart TVs in  
25 the future if they were represented properly and truthfully.

26        146. As a direct and proximate result of Defendant Vizio's fraudulent concealment  
27 of material facts, Plaintiffs and Class Members have suffered injury, including, but not  
28 limited to, monetary loss in connection with purchases of products they may not have

1 purchased absent Vizio's fraudulent omissions and non-disclosures, as well as invasion of  
2 their statutorily protected privacy rights.

3 147. Accordingly, Plaintiffs and Class Members are entitled to, and hereby seek,  
4 actual damages, punitive damages, reasonable attorneys' fees and costs under Cal. Civ.  
5 Proc. Code § 1021.5, and any and all further equitable relief that this Court deems  
6 appropriate.

## 7 **EIGHTH CAUSE OF ACTION**

### 8 **Intentional Misrepresentation**

#### 9 **Cal. Civ. Code §§ 1709, 1710(1)**

#### 10 **(On behalf of Plaintiffs and the Class Against Defendant Vizio)**

11 148. Plaintiffs and Class Members re-allege and incorporate by reference each and  
12 every allegation set forth in this Complaint with the same force and effect, and further  
13 allege as follows:

14 149. California Civil Code Section 1709 provides that "[o]ne who willfully  
15 deceives another intent to induce him to alter his position to his injury or risk, is liable for  
16 any damage which he thereby suffers."

17 150. "Deceit," within the meaning of Section 1709, includes "[t]he suggestion, as a  
18 fact, of that which is not true, by one who does not believe it to be true." Cal. Civ. Code §  
19 1710(1).

20 151. Vizio intentionally and knowingly represented and/or suggested untrue or  
21 misleading facts to Plaintiffs and Class Members concerning its Vizio Smart TVs,  
22 including, but not limited to, the suggestion that its Smart TVs comply with all governing  
23 federal and state privacy laws.

24 152. Vizio intentionally and knowingly represented and/or suggested the  
25 aforementioned untrue or misleading facts to Plaintiffs and Class Members with the intent  
26 to induce them to purchase the Vizio Smart TVs.

27 153. Vizio's representations and suggestions, however, are false and misleading, as  
28 the Smart TVs track, monitor, and disclose Plaintiffs and Class Members' personal

1 information (including, but not limited to, unique IP addresses, MAC addresses, product  
2 serial codes, device and router names, and program viewing behavior) to third parties for  
3 financial gain without their informed consent or knowledge, and in violation of their  
4 statutorily protected privacy rights.

5 154. Vizio knew that its representations and suggestions were false and/or  
6 misleading when made, or made the representations and suggestions recklessly and without  
7 regard for their truth.

8 155. Plaintiffs and Class Members would not have purchased the Vizio Smart TVs,  
9 or would not have paid as much for them, had they known that the Vizio Smart TVs track,  
10 monitor, collect, and disseminate their personal information to third parties for financial  
11 gain without the informed consent or knowledge of Plaintiffs and Class Members, and in  
12 violation of their statutorily protected privacy rights. However, Plaintiffs and Class  
13 Members would still be interested in potentially purchasing the Vizio Smart TVs in the  
14 future if they were represented properly and truthfully.

15 156. As a direct and proximate result of Defendant Vizio's intentional  
16 misrepresentations, Plaintiffs and Class Members have suffered injury, including, but not  
17 limited to, monetary loss in connection with purchases of products they may not have  
18 purchased absent Vizio's false and/or misleading representations, as well as invasion of  
19 their statutorily protected privacy rights.

20 157. Accordingly, Plaintiffs and Class Members are entitled to, and hereby seek,  
21 actual damages, punitive damages, reasonable attorneys' fees and costs under Cal. Civ.  
22 Proc. Code § 1021.5, and any and all further equitable relief that this Court deems  
23 appropriate.

## 24 **NINTH CAUSE OF ACTION**

### 25 **Negligent Misrepresentation/Negligent Omission of Material Facts**

#### 26 **Cal. Civ. Code §§ 1709, 1710(2)**

#### 27 **(On behalf of Plaintiffs and the Class Against Defendant Vizio)**

28 158. Plaintiffs and Class Members re-allege and incorporate by reference each and

1 every allegation set forth in this Complaint with the same force and effect, and further  
2 allege as follows:

3 159. California Civil Code Section 1709 provides that “[o]ne who willfully  
4 deceives another intent to induce him to alter his position to his injury or risk, is liable for  
5 any damage which he thereby suffers.”

6 160. “Deceit,” within the meaning of Section 1709, includes “[t]he assertion, as a  
7 fact, of that which is not true, by one who has no reasonable ground for believing it to be  
8 true.” Cal. Civ. Code § 1710(2).

9 161. Defendant Vizio negligently made untrue and/or misleading representations,  
10 assertions of fact, omissions of material fact, and non-disclosures to Plaintiffs and Class  
11 Members concerning its Vizio Smart TVs. Specifically, Defendant Vizio negligently  
12 represented and/or asserted to Plaintiffs and Class Members that its Smart TVs comply  
13 with all governing federal and state privacy laws. Additionally, Vizio negligently  
14 concealed material facts to Plaintiffs and Class Members that were known only to  
15 Defendant prior to Plaintiffs and Class Members’ purchases of the Vizio Smart TVs, or  
16 prior to the installation of the Smart Interactivity feature on their Vizio Smart TVs,  
17 including, but not limited to, that that the Smart TVs track, monitor, collect, and  
18 disseminate personal information (including, but not limited to, unique IP addresses, MAC  
19 addresses, product serial codes, device and router names, and program viewing behavior)  
20 to third parties for financial gain, and without the informed consent or knowledge of  
21 Plaintiffs and Class Members.

22 162. Vizio negligently made the aforementioned untrue and/or misleading  
23 representations, assertions of fact, omissions of material fact, and non-disclosures to  
24 Plaintiffs and Class Members with the intent to induce them to purchase the Vizio Smart  
25 TVs.

26 163. Vizio’s representations, assertions of fact, omissions of material fact, and non-  
27 disclosures, however, are false and/or misleading, as the Vizio Smart TVs with integrated  
28 Smart Interactivity technology track, monitor, and disclose Plaintiffs and Class Members’

1 personal information (including, but not limited to, unique IP addresses, MAC addresses,  
2 product serial codes, device and router names, and program viewing behavior) to third  
3 parties for financial gain, without their informed consent or knowledge and in violation of  
4 their statutorily protected privacy rights.

5 164. Whether or not Vizio honestly believed that its representations, assertions of  
6 fact, omissions of material fact, and non-disclosures were true or not misleading,  
7 Defendant had no reasonable grounds for believing them to be true or not misleading at the  
8 time they were made.

9 165. Plaintiffs and Class Members would not have purchased the Vizio Smart TVs,  
10 or would not have paid as much for them, had they known that the Vizio Smart TVs track,  
11 monitor, collect, and disseminate their personal information to third parties for financial  
12 gain without the informed consent or knowledge of Plaintiffs and Class Members, and in  
13 violation of their statutorily protected privacy rights. However, Plaintiffs and Class  
14 Members would still be interested in potentially purchasing the Vizio Smart TVs in the  
15 future if they were represented properly and truthfully.

16 166. As a direct and proximate result of Defendant Vizio's negligent  
17 representations, assertions of fact, omissions of material fact, and non-disclosures,  
18 Plaintiffs and Class Members have suffered injury, including, but not limited to, monetary  
19 loss in connection with purchases of products they may not have purchased absent Vizio's  
20 false and/or misleading representations and omissions, as well as invasion of their  
21 statutorily protected privacy rights.

22 167. Accordingly, Plaintiffs and Class Members are entitled to, and hereby seek,  
23 actual damages, punitive damages, reasonable attorneys' fees and costs under Cal. Civ.  
24 Proc. Code § 1021.5, and any and all further equitable relief that this Court deems  
25 appropriate.  
26  
27  
28

**TENTH CAUSE OF ACTION**

**Violations of Illinois' Consumer Fraud and Deceptive Business Practices Act, and  
Uniform Deceptive Trade Practices Act**

**815 ILCS § 505/1, *et seq.*; 815 ILCS § 510/2**

**(On behalf of Plaintiffs and the Class Against Defendant Vizio)**

168. Plaintiffs and Class Members re-allege and incorporate by reference each and every allegation set forth in this Complaint with the same force and effect, and further allege as follows:

169. Defendant Vizio engaged in unfair or deceptive acts or practices by manufacturing, advertising, distributing, and selling its Smart TVs with integrated Smart Interactivity tracking software to consumers, while simultaneously actively concealing the material fact that the Smart TVs monitor, collect, track, and disseminate their personal information (including without limitation unique IP addresses, MAC addresses, identifiable product serial codes, and device and router names) for financial gain without consumers' knowledge or consent, and in violation of their statutorily protected privacy rights.

170. Specifically, Vizio knowingly and willfully concealed, suppressed, and/or omitted material facts from Plaintiffs and Class Members in order to induce them and other consumers to purchase its Smart TVs, including the fact that the Smart TVs monitor, collect, track, and disseminate their personal information (including without limitation unique IP addresses, MAC addresses, identifiable product serial codes, and device and router names) for financial gain without their knowledge or consent, and in violation of their statutorily protected privacy rights.

171. Vizio's material misstatements, non-disclosures, omissions, and active concealment were likely to, and did, deceive reasonable consumers, including Plaintiffs and Class Members, about the nature and quality of its Smart TVs, and their compliance with governing federal and state consumer protection laws.

172. Vizio intended that Plaintiffs and Class Members would rely on its

1 misrepresentations, as well as the material facts Vizio concealed, suppressed, and omitted,  
2 as described above.

3 173. Vizio knew that this practice was, and is, unlawful, but nonetheless continued  
4 to sell its Smart TVs with integrated Smart Interactivity software, as well as provide  
5 automatic updates activating the Smart Interactivity feature for Vizio Smart TVs purchased  
6 before the feature was implemented directly into the TVs.

7 174. Vizio's conduct, as described herein, offends public policy, is immoral,  
8 unethical, oppressive, and unscrupulous, and caused substantial injury to consumers,  
9 Plaintiffs, and Class Members, including invasion of their statutorily protected privacy  
10 rights.

11 175. Vizio's unfair and/or deceptive acts and practices occurred in the course of  
12 conduct involving trade or commerce, and was directed toward the market in general. The  
13 complained of conduct in this case implicates consumer protection concerns.

14 176. Plaintiffs and Class Members would not have purchased the Vizio Smart TVs,  
15 or would not have paid as much for them, had they known that the Vizio Smart TVs track,  
16 monitor, collect, and disseminate their personal information to third parties for financial  
17 gain without the informed consent or knowledge of Plaintiffs and Class Members, and in  
18 violation of their statutorily protected privacy rights. However, Plaintiffs and Class  
19 Members would still be interested in potentially purchasing the Vizio Smart TVs in the  
20 future if they were represented properly and truthfully.

21 177. As a direct and proximate result of Defendant Vizio's willful omissions of  
22 material fact, non-disclosures, active concealment, and other unfair and/or deceptive acts,  
23 Plaintiffs and Class Members have suffered injury, including, but not limited to, monetary  
24 loss in connection with purchases of products they may not have purchased absent Vizio's  
25 false and/or misleading representations and omissions, as well as invasion of their  
26 statutorily protected privacy rights

27 178. Accordingly, Plaintiffs and Class Members are entitled to, and hereby seek,  
28 actual damages, punitive damages, reasonable attorneys' fees and costs, and any and all



1 further equitable relief that this Court deems

## 2 **ELEVENTH CAUSE OF ACTION**

### 3 **Breach of Covenant of Good Faith and Fair Dealing**

#### 4 **(On behalf of Plaintiffs and the Class Against Defendant Vizio)**

5 179. Plaintiffs and Class Members re-allege and incorporate by reference each and  
6 every allegation set forth in this Complaint with the same force and effect, and further  
7 allege as follows:

8 180. “Every contract imposes upon each party a duty of good faith and fair dealing  
9 in its performance and its enforcement.” *See e.g., Carma Developers (Cal.), Inc. v.*  
10 *Marathon Dev. California, Inc.*, 2 Cal. 4th 342, 371 (1992). “The covenant of good faith  
11 finds particular application in situations where one party is invested with a discretionary  
12 power affecting the rights of another. Such power must be exercised in good faith.” *Id.* at  
13 372.

14 181. “[B]reach of a specific provision of the contract is not ... necessary’ to a  
15 claim for breach of the implied covenant of good faith and fair dealing.” *Thrifty Payless,*  
16 *Inc. v. Americana at Brand, LLC*, 218 Cal. App. 4th 1230, 1244 (2013) (quoting *Carma*  
17 *Developers*, 2 Cal. 4th at 373, n.12).

18 182. “Nor is it necessary that the party’s conduct be dishonest. Dishonesty  
19 presupposes subjective immorality; the covenant of good faith can be breached for  
20 objectively unreasonable conduct, regardless of the actor’s motive.” *Thrifty Payless, Inc.*,  
21 218 Cal. App. 4th at 1244.

22 183. Defendant Vizio entered into contracts with Plaintiffs and Class Members for  
23 the purchase of its Smart TVs.

24 184. Vizio had, and has, a duty of good faith and fair dealing, including a duty to  
25 truthfully and accurately inform Plaintiffs and Class Members of all facts that would be  
26 material to their purchases of Vizio Smart TVs.

27 185. Vizio breached its duty of good faith and fair dealing through its misleading  
28 and/or false representations, assertions of fact, omissions of material fact, and non-

disclosures. Specifically, Vizio intentionally and knowingly represented and/or asserted to Plaintiffs and Class Members that its Smart TVs comply with all governing federal and state privacy laws. Additionally, Vizio intentionally and knowingly concealed material facts to Plaintiffs and Class Members that were known only to Defendant prior to Plaintiffs and Class Members' purchases of the Vizio Smart TVs, or prior to the installation of the Smart Interactivity feature on their Vizio Smart TVs, including, but not limited to, that the Smart TVs track, monitor, collect, and disseminate personal information (including, but not limited to, unique IP addresses, MAC addresses, product serial codes, device and router names, and program viewing behavior) to third parties for financial gain, and without the informed consent or knowledge of Plaintiffs and Class Members.

186. Vizio's representations, assertions of fact, omissions of material fact, and non-disclosures are false and/or misleading, as its Smart TVs track, monitor, and disclose Plaintiffs and Class Members' personal information (including, but not limited to, unique IP addresses, MAC addresses, product serial codes, device and router names, and program viewing behavior) to third parties for financial gain without the informed consent or knowledge of Plaintiffs and Class Members, and in violation of their statutorily protected privacy rights.

187. Plaintiffs and Class Members would not have purchased the Vizio Smart TVs, or would not have paid as much for them, had they known that the Vizio Smart TVs track, monitor, collect, and disseminate their personal information to third parties for financial gain without the informed consent or knowledge of Plaintiffs and Class Members, and in violation of their statutorily protected privacy rights. However, Plaintiffs and Class Members would still be interested in potentially purchasing the Vizio Smart TVs in the future if they were represented properly and truthfully.

188. As a direct and proximate result of Defendant Vizio's negligent representations, assertions of fact, omissions of material fact, and non-disclosures—all of which constitute breaches of Defendant's duty of good faith and fair dealing—Plaintiffs and Class Members have suffered injury, including, but not limited to, monetary loss in

1 connection with purchases of products they may not have purchased absent Vizio's false  
2 and/or misleading representations and omissions, as well as invasion of their statutorily  
3 protected privacy rights.

4 189. Accordingly, Plaintiffs and Class Members are entitled to, and hereby seek,  
5 actual damages, punitive damages, reasonable attorneys' fees and costs under Cal. Civ.  
6 Proc. Code § 1021.5, and any and all further equitable relief that this Court deems  
7 appropriate.

## 8 **TWELFTH CAUSE OF ACTION**

### 9 **Intrusion Into Private Affairs**

#### 10 **(On behalf of Plaintiffs and the Class Against Defendants)**

11 190. Plaintiffs and Class Members re-allege and incorporate by reference each and  
12 every allegation set forth in this Complaint with the same force and effect, and further  
13 allege as follows:

14 191. The tort of intrusion "encompasses unconsented-to physical intrusion into the  
15 home, hospital room or other place the privacy of which is legally recognized, as well as  
16 unwarranted sensory intrusions such as eavesdropping, wiretapping, and visual or  
17 photographic spying." *Shulman v. Grp. W Prods., Inc.*, 18 Cal. 4th 200, 230-31, (1998).

18 192. "[T]he plaintiff must show the defendant penetrated some zone of physical or  
19 sensory privacy surrounding, or obtained unwanted access to data about, the plaintiff. The  
20 tort is proven only if the plaintiff had an objectively reasonable expectation of seclusion or  
21 solitude in the place, conversation or data source." *Sanders v. Am. Broad. Companies,*  
22 *Inc.*, 20 Cal. 4th 907, 914-15 (1999).

23 193. A plaintiff need not prove that he or she had a "complete expectation of  
24 privacy." *Id.* at 917. Rather, "[p]rivacy for purposes of the intrusion tort must be  
25 evaluated with respect to the identity of the alleged intruder and the nature of the  
26 intrusion." *Id.* at 918.

27 194. Plaintiffs and Class Members had, and have, a reasonable expectation of  
28 privacy in their personalized home IP addresses, MAC addresses, product serial codes,

1 device and router names, program viewing behavior, and other information collected and  
2 disseminated by Defendants.

3 195. Defendants intentionally, willfully, and knowingly intruded into, and  
4 disclosed, Plaintiffs and Class Members' personal information, including, but not limited  
5 to, their unique IP addresses, MAC addresses, product serial codes, device and router  
6 names, and program viewing behavior.

7 196. Defendants' intrusion into Plaintiffs and Class Members' personal  
8 information, and subsequent dissemination of such personal information for financial gain  
9 without their informed consent or knowledge, is highly offensive to Plaintiffs and Class  
10 Members.

11 197. Defendants' intrusion into Plaintiffs and Class Members' personal  
12 information, and subsequent dissemination of such personal information for financial gain  
13 without their informed consent or knowledge, would be highly offensive to a reasonable  
14 person.

15 198. Defendants' intrusion into Plaintiffs and Class Members' personal  
16 information, and subsequent dissemination of such personal information for financial gain  
17 without their informed consent or knowledge is sufficiently serious and unwarranted as to  
18 constitute an egregious breach of social norms.

19 199. As a direct and proximate result of Defendants' intrusion into Plaintiffs and  
20 Class Members' personal information, and subsequent dissemination of such personal  
21 information for financial gain without their informed consent or knowledge, Plaintiffs and  
22 Class Members have suffered injury, including, but not limited to, being subjected to  
23 unconsented targeted advertising, privacy invasions, disclosure of their private  
24 information, mental suffering, and anguish.

25 200. Accordingly, Plaintiffs and Class Members are entitled to, and hereby seek,  
26 actual damages, punitive damages, reasonable attorneys' fees and costs under Cal. Civ.  
27 Proc. Code § 1021.5, and any and all further equitable relief that this Court deems  
28 appropriate.

201. Plaintiffs and Class Members are further entitled to, and hereby seek, an award for mental suffering and anguish. *See Miller v. Nat'l Broad. Co.*, 187 Cal. App. 3d 1463, 1485 (1986) (“One whose right of privacy is unlawfully invaded is entitled to recover substantial damages, although the only damages suffered by him resulted from mental anguish.”).

### **THIRTEENTH CAUSE OF ACTION**

#### **Unjust Enrichment**

#### **(On behalf of Plaintiffs and the Class Against Defendants)**

202. Plaintiffs and Class Members re-allege and incorporate by reference each and every allegation set forth in this Complaint with the same force and effect, and further allege as follows:

203. “Under California law, the elements of unjust enrichment are: (1) receipt of a benefit; and (2) unjust retention of the benefit at the expense of another.” *Valencia v. Volkswagen Grp. of Am. Inc.*, No. 15-CV-00887-HSG, 2015 WL 4747533, at \*8 (N.D. Cal. Aug. 11, 2015). *See also, Munoz v. MacMillan*, 195 Cal. App. 4th 648, 661 (2011) (“Common law principles of restitution require a party to return a benefit when the retention of such benefit would unjustly enrich the recipient; a typical cause of action involving such remedy is ‘quasi-contract.’”)

204. “When a plaintiff alleges unjust enrichment, a court may construe the cause of action as a quasi-contract claim seeking restitution.” *Astiana v. Hain Celestial Grp., Inc.*, 783 F.3d 753, 762 (9th Cir. 2015). “Whether termed unjust enrichment, quasi-contract, or quantum meruit, the equitable remedy of restitution when unjust enrichment has occurred “is an obligation (not a true contract [citation] ) created by the law without regard to the intention of the parties, and is designed to restore the aggrieved party to his or her former position by return of the thing or its equivalent in money.” *F.D.I.C. v. Dintino*, 167 Cal. App. 4th 333, 346 (2008).

205. Plaintiffs and Class Members conferred non-gratuitous benefits upon Defendants in the form of collected viewing data and profits derived from the

1 dissemination of Plaintiffs and Class Members' personal information for targeted  
2 marketing.

3 206. Defendants accepted or retained such non-gratuitous benefits with full  
4 knowledge that Plaintiffs and Class Members did not consent to have their personal  
5 information disseminated to third parties for targeted marketing or financial gain.  
6 Defendants have been unjustly enriched in retaining the revenues derived from Plaintiffs  
7 and Class Members' purchases of the Vizio Smart TVs with integrated Smart Interactivity  
8 tracking technology, which retention under these circumstances is unjust and inequitable  
9 because Defendants misrepresented the facts concerning the nature, qualities, and  
10 characteristics of the Vizio Smart TVs and disseminated Plaintiffs and Class Members'  
11 personal information without their informed consent or knowledge.

12 207. Plaintiffs and Class Members would not have purchased the Vizio Smart TVs,  
13 or would not have paid as much for them, had they known that the Vizio Smart TVs track,  
14 monitor, collect, and disseminate their personal information to third parties for financial  
15 gain without the informed consent or knowledge of Plaintiffs and Class Members, and in  
16 violation of their statutorily protected privacy rights. However, Plaintiffs and Class  
17 Members would still be interested in potentially purchasing the Vizio Smart TVs in the  
18 future if they were represented properly and truthfully.

19 208. As a direct and proximate result of Defendants' false and/or misleading  
20 representations, assertions of fact, omissions of material fact, non-disclosures, and  
21 collection and dissemination of private information, Plaintiffs and Class Members have  
22 suffered injury, including, but not limited to, monetary loss in connection with purchases  
23 of products they may not have purchased absent Defendants' unlawful conduct, as alleged  
24 herein.

25 209. Because Defendants' retention of the non-gratuitous benefits conferred on  
26 them by Plaintiffs and Class Members would be unjust and inequitable, Plaintiffs and Class  
27 Members are entitled to, and hereby seek, disgorgement and restitution of wrongful profits,  
28 revenue, and benefits conferred upon Defendants in a manner established by this Court.

210. Plaintiffs and Class Members are further entitled to, and hereby seek, reasonable attorneys' fees and costs under Cal. Civ. Proc. Code § 1021.5, as well as any and all further equitable relief that this Court deems appropriate.

## **VII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs and Class Members pray for judgment against Defendants, as follows:

1. An order certifying that this action is properly brought and may be maintained as a class action;
2. An order appointing Plaintiffs as class representatives of the putative Class, and the Law Offices of Ronald A. Marron, APLC as class counsel for the putative Class;
3. An order requiring Defendants to bear the costs of Class notice;
4. An order awarding restitution and disgorgement in such amount that Plaintiffs and Class Members paid to purchase the Vizio Smart TVs;
5. An order awarding Plaintiffs and Class Members actual damages, compensatory damages, punitive or treble damages, and such other relief as provided by the statutes cited herein;
6. An order awarding declaratory relief, as well as retrospective and prospective injunctive relief as permitted by law or equity, including an order enjoining Defendants continuing the unlawful practices as alleged herein;
7. An order compelling Defendant Vizio to engage in a corrective advertising campaign to inform the public concerning the true nature of the Vizio Smart TVs, including a recall of the falsely or misleadingly packaged Vizio Smart TVs;
8. An order awarding Plaintiffs their costs of suit, including reasonable attorneys' fees and pre- and post-judgment interest on such monetary relief;
9. An order requiring an accounting for, and imposition of, a constructive trust upon all monies Defendants received as a result of the misleading, fraudulent,



1 and unlawful conduct alleged herein; and

2 10. Such other relief to which Plaintiffs and Class Members may be entitled to at  
3 law or in equity.

4 **VIII. DEMAND FOR JURY TRIAL**

5 Plaintiffs hereby request a jury trial on all causes of action, claims, and issues so  
6 triable.

7  
8 Dated: December 16, 2015 /s/ Ronald A. Marron  
9 By: RONALD A. MARRON

10 **LAW OFFICES OF RONALD A.**  
11 **MARRON, APLC**  
12 SKYE RESENDES  
13 WILLIAM B. RICHARDS, JR.  
14 651 Arroyo Drive  
15 San Diego, California 92103  
16 Telephone: (619) 696-9006  
17 Facsimile: (619) 564-6665

18 *Attorneys for Plaintiffs and the Putative Class*  
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# **EXHIBIT 1**

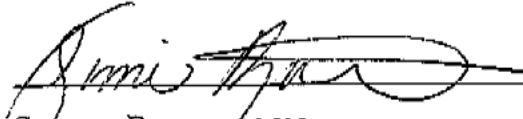
1 I, Simone Richardson, declare as follows:

2 1. I am a Plaintiff in this action. I make this affidavit pursuant to California Civil  
3 Code Section 1780(d).

4 2. The Complaint in this action is filed in a proper place for the trial of this action  
5 because Defendants are doing business in this county.  
6

7 I declare under penalty of perjury under the laws of Illinois and the United States that  
8 the foregoing is true and correct.

9  
10 Dated: 12/14, 2015

  
11 SIMONE RICHARDSON  
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**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET**

**I. (a) PLAINTIFFS** ( Check box if you are representing yourself ☐ )

Dieisha Hodges; and Simone Richardson

**DEFENDANTS** ( Check box if you are representing yourself ☐ )

Vizio, Inc.; and Cognitive Media Networks, Inc.

(b) County of Residence of First Listed Plaintiff Alameda

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Orange

(IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information.

Ronald A. Marron  
651 Arroyo Drive  
San Diego, CA 92103  
619-696-9006

Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information.

**II. BASIS OF JURISDICTION** (Place an X in one box only.)

- ☐ 1. U.S. Government Plaintiff ☒ 3. Federal Question (U.S. Government Not a Party)
- ☐ 2. U.S. Government Defendant ☐ 4. Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES**—For Diversity Cases Only  
(Place an X in one box for plaintiff and one for defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. ORIGIN** (Place an X in one box only.)

- ☒ 1. Original Proceeding ☐ 2. Removed from State Court ☐ 3. Remanded from Appellate Court ☐ 4. Reinstated or Reopened ☐ 5. Transferred from Another District (Specify) ☐ 6. Multi-District Litigation

**V. REQUESTED IN COMPLAINT: JURY DEMAND:** ☒ Yes ☐ No (Check "Yes" only if demanded in complaint.)**CLASS ACTION under F.R.Cv.P. 23:** ☒ Yes ☐ No☐ **MONEY DEMANDED IN COMPLAINT:** \$ \_\_\_\_\_**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

18 U.S.C Section 2710-Video Privacy Protection Act

**VII. NATURE OF SUIT** (Place an X in one box only.)

OTHER STATUTES	CONTRACT	REAL PROPERTY CONT.	IMMIGRATION	PRISONER PETITIONS	PROPERTY RIGHTS
<input type="checkbox"/> 375 False Claims Act	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 462 Naturalization Application	<b>Habeas Corpus:</b>	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 290 All Other Real Property	<b>TORTS</b>	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 140 Negotiable Instrument	<b>PERSONAL INJURY</b>	<b>PERSONAL PROPERTY</b>	<input type="checkbox"/> 530 General	<b>SOCIAL SECURITY</b>
<input type="checkbox"/> 450 Commerce/ICC Rates/Etc.	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 310 Airplane	<input checked="" type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<b>Other:</b>	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org.	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.)	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 863 DIWC/DIWW (405 (g))
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 340 Marine	<b>BANKRUPTCY</b>	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 865 RSI (405 (g))
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 560 Civil Detainee Conditions of Confinement	<b>FEDERAL TAX SUITS</b>
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<b>FORFEITURE/PENALTY</b>	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 891 Agricultural Acts	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<b>CIVIL RIGHTS</b>	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
<input type="checkbox"/> 893 Environmental Matters	<b>REAL PROPERTY</b>	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 690 Other	
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 441 Voting	<b>LABOR</b>	
<input type="checkbox"/> 896 Arbitration	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 710 Fair Labor Standards Act	
<input type="checkbox"/> 899 Admin. Procedures Act/Review of Appeal of Agency Decision	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 720 Labor/Mgmt. Relations	
<input type="checkbox"/> 950 Constitutionality of State Statutes		<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 445 American with Disabilities-Employment	<input type="checkbox"/> 740 Railway Labor Act	
			<input type="checkbox"/> 446 American with Disabilities-Other	<input type="checkbox"/> 751 Family and Medical Leave Act	
			<input type="checkbox"/> 448 Education	<input type="checkbox"/> 790 Other Labor Litigation	
				<input type="checkbox"/> 791 Employee Ret. Inc. Security Act	

**FOR OFFICE USE ONLY:**

Case Number:

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET**

**VIII. VENUE:** Your answers to the questions below will determine the division of the Court to which this case will be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

<b>QUESTION A: Was this case removed from state court?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  If "no," skip to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question E, below, and continue from there.	<b>STATE CASE WAS PENDING IN THE COUNTY OF:</b> <input type="checkbox"/> Los Angeles, Ventura, Santa Barbara, or San Luis Obispo <input type="checkbox"/> Orange <input type="checkbox"/> Riverside or San Bernardino	<b>INITIAL DIVISION IN CACD IS:</b> Western Southern Eastern	
<b>QUESTION B: Is the United States, or one of its agencies or employees, a PLAINTIFF in this action?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  If "no," skip to Question C. If "yes," answer Question B.1, at right.	<b>B.1. Do 50% or more of the defendants who reside in the district reside in Orange Co.?</b> <i>check one of the boxes to the right</i> →  <b>B.2. Do 50% or more of the defendants who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.)</b> <i>check one of the boxes to the right</i> →	YES. Your case will initially be assigned to the Southern Division. <input type="checkbox"/> Enter "Southern" in response to Question E, below, and continue from there.  <input type="checkbox"/> NO. Continue to Question B.2.  YES. Your case will initially be assigned to the Eastern Division. <input type="checkbox"/> Enter "Eastern" in response to Question E, below, and continue from there.  <input type="checkbox"/> NO. Your case will initially be assigned to the Western Division. <input type="checkbox"/> Enter "Western" in response to Question E, below, and continue from there.	
<b>QUESTION C: Is the United States, or one of its agencies or employees, a DEFENDANT in this action?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  If "no," skip to Question D. If "yes," answer Question C.1, at right.	<b>C.1. Do 50% or more of the plaintiffs who reside in the district reside in Orange Co.?</b> <i>check one of the boxes to the right</i> →  <b>C.2. Do 50% or more of the plaintiffs who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.)</b> <i>check one of the boxes to the right</i> →	YES. Your case will initially be assigned to the Southern Division. <input type="checkbox"/> Enter "Southern" in response to Question E, below, and continue from there.  <input type="checkbox"/> NO. Continue to Question C.2.  YES. Your case will initially be assigned to the Eastern Division. <input type="checkbox"/> Enter "Eastern" in response to Question E, below, and continue from there.  <input type="checkbox"/> NO. Your case will initially be assigned to the Western Division. <input type="checkbox"/> Enter "Western" in response to Question E, below, and continue from there.	
<b>QUESTION D: Location of plaintiffs and defendants?</b>  Indicate the location(s) in which 50% or more of <i>plaintiffs who reside in this district</i> reside. (Check up to two boxes, or leave blank if none of these choices apply.)  Indicate the location(s) in which 50% or more of <i>defendants who reside in this district</i> reside. (Check up to two boxes, or leave blank if none of these choices apply.)	<b>A.</b> Orange County	<b>B.</b> Riverside or San Bernardino County	<b>C.</b> Los Angeles, Ventura, Santa Barbara, or San Luis Obispo County
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>D.1. Is there at least one answer in Column A?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No  If "yes," your case will initially be assigned to the SOUTHERN DIVISION.  Enter "Southern" in response to Question E, below, and continue from there.  If "no," go to question D2 to the right. →	<b>D.2. Is there at least one answer in Column B?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No  If "yes," your case will initially be assigned to the EASTERN DIVISION.  Enter "Eastern" in response to Question E, below.  If "no," your case will be assigned to the WESTERN DIVISION.  Enter "Western" in response to Question E, below. ↓		
<b>QUESTION E: Initial Division?</b>  Enter the initial division determined by Question A, B, C, or D above: →	<b>INITIAL DIVISION IN CACD</b>  Southern		
<b>QUESTION F: Northern Counties?</b>  Do 50% or more of plaintiffs or defendants in this district reside in Ventura, Santa Barbara, or San Luis Obispo counties? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET**IX(a). IDENTICAL CASES:** Has this action been previously filed in this court?☒ NO ☐ YES

If yes, list case number(s): \_\_\_\_\_

**IX(b). RELATED CASES:** Is this case related (as defined below) to any civil or criminal case(s) previously filed in this court?☐ NO ☒ YES

If yes, list case number(s): 8:15-cv-01860-JLS-KES; and 8:15-cv-01984-AB-AFM

**Civil cases** are related when they (check all that apply):

- ☒ A. Arise from the same or a closely related transaction, happening, or event;
- ☒ B. Call for determination of the same or substantially related or similar questions of law and fact; or
- ☒ C. For other reasons would entail substantial duplication of labor if heard by different judges.

Note: That cases may involve the same patent, trademark, or copyright is not, in itself, sufficient to deem cases related.

**A civil forfeiture case and a criminal case** are related when they (check all that apply):

- ☐ A. Arise from the same or a closely related transaction, happening, or event;
- ☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
- ☐ C. Involve one or more defendants from the criminal case in common and would entail substantial duplication of labor if heard by different judges.

**X. SIGNATURE OF ATTORNEY****(OR SELF-REPRESENTED LITIGANT):** s/ Ronald A. Marron

DATE: 12/16/2015

**Notice to Counsel/Parties:** The submission of this Civil Cover Sheet is required by Local Rule 3-1. This Form CV-71 and the information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. For more detailed instructions, see separate instruction sheet (CV-071A).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))