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*\*Pro hac vice admission to be sought*

*Attorneys for Plaintiff and the Putative Class*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

PALMA REED, individually and on behalf  
of all others similarly situated,

*Plaintiff,*

v.

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

*Defendants.*

Case No.

**COMPLAINT FOR:**

- 1. Violations of the Video Privacy Protection Act, 18 U.S.C. § 1710;**
- 2. Violations of Cal. Civ. Code § 1799.3;**
- 3. Violations of Cal. Civ. Code §§ 1750 *et seq.*;**
- 4. Violations of Cal. Bus. & Prof. Code §§ 17200, *et seq.*;**
- 5. Violations of Cal. Bus. & Prof. Code §§ 17500, *et seq.*;**
- 6. Fraudulent Omission;**
- 7. Negligent Omission; and**
- 8. Unjust Enrichment.**

**DEMAND FOR JURY TRIAL**

**CLASS ACTION**

1 Plaintiff Palma Reed (“Plaintiff” or “Reed”) brings this class action complaint  
2 (“Complaint”) against Defendants Cognitive Media Networks, Inc. (“Cognitive”) and Vizio, Inc.,  
3 (“Vizio”) (together, “Defendants”)<sup>1</sup> based on their inclusion of tracking software on their high-  
4 definition and internet connected televisions (“Smart TVs”). Plaintiff, for her Complaint, alleges as  
5 follows upon personal knowledge as to herself and her own acts and experiences, and, as to all other  
6 matters, upon information and belief, including investigation conducted by her attorneys.

### 7 NATURE OF THE ACTION

8 1. Vizio is one of the leading manufacturers, distributors, and sellers of Smart TVs,  
9 selling millions per year. The Smart TVs Vizio markets offer consumers the ability to watch  
10 traditional television via cable or antenna, to connect devices such as Blu-ray or DVD players, and  
11 to connect to the internet to view movies and shows online and to interact with dozens of  
12 applications.

13 2. Unfortunately, Vizio partnered with Cognitive to secretly install invasive tracking  
14 software on its Smart TVs. Defendants’ tracking software monitors the shows and media being  
15 watched and continuously reports back to Defendant Cognitive’s servers. Worse, Defendants’  
16 tracking software regularly performs scans of users’ home network to collect identifying  
17 information. Defendants use the network-scan information to link collected viewing histories with  
18 particular households, and perhaps, even particular people.

19 3. Average consumers in the market for Smart TVs lack the requisite technical  
20 expertise to uncover Defendants’ tracking software on their own. Instead, they rely on Defendants  
21 to truthfully and transparently disclose the inclusion of the tracking software. They didn’t.

22 4. Rather, Defendants “opted in” hundreds of thousands of consumers into their  
23 invasive monitoring program. As such, and because Defendants did not disclose the existence of (or  
24 obtain consent to use) their tracking software, hundreds of consumers have been harmed because

25 <sup>1</sup> As alleged more fully below, Defendants acted jointly in the installation and operation of  
26 their tracking software. Moreover, Defendant Vizio is the parent company of Cognitive. As such,  
27 where referring to “Defendants” collectively, Plaintiff alleges the same facts against Vizio and  
28 Cognitive unless otherwise specified. Every reference to “Defendants” shall be construed to include  
all Defendants jointly and acting in concert, unless a particular Defendant is identified by name.

1 they bought Vizio Smart TVs that invade their privacy and surreptitiously track their activities.

2 5. Accordingly, this putative class action lawsuit seeks (i) to prevent Defendants from  
3 continuing to operate their Smart TV tracking software, and (ii) actual damages for those who  
4 purchased Vizio Smart TVs.

### 5 **PARTIES**

6 6. Plaintiff Palma Reed is a natural person and citizen of the State of California.

7 7. Defendant Cognitive Media Networks, Inc., is a California corporation with its  
8 principal place of business located at 1663 Mission Street, San Francisco, California 94103.  
9 Cognitive does business throughout the United States and the State of California, including in this  
10 District.

11 8. Defendant Vizio, Inc., is a California corporation with its principal place of business  
12 located at 39 Tesla, Irvine, California 92618. Vizio does business throughout the United States and  
13 the State of California, including in this District.

### 14 **JURISDICTION AND VENUE**

15 9. This Court has jurisdiction over the subject matter of this action pursuant to 28  
16 U.S.C. § 1331 as this action arises under the VPPA, which is a federal statute. Furthermore, the  
17 Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2), because (i) at least one  
18 member of the Class is a citizen of a different state than the Defendants, (ii) the amount in  
19 controversy exceeds \$5,000,000, exclusive of interests and costs, and (iii) none of the exceptions  
20 under that subsection apply to this action.

21 10. This Court has personal jurisdiction over Defendants because Defendants conduct  
22 business in California, are headquartered in California, and because the events giving rise to this  
23 lawsuit occurred, in substantial part, in California.

24 11. Venue is proper in the United States District Court for the Northern District of  
25 California pursuant to 28 U.S.C. § 1391(b) because Defendant Cognitive maintain its headquarters  
26 in this District, and Defendant Vizio conducts significant business in this District.

## INTRADISTRICT ASSIGNMENT

12. Pursuant to Civil Local Rule 3-2(e), this case shall be assigned to the San Francisco Division.

## FACTUAL BACKGROUND

### **I. An Introduction to Defendants and the Vizio Smart TVs**

13. Defendant Cognitive Media Networks, Inc., is an advertising company that provides “Automatic Content Recognition” software for televisions with integrated internet capabilities (i.e., Smart TVs). Cognitive’s software is used to determine what viewers are watching in real-time. The video viewing habits collected through Cognitive’s software is ultimately provided to third-party advertisers and content providers that aim to display custom and targeted advertisements to consumers.

14. Defendant Vizio is a leading manufacturer of Smart TVs. With over three billion dollars in annual revenues, Vizio has captured approximately 35% of the Smart TV market in the United States.<sup>2</sup> Vizio has partnered with Cognitive to use its content-recognition software and, in August of 2015, Vizio purchased a controlling stake in Cognitive for approximately \$50 million.<sup>3</sup>

15. As is expected, Vizio’s televisions allow consumers to watch visual content in myriad ways. Each Smart TV is equipped with a variety of input options that are designed to accept video content, including HDMI connections and coaxial (i.e., cable TV or antenna) connectors.

16. Vizio’s Smart TVs expand on traditional television functionality and include internet connectivity through wireless networking (“Wifi”). Defendant Vizio designed its Smart TVs to utilize internet access through its Vizio Internet App and Vizio Internet App Plus (“VIA” and “VIA Plus”, respectively) software services. With VIA and VIA Plus, Defendant Vizio provides a means for consumers to watch movies and TV shows, listen to music, get weather and news information, and access other applications, all on demand.

17. In a recent public filing, Vizio states that it “believes that our platform [i.e., the

<sup>2</sup> Vizio, Inc., *Prospectus (Form S-1)*, at 19 (October 22, 2015) (“Prospectus”). Excerpts of the Prospectus are attached hereto as Exhibit A.

<sup>3</sup> *Id.* at 31.

Smart TV platform], which enables ease of discovery and access to digital content for television viewers, creates the opportunity to deliver and monetize additional services relating to [the video on demand] market.”<sup>4</sup>



(**Figure 1**, showing Vizio’s Smart TV functionality that is displayed on its TV’s packaging.)

18. As Figure 1 shows, Vizio pre-installs many video (and audio) applications on its Smart TVs, including Netflix, YouTube, and Amazon Instant Video. Absent the applications provided by Vizio consumers would have to purchase additional devices to view videos from those services.

19. The remote that ships with Vizio Smart TVs also includes shortcuts to access certain applications provided by Vizio, such as Amazon Instant Video and Netflix. *See Figure 2*, on the next page.

<sup>4</sup> *Id.* at 13.



(Figure 2.)

20. Indeed, consumers pay a premium for access to Vizio’s Smart TV functionality and expect (and paid for) continued access to the videos and services offered through the Smart TV functionality. Unfortunately, Vizio and Cognitive partnered to pre-install “Automatic Content Recognition” software (the “Tracking Software”) on all Vizio-branded Smart TVs without first obtaining consumers’ consent.

## **II. Defendants Secretly Monitor What Consumers Watch and Scan Home Networks for Identifying Information.**

21. A detailed analysis of Defendants’ Tracking Software reveals that it monitors, in real time, what consumers are watching, scans home networks to capture consumers’ identifying information, and reports back to servers owned and operated by Cognitive. Defendants then disclose the collected information to third-party data brokers and advertisers. At no time, however, do Defendants disclose their tracking activities, nor do they ever obtain consent. Instead, they automatically opt-in everyone into their invasive monitoring program.

### **A. Defendants’ Tracking Software monitors what consumers are watching.**

22. As introduced above, Defendants worked together to pre-install the Tracking Software on millions of Vizio branded Smart TVs. A technical inspection of the network traffic reveals that the Smart TVs are communicating with Defendant Cognitive’s servers. But because Defendants’ programmed the Tracking Software to use encryption, the contents of those

communications were obfuscated and unknown. In recent SEC filing, however, Defendant Vizio admitted that the encrypted communications contain particularized details of what consumers are watching.

23. Through the user of an interception proxy—a computer forensics analysis tool—the communications between a Vizio Smart TV and Defendant Cognitive’s servers can be identified. Figure 3 is a screenshot of the network traffic captured from a Vizio Smart TV with the Tracking Software installed. There, the Smart TV (identifiable by its IP address of 192.168.1.41) regularly communicates with “control.tvinteractive.tv” (identifiable by its IP address of 54.235.185.119), which is a webserver owned and operated by Defendant Cognitive<sup>5</sup> and over which Defendant Vizio has ultimate control. But although it’s clear the Smart TV is communicating with Defendants, the contents of the communications are encrypted and undecipherable.

| Source         | Src Port | Destination    | Dst Port | Protocol | Length | Info                                |
|----------------|----------|----------------|----------|----------|--------|-------------------------------------|
| 192.168.1.41   | 59983    | 54.235.185.119 | 443      | TCP      | 74     | 59983-443 [SYN] Seq=0 win=14600 Len |
| 54.235.185.119 | 443      | 192.168.1.41   | 59983    | TCP      | 74     | 443-59983 [SYN, ACK] Seq=0 Ack=1 wi |
| 192.168.1.41   | 59983    | 54.235.185.119 | 443      | TCP      | 66     | 59983-443 [ACK] Seq=1 Ack=1 win=146 |
| 192.168.1.41   | 59983    | 54.235.185.119 | 443      | TLSv1    | 291    | Client Hello                        |
| 54.235.185.119 | 443      | 192.168.1.41   | 59983    | TCP      | 66     | 443-59983 [ACK] Seq=1 Ack=226 win=1 |
| 54.235.185.119 | 443      | 192.168.1.41   | 59983    | TCP      | 1514   | [TCP Previous segment not captured] |
| 54.235.185.119 | 443      | 192.168.1.41   | 59983    | TCP      | 1266   | [TCP segment of a reassembled PDU]  |
| 54.235.185.119 | 443      | 192.168.1.41   | 59983    | TCP      | 1184   | [TCP segment of a reassembled PDU]  |
| 54.235.185.119 | 443      | 192.168.1.41   | 59983    | TLSv1    | 1514   | [TCP out-of-order] Server Hello     |
| 192.168.1.41   | 59983    | 54.235.185.119 | 443      | TCP      | 78     | [TCP Dup ACK 63134#1] 59983-443 [AC |
| 192.168.1.41   | 59983    | 54.235.185.119 | 443      | TCP      | 78     | [TCP Dup ACK 63134#2] 59983-443 [AC |
| 192.168.1.41   | 59983    | 54.235.185.119 | 443      | TCP      | 78     | [TCP Dup ACK 63134#3] 59983-443 [AC |
| 192.168.1.41   | 59983    | 54.235.185.119 | 443      | TCP      | 66     | 59983-443 [ACK] Seq=226 Ack=5215 wi |
| 192.168.1.41   | 59983    | 54.235.185.119 | 443      | TLSv1    | 200    | Client Key Exchange, Change Cipher  |
| 54.235.185.119 | 443      | 192.168.1.41   | 59983    | TLSv1    | 1514   | [TCP out-of-order] Server Hello     |
| 192.168.1.41   | 59983    | 54.235.185.119 | 443      | TCP      | 78     | [TCP Dup ACK 63144#1] 59983-443 [AC |
| 54.235.185.119 | 443      | 192.168.1.41   | 59983    | TLSv1    | 125    | Change Cipher Spec, Encrypted Hands |
| 192.168.1.41   | 59983    | 54.235.185.119 | 443      | TCP      | 66     | 59983-443 [ACK] Seq=360 Ack=5274 wi |
| 192.168.1.41   | 59983    | 54.235.185.119 | 443      | TLSv1    | 535    | Application Data                    |
| 54.235.185.119 | 443      | 192.168.1.41   | 59983    | TLSv1    | 327    | Application Data                    |
| 192.168.1.41   | 59983    | 54.235.185.119 | 443      | TLSv1    | 103    | Encrypted Alert                     |

(Figure 3, showing encrypted communications highlighted in black.)

24. Recently, however, Defendant Vizio revealed in its SEC filings that these encrypted communications contain “most content displayed on [Vizio Smart TV] screens, including content from cable and satellite providers, streaming devices and gaming consoles.”<sup>6</sup> Defendant goes on to

<sup>5</sup> *Free online network tools - traceroute, nslookup, dig, whois lookup, ping - IPv6*, [http://centralops.net/co/DomainDossier.aspx?addr=control.tvinteractive.tv&dom\\_dns=1&dom\\_whois=1&net\\_whois=1](http://centralops.net/co/DomainDossier.aspx?addr=control.tvinteractive.tv&dom_dns=1&dom_whois=1&net_whois=1) (last visited Nov. 13, 2015) (reporting the following administrator of control.tvinteractive.tv as: Registry Admin Name: Zeev Neumeier; Admin Organization: Cognitive Media Networks Inc.; Admin Street: 1663 Mission st; Admin Street: Suite 520; Admin City: San Francisco; Admin State/Province: California; Admin Postal Code: 94103; Admin Country: United States.)

<sup>6</sup> Prospectus, at 10.



1 state that it collects “up to 100 billion viewing points daily” about “highly specific viewing data.”<sup>7</sup>

2 25. Indeed, the information Defendants collect is specific enough to determine what  
3 show or movie is being watched and even, what video game is being played. Specifically, Vizio  
4 states that it:

5 collect[s] meaningful viewing behavior data by matching attributes of content displayed  
6 on the screens of ... connected Smart TVs to our database of existing content, such as  
7 movies, TV shows and games. We must continue to develop and update this database and  
8 to match the content in this database to content displayed on [Smart TVs]. The process of  
developing this database is ongoing and incomplete, particularly with respect to content  
broadcast by local television stations. Delays in developing this database of content may  
decrease the value of our [Tracking Software] data services.<sup>8</sup>

9 **B. Defendants’ Tracking Software conducts invasive scans of consumers’ home**  
10 **networks.**

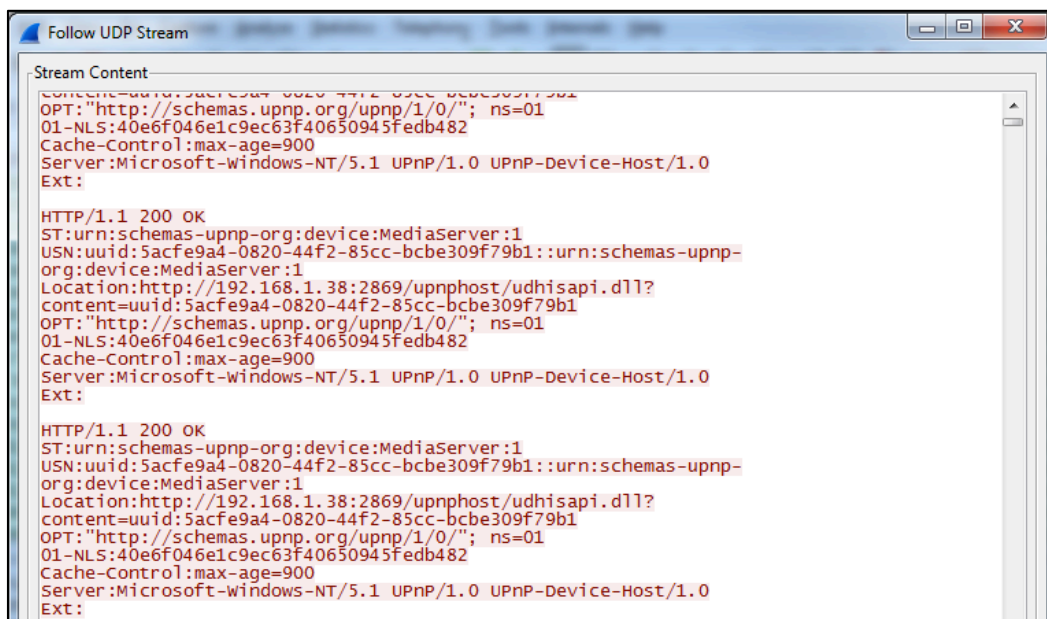
11 26. In addition to monitoring video viewing activity, Defendants programmed their  
12 Tracking Software to continuously scan consumers’ home computer networks. Defendants  
13 programmed the Tracking Software to scan consumers’ home networks to capture information that  
14 can be used to identify the people whose viewing activity was captured. That is, although  
15 Defendants know *someone* is watching a particular show or movie, they require additional  
16 information to assign the viewing information to a specific person.

17 27. Using an interception proxy once more, Defendants’ Tracking Software is revealed.  
18 Figure 4 shows a portion of the Tracking Software’s scan for each and every device connected to  
19 the consumer’s home network. In the selected portion shown in Figure 4, the Tracking Software is  
20 scanning for a device with the IP address of 192.168.1.38.

21  
22  
23  
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25  
26  
27 <sup>7</sup> *Id.* at 17.

28 <sup>8</sup> *Id.* at 46.





(Figure 4.)

28. Through the scan, Defendants' Tracking Software obtains information about a particular device. Figure 5 shows the results of one such scan. There, the Tracking Software scanned for a device with an IP address of 192.168.1.70 and obtained detailed information specific to that device.



(Figure 5.)

29. Indeed, Figure 6 shows just some of the details Defendants' Tracking Software obtained about just *one* device:



(Figure 6.)

30. As can be seen, Defendants' Tracking Software obtains products' names and model numbers along with potentially sensitive data as product serial numbers and device identifiers. Beyond that, Defendants' Tracking Software obtains computer names (e.g., "Jane Doe's Office Computer"), devices' unique MAC addresses and details about consumers' Wifi networks.<sup>9</sup> Normally, such information is locked behind consumers' firewalls and home network privacy settings. But by secretly installing their Tracking Software on devices consumers put in their homes and interact with daily, Defendants' have gained access to a trove of detailed information.

<sup>9</sup> A MAC address is the Media Access Control address of network-connected devices that is unique and persistent (*i.e.*, it doesn't change) string of letters and number assigned to a particular device. Companies have tried to collect MAC addresses *en masse* and without authorization to create detailed databases of consumers, their locations, and their habits. *See FTC 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/> (last visited Nov. 13, 2015).

**C. Defendants disclose collected information to third-party data brokers and advertisers.**

31. In its recent SEC filings, Defendant Vizio admits that it discloses information collected by the Tracking Software to various third parties. Indeed, Vizio explains that it installed the Tracking Software so that it can use “real-time viewing behavior data to deliver more effective, targeted advertising campaigns. ... [T]he ability to collect and analyze real-time viewing data will enable measurable and increased return on marketing investment, enhance the value of television advertising, and drive increased television advertising spend.”<sup>10</sup>

32. To facilitate the targeted advertising, Defendants have to know accurate and particular information about consumers. Defendant explains that it compiles the information collected through the Tracking Software and discloses the information data brokers to “enhance” the information. That is, Defendants may know from the Tracking Software that an individual watched *Scandal* on a Thursday at 8:00 pm pacific time with an IP address of 96.90.87.4 and a Wifi router MAC address of 04:bd:88:7a:1c:c1, but they want to know the individual’s name, address, and other demographic information.

33. By contracting with a data broker, Defendant Vizio obtains that data. Vizio sends the information it has to the broker. The broker then matches and links that information to consumers in its database by linking across, for instance, IP address or Wifi router MAC address. The broker may have in its table that Jane Doe, with a home address of 123 Main Street, is linked to a Wifi router with the same MAC address as provided (04:bd:88:71:1c:c1). The broker then appends that information to the data it received and sends the enhanced data back to Vizio.

34. With the enhanced data, Vizio now knows that it was Jane Doe at 123 Main Street that watched *Scandal* on a Thursday at 8:00 pm pacific time with an IP address of 96.90.87.4 and a Wifi router MAC address of 04:bd:88:7a:1c:c1. Vizio then discloses certain of that information to media and data analytics companies, amongst others.

**D. Defendants do not obtain consumers’ consent to operate the Tracking Software.**

35. Despite invasively monitoring and tracking consumers through their Tracking

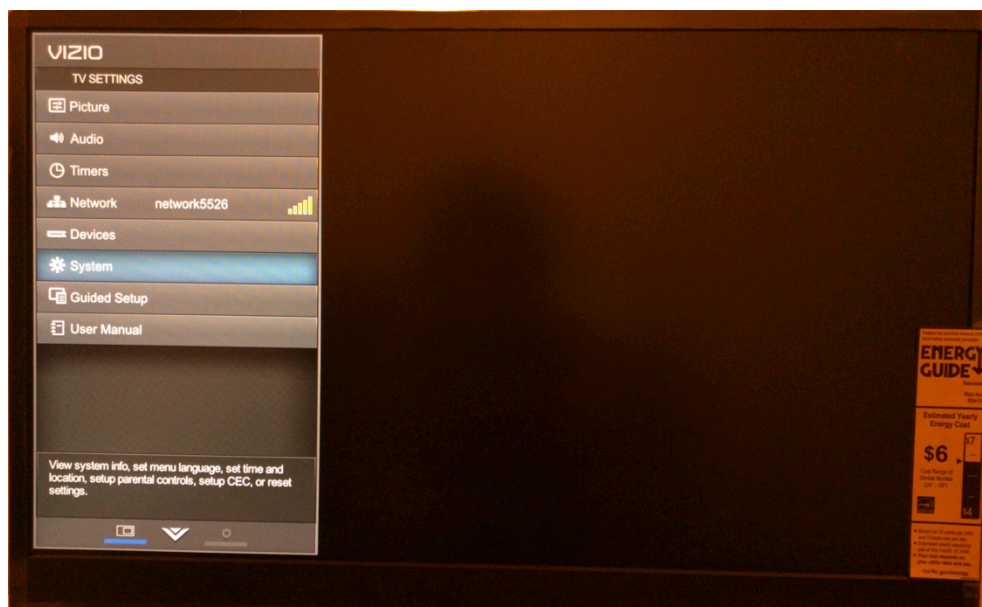
<sup>10</sup> *Prospectus*, at 31.

1 Software, Defendants never obtain consent nor do they disclose to consumers that the Tracking  
2 Software is installed on the Smart TVs. Instead, Defendants automatically “opts in” everyone.

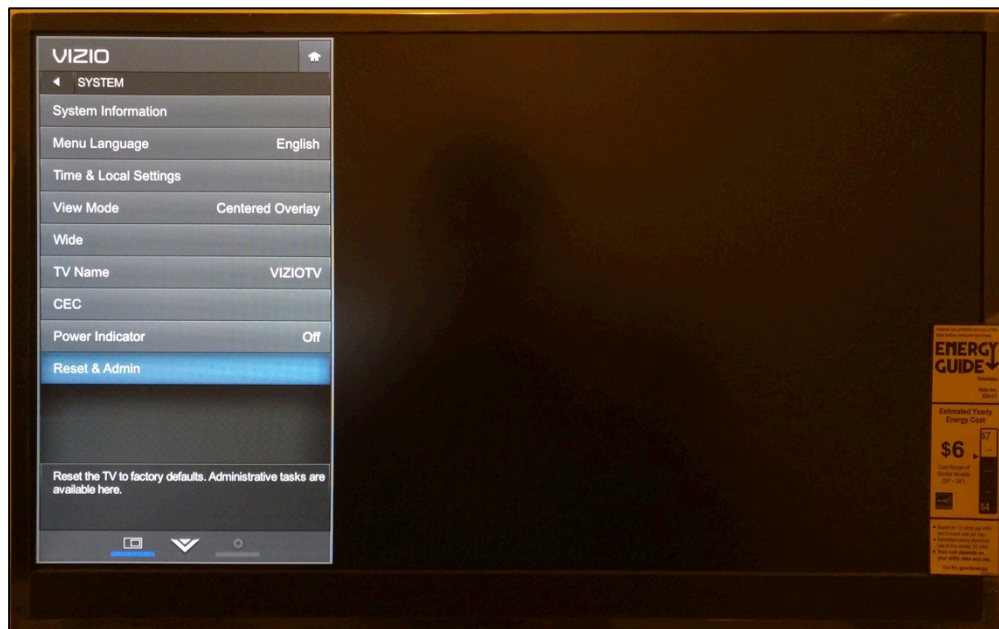
3 36. In its SEC filings, Vizio acknowledges that “some individuals may be reluctant or  
4 unwilling to connect to the Internet through our Smart TVs because they have concerns regarding  
5 the risks associated with data privacy and security. If the wider public perceives data privacy or  
6 security concerns with respect to our Smart TVs, this could negatively impact the growth potential  
7 for the net sales of our Smart TVs and our Inscape data services.”

8 37. Nevertheless, Defendants went to great lengths to conceal that the Smart TVs have  
9 the Tracking Software installed. For example, Defendants do not disclose the existence of the  
10 Tracking Software during a Vizio Smart TV’s setup, in advertising, or on the products’ packaging.  
11 Nor do Defendants alert consumers while they’re being monitored about the Tracking Software or  
12 require consumers to agree to any terms or privacy policy relevant to the Tracking Software.

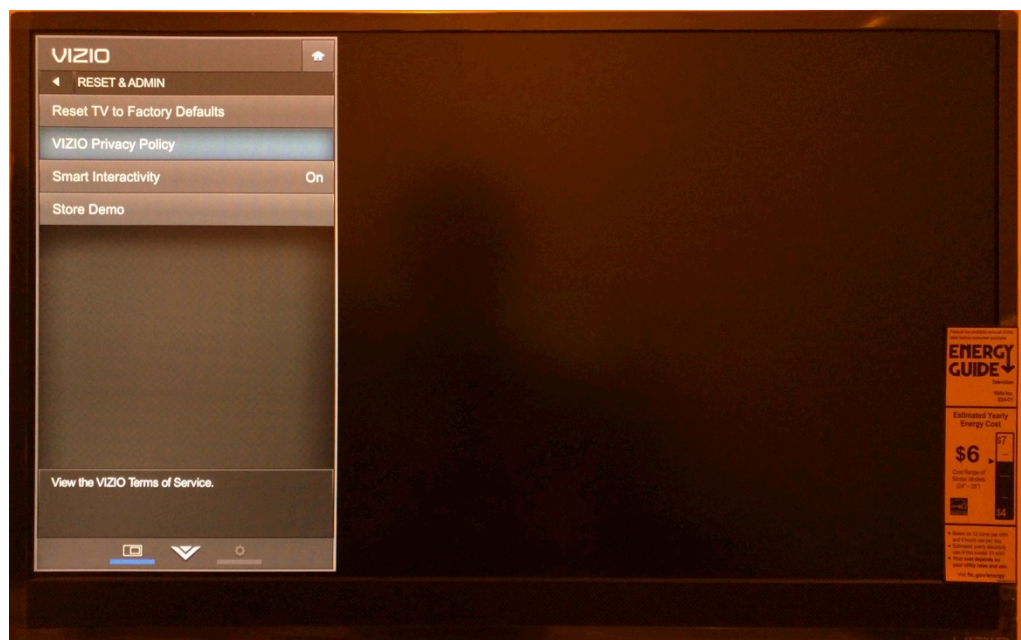
13 38. Instead, Defendants hid references about its Tracking Software in obscure settings  
14 menus, knowing that no consumers would uncover them. Indeed, Defendants hid their privacy  
15 policy that purportedly governs how the Tracking Software collects data and how Defendants use  
16 the data deep in the Smart TVs’ menus. Figures 7 through 10 show the steps needed to access that  
17 privacy policy.



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24  
25  
26  
27 (Figure 7, showing navigation to “System.”)  
28

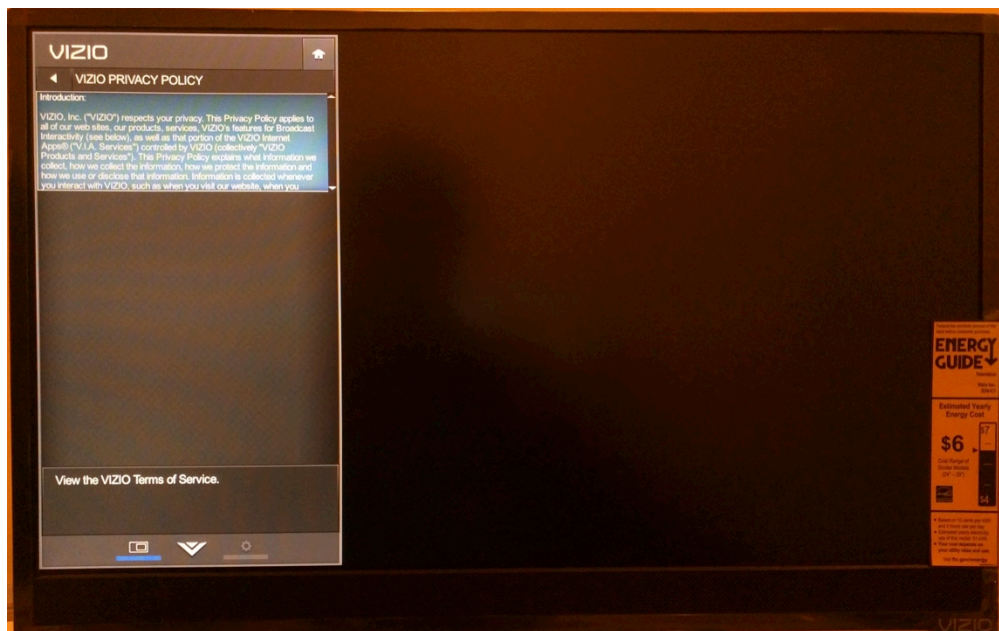


(Figure 8, showing navigation to “Reset & Admin.”)



(Figure 9, showing navigation to “VIZIO Privacy Policy” described as “the VIZIO Terms of Service.”)

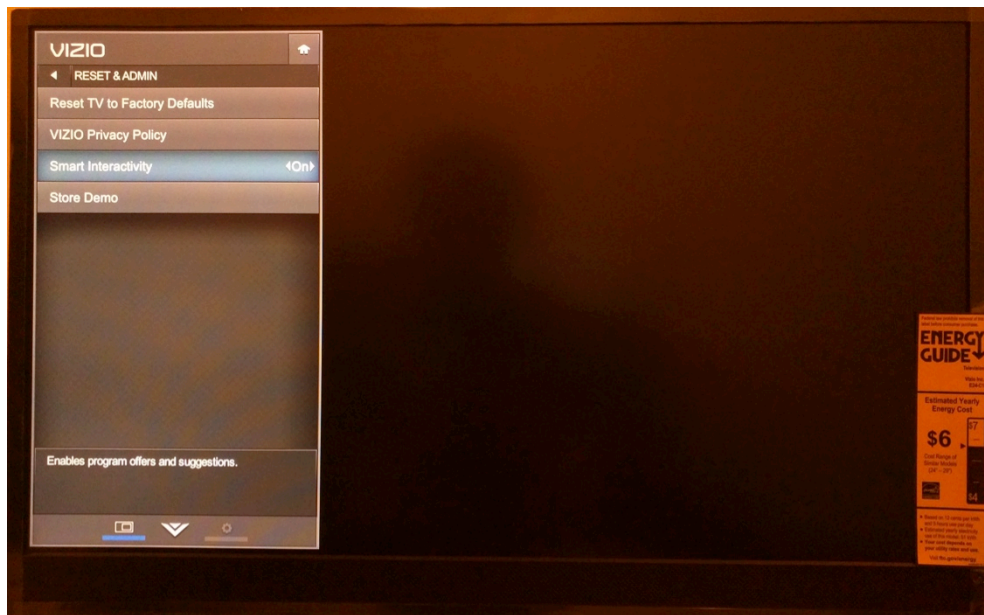




(Figure 10, showing the “VIZIO Privacy Policy” as viewable on a Vizio Smart TV.)

39. As the figures show, even if a consumer somehow stumbled upon the privacy policy, Defendants intentionally obstruct consumers’ ability to read and comprehend (let alone consent to) what Defendants’ Tracking Software does. As Figure 10 demonstrates, Defendants restricted the privacy policy to be viewable on only a small fraction of the total screen, requiring consumers to stand inches away from their TVs to view complex and dense legal jargon (that is displayed in white text against a light blue background).

40. Incredibly, and despite selling televisions with as much as 120-inches of ultra-high-definition television space that they could use, Defendants attempt to further conceal their Tracking Software by making it impossible for consumers to read the privacy policy.



(Figure 11.)

41. Moreover, while Defendants included a supposed “opt-out” feature for the Tracking Software, they do not provide consumers with any information about what the feature that is “on” by default does. As Figure 11 shows, Defendants call the Tracking Software “Smart Interactivity,” set the default setting to “On,” and only state that it purportedly “Enables program offers and suggestions.” Notably, it fails to mention that “Smart Interactivity” tracks viewing habits, performs invasive scans of consumers’ home networks, and sends collected data back to Defendants in real time.

### III. Plaintiff Reed’s Experience.

42. On December 11, 2012, Plaintiff purchased a Vizio E320i Smart TV from a Costco near her home in Los Angeles, California for \$324.06, including an \$8.00 E-Waste Fee and 8.75% tax. On December 28, 2012, Plaintiff purchased a Vizio M420SL Smart TV from a Sam’s Club near her home in Los Angeles, California for \$606.83, including a \$10.00 E-Waste Fee and 8.75% tax.

43. Since purchasing the televisions, Plaintiff Reed has had both Smart TVs connected to her home wireless network and has used the Smart TVs to watch shows and movies, including through connected applications. At no time did she consent to the operation of Defendants’ Tracking Software. And, at no time did Defendants disclose to her that the Smart TVs had Defendants’ Tracking Software installed and operating.



44. Had she known that Defendants installed Tracking Software on her television she would not have purchased the Smart TVs. Accordingly, Plaintiff has suffered damages as the result of Defendants' installation of and operation of their Tracking Software.

### CLASS ALLEGATIONS

45. **Class Definition:** Plaintiff brings this action pursuant to Federal Rule of Civil Procedure 23(b)(2) and Rule 23(b)(3) on behalf of herself and a Class of similarly situated individuals defined as follows:

All individuals in the United States that purchased a Vizio Smart TV with Defendants' Tracking Software installed.

The following people are excluded from the Class: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendants, Defendants' subsidiaries, parents, successors, predecessors, and any entity in which the Defendants or their parents have a controlling interest and its current or former employees, officers and directors; (3) persons who properly execute and file a timely request for exclusion from the Class; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiff's counsel and Defendants' counsel; and (6) the legal representatives, successors, and assigns of any such excluded persons.

46. **Numerosity:** The exact number of members of the Class is unknown and is not available to Plaintiff at this time, but individual joinder in this case is impracticable. The Class likely consists of hundreds of thousands of individuals. Class members can be easily identified through Defendants' or their agents' records.

47. **Commonality and Predominance:** There are many questions of law and fact common to the claims of Plaintiff and the other members of the Class, and those questions predominate over any questions that may affect individual members of the Class. Common questions for the Class include but are not limited to the following:

- a) Whether Defendants disclosed that their Tracking Software was installed on the Vizio Smart TVs;
- b) Whether Defendant Vizio unlawfully disclosed and continues to unlawfully disclose consumers' personally identifiable information, including their video

viewing records, in violation of 18 U.S.C. § 2710(b);

- c) Whether Defendant Vizio unlawfully disclosed and continues to unlawfully disclose consumers' personally information or records, including records of their video viewing history, in violation of Cal. Civ. Code § 1799.3.
- d) Whether Defendant Vizio's disclosures were committed knowingly;
- e) Whether Defendants' conduct described herein was willful;
- f) Whether Defendants' conduct described herein constitutes a violation of California's Consumers Legal Remedies Act (Cal. Civ. Code. §§ 1750, *et seq.*);
- g) Whether Defendants' conduct described herein constitutes a violation of the Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*);
- h) Whether Defendant Vizio's conduct described herein constitutes a violation of the False Advertising Law (Cal. Bus. & Prof. Code §§ 17500, *et seq.*);
- i) Whether Defendant Vizio's conduct described herein constitutes fraudulent omission;
- j) Whether Defendant Vizio's conduct described herein constitutes negligent omission; and,
- k) Whether Defendants' conduct has caused them to be unjustly enriched.

48. **Typicality:** Plaintiff's claims are typical of the claims of the other members of the Class. Plaintiff and the Class sustained damages as a result of Defendants' uniform wrongful conduct during transactions with Plaintiff and the Class.

49. **Adequate Representation:** Plaintiff has and will continue to fairly and adequately represent and protect the interests of the Class, and she has retained counsel competent and experienced in complex litigation and class actions. Plaintiff has no interests antagonistic to those of the Class, and Defendants have no defenses unique to Plaintiff. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the members of the Class, and they have the resources to do so. Neither Plaintiff nor her counsel has any interest adverse to those of the

1 other members of the Class.

2       50.     **Policies Generally Applicable to the Class:** This class action is appropriate for  
3 certification because Defendants have acted or refused to act on grounds generally applicable to the  
4 Class, thereby requiring the Court's imposition of uniform relief to ensure compatible standards of  
5 conduct toward the members of the Class and making final injunctive relief appropriate with respect  
6 to the Class as a whole. Defendants' policies challenged herein apply and affect the members of the  
7 Class uniformly and Plaintiff's challenge of these policies hinges on Defendants' conduct with  
8 respect to the Class as a whole, not on facts or law applicable only to Plaintiff.

9       51.     **Superiority:** This class action is also appropriate for certification because class  
10 proceedings are superior to all other available methods for the fair and efficient adjudication of this  
11 controversy and joinder of all members of the Class is impracticable. The damages suffered by the  
12 individual members of the Class will likely be small relative to the burden and expense of  
13 individual prosecution of the complex litigation necessitated by Defendants' wrongful conduct.  
14 Thus, it would be virtually impossible for the individual members of the Class to obtain effective  
15 relief from Defendants' misconduct. Even if members of the Class could sustain such individual  
16 litigation, it would not be preferable to a class action because individual litigation would increase  
17 the delay and expense to all parties due to the complex legal and factual controversies presented in  
18 this Complaint. By contrast, a class action presents far fewer management difficulties and provides  
19 the benefits of single adjudication, economy of scale, and comprehensive supervision by a single  
20 court. Economies of time, effort, and expense will be fostered and uniformity of decisions will be  
21 ensured.

22       52.     Plaintiff reserves the right to revise the foregoing "Class Allegations" and "Class  
23 Definition" based on facts learned through additional investigation and in discovery.

24                               **FIRST CAUSE OF ACTION**  
25                               **Violations of the Video Privacy Protection Act**  
                                  **18 U.S.C. § 2710**  
26                               **(On Behalf of Plaintiff and the Class Against Defendant Vizio)**

27       53.     Plaintiff incorporates the foregoing allegations as if fully set forth herein.

28       54.     Defendant Vizio is a "video tape service provider[]" as defined by the VPPA because

1 it “engage[s] in the business, in or affecting interstate or foreign commerce, of rental, sale, or  
2 delivery or prerecorded video cassette tapes or similar audio visual materials,” 18  
3 U.S.C. § 2710(a)(4), by delivering videos (*i.e.*, “similar audio visual materials” under the VPPA’s  
4 definition) to consumers through its internet connected Smart TVs.

5 55. Specifically, and as detailed in Section I, Vizio facilitates the transmission of specific  
6 video titles to be made to consumers through its VIA and VIA Plus services that allows consumers  
7 to watch movies and shows, listen to music, and access applications on demand.

8 56. Plaintiff is a “consumer” as defined by the VPPA because she is a “renter, purchaser,  
9 or subscriber of goods or services from a video tape service provider,” namely Defendant Vizio. 18  
10 U.S.C. § 2710(a)(1). Specifically, Plaintiff purchased two televisions manufactured, marketed, and  
11 distributed by Defendant Vizio. Moreover, Plaintiff paid a premium for Defendant Vizio’s “smart  
12 TV” functionality. As such, she paid for (and Defendant Vizio intended to create) a continuing and  
13 ongoing relationship between herself and Defendant Vizio for access to premium “smart TV”  
14 features, including access to movies and television shows on demand.

15 57. Plaintiff has viewed many movies and television shows on her Smart TVs. During  
16 these occasions, Defendants’ Tracking Software collected information on the specific movies or  
17 shows she was watching, performed a scan of Plaintiff’s home network for unique identifiers (*e.g.*,  
18 computer names, MAC addresses, product serial numbers), and transmitted the collected  
19 information to Defendant Vizio.

20 58. Under the VPPA, the term “personally identifiable information” “includes  
21 information which identifies a person as having requested or obtained specific video materials or  
22 services from a video tape service provider.” 18 U.S.C. § 2710(a)(3). The definition’s usage of the  
23 word “includes” means that a more expansive reading of the term was expressly contemplated.

24 59. Defendant Vizio has disclosed and continues to disclose Plaintiff’s information to  
25 third parties. Defendant Vizio first discloses collected personally identifying information (“PII”) to  
26 third-party data brokers to “enhance” the information with other demographic information about  
27 Plaintiff, and then discloses the “enhanced” personally identifying information to advertisers to  
28

1 “generate meaningful revenue.”<sup>11</sup>

2 60. Defendant Vizio’s transmissions of Plaintiff’s PII to data brokers and advertisers  
3 constitutes “knowing[] disclosures” of Plaintiff’s “personally identifiable information” to a person  
4 as proscribed by the VPPA. 18 U.S.C. § 2710(a)(1).

5 61. At no time did Plaintiff ever provide Defendant Vizio with any form of consent—  
6 either written or otherwise—to collect her PII or to disclose her PII to third parties.

7 62. Nor were Defendant Vizio’s disclosures made in the “ordinary course of business” as  
8 the term is defined by the VPPA. In particular, the Defendant Vizio’s disclosures to data brokers  
9 and advertisers were not necessary for “debt collection activities, order fulfillment, request  
10 processing, [or] the transfer of ownership.” 18 U.S.C. § 2710(a)(2).

11 63. As a result of Defendant Vizio’s unlawful disclosures, Plaintiff and the Class have  
12 had their statutorily defined right to privacy violated. Plaintiff seeks an injunction prohibiting  
13 Defendant Vizio from collecting and then releasing her and the Class’s PII in the future, as well as  
14 the maximum statutory and punitive damages available under the VPPA. 18 U.S.C. § 2710(c).

15 **SECOND CAUSE OF ACTION**  
16 **Violations of Cal. Civ. Code § 1799.3**  
17 **(On Behalf of Plaintiff and the Class Against Defendant Vizio)**

18 64. Plaintiff incorporates by reference the foregoing allegations as if fully set forth  
19 herein.

20 65. California Civil Code § 1799.3(a) provides that “No person providing video  
21 recording sales or rental services shall disclose any personal information or the contents of any  
22 record, including sales or rental information, which is prepared or maintained by that person, to any  
23 person, other than the individual who is the subject of the record, without the written consent of that  
24 individual.”

25 66. Defendant Vizio is a “person providing video recording sales or rental services”  
26 because it facilitates the sale and rental of videos to consumers through its internet connected Smart  
27 TVs.

28 <sup>11</sup> Prospectus, at 10.

1           67.     None of the exemptions provided by Cal. Civ. Code § 1799.3 (b) apply.

2           68.     Defendant Vizio has disclosed and continues to disclose Plaintiff's personal  
3 information and the contents of records prepared or maintained by Vizio to third parties. Defendant  
4 Vizio first discloses collected personal information and contents of records to third-party data  
5 brokers to "enhance" information collected through the Tracking Software with other demographic  
6 information about Plaintiff. Defendant Vizio then discloses the "enhanced" personal information  
7 and contents of records to advertisers.

8           69.     At all times Defendant Vizio has acted willfully.

9           70.     At no time did Plaintiff provide Defendant Vizio with any form of consent allowing  
10 it to collect her personal information and viewing records, nor to disclose her personal information  
11 and viewing records to third parties.

12          71.     As a result of Defendant Vizio's unlawful disclosures, Plaintiff and the Class have  
13 had their statutorily defined right to privacy violated. Plaintiff seeks an injunction prohibiting  
14 Defendant Vizio from collecting and then disclosing her and the Class's personal information in the  
15 future, as well as the maximum statutory and punitive damages available under Cal. Civ. Code §  
16 1799.3(c)(1).

17                   **THIRD CAUSE OF ACTION**  
18                   **Violations of the Consumers Legal Remedies Act**  
19                   **Cal. Civ. Code §§ 1750, *et seq.***  
20                   **(On Behalf of Plaintiff and the Class Against Defendants)**

21          72.     Plaintiff incorporates by reference the foregoing allegations as if fully set forth  
22 herein.

23          73.     The Consumers Legal Remedies Act ("CLRA") applies to Defendants' actions and  
24 conduct as described herein because it extends to transactions that are intended to result, or which  
25 have resulted, in the sale of goods or services to consumers.

26          74.     Defendants are each a "person" as defined by Cal. Civ. Code § 1761(c).

27          75.     Plaintiff and each member of the Class are "consumers" as defined by Cal. Civ.  
28 Code § 1761(a).

          76.     Defendant Vizio's Smart TVs are "goods" within the meaning of Cal. Civ. Code §

1 1761(a).

2 77. As described herein, Defendants have engaged in deceptive practices, unlawful  
3 methods of competition, and/or unfair acts as defined by Cal. Civ. Code §§ 1750 *et seq.*, to the  
4 detriment of Plaintiff and the Class.

5 78. Defendants, acting with knowledge, intentionally and unlawfully brought harm upon  
6 Plaintiff and the Class by installing their Tracking Software on Vizio Smart TVs and collecting,  
7 without authorization, consumers' viewing habits.

8 79. Specifically, by not disclosing that their Tracking Software was installed on the  
9 Smart TVs, Defendants violated Cal. Civ. Code § 1750 in at least the following respects:

- 10 a. In violation of § 1770(5), by representing that the Smart TVs had  
11 characteristics, ingredients, uses, benefits, or quantities which they did not  
12 have;
- 13 b. In violation of § 1770(7), by representing that the Smart TVs were of a  
14 particular standard, quality, or grade of which they are not; and
- 15 c. In violation of § 1770(9), by advertising the Smart TVs with the intent not to  
16 sell its goods as advertised.

17 80. Defendants' unfair or deceptive acts or practices were capable of deceiving a  
18 substantial portion of the purchasing public.

19 81. Defendants did not disclose facts about their Tracking Software to consumers that  
20 purchased the Smart TVs because they knew consumers would not purchase the Smart TVs if they  
21 knew of the Tracking Software.

22 82. Defendants were under a duty to Plaintiff and the Class to disclose that the Smart  
23 TVs contained the Tracking Software because:

- 24 a. Defendants were in a superior position to know that the Tracking Software  
25 was installed on the Smart TVs;
- 26 b. Plaintiff and the Class could not reasonably have been expected to learn or  
27 discover that Defendants included the Tracking Software on the Smart TVs;  
28



1 c. Defendants knew that Plaintiff and the Class members could not reasonably  
2 have been expected to learn or discover that Defendants included the  
3 Tracking Software on the Smart TVs; and

4 d. Defendants knew that Plaintiff and Class members would not purchase the  
5 Smart TVs if they knew of the Tracking Software.

6 83. By failing to disclose that the Smart TVs contained the Tracking Software,  
7 Defendants have knowingly and intentionally concealed material facts and breached their duty not  
8 to do so.

9 84. The facts concealed or not disclosed by Defendants to Plaintiff and the Class,  
10 including that the Smart TVs contained the Tracking Software, are material in that a reasonable  
11 consumer would have considered them to be important in deciding whether or not to purchase the  
12 Smart TVs.

13 85. Plaintiff and the Class reasonably expected that their televisions would be free from  
14 Tracking Software.

15 86. The existence of Tracking Software on a television is a material term for the  
16 purchase of a television, and a primary reason to not purchase a particular television.

17 87. Defendants did not disclose facts about their Tracking Software to consumers that  
18 purchased the Smart TVs because they knew consumers, acting reasonably under the circumstances,  
19 would not purchase the Smart TVs if they knew of the Tracking Software.

20 88. Through the omissions detailed herein, Defendants wrongfully induced Plaintiff and  
21 the other members of the Class to purchase the Smart TVs when they otherwise would not have  
22 purchased them.

23 89. As a direct and proximate result of Defendants' violations of Cal. Civ. Code  
24 §§ 1750, *et seq.*, Plaintiff and each Class member have suffered harm in the form of paying monies  
25 to purchase the Smart TVs when they otherwise would not have purchased them.

26 90. Under Cal. Civ. Code § 1780(a) and (b), Plaintiff, individually and on behalf of the  
27 Class, seeks an injunction requiring Defendants to cease and desist the illegal conduct alleged in  
28

1 this Complaint, and all other appropriate remedies for its violations of the CLRA. For the sake of  
 2 clarity, Plaintiff explicitly disclaims any claim for damages under the CLRA at this time.

3 **FOURTH CAUSE OF ACTION**  
 4 **Violations of California's Unfair Competition Law**  
 5 **Cal. Bus. & Prof. Code §§ 17200, *et seq.***  
 6 **(On Behalf of Plaintiff and the Class Against Defendants)**

7 91. Plaintiff incorporates by reference the foregoing allegations as if fully set forth  
 8 herein.

9 92. California's Unfair Competition Law ("UCL"), Cal Bus. & Prof. Code §§ 17200, *et*  
 10 *seq.*, protects both consumers and competitors by promoting fair competition in commercial  
 11 markets for goods and services.

12 93. The UCL prohibits any unlawful, unfair, or fraudulent business act or practice,  
 13 including the employment of any deception, fraud, false pretense, false promise, misrepresentation,  
 14 or the concealment, suppression, or omission of any material fact. A business practice need only  
 15 meet one of the three criteria to be considered unfair competition.

16 94. The specifications of a consumer product is a material term of any transaction  
 17 because it directly affects a consumer's choice of, or conduct regarding, whether to purchase a  
 18 product. Any deception or fraud related to the specifications of a product is materially misleading.

19 95. As described herein, Defendants have engaged in deceptive business practices, as  
 20 defined by the UCL, by installing their Tracking Software on Vizio Smart TVs and collecting,  
 21 without authorization, consumers' viewing habits.

22 96. Defendants have violated the fraudulent and unfair prongs of the UCL by knowingly  
 23 installing Tracking Software that collects information on the specific movies or shows being  
 24 watched and that performs a network scan of home computer networks to capture, amongst other  
 25 things, the MAC identifiers and names of wireless routers, mobile devices (*e.g.*, smartphones), and  
 26 computers and then sends the collected information to Defendant Vizio, Inc.

27 97. Defendants did not disclose that the Smart TVs contain the Tracking Software  
 28 because they knew consumers would not purchase the Smart TVs if they knew of that fact.

98. Furthermore, Defendants never sought or obtained consumers' consent to install or

1 operate their Tracking Software on consumers' Smart TVs.

2 99. As such, Defendants have caused substantial injury to consumers through their  
3 fraudulent and unfair conduct described above. The injuries caused by Defendants' fraudulent and  
4 unfair conduct are not outweighed by any countervailing benefits to consumers or competition, and  
5 the injury is one that consumers themselves could not reasonably have avoided. Defendants knew or  
6 had reason to know that Plaintiff and the Class could not have reasonably known or discovered the  
7 existence of the Tracking Software.

8 100. Defendants' fraudulent and unfair conduct occurred during the marketing,  
9 distribution, and sale of Smart TVs, and therefore occurred in the course of Defendants' business  
10 practices.

11 101. Defendants' conduct directly and proximately caused Plaintiff and the Class actual  
12 monetary damages in the form of the price paid for the Smart TVs.

13 102. If Defendants had disclosed that their Tracking Software was installed and operating  
14 on the Vizio Smart TVs Plaintiff and members of the Class would not have purchased the Smart  
15 TVs.

16 103. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiff seeks an order (1) requiring  
17 Defendants to cease the fraudulent and unfair practices described herein; (2) requiring Defendants  
18 to restore to Plaintiff and each Class member any money acquired by means of unfair competition  
19 (restitution); and, (3) awarding reasonable costs and attorneys' fees pursuant to Cal. Code Civ. Proc.  
20 § 1021.5.

21 **FIFTH CAUSE OF ACTION**  
22 **Violation of False Advertising Law**  
23 **Cal. Bus. & Prof. Code §§ 17500 *et seq.***  
**(On Behalf of Plaintiff and the Class Against Defendant Vizio)**

24 104. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

25 105. California's False and Misleading Advertising Law ("FAL") prohibits corporations  
26 from intentionally disseminating advertisements for products or services that are "unfair, deceptive,  
27 untrue, or misleading." Cal. Bus. & Prof. Code §17500.

28 106. As detailed throughout this Complaint, Defendant Vizio has disseminated unfair,

1 deceptive, untrue, and misleading advertisements because it does not disclose that its Smart TVs  
 2 contain the Tracking Software. Defendant Vizio did not disclose that fact because it knew  
 3 consumers would not purchase its Smart TVs if they knew it contained the Tracking Software.

4 107. A reasonable person is likely to be deceived by Defendant Vizio's omissions.

5 108. Defendant Vizio knew or should have known when creating and disseminating  
 6 advertisements without disclosing that the Smart TVs contain the Tracking Software that they  
 7 contained materially false and misleading information.

8 109. Defendant's conduct directly and proximately caused Plaintiff and the Class actual  
 9 monetary damages in the form of the price paid for the Smart TVs.

10 110. Plaintiff seeks an order (1) requiring Defendant to cease the false advertising  
 11 practices described herein; (2) requiring Defendant to restore to Class members any money acquired  
 12 by means of false advertising (restitution); and, (3) awarding reasonable costs and attorneys' fees  
 13 pursuant to Cal. Code Civ. Proc. § 1021.5.

#### 14 **SIXTH CAUSE OF ACTION**

##### 15 **Fraudulent Omission**

##### 16 **(On Behalf of Plaintiff and the Class Against Defendant Vizio)**

17 111. Plaintiff incorporates by reference the foregoing allegations as if fully stated herein.

18 112. As described with particularity herein, Defendant Vizio has concealed or suppressed  
 19 a material fact. Specifically, Defendant Vizio concealed the fact that its Smart TVs contain  
 20 Tracking Software that collects information on the specific movies or shows being watched and that  
 21 performs a network scan of home computer networks to capture, amongst other things, the MAC  
 22 identifiers and names of wireless routers, mobile devices (*e.g.*, smartphones), and computers.

23 113. Defendant Vizio was under a duty to Plaintiff and the Class to disclose that the Smart  
 24 TVs contained the Tracking Software because:

- 25 a. Defendant was in a superior position to know that the Tracking Software was  
 26 installed on its Smart TVs;
- 27 b. Plaintiff and the Class could not reasonably have been expected to learn or  
 28 discover that Defendant included the Tracking Software on its Smart TVs;

c. Defendant knew that Plaintiff and the Class members could not reasonably have been expected to learn or discover that Defendant included the Tracking Software on its Smart TVs; and

d. Defendant knew that Plaintiff and Class members would not have purchased the Smart TVs if it disclosed the Tracking Software.

114. Defendant intentionally concealed or suppressed information about the Tracking Software with intent to defraud Plaintiff and members of the Class. Specifically, Defendant knew that Plaintiff and Class members would not have purchased the Smart TVs if it disclosed the Tracking Software. Moreover, Defendant knew that, absent the Tracking Software, it would have to pay Plaintiff and members of the Class for access to their video viewing history.

115. Plaintiff and members of the Class did not know that the Smart TVs they purchased contained the Tracking Software. Had they known, they would not have purchased the Smart TVs.

116. Defendant Vizio's conduct directly and proximately caused Plaintiff and the Class actual monetary damages in the form of the price paid for the Smart TVs.

117. Plaintiff, on behalf of herself and the Class, seeks damages from Defendant Vizio's unlawful conduct.

#### **SEVENTH CAUSE OF ACTION**

##### **Negligent Omission**

##### **(On Behalf of Plaintiff and the Class Against Defendant Vizio)**

118. Plaintiff incorporates by reference the foregoing allegations.

119. As described with particularity herein, Defendant Vizio has negligently concealed or suppressed a material fact. Specifically, Defendant Vizio negligently concealed the fact that its Smart TVs contain Tracking Software that collects information on the specific movies or shows being watched and that performs a network scan of home computer networks to capture, amongst other things, the MAC identifiers and names of wireless routers, mobile devices (*e.g.*, smartphones), and computers

120. Defendant Vizio was under a duty to Plaintiff and the Class to disclose that the Smart TVs contained the Tracking Software because:

- a. Defendant was in a superior position to know that the Tracking Software was installed on its Smart TVs;
- b. Plaintiff and the Class could not reasonably have been expected to learn or discover that Defendant included the Tracking Software on its Smart TVs;
- c. Defendant should have known that Plaintiff and the Class members could not reasonably have been expected to learn or discover that Defendant included the Tracking Software on its Smart TVs; and
- d. Defendant should have known that Plaintiff and Class members would not have purchased the Smart TVs if it disclosed the Tracking Software.

121. Defendant negligently concealed or suppressed information about the Tracking Software. Specifically, Defendant should have known that Plaintiff and Class members would not have purchased the Smart TVs if it disclosed the Tracking Software or that it would have had to pay for access to their video viewing history.

122. Plaintiff and members of the Class did not know that the Smart TVs they purchased contained the Tracking Software. Had they known, they would not have purchased the Smart TVs.

123. Defendant Vizio's conduct directly and proximately caused Plaintiff and the Class actual monetary damages in the form of the price paid for the Smart TVs.

124. Plaintiff, on behalf of herself and the Class, seeks damages from Defendant Vizio's unlawful conduct.

**EIGHTH CAUSE OF ACTION**  
**Unjust Enrichment**  
**(On Behalf of Plaintiff and the Class Against Defendants)**

125. Plaintiff incorporates by reference the foregoing allegations as if fully set forth herein.

126. Plaintiff and the Class have conferred a benefit upon Defendants in the form of their personal video viewing history. Absent the use of their unauthorized Tracking Software, Defendants would have had to pay Plaintiff and each member of the Class money in exchange for their video viewing history. Indeed, the leading company that collects and analyzes consumer video viewing

1 habits, The Nielsen Company, pays consumers (typically \$10) for one-time access to their video  
2 viewing records.<sup>12</sup>

3 127. Defendants appreciate and/or have knowledge of the benefits conferred upon them  
4 by Plaintiff and the Class.

5 128. Under principles of equity and good conscience, Defendants should not be permitted  
6 to retain the benefit obtained from Plaintiff and the members of the Class, which Defendants have  
7 unjustly obtained as a result of its unauthorized Tracking Software.

8 129. Accordingly, Plaintiff and the Class seek full disgorgement and restitution of any  
9 money Defendants have received or generated as a result of the unlawful and/or wrongful conduct  
10 alleged herein.

### 11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff Palma Reed on behalf of herself and the Class respectfully requests  
13 that the Court enter an order:

14 A. Certifying this case as a class action on behalf of the Class defined above, appointing  
15 Palma Reed as representative of the Class, and appointing his counsel as class counsel;

16 B. Declaring that Defendant Vizio's actions, as set out above, violate the VPPA (18  
17 U.S.C. § 2710), Cal. Civ. Code § 1799.3, and the FAL (Cal. Bus. & Prof. Code §§ 17500, *et seq.*),  
18 and constitute fraudulent omission and negligent omission;

19 C. Declaring that Defendants' actions, as set out above, violate the CLRA (Cal. Civ.  
20 Code §§ 1750, *et seq.*); UCL (Cal. Bus. & Prof. Code §§ 17200 *et seq.*); and have resulted in them  
21 being unjustly enriched;

22 D. Awarding damages, including statutory and punitive damages where applicable, to

23 <sup>12</sup> *Nielsen TV Diary | Frequently Asked Questions*, tvdiary.nielsen.com/content/panel/tvdiary7  
24 -en-feb2014/faq.html (last visited Nov. 13, 2015) (describing how "The people who plan and  
25 schedule television programs want to know what households like yours are watching. Unlike a  
26 newspaper or magazine, where the copies sold can be counted, there is no simple way to know how  
27 many people are watching a certain television program. Nielsen estimates the audience of TV  
28 programs with the information gathered from households like yours," and that "[t]he money  
enclosed with the diary is a thank you in advance for filling out and returning your diary. We truly  
appreciate your participation.").



1 Plaintiff and the Class in an amount to be determined at trial;

2 E. Awarding Plaintiff and the Class their reasonable litigation expenses and attorneys'  
3 fees;

4 F. Awarding Plaintiff and the Class pre- and post-judgment interest, to the extent  
5 allowable;

6 G. Awarding such other injunctive and declaratory relief as is necessary to protect the  
7 interests of Plaintiff and the Class; and

8 H. Awarding such other and further relief as the Court deems reasonable and just.

9 **DEMAND FOR JURY TRIAL**

10 Plaintiff demands a trial by jury for all issues so triable.

11 Respectfully submitted,

12 Dated: November 13, 2015

**PALMA REED**, individually and on behalf of all  
13 others similarly situated,

14 By: /s/ Samuel M. Lasser  
One of Plaintiff's Attorneys

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Attorneys for Plaintiff and the Putative Class*

# EXHIBIT A

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As filed with the Securities and Exchange Commission on October 22, 2015

Registration No. 333-205866

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

**AMENDMENT NO. 3 TO  
FORM S-1  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933**

**VIZIO Holdings, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**3651**  
(Primary Standard Industrial  
Classification Code Number)

**47-5132195**  
(I.R.S. Employer  
Identification No.)

**39 Tesla**  
**Irvine, California 92618**  
**(949) 428-2525**

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

**William W. Wang**  
**Chairman and Chief Executive Officer**  
**VIZIO Holdings, Inc.**  
**39 Tesla**  
**Irvine, California 92618**  
**(949) 428-2525**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

*Copies to:*

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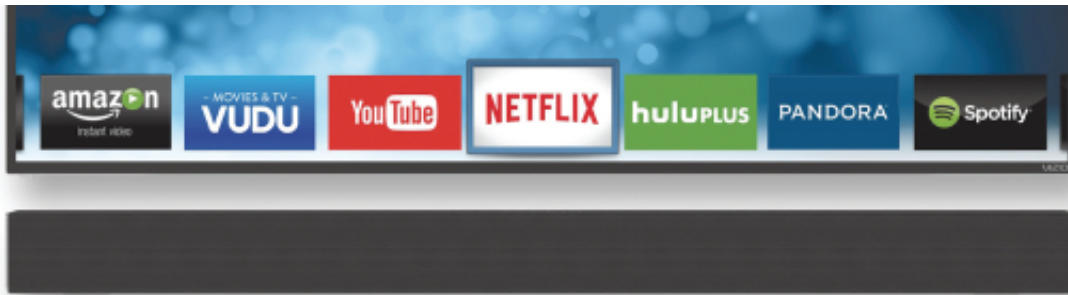
**Approximate date of commencement of proposed sale to the public:** As soon as practicable after this Registration Statement becomes effective.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933 check the following box. ☐

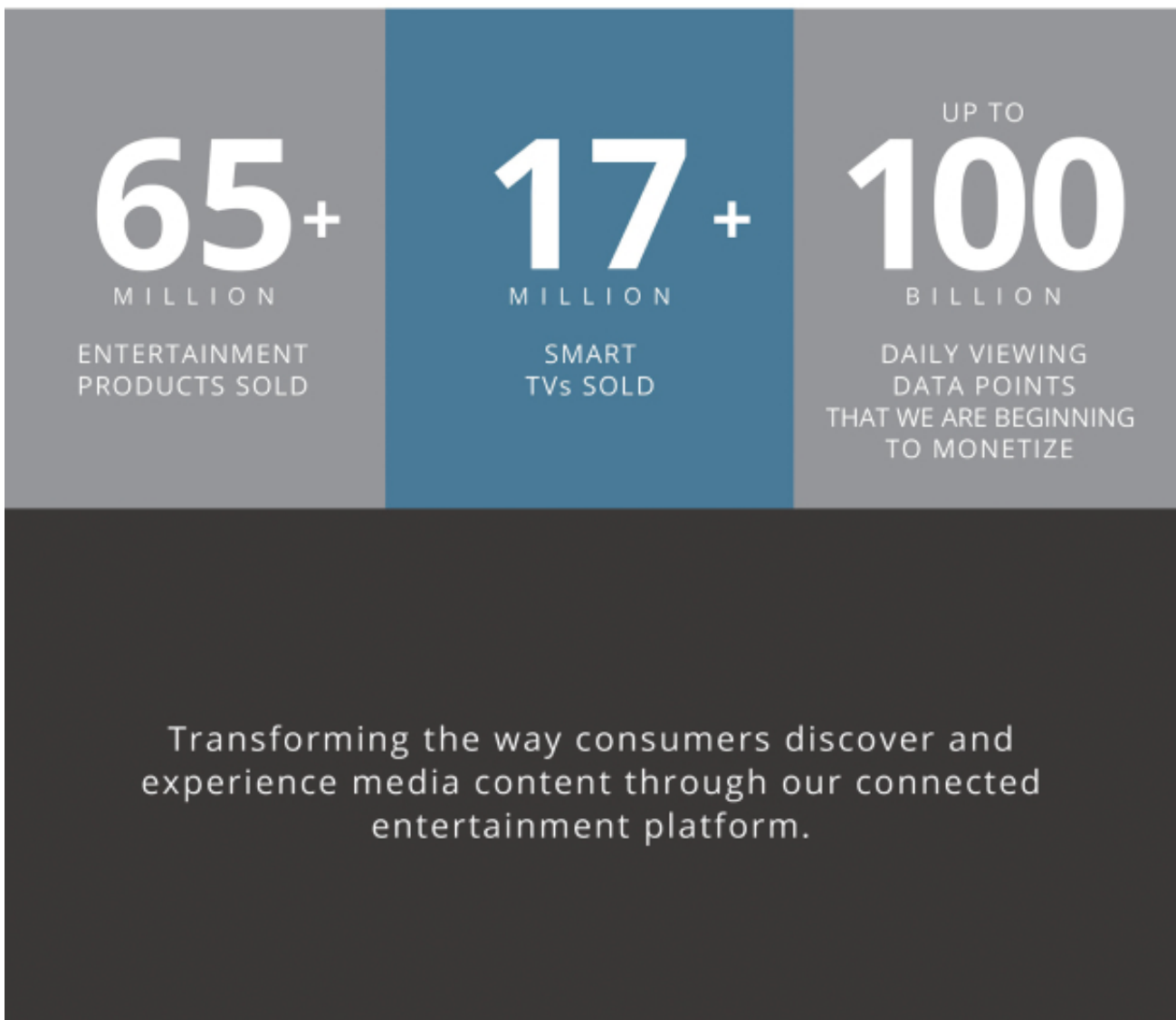
If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the

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More than 3.5 billion hours of entertainment content streamed



[Table of Contents](#)**PROSPECTUS SUMMARY**

*The following summary highlights selected information contained elsewhere in this prospectus and does not contain all the information that may be important to you before investing in our Class A common stock. You should read the entire prospectus carefully, including the “Risk Factors,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and the consolidated financial statements and related notes appearing elsewhere in this prospectus before making an investment decision.*

*Prior to the consummation of the Reorganization Transaction (as defined below) and in reference to events which took place prior to the consummation of the Reorganization Transaction, unless the context requires otherwise, the words “VIZIO,” “we,” the “Company,” “us,” and “our” refer to VIZIO, Inc., a California corporation, and its subsidiaries. Subsequent to the consummation of the Reorganization Transaction and in reference to events which are to take place subsequent to the consummation of the Reorganization Transaction, unless the context requires otherwise, the words “VIZIO,” “we,” the “Company,” “us,” and “our” refer to VIZIO Holdings, Inc., a Delaware corporation, and its subsidiaries. In addition, unless otherwise stated or the context otherwise requires, “Parent” refers to VIZIO Holdings, Inc., a Delaware corporation, and “California VIZIO” refers to VIZIO, Inc., a California corporation. See “—Corporate Information.”*

**VIZIO Holdings, Inc.****Our Mission**

VIZIO’s mission is to deliver the ultimate entertainment experience through our community of connected consumers, advertisers and media content providers.

**Company Overview**

VIZIO is transforming the way consumers discover and experience media content through our connected entertainment platform. Since our founding in 2002, we have sold over 65 million televisions and audio and other products and built an industry-leading brand. We have achieved significant U.S. market share of both Smart TVs, or Internet-connectable televisions, and sound bars. Our strong brand, technological leadership and go-to-market strategy have driven the broad adoption of our Smart TVs, creating a community of over 10 million VIZIO connected units, or VCUs. A VCU is a Smart TV that has been connected to the Internet and has transmitted data collected by our Inscape data services. Our Inscape data services capture real-time viewing behavior data from our VCUs and enable us to provide it to advertisers and media content providers. The scale of our VCU community, together with our engaged user base and our Inscape data services, position us at the nexus of the connected entertainment ecosystem.

As a leading connected entertainment platform, we focus on delivering cutting-edge technology and building a premium global brand. Since we are not vertically integrated, we are able to maintain flexibility and adapt to changes in market demand, product supply and pricing. Our strategic relationships with our manufacturers and retailers as well as our efficient operating model have been critical to the success of our business. We have leveraged our manufacturers’ purchasing power and expertise in supply chain management to drive cost reductions and rapidly scale our business. Our efficient operating model has enabled us to minimize overhead costs, more accurately forecast inventory levels and achieve high inventory turnover. As a result, we have been profitable for the last nine years and have grown our business with minimal external funding.

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Our products are sold in over 8,000 retail stores across the United States. We held the #1 unit share position in the U.S. sound bar industry<sup>(1)</sup> and the #2 unit share position in the U.S. smart, high definition television, or HDTV, industry in 2014.<sup>(2)</sup> For the years ended December 31, 2013 and 2014 and the nine months ended September 30, 2015, we 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. Substantially all of these amounts were generated from the sale of televisions and sound bars.

### **Our Platform**

The VIZIO platform combines our connected media entertainment products, discovery and engagement software and Inscope data services:

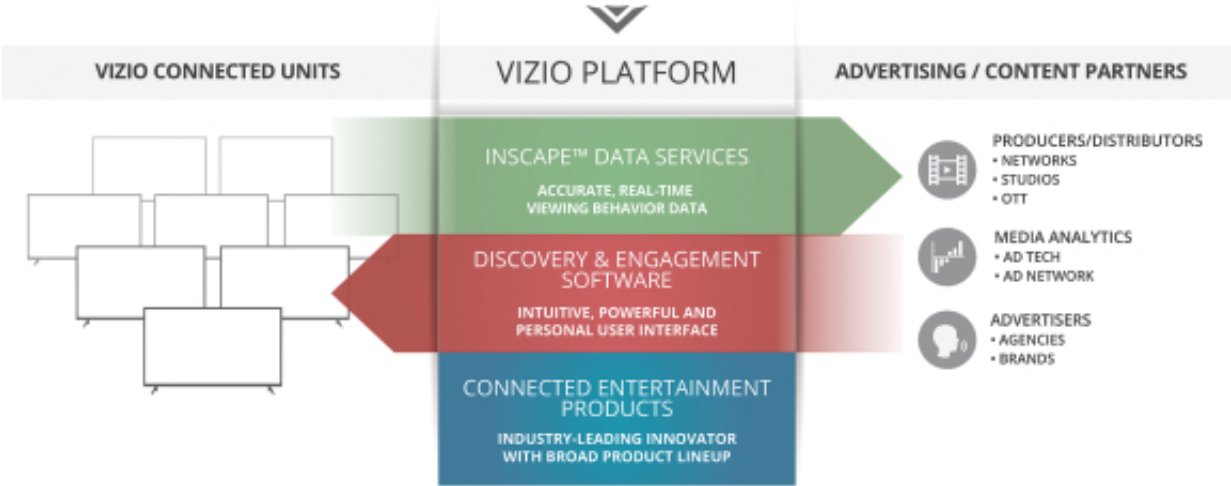
- **Connected Entertainment Products.** Our Smart TV and audio products combine best-in-class technology with beautifully simple design. Our award-winning products offer industry-leading picture and audio quality and are at the forefront of innovative technology. Our focus on connectivity has driven our consumers to make an initial connection of their Smart TVs to the Internet at an average rate of approximately 91% and 90% for the nine month periods ended September 30, 2015 and September 30, 2014, respectively, and approximately 90% for the twelve month period ended September 30, 2015.
- **Discovery & Engagement Software: VIZIO Internet Apps Plus.** Our discovery and engagement software, VIZIO Internet Apps Plus, connects consumers to a wide range of premium entertainment content and enhances the value of our products. We provide an intuitive and engaging interface that enables viewers to easily discover and engage with entertainment and other content on our Smart TVs from traditional and streaming content providers, such as Netflix, Hulu, YouTube and Amazon Instant Video. Since 2009, users have streamed more than 3.5 billion hours of content through our discovery and engagement software.

(1) Source: The NPD Group/Retail Tracking Service, based on sound bar units sold in the U.S. from January 2014 to December 2014.

(2) Source: The NPD Group/Retail Tracking Service, based on total smart, high definition television units sold in the U.S. from January 2014 to December 2014. The NPD Group/Retail Tracking Service defines a smart, high definition television as an LCD TV with apps included and a display resolution of 1336 x 768 pixels or higher.

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- Inscape Data Services.** Our Inscape data services capture, in real time, up to 100 billion anonymized viewing data points each day from our over 10 million VCUs. Inscape collects, aggregates and stores data regarding most content displayed on VCU television screens, including content from cable and satellite providers, streaming devices and gaming consoles. Inscape provides highly specific viewing behavior data on a massive scale with great accuracy, which can be used to generate intelligent insights for advertisers and media content providers and to drive their delivery of more relevant, personalized content through our VCUs. Although we are still in the early stages of commercializing Inscape and have yet to generate meaningful revenue from it, we believe it provides an attractive value proposition to advertisers and media content providers which will enable us to further monetize it in the future.



Consumer Use and Engagement Model

We believe our business focus enables a self-reinforcing consumer use and engagement model that we expect to fuel our growth while driving revenue. Our connected entertainment products and discovery and engagement software increase usage of our platform, enabling Inscape to gather more anonymized data on viewing behaviors, which we can deliver to advertisers and media content providers. These companies in turn can deliver more relevant and personalized content for viewers, further enhancing the entertainment experience. We believe this self-reinforcing cycle will increase our brand awareness and enhance demand for our connected entertainment products.



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from 15.6 million units in 2014 to 20.7 million units in 2019, representing a 5.8% compound annual growth rate. Furthermore, according to IHS Technology, Smart TVs are expected to comprise an even greater percentage of North American annual television shipments, rising from 35.8% in 2014 to 49.6% in 2019. Moreover, while we have not historically focused on opportunities outside of North America, international revenue for high-definition television shipments totaled \$78.1 billion in 2014, according to IHS Technology, and international markets represent a natural extension of our current market focus.

- ***Video on Demand, or VOD.*** According to Markets and Markets, the global VOD market is forecasted to grow from \$25.3 billion in 2014 to \$61.4 billion in 2019, representing a compound annual growth rate of 19.4%. We believe that our platform, which enables ease of discovery and access to digital content for television viewers, creates the opportunity to deliver and monetize additional services relating to this market.
- ***Audience & Advertisement Measurement.*** Advertisers and media content providers are looking for access to accurate, real-time data regarding consumer preferences and behaviors so they can better measure and increase their return on content creation and advertising spend. We believe total global market spend on audience and advertisement measurement services was approximately \$1.9 billion in 2014, and this represents an attractive market opportunity for our Inscope data services.
- ***Television/Digital Advertising.*** According to eMarketer, U.S. digital advertising spend has grown at a compound annual growth rate of 17.4% from 2012 to 2014, driven largely by the ability to accurately target relevant consumers and measure return on advertising spend. Television advertising spend in the United States, however, represents the largest advertising market with approximately \$68.5 billion spent in 2014, according to eMarketer. We believe recent advancements in television data and analytics capabilities will bring the optimization benefits of digital advertising to television advertising, allowing us to attract digital advertisers and capitalize on digital growth trends through our Inscope data services.
- ***Mobile/Television Commerce.*** According to eMarketer, in 2014, U.S. consumers spent \$58.1 billion on products and services using Internet-enabled mobile devices, such as tablets and smartphones. We believe that the Smart TV represents a future driver of retail mobile commerce sales as consumers will be able to simultaneously view complementary content and advertising on their tablet or smartphone and easily purchase goods and services seen on the television screen with those handheld devices. A Nielsen study found that roughly 40% of tablet and smartphone owners use their handheld device as a “second screen” daily. According to a recent Delivery Agent survey, 68% of respondents were interested or very interested in using their television to shop.

## **Powerful Trends Driving Our Market**

Several powerful trends are driving the growth of the television and advertising markets:

- ***Advances in technology are enhancing the television viewing and audio playback experience.*** Revolutionary technological innovations, such as Ultra-High Definition, or UHD, High-Dynamic-Range, or HDR, and 3D vector-based audio reproduction offer major enhancements to the entertainment experience. UHD televisions deliver four times the picture resolution and, in combination with other new technologies like Full Array LED backlighting with Active LED Zones, can deliver higher contrast ratios, enhanced motion clarity and a more lifelike viewing experience when compared to current high-definition televisions. Furthermore, improvements in sound quality, wireless connectivity and design are driving consumer demand for audio products to pair with their televisions. We believe these factors represent major consumer upgrade catalysts and should accelerate the replacement cycle of prior generation televisions and audio products.

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- ***The television is finally connected to the Internet.*** The wide adoption of high-speed broadband Internet access has enabled a vast range of bandwidth-intensive video and Internet services to be delivered directly to the television. According to eMarketer, U.S. household broadband penetration was 74% in 2014. Broadband connectivity has driven demand for Smart TVs, which allow consumers to access and view content as a connected entertainment experience on the largest screens in their home.
- ***Consumers demand an intuitive, easy-to-use interactive entertainment experience.*** U.S. consumers spend an average of 30 hours per week watching television, according to eMarketer. This figure has remained stable over the past five years, despite recent growth in smartphone and tablet media consumption, which has been incremental to television consumption. We believe consumers want to search for and discover content, regardless of source, on their television through intuitive and easy-to-use interfaces as well as applications that offer optimized experiences, in the same manner they do on their smartphone or tablet. Consumers also desire seamless integration between the multiple screens they are using, such as using a mobile device to interact with their television to discover, stream or view complementary content.
- ***Delivering personalized content to consumers requires next generation viewing data and analytics capabilities.*** Smart TVs enable content consumption from multiple sources, greatly increasing the volume of content available to consumers. In June 2014, the Consumer Electronics Association reported that, in the 12 months ended April 2014, 45% of U.S. television households were streaming content on their TVs, up from 28% in the 12 months ended April 2013. This trend has further increased the difficulty for content creators and distributors to collect and decipher viewing behaviors using traditional means such as consumer surveys and sampling. The collection and analysis of viewing behavior data is crucial to create and distribute content that further enhances consumers' viewing experiences.
- ***Advertisers want to leverage viewing data to deliver more targeted ads.*** The Internet has enabled content providers, brands, advertisers and analytics providers to deploy more relevant, personalized advertising through computers and mobile devices based on user behavior. Smart TVs now enable advertisers to leverage real-time viewing behavior data to deliver more effective, targeted advertising campaigns. We believe the ability to collect and analyze real-time viewing data will enable measurable and increased return on marketing investment, enhance the value of television advertising, and drive increased television advertising spend.

## **Our Solution**

The VIZIO connected platform delivers quality entertainment experiences and accurate viewing behavior data through:

- ***Leading product design with broad market appeal.*** We are an industry-leading technology innovator with broad market consumer brand appeal, delivering best-in-class products. We are also developing the next generation user experience for intuitive discovery and access to a wide variety of content. We relentlessly pursue our goal of delivering premium quality video and audio products in a way that helps accelerate broad adoption of new technologies, including UHD and HDR technology, and on a broad range of display sizes ranging from 24" to 120".
- ***Intuitive, powerful and personal user interface.*** Our Smart TVs connect consumers with an intuitive yet powerful user interface, capable of facilitating discovery of and engagement with a wide variety of content as well as relevant, personal content recommendations based on their viewing behavior. Viewers can quickly and easily discover and engage with entertainment and other content from traditional and streaming content providers on our Smart TVs.

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- ***Real-time data on our consumers' viewing behavior.*** Our Inscape data services and community of over 10 million VCUs enable us to capture up to 100 billion anonymized viewing data points each day. We believe this user base is large enough to reflect U.S. census demographics, which we believe enables us to offer higher quality, more accurate and timely viewing behavior data than previously available from other sources. This real-time data allows us to provide the media and advertising ecosystem with actionable viewership insights, which we believe will enable us to further monetize our Inscape data services.
- ***Advertising and content optimization for the marketing and media ecosystem.*** We are developing strong partnerships with content and analytics providers, advertisers and brands to monetize our connected platform. VIZIO's platform can provide these parties with anonymized, highly specific viewing data using our Inscape data services. We believe the monetization of our connected platform through these partnerships will represent a significant component of our solution set in the future.

### **Our Competitive Strengths—What Sets Us Apart**

We believe that the following strengths are the keys to our success:

- ***Leading Consumer Brand.*** We have built a strong, recognized and trusted brand that symbolizes premium technology, quality and value. Since our founding in 2002, VIZIO has built a highly recognizable brand in the United States, with seven out of ten respondents recognizing VIZIO, and eight out of ten VIZIO owners recommending VIZIO to their friends and family, according to a 2015 survey commissioned by us and conducted by survey solutions company Toluna.
- ***Premium Product Design and Technology.*** We offer a selection of premium media entertainment products, including televisions, sound bars and other products designed to enhance the entertainment experience. Using consumer research and feedback, we focus on creating products that combine best-in-class video and audio performance with powerful user interface software that simplifies access to a wide variety of entertainment content. We have deployed new technologies that advance the picture and audio quality of our products, such as UHD, HDR, Ultra Color Spectrum, full-array LED backlight designs and new picture processing technologies that have been consistently recognized and awarded by industry press.
- ***Positioned at the Nexus of the Connected Entertainment Ecosystem.*** We are strategically positioned at the nexus of the connected entertainment ecosystem. Our Smart TVs can collect viewing behavior data from any connected media source, generating a broader data set than can be obtained from any single media source. We can provide this broader data set, at scale and with real-time delivery, to advertisers and media content providers, who in turn can create more relevant, personalized entertainment experiences and drive further engagement.
- ***Efficient Operating Model.*** We have been profitable for the last nine years and have grown our business with minimal external funding. We leverage the purchasing power and supply chain management expertise of our manufacturers to maintain a lean operating model, while scaling our business. Our strategic relationships with our manufacturers and retailers as well as our efficient operating model have been critical to the success of our business. Our efficient operating model has enabled us to minimize overhead costs, more accurately forecast inventory levels and achieve high inventory turnover.
- ***Proven Management Team.*** We have assembled a proven management team that is led by one of our founders, William Wang. Our current management team has been with VIZIO for an average of nine years and collectively has over 100 years of industry experience.

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### **Our Growth Strategy**

We intend to continue to grow our business and expand into new markets. Key elements of our growth strategy include the following:

- ***Continue to Introduce Innovative Products and Functionality.*** We plan to increase our investment in research and development to expand and enhance the features and capabilities of our award-winning products, including our discovery and engagement software, 3D vector-based audio reproduction and Inscape data services.
- ***Continue to Monetize our Platform.*** With over 10 million VCUs, the size of our user base compares favorably to the television subscriber bases of AT&T U-Verse, Verizon FiOS and Cox Communications, providing us with an opportunity to create additional revenue streams in the form of paid advertising placements, software applications for content search, control and recommendations as well as insights into end consumer behavior. Additional monetization opportunities include developing enhanced capabilities such as intelligent search and discovery features, improving our ability to deliver relevant content as well as advanced viewership analytics.
- ***Expand into Markets Outside of North America.*** Leveraging our efficient operating model, we have begun to expand into international markets beginning with Canada and Mexico. We intend to expand into additional international markets based on the anticipated demand in these markets for our platform, including Inscape data services. We intend to expand into these markets by continuing to partner with our existing retailer partners and manufacturers, as well as expanding our on-line retail presence.
- ***Increase Penetration within U.S. Retailers.*** We believe that our distribution footprint covers a significant portion of the U.S. retail consumer electronics market. According to Gap Intelligence, as of September 30, 2015, VIZIO held the #1 or #2 HDTV shelf share at many major consumer electronics retailers such as Wal-Mart, Costco, Sam's Club and Target. However, we believe there is an opportunity to expand shelf space of our products with our existing retailers to take further market share from our competitors. In addition, we have not yet made a focused effort to penetrate regional independent retailers. We believe that these regional independent retailers represent a significant growth opportunity for us, and we plan to capitalize on the strength of our brand to increase our presence.
- ***Continue to Invest in Our Brand.*** In 2014, VIZIO had 35% U.S. unit share for Smart TVs<sup>(3)</sup> and was a unit share leader in the overall U.S. HDTV market.<sup>(4)</sup> In sound bar audio systems, VIZIO was the #1 U.S. market leader in 2014 in units sold.<sup>(5)</sup> We will continue to invest in our brand to strengthen our foothold in the United States, while simultaneously leveraging our previous successes to expand our brand internationally.

(3) Source: The NPD Group/Retail Tracking Service, based on total smart television units sold in the U.S. from January 2014 to December 2014. The NPD Group/Retail Tracking Service defines a smart television as an LCD TV with apps included.

(4) Source: The NPD Group/Retail Tracking Service, based on total high definition television units sold in the U.S. from January 2014 to December 2014. The NPD Group/Retail Tracking Service defines a high definition television as an LCD TV with a display resolution of 1336 x 768 pixels or higher.

(5) Source: The NPD Group/Retail Tracking Service, based on sound bar units sold in the U.S. from January 2014 to December 2014.

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- If we fail to keep pace with technological advances in our industry, or if we pursue technologies that do not become commercially accepted, consumers may not buy our media entertainment products, and our net sales and profitability may decline.
- Our success depends on our ability to continue to establish, promote and strengthen the VIZIO brand.
- A small number of customers account for a majority of our net sales, and if our relationship with any of them is harmed or terminated, or the level of business with them is significantly reduced, our results of operations could be materially adversely affected.
- We depend on a limited number of manufacturers for our products and their components. If we experience any delay, disruption or quality control problems with our manufacturers in their operations, we may be unable to keep up with customer and consumer demand, we could lose market share and net sales, and our reputation and business would be harmed.
- We compete in rapidly evolving and highly competitive markets and we expect intense competition to continue, which could result in a loss of our market share and a decrease in our net sales and profitability, and could adversely affect our growth prospects.
- Limited availability of raw materials, components and manufacturing equipment for our products, or increases in the cost of these items, could materially and adversely affect our business, results of operations or financial condition.
- The use of Automatic Content Recognition, or ACR, technology to provide viewing behavior data to advertisers and media content providers is an emerging industry. Our Inscape data services are in an early stage of commercialization and has not yet generated meaningful revenue. Its success 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. Our failure to successfully monetize our Inscape data services could materially and adversely harm our growth prospects.
- Our business is seasonal, and if our product sales during the holiday season fall below our forecasts, our overall financial condition and results of operations could be adversely affected.
- After the offering, you will hold single-vote per share Class A common stock while the majority of VIZIO's voting power will be held by the holders of 10-vote-per-share Class B common stock. Our Chairman of the Board and Chief Executive Officer, William Wang, will continue to have control over VIZIO after this offering, which will severely limit your ability to influence or direct the outcome of key corporate actions and transactions, including a change in control.

### **Controlled Company Status**

Following this offering, because our principal stockholder will control more than 50% of the voting power of our common stock, we will be considered a "controlled company" under the NASDAQ rules. As such, we are permitted, and have elected, to opt out of compliance with certain NASDAQ corporate governance requirements. Accordingly, stockholders will not have the same protections afforded to stockholders of companies that are subject to all of the NASDAQ corporate governance requirements. See "Risk Factors—We are a "controlled company" within the meaning of the NASDAQ rules. As a result, we qualify for, and intend to continue to rely on, exemptions from certain corporate governance requirements that provide protection to stockholders of other companies."

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customer demand for our products, or may be required to incur higher costs to secure the necessary production capacity and components. We could also overestimate future sales of our products and risk causing our manufacturers to carry excess product and component inventory, which could result in our providing increased price protection or other sales incentives, which could have a material and adverse effect on our net sales and gross margins. The cost of the components used in our products also tends to drop rapidly as volumes increase and technologies mature. Therefore, if our manufacturers or their suppliers are unable to promptly use the components purchased in anticipation of our forecasts, the cost of the products we sell may be higher than our competitors due to an over-supply of higher priced components.

Furthermore, a failure to deliver sufficient quantities of products to meet the demands of our customers may cause us to lose customers. At certain times in the past, we have been unable to supply the number of televisions demanded by certain of our customers. If this were to occur more frequently, our relationship with these customers may be materially affected, and they may decide to seek other sources of supply or cease doing business with us altogether.

***The use of Automatic Content Recognition, or ACR, technology to provide viewing behavior data to advertisers and media content providers is an emerging industry. Our Inscape data services are in an early stage of development and its success depends on various factors. Our failure to successfully monetize our Inscape data services could materially and adversely harm our growth prospects.***

We recently began offering to advertisers and media content providers our Inscape data services, which provide viewing behavior data collected using our ACR technology from our Smart TVs. We are in the early stages of commercializing our Inscape data services and it has not yet resulted in meaningful revenue. Moreover, the utilization of viewing behavior data collected using ACR technology through Smart TVs to inform digital advertising and content delivery is an emerging industry, and future demand and market acceptance for this type of data is uncertain. If the market for the use of this data does not develop or develops more slowly than we expect, or if we are unable to successfully develop and monetize our Inscape data services offerings, our growth prospects could be materially and adversely harmed.

Inscape data services is a new and untested business for us, and we are still in the process of evaluating and developing partner relationships with advertisers and media content providers, as well as our business strategies and service offerings. In directing our focus into a new area of business, we face numerous risks and challenges, including facing new competitors and having the increased need to develop new strategic relationships. We cannot assure you that our strategy will result in increased net sales or net income. Furthermore, growth in our Inscape data services may require changes to our existing business model and cost structure, modifications to our infrastructure and exposure to new regulatory and legal risks, any of which may require expertise in areas in which we have little or no experience. These risks pose a material adverse risk to our growth prospects and in the future, may pose a material risk to our results of operations and financial condition. Moreover, we are continuing to invest substantial resources in the development of our Inscape data services offerings, and if these offerings are unsuccessful, we would not achieve a return on this investment.

Many factors may adversely affect the acceptance and growth of our Inscape data services, including:

- changes in the economic prospects of advertisers, advertising and media agencies, broadcast, cable and local television networks, digital publishers and streaming companies, data analytics firms, advertising technology firms, or the industries or verticals we expect to primarily serve with our Inscape data services;
- the failure to add, or the loss of, brand advertisers, advertising and media agencies, broadcast, cable and local television networks, digital publishers and streaming companies, data analytics firms, and advertising technology firms running advertising campaigns using our Inscape data services;



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- the timing and amount of sales and marketing expenses incurred to attract new brand advertisers, advertising and media agencies, broadcast, cable and local television networks, digital publishers and streaming companies, data analytics firms, and advertising technology firms to our Inscape data services;
- changes in the demand for viewing behavior data;
- developing and maintaining relationships and technology integrations with brand advertisers, advertising and media agencies, broadcast, cable and local television networks, digital publishers and streaming companies, data analytics firms and marketing technology firms;
- the failure of our network or software systems, or the networks or software systems of marketing technology companies;
- decisions by advertisers, media content providers, digital publishers or marketing technology companies to, or changes in their technology or rights that, restrict our ability to collect data or their refusal to implement mechanisms we request to ensure compliance with our legal obligations or technical requirements;
- changes by marketing technology companies that render inoperable the integrations we have with them;
- interruptions, failures or defects in our data collection, mining, analysis and storage systems;
- changes in device functionality and settings, and other changes in technologies, including those that make it easier for consumers to prevent the placement monitoring technology and impact our ability to reach them online or collect and use exposure data, and decisions by consumers to opt out of being monitored or to use such technology; and
- changes in or the introduction of new laws, rules, regulations and industry standards or increased enforcement of international laws, rules, regulations and industry standards impacting the collection, use, security or sharing of data or otherwise.

If we are unable to adequately address these factors, we may not be able to successfully develop our Inscape data services business and our anticipated future growth would be adversely impacted.

***The success of our Inscape data services will depend on many factors, including our ability to provide viewing behavior data that advertisers and media content providers find useful and valuable, which in turn depends on factors such as the adoption rate of our Smart TVs, our ability to collect, measure, and report viewing behavior data from relevant content sources, our ability to build out and maintain a database of matching content, and consumers' willingness to not opt out of our data service and maintain their Smart TVs' connection to the Internet.***

The success of our Inscape data services will depend on many factors, including our ability to provide viewing behavior data that advertisers and media content providers find useful and valuable. This ability, in turn, depends to a significant extent on the willingness of consumers to continue to purchase and use our Smart TVs and in our maintaining and continuing to grow our community of VIZIO connected units, or VCUs. A VCU represents one of our Smart TVs that has been connected to the Internet and has transmitted data collected by our Inscape data services. While we believe our current community of over 10 million VCUs enables the data we provide to reflect U.S. census demographics, a larger and broader user base may be necessary for us to sufficiently monetize some services we may offer in the future, such as delivering targeted audiences to advertisers.

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Through our Inscape data services, we are capable of collecting meaningful viewing behavior data by matching attributes of content displayed on the screens of our ACR-capable, connected Smart TVs to our database of existing content, such as movies, TV shows and games. We must continue to develop and update this database and to match the content in this database to content displayed on our VCU's. The process of developing this database is ongoing and incomplete, particularly with respect to content broadcast by local television stations. Delays in developing this database of content may decrease the value of our Inscape data services.

We currently do not collect, and might not in the future collect, viewing behavior data regarding content streamed through VIZIO Internet Apps Plus or content viewed on Smart TVs located outside of the United States. These potential limitations may impair our ability to monetize our Inscape data services.

Moreover, our Smart TV viewers can opt out of data collection at any time. Furthermore, 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. If the wider public perceives data privacy or security concerns with respect to our Smart TVs, this could negatively impact the growth potential for the net sales of our Smart TVs and our Inscape data services.

***We are dependent on logistics services provided by our third-party logistics provider, and failure to properly manage this relationship, or the failure of our logistics provider to perform as expected, could adversely impact our results of operations.***

We currently rely primarily on only one third-party logistics provider for our warehousing and transportation needs that are not already handled by our manufacturers. We have no assurance that business interruptions will not occur as a result of the failure by this provider to perform as expected or that this logistics provider will meet the needs of our business. Further, if we are unable to properly manage our relationship with our logistics provider, including by accurately forecasting our requirements, our net sales, results of operations and gross profits may be adversely affected. We cannot ensure that our logistics provider will continue to perform services to our satisfaction, in a manner satisfactory to our customers, manufacturers and their suppliers, or on commercially reasonable terms. Our manufacturers could become dissatisfied with our logistics provider or its cost levels and refuse to utilize this logistics provider. Our customers could become dissatisfied and cancel their orders, impose charges on us or decline to make future purchases from us if this logistics provider fails to deliver products on a timely basis and in compliance with customers' shipping and packaging requirements, thereby increasing our costs and/or potentially causing our reputation and our brand to suffer. If our logistics provider is not able to provide the agreed services at the level of quality we require or becomes unable to handle our existing or higher volumes, we may not be able to replace such logistics provider on short notice, which may have a material adverse effect on our business.

Our logistics provider may also fail to perform as expected for reasons outside its control. For example, in the first quarter of 2015, there was a labor dispute which impacted the seaports in the western United States, which delayed many of our inbound supply shipments. This resulted in lower revenue, net sales and profitability for us in the first quarter of 2015.

In addition, because we currently rely primarily on only one third-party logistics provider for our warehousing and transportation needs, if we encounter problems with this logistics provider, we may not be able to quickly shift to a new provider of these services and our ability to meet customer expectations, manage inventory, complete sales and achieve objectives for operating efficiencies could be materially adversely affected.

***An economic downturn, or economic uncertainty in our key markets, could adversely affect consumer discretionary spending and demand for our products and our operating results.***

The products we currently sell, predominately televisions and sound bars, are consumer discretionary items. As such, our results of operations tend to be sensitive to changes in conditions that impact the level of consumer spending for discretionary items, including general macroeconomic conditions, consumer confidence,



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- changes in the mix of products we sell;
- the anticipation of new products or updates that causes our customers and consumers to forego purchases of current products;
- the introduction of new technologies, products or service offerings by competitors;
- our ability to manage our product mix and consider allowances, including for price protection;
- our inability to reduce our fixed costs to compensate for any reduced net sales or decrease in average selling prices;
- changes in advertising and other marketing costs;
- aggressive pricing, marketing campaigns or other initiatives by our competitors;
- increases in the cost of the products we sell due to the rising costs of key components such as LCD panels, chipsets and raw materials, particularly in countries like China that account for a significant portion of the manufacturing capacity for our products;
- costs of expanding or enhancing our supply base;
- changes and uncertainty in the legislative, regulatory and industry environment for us, our customers or our manufacturers;
- investments in new product or service offerings, including the level of investment in our Inscape data services;
- changes in our capital expenditures as we acquire the hardware, equipment, technologies and other assets required to operate and scale our business; and
- costs related to acquisitions of other businesses or technologies.

As a result of the variability of these and other factors, our operating results in future quarters may be below the expectations of stock analysts and investors, which could cause our stock price to fall.

***We may undertake acquisitions to expand our business, which may pose risks to our business and dilute the ownership of our stockholders or restrict our operations.***

As part of our business and growth strategy, we have in the past acquired and made significant investments in, and may in the future acquire or make significant investments in, businesses, assets, technologies or services that we believe complement our business. For example in December 2014, we acquired Advanced Media Research Group, Inc., a software and application development company, and in August 2015, we acquired Cognitive Media Networks, Inc., a software provider that enables our Inscape data services. Integrating any newly acquired businesses, assets, technologies or services may be expensive and time-consuming. We have limited experience acquiring and integrating businesses, and may not be successful in doing so. In addition, to finance any acquisitions, it may be necessary for us to raise additional funds through public or private financings. Additional funds may not be available on terms that are favorable to us, and in the case of equity or equity-linked financings, could result in dilution to our stockholders. Furthermore, funds obtained through debt financing could contain covenants that restrict how we operate our business or obtain other financing in the future.

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compatible businesses, technologies or services, as well as negotiating acquisitions, could also disrupt our ongoing business and divert our management's attention. Acquisitions by us could also result in large write-offs or assumptions of debt and contingent liabilities, any of which could substantially harm our business and results of operations.

***If we are unable to provide a competitive entertainment offering through our Smart TV discovery and engagement software, our ability to attract and retain consumers would be harmed, as they increasingly look for new ways to access, discover and view digital content.***

Our Smart TVs connect consumers with a user interface capable of facilitating discovery and engagement with a wide variety of content from traditional and streaming content providers, including Netflix, Hulu, YouTube and Amazon Instant Video. We face increased competition from a growing number of broadband-enabled devices from providers such as Roku, AppleTV, Amazon, and Google that provide broadband delivered digital content directly to a consumer's television connected to their device. We also face competition from online content providers and other PC software providers who deliver digital content directly to a consumer's personal computer, which in some cases may then be viewed on a consumer's television. To compete effectively, we must be able to provide premium, high-definition content at comparable speeds and quality. We must also maintain arrangements with a competitive assortment of content providers. We do not currently have arrangements with all of the popular content providers, including some content providers that are available on competitive devices, such as ESPN and HBOGo. Furthermore, our arrangements with our current content providers typically involve no significant long-term commitments, and we cannot guarantee we will be able to continue our relationships with our current content providers in the future. If we are unable to provide a competitive entertainment offering through our Smart TV discovery and engagement software, our ability to attract and retain consumers would be harmed, as they increasingly look for new ways to access, discover and view digital content.

***The success of our Inscape data services depends on developing and maintaining relationships and technology integrations with brand advertisers, advertising and media agencies, broadcast, cable and local television networks, digital publishers and streaming companies, data analytics firms and advertising technology firms, which enable us to deliver our Inscape data services at scale.***

We are in the early stages of developing our Inscape data services, which is a complex process, involving cooperation among multiple participants in the television and digital advertising ecosystems. The success of our Inscape data services depends on developing and maintaining relationships and technology integrations with brand advertisers, advertising and media agencies, broadcast, cable and local television networks, digital publishers and streaming companies, data analytics firms and advertising technology firms, which enable us to deliver our Inscape data services at scale. The television and digital advertising industries continue to evolve and we will need to ensure we maintain and expand our existing relationships as well as develop relationships with additional constituents as they emerge. We cannot assure you that our relationships with these constituents will result in significant net sales, or that we will be able to maintain or expand these existing relationships or develop new relationships.

In particular, we have spent the last several years and significant resources building out technology integrations with marketing technology companies to facilitate the collection of data that we ultimately intend to be used for the delivery of digital advertisements to television and online content audiences. We are, therefore, dependent on marketing technology companies to collect and make that data useful to our Inscape data service customers. If these marketing technology companies fail to properly collect user data from our products, or if we fail to maintain and expand our relationships with these marketing technology companies, the success of our Inscape data services offerings could be adversely affected. Additionally, television content providers, digital publishers and marketing technology companies may begin to develop products supplementing their current product offerings to compete with our data services offerings rather than continuing to facilitate the delivery of

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our products or continuing to purchase and incorporate our products into their own products. If television content providers, digital publishers and marketing technology companies elect to compete directly with our data services offerings, future demand for these services may decrease and we may not experience our anticipated growth.

### ***Our future growth is dependent upon the growth and integration of the digital and television advertising industries.***

Many advertisers continue to devote a substantial portion of their advertising budgets to traditional, offline advertising, such as offline television, radio and print. The future growth of our business and, in particular, our Inscape data services, will depend on the integration of television and digital advertising, and on advertisers increasing their spend on television and digital advertising, and we cannot be certain that they will do so. If advertisers do not perceive meaningful benefits from the integration of television and digital advertising, and in particular the benefit of viewing behavior data, including in terms of cost effectiveness, then the digital advertising market may develop more slowly than we expect, which could adversely affect our growth prospects. Furthermore, viewing behavior data does not yet make up a significant part of the television and digital advertising ecosystem, and we do not have control over most factors contributing to the development of the market.

### ***We do not control our manufacturers, or require them to comply with a formal code of conduct, and actions that they might take could harm our reputation and sales.***

We do not control our manufacturers, including their labor, environmental or other practices, or require them to comply with a formal code of conduct. A violation of labor, environmental or other laws by our manufacturers or their suppliers, or a failure of these parties to follow ethical business practices, could lead to negative publicity and harm our reputation, particularly since some of our most significant manufacturers are related parties, such as AmTRAN Technology Co., Ltd. and Hon Hai Precision Industry Co., Ltd., an affiliate of our stockholder Q-Run Holdings Ltd. In addition, we may choose to seek alternative manufacturers if these violations or failures were to occur. Identifying and qualifying new manufacturers can be time consuming and we might not be able to substitute suitable alternatives in a timely manner or at an acceptable cost. In the past, other consumer product companies have faced significant criticism for the actions of their manufacturers and suppliers, and we could face such criticism ourselves. Any of these events could adversely affect our brand, harm our reputation, reduce demand for our products and harm our ability to meet demand if we need to identify alternative manufacturers.

### ***We rely primarily on third parties for the research and development behind the technologies underlying our products and services.***

We rely primarily on third parties for the research and development of the technologies underlying our products and services. The success of our products and services is dependent on the research and development performed by these third parties. If our relationships with our third-party manufacturers and licensors is harmed or ends, we may need to incur additional research and development costs in order to remain competitive with our products and services. Furthermore, we cannot control the amount or type of research and development done by our third-party providers. If they choose to invest less in research and development, or to invest in areas so that they fail to keep pace with the technological changes in our industries, our products and services could be less competitive, whereby our business, operating results and financial condition could be adversely affected.

### ***Our success will depend in part on our continued ability to offer products utilizing a display technology that has broad market appeal.***

Most of our net sales are currently derived from the sale of products utilizing LCD display technology, which is currently the most common flat panel display technology. We do not design or manufacture LCD

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could seek to impose substantial civil and/or criminal fines and penalties which could have a material adverse effect on our business, reputation, operating results and financial condition.

***New regulations related to conflict minerals may cause us to incur additional expenses and could limit the supply and increase the costs of certain metals used in the manufacturing of our products.***

As a public company, we will be subject to the requirements under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, or the Dodd-Frank Act, that will require us to diligence, disclose and report whether or not our products contain conflict minerals. The implementation of these requirements could adversely affect the sourcing, availability and pricing of the materials used in the manufacture of components used in our products. In addition, we will incur additional costs to comply with the disclosure requirements, including costs related to conducting diligence procedures to determine the sources of conflict minerals that may be used or necessary to the production of our products and, if applicable, potential changes to products, processes or sources of supply as a consequence of such verification activities. It is also possible that we may face reputational harm if we determine that certain of our products contain minerals not determined to be conflict-free or if we are unable to alter our products, processes or sources of supply to avoid such materials.

***Our management team has limited experience managing a public company.***

Most members of our management team have limited experience managing a publicly-traded company, interacting with public company investors, and complying with the increasingly complex laws pertaining to public companies. Our management team may not successfully or efficiently manage our transition to being a public company subject to significant regulatory oversight and reporting obligations under the federal securities laws and the continuous scrutiny of securities analysts and investors. These new obligations and constituents will require significant attention from our senior management and could divert their attention away from the day-to-day management of our business, which could adversely affect our business, financial condition, and operating results.

***We are subject to a variety of federal, state and foreign laws and regulatory regimes. Failure to comply with governmental laws and regulations could subject us to, among other things, mandatory product recalls, penalties and legal expenses that could have an adverse effect on our business.***

Our business is subject to regulation by various federal and state governmental agencies. Such regulation includes the radio frequency emission regulatory activities of the Federal Communications Commission, the anti-trust regulatory activities of the Federal Trade Commission and Department of Justice, the consumer protection laws of the Federal Trade Commission, the import/export regulatory activities of the Department of Commerce, the product safety regulatory activities of the Consumer Products Safety Commission, the regulatory activities of the Occupational Safety and Health Administration, the environmental regulatory activities of the Environmental Protection Agency, the labor regulatory activities of the Equal Employment Opportunity Commission and tax and other regulations by a variety of regulatory authorities in each of the areas in which we conduct business. We are also subject to regulation in other countries where we conduct business. In certain jurisdictions, such regulatory requirements may be more stringent than in the United States. In addition, we are subject to a variety of federal and state employment and labors laws and regulations, including the Americans with Disabilities Act, the Federal Fair Labor Standards Act, the WARN Act and other regulations related to working conditions, wage-hour pay, over-time pay, employee benefits, anti-discrimination, and termination of employment. Noncompliance with applicable regulations or requirements could subject us to investigations, sanctions, mandatory product recalls, enforcement actions, disgorgement of profits, fines, damages, civil and criminal penalties, or injunctions.

We are subject to governmental export and import controls and economic sanctions laws that could subject us to liability and impair our ability to compete in international markets. The U.S. and various foreign governments have imposed controls, export license requirements and restrictions on the import or export of some

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technologies. Our products are subject to U.S. export controls, including the Commerce Department's Export Administration Regulations and various economic and trade sanctions regulations established by the Treasury Department's Office of Foreign Assets Controls, and exports of our products must be made in compliance with these laws. Furthermore, U.S. export control laws and economic sanctions prohibit the provision of products and services to countries, governments, and persons targeted by U.S. sanctions. Even though we attempt to ensure that our customers comply with applicable law to prevent our products from being provided to targets of U.S. sanctions, their actions are not within our complete control, and our products could be re-exported to those targets, or provided by our customers in contravention of our requirements or instructions. Any such provision could have negative consequences, including government investigations, penalties and reputational harm. Our failure to obtain required import or export approval for our products could harm our international and domestic sales and adversely affect our net sales.

Any government enforcement action could harm our business, financial condition and results of operations. If any governmental sanctions are imposed, or if we do not prevail in any possible governmental civil or criminal litigation matter in the future, our business, financial condition and results of operations could be materially adversely affected. In addition, responding to any action will likely result in a significant diversion of management's attention and resources and an increase in professional fees.

***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.***

Unless a consumer chooses to disable the feature, many of our Smart TVs are programmed to collect specific viewing information, in association with non-personal information (which we define in our posted privacy policies as a data element or elements in a form that does not alone permit direct association with a specific person). We may make such (non-identifying) information available to third parties, for advertising and other business purposes. U.S. and foreign governments have enacted or are considering legislation related to digital advertising and we expect to see an increase in legislation and regulation related to digital advertising, the use of location or behavioral data to inform advertising, the collection and use of Internet user data and unique device identifiers, such as IP address, and other data protection and privacy regulation. Such laws and legislation could affect our costs of doing business, and may adversely affect the demand for, or effectiveness and value of, our Inscope data services solution.

Our customers may also object to or opt out of the collection and use of their data, which may harm our business. For example, 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 Inscope data services.

In addition, we collect, process, store, use and may make available to third parties, such as warranty service providers, personal information (which we define in our posted privacy policies as data that can be used to identify or contact a person) and other data supplied by consumers when, for example, consumers register our products for warranty purposes. Possession and use of personal consumer information in conducting our business may subject us to legislative and regulatory burdens in the United States and foreign jurisdictions, as well as other obligations related to privacy that could require notifications of any data breaches and restrict our use of information collected from or about consumers or their devices, including applicable state laws such as consumer



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protection and breach notification laws. The personal information we collect and maintain also 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.

We may incur significant expenses to comply with privacy, consumer protection and security standards and protocols imposed by law, regulation, industry standards or contractual obligations. A wide variety of local, state, national and international laws and regulations apply to the collection, use, retention, protection, disclosure, transfer and other processing of data collected from or about consumers and devices, and the regulatory framework for privacy issues is evolving worldwide. Various government and consumer agencies and public advocacy groups have called for new regulation and changes in industry practices, including some directed at the digital advertising or connected devices industries in particular. Some of our competitors may have more access to lobbyists or governmental officials and may use such access to effect statutory or regulatory changes in a manner to commercially harm us while favoring their solutions. It is possible that new laws and regulations will be adopted in the United States and internationally, or existing laws and regulations may be interpreted in new ways, that would affect our business, particularly with regard to regulation of devices that connect to the Internet. The U.S. Federal Trade Commission and many state attorneys general are applying federal and state consumer protection laws to require that the online collection, use, and dissemination of data, and the presentation of website or other electronic content, comply with certain standards for notice, choice, security, and access. Courts may also adopt these developing standards. A number of states, including California, have enacted laws or are considering the enactment of laws governing the release of credit card or other information received from consumers. Individual lawmakers in the United States have sent letters to our competitors objecting to the means and methods of communicating with consumers about data collection and data sharing practices related to Smart TV products and services or expressed specific concerns about data security risks presented by Smart TVs.

Evolving definitions of what is considered “personal data” under EU laws, or personally identifying or identifiable information within the United States and elsewhere, especially relating to the classification of IP addresses, machine, device or other persistent identifiers, location data, behavioral data, and other such information, may cause us in the future to change our business practices, diminish the quality of our data and the value of our Inscope data services, and hamper our ability to expand our offerings into the EU or other jurisdictions outside of the United States. Furthermore, such laws may be inconsistent between countries and jurisdictions or conflict with other rules and regulations. Whether and how existing local and international privacy and consumer protection laws in various jurisdictions apply to the Internet and other online technologies is still uncertain and may take years to resolve. 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. For example, our business, including our ability to operate and expand internationally, could be adversely affected if legislation or regulations are adopted, interpreted, or implemented in a manner that is inconsistent with our current business practices and that require changes to these practices, the design of our products and features or privacy practices. The costs of compliance with, and the other burdens imposed by, these and other laws or regulatory actions may prevent us from selling our products or services, or increase the costs of doing so, and may affect our ability to invest in or jointly develop products. 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.

Further, while 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

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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. Furthermore, any such proceedings or actions, or public statements against us by consumer advocacy groups or others, could cause our customers to lose trust in us, which could have an adverse effect on our business.

Additionally, 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 our policies, such violations may also put consumers' information at risk and could in turn have an adverse effect on our business. If third parties improperly obtain and use the information from or about our consumers or their devices, we may be required to expend significant resources to resolve these problems.

We also are subject to certain contractual obligations to indemnify and hold harmless advertisers, digital publishers, marketing technology companies and other users or buyers of our data from the costs or consequences of noncompliance with privacy-related laws, regulations, self-regulatory requirements or other legal obligations, or inadvertent or unauthorized use or disclosure of data that we store or handle as part of providing our products.

***A significant breach of the confidentiality of the information we hold or of the security of our computer systems could be detrimental to our business, financial condition and operating results.***

We rely on others to operate complex computer systems that store consumer data, which they are contractually required to maintain on a confidential basis. The information we collect through our Inscape data services does not include consumers' names, addresses, phone numbers, social security numbers, credit card information or other contact or identity information that we consider to be personal information, but it does include device or other persistent identifiers, IP addresses and viewing behavior data. We also maintain a separate database of personal information that we collect in connection with consumers who register our products for warranty purposes or otherwise contact us, such as for customer service assistance. Like all services that connect with the Internet, our Inscape data service, and our website, may be subject to break-ins, attacks, attempts to overload our servers with denial-of-service or other attacks and similar disruptions from unauthorized use of our computer systems, any of which could lead to interruptions, delays, or shutdowns of our services, causing loss of critical data or the unauthorized disclosure or use of information about consumers or their devices or other sensitive or confidential information. Our databases and data centers maintained on our behalf may be subject to unauthorized access by third parties who bypass or disable physical and cyber security and associated measures. Such unauthorized third parties could attempt to gain entry to those databases and data centers for the purpose of stealing data or disrupting systems. We cannot be certain that current or future criminal capabilities, discovery of existing or new vulnerabilities in our and our service providers' systems and attempts to exploit those vulnerabilities, physical systems or facility break-ins and data thefts or other developments will not compromise or breach the technology protecting the systems and information possessed by us and our service providers. In the event that our or our service providers' protection efforts are unsuccessful and there is an unauthorized disclosure of confidential information or the breach of the security of such information, we could suffer substantial harm. A major breach of our or our service providers' network security and systems could have serious negative consequences for our businesses and future prospects, including possible fines, penalties and damages, reduced consumer demand for our media entertainment products, and harm to our reputation and brand.

Further, a portion of our technology infrastructure is operated by third parties over which we have no direct control, and we are reliant in part on their security measures to protect our consumers' information. If those third parties do not adequately protect our consumers' information, it could result in decreased net sales and our reputation could suffer irreparable harm, causing consumers to reject our products in the future, our data providers not to share data with us, or advertisers or other downstream users of our viewing behavior data not to



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manufacturers for each of our finished products. Our operations team based in the United States and China coordinate with our manufacturers' engineering, manufacturing and quality control personnel to develop the requisite manufacturing processes, quality checks and testing and general oversight of the manufacturing activities. We believe this model has enabled us to effectively and efficiently deliver high quality and innovative products while enabling us to minimize costs and manage inventory risk.

## **Research and Development**

We are passionate about designing cutting-edge products that drive consumer demand and enhance our brand. We believe that our future success depends, in part, upon our ability to continue to develop innovative new products, enhancements to our existing products, and enhanced functionality and ease of use. We will continue to employ a consumer focused design approach by providing innovative products that respond to, anticipate and even drive consumer desires for enhanced picture quality, audio quality, functionality, design and ease of use.

Our strong relationships with our manufacturers give us access to a significant pool of research and development resources with the common goal of developing quality products that are accessible to consumers. Although we design our products in-house, we outsource the majority of our research and development as well as leverage the resources of our suppliers' research and development functions in the development of new product introductions.

We carefully design our products to be aesthetically pleasing, with a focus on premium picture quality and an intuitive user experience. Our products include next generation technology, such as full-array LED backlighting, which enhances the viewing experience.

## **Logistics and Fulfillment**

The parts for our products are procured directly by our manufacturers. We utilize our business planning team to obtain competitive pricing on certain components, and we leverage our manufacturers' volume purchases for best pricing on common parts. Televisions, sound bars and accessories are typically manufactured and packaged for retail sale and shipped via ocean freighter from our manufacturers in China and by trucks from our manufacturers in Mexico to logistics hubs. Our business planning team also coordinates with our manufacturers to ensure the shipment of our products from the manufacturer to these logistics hubs meets customer needs. We typically take ownership of the products directly from these logistics hubs, and our logistics team manages this process as we deliver the products to our customers. We utilize a vendor-managed inventory strategy that allows us to reduce costs across the entire supply chain and improve inventory flexibility.

## **Competition**

We believe the principal competitive factors impacting the market for our products are brand, price, features, quality, design, customer service, time-to-market and availability. We believe that we compete favorably in these areas. The consumer electronics market in which we operate is highly competitive and includes large, well-established companies. We face competition from large consumer electronics brands such as Samsung, Sony, LG, Sharp, Toshiba, Panasonic and Funai. Many of our competitors have greater financial, distribution, marketing and other resources, longer operating histories, better brand recognition and greater economies of scale. In addition, these competitors have long-term relationships with many of our retail customers.

We believe the principal competitive factors impacting the market for our Inscope data services are the quality and accuracy of our data, the timeliness of our data, and the amount and level of detailed information and insight that we can provide. We believe that we compete favorably in these areas. The market for viewing behavior data and analysis is highly competitive and includes well-established companies such as A.C. Nielsen and Rentrak. Many of Inscope's competitors have greater financial, marketing and other resources, longer

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) \_\_\_\_\_

**DEFENDANTS**

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) \_\_\_\_\_

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

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

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box 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. NATURE OF SUIT** (Place an "X" in One Box Only)

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

**V. 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 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    DEMAND \$

CHECK YES only if demanded in complaint:

**JURY DEMAND:**    ☐ Yes    ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE

SIGNATURE OF ATTORNEY OF RECORD

(Place an "X" in One Box Only)

( ) SAN FRANCISCO/OAKLAND    ( ) SAN JOSE    ( ) EUREKA

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.