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Superior Court of California
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Brittany Smith

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

JEFFREY KOENIG and MARCELLUS
HOLT, on Behalf of Themselves and All
Others Similarly Situated,

Plaintiffs,

vs.

VIZIO, INC.,

Defendant.

Case No **BC 702266**

**PLAINTIFFS' CLASS ACTION
COMPLAINT FOR VIOLATIONS OF:**

- 1. UNFAIR COMPETITION LAW,
BUS. & PROF. CODE, § 17200**
- 2. FALSE ADVERTISING LAW, BUS.
& PROF. CODE, § 17500**
- 3. CONSUMER LEGAL REMEDIES
ACT, CIV. CODE, § 1770**

DEMAND FOR JURY TRIAL

05/01/2018

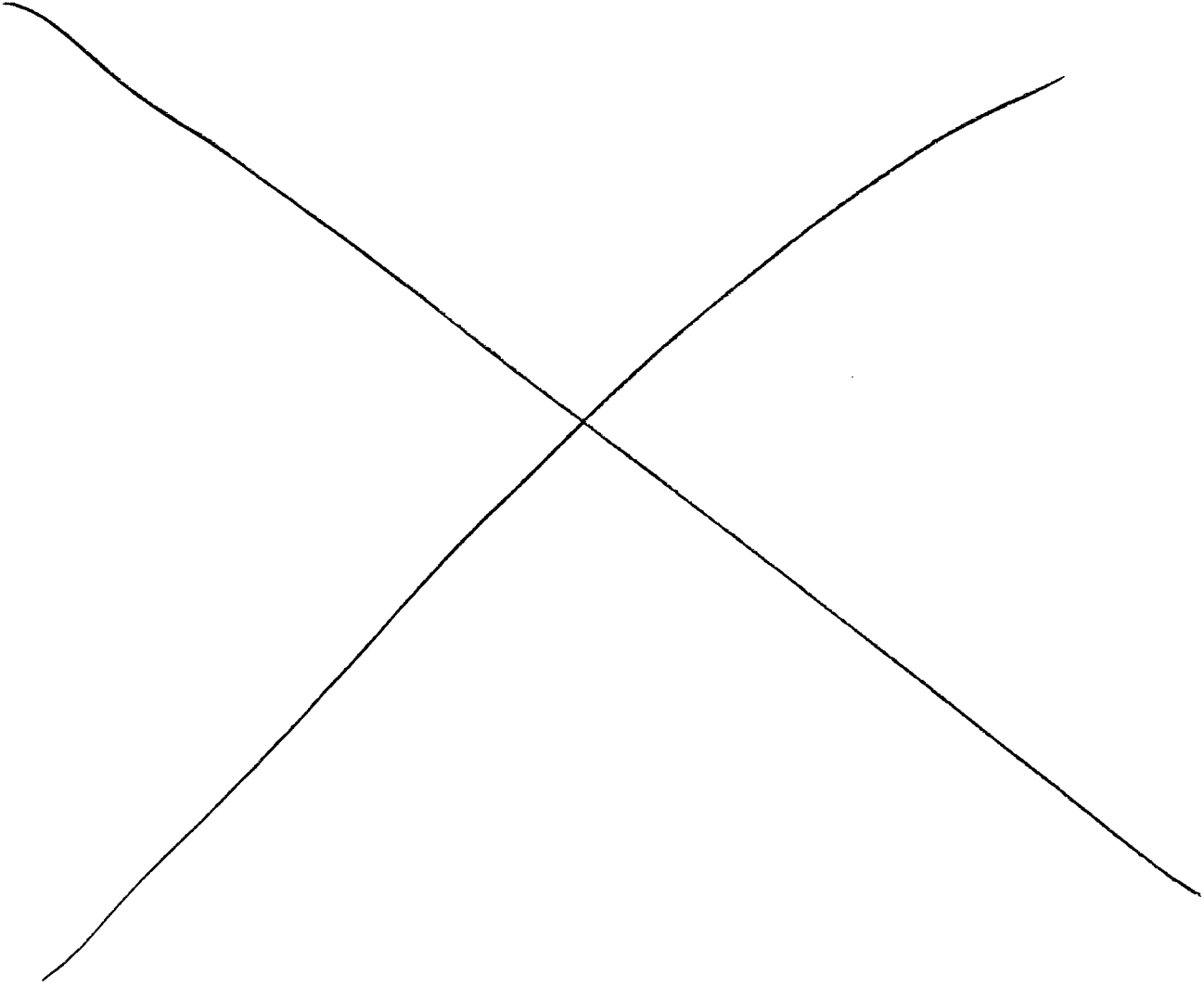
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CIT/CASE: BC702266
LEA/DEF#:

55-10

RECEIPT #: CCH612315015
DATE PAID: 05/01/18 11:12 AM
PAYMENT: \$1,435.00 310

RECEIVED:
CHECK: \$1,435.00
CASH: \$0.00
CHANGE: \$0.00
CARD: \$0.00



05 / 01 / 2018

1 For this class action Complaint, Plaintiffs Jeffrey Koenig and Marcellus Holt, individually
2 and on behalf of all others similarly situated, allege as follows:

3 **SUMMARY OF THE ACTION**

4 1. The market for flat panel LCD (Liquid Crystal Display) televisions is competitive.
5 As such, product performance and technical capabilities are key factors in marketing and setting
6 the price television manufacturers and vendors can demand for their products.

7 2. A significant technical problem with LCD televisions (hereafter referred to as
8 “televisions”) is motion blurring, particularly with fast-moving scenes.

9 3. A solution to this problem is to increase the television’s refresh rate so it can
10 display more images per second to reduce or eliminate motion blurring and provide a better
11 picture compared to televisions lacking this technology. Because this technology is expensive,
12 however, these televisions command a premium price.

13 4. Defendant VIZIO states in its marketing materials and technical specifications that
14 its televisions use a higher refresh rate, and it makes these representations to try and influence
15 consumer decisions on whether to purchase its televisions.

16 5. In reality, the refresh rates of VIZIO’s televisions are half of what VIZIO claims,
17 and in many instances, VIZIO has done nothing to increase the television’s refresh rate.
18 Defendant VIZIO makes these false or misleading statements about the capabilities of its
19 televisions so it can market and sell lower-quality televisions at a higher price or, alternatively,
20 capture sales it otherwise would not have made.

21 6. Had Defendant VIZIO provided accurate information about the quality of its
22 televisions, Plaintiffs and the Class would have paid less for their televisions or purchased a
23 competing product from a different manufacturer.

24 7. Defendant VIZIO’s scheme injured Plaintiffs and members of the putative class
25 by, among other things, having them pay more for their VIZIO televisions than they otherwise
26 would have paid or, alternatively, duping them into buying a product they otherwise would not
27 have considered for purchase.

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1 **PARTIES**

2 8. Defendant VIZIO, Inc. (hereafter, VIZIO) is a corporation organized under the
3 laws of the state of California. Its headquarters are located at 39 Tesla, Irvine, California.

4 9. Plaintiff Jeffrey Koenig is a resident of the state of California who resides in
5 Rosamond, California. On August 1, 2016, Plaintiff Koenig purchased a new VIZIO television
6 for personal use that VIZIO sold through bestbuy.com. He picked up the television at a Best Buy
7 store in Santa Clarita, CA.

8 10. Plaintiff Marcellus Holt is a resident of the state of California who resides in San
9 Bernardino, California. In November of 2016, Plaintiff Holt purchased a new VIZIO television
10 for personal use that VIZIO sold through a Target store located in Canoga Park, California.

11 **JURISDICTION AND VENUE**

12 11. The Court has personal jurisdiction over Defendant VIZIO as it resides in and does
13 business in the State of California.

14 12. This is a class action brought pursuant to Code of Civil Procedure, § 382, and this
15 Court has jurisdiction over the Plaintiffs' claims because the amount in controversy exceeds this
16 Court's jurisdictional minimum.

17 13. Federal jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d), is
18 lacking because two-thirds or more of the members of the proposed plaintiff class in this case in
19 the aggregate, and the primary defendant, VIZIO, are citizens of the State of California. 28 U.S.C.
20 § 1332(d)(4)(B).

21 14. Venue is proper under Code of Civil Procedure sections 395, subdivision (a),
22 395.5, and Civil Code section 1780, subdivision (c) because a substantial part of the events or
23 omissions giving rise to the claims asserted in this complaint occurred in this county, to wit,
24 Defendant VIZIO made false and misleading statements about its televisions in this county to sell
25 its televisions to Plaintiffs Koenig, Holt and other putative class members in this county, and
26 certain of the transactions at issue occurred in this county and the State of California. Attached to
27 this Complaint is a Consumer Legal Remedies Act Affidavit of Venue.

1 **FACTS**

2 15. VIZIO assembles and sells televisions. It is one of the largest sellers (by volume)
3 of televisions in California and the United States.

4 16. VIZIO depends on the sale of televisions for a substantial portion of its net sales,
5 and a decline in the volume of those sales would harm its business and operating results.

6 17. The market for televisions is rapidly evolving and highly competitive, and VIZIO
7 sells the vast majority of its televisions to the end consumer through various retailers. In most
8 instances, retailers offer several competing brands of similar televisions. Retailers will cease
9 offering VIZIO products if consumers prefer a competing brand and VIZIO televisions are unable
10 to be sold at a profit.

11 18. Consumer demand for televisions is affected by, among other things, technological
12 innovations that advance the picture quality of display panels to achieve better clarity and detail
13 in images, especially during fast-moving scenes.

14 19. Thus, to remain competitive and stimulate consumer demand, VIZIO must keep
15 pace with technological advances that deliver better picture quality in televisions. If consumers
16 were to start choosing televisions manufactured by VIZIO's competitors, it would have a
17 materially adverse effect on VIZIO's financial condition.

18 20. As a result, both VIZIO and its competitors have continually focused on methods
19 to advance the picture quality of display panels to achieve better clarity and detail in images,
20 especially during fast-moving scenes.

21 **Refresh Rates: A Primer and its Importance**

22 21. The display panel of a television displays and holds one image at a time in rapid
23 succession to create the appearance of a moving picture. It determines overall performance
24 capabilities and is, for all intents and purposes, the television.

25 22. The number of images (per second) that a television's display panel can produce
26 and present to the viewer is measured in cycles per second, called Hertz ("Hz"), and is referred to
27 as refresh rate, that is, the number of times the display panel can "refresh" the image each second.

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1 23. A television's Hz measurement, that is, refresh rate, are industry standard
2 specifications.

3 24. A television's refresh rate (Hz) is determined solely by, and correspond directly to,
4 the vertical frequency of the display panel used by the television. If, for example, the display
5 panel has a vertical frequency of 60Hz, the television has a Hz measurement of 60Hz and can
6 refresh at the rate of 60 images per second; if the display panel has a vertical frequency of 120Hz,
7 the television has a Hz measurement of 120Hz and can refresh at the rate of 120 images per
8 second; and if the display panel has a vertical frequency of 240Hz, the television has a Hz
9 measurement of 240Hz and can refresh at the rate of 240 images per second.

10 25. As stated, a television's Hz specification, it's refresh rate and the vertical
11 frequency of the display panel used by the television are unequivocally, identically and
12 numerically linked: knowing any one of these specifications reveals the numerical value for the
13 remaining two. In effect, these three specifications are one in the same.

14 26. The refresh rate (Hz) specification of a television is a material specification. If
15 enough images are not presented in rapid enough succession, the viewer will experience "motion
16 blur," especially with sports programing, camera panning, action sequences, video games and
17 during high-volume content presentation (as when information scrolls across the bottom of the
18 screen). Motion blur occurs when the television's display panel cannot produce and display
19 images quickly enough to maintain image presentation clarity.

20 27. Televisions with higher refresh rates (Hz) can reduce or eliminate motion blur and
21 produce clearer and consistently smoother pictures. To achieve higher refresh rates (Hz), the
22 display panel must have the technological capability to capture (or create) the images required to
23 achieve motion clarity.

24 28. Increasing the refresh rate (Hz) capabilities of display panels is an expensive and
25 significant technological accomplishment. In the United States, because the electric current is
26 supplied at 60Hz, the standard and basic refresh rate of display panels is 60Hz. To improve the
27 refresh rate (Hz), LCD display panel manufacturers have incorporated advanced technology and
28 high-end materials to produce 120Hz and 240Hz display panels for use in televisions.

1 29. These advanced display panels use image interpolation technology which predicts,
2 30. creates and displays an image (or images) in between the images supplied by the
3 60Hz current. To illustrate, a 60Hz display panel will produce the 60 images broadcast by the
4 60Hz current as follows: 1-2-3-4-5-6-7-8 and so on. A 120Hz display panel will use complex
5 algorithms to predict, create, and display an image in between each of the supplied 60 images to
6 display 120 images per second in the following manner: 1-1/2-2-2/3-3-3/4-4-4/5-5-5/6-6-6/7-7-
7 7/8-8 and so on. Consequently, the amount of blurring on a 120Hz display panel is halved from
8 the level at the rate of 60 images per second. A 240Hz display panel can use algorithms to
9 predict, create, and display three images in between each image supplied by the current and the
10 amount of blurring is further halved from the level at the rate of 120 images per second.

11 31. In addition, display panels greater than 60Hz require higher-end liquid crystals
12 capable of the faster response times needed to display, hold and rapidly change the images that
13 are displayed.

14 32. An alternative, less expensive method to address motion blur is to manipulate the
15 television's lighting element – the backlight. Backlight manipulation methods dim or cease to
16 illuminate a portion of the image while it appears on screen before displaying the next image.

17 33. Display panels that utilize backlight manipulation do not have the ability to display
18 more images than its stated vertical frequency specification: a 60Hz display panel with backlight
19 manipulation can only display a maximum of 60 images per second; a 120Hz display panel with
20 backlight manipulation can only display a maximum of 120 images per second; and a 240Hz
21 display panel with backlight manipulation can only display a maximum 240 images per second.

22 34. Backlight manipulation has no effect on the refresh rate (Hz) of a television
23 because backlight manipulation cannot, and does not, increase the Hz of the display panel used by
24 a television.

25 35. Backlight manipulation is less expensive for the television manufacturer to
26 implement. It is also less effective at reducing or eliminating motion blur, particularly in fast-
27 moving scenes, than using 120Hz or 240Hz display panels.

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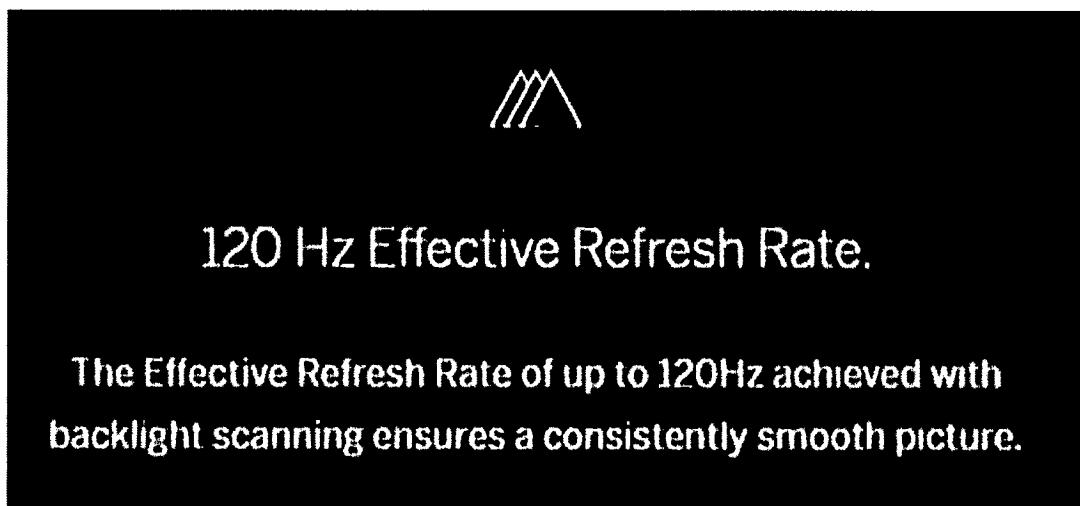
1 **VIZIO's Practice of Fraudulently Marketing Refresh Rate (Hz)**

2 36. VIZIO's competitors began developing and selling LCD televisions purporting to
3 have 120Hz or 240Hz display panels.


4 37. Instead of investing in the technology and materials to legitimately increase the
5 refresh rate (Hz) of its televisions, VIZIO opted to utilize the inferior and less expensive backlight
6 manipulation method to address motion blur. Nonetheless, VIZIO claimed the prestige of having
7 televisions with a higher refresh rate (Hz) even though they did not.

8 38. Thus, VIZIO marketed the technical specifications of its televisions with 60Hz
9 display panels as having a "120 Hz Effective Refresh Rate."

10 39. For example, in a section of VIZIO's current website for its television titled
11 "Picture Quality Specs," VIZIO states as follows:



21 40. VIZIO's marketing the technical specifications of televisions with 60Hz display
22 panels as having a "120Hz Effective Refresh Rate" is misleading and untrue. VIZIO's televisions
23 with 60Hz display panels, in fact, have an effective refresh rate of only 60Hz because they can
24 only display 60 images per second, not 120 images per second. Backlight manipulation methods
25 cannot and do not increase the effective Hz (refresh rate) of the television.

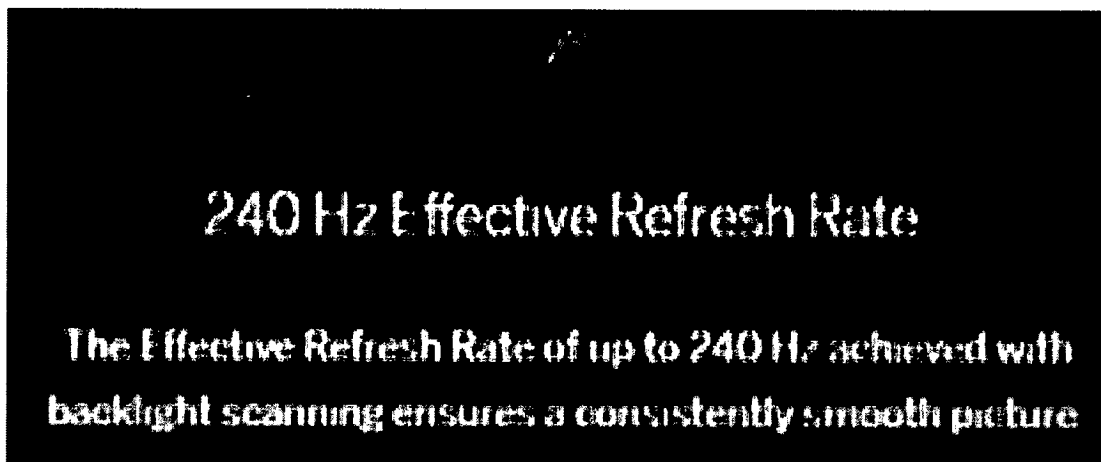
26 41. Yet, as further reflected by the  icon of multiple images in VIZIO's
27 specifications, the message VIZIO intends to convey to the consumers is that its televisions use a
28 larger number of multiple images to achieve a smooth picture (in this case, 120 images per

1 second) when they do not.


2 42. VIZIO knows, or at the very least should know, that its televisions with 60Hz
3 display panels have a refresh rate of 60 images per second and that backlight manipulation
4 methods cannot and do not increase the effective Hz (refresh rate) of a television.

5 43. VIZIO also manufactured and sold televisions with 120Hz display panels, but
6 marketed the technical specifications of its televisions with 120Hz display panels as having a
7 “240Hz Effective Refresh Rate” in order to compete with competitors offering legitimate 240Hz
8 televisions. See VIZIO Webpages, attached hereto as Exhibits D and E.

9 44. For example, in a section of VIZIO’s current website for televisions titled “Picture
10 Quality Specs,” VIZIO states as follows:



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19 45. VIZIO’s marketing of the technical specifications of its televisions with 120Hz
20 display panels as having a “240Hz Effective Refresh Rate” is misleading and untrue. VIZIO’s
21 televisions with 120Hz display panels have an effective refresh rate of 120Hz because they can
22 only display 120 images per second, not 240 images per second. Backlight manipulation methods
23 cannot and do not increase the effective Hz (refresh rate) of the television.

24 46. Yet, as further reflected by the  icon of multiple images in VIZIO’s
25 specifications, the message VIZIO intends to convey to consumers is that its televisions use a
26 larger number of multiple images to achieve a smooth picture (in this case, 240 images per
27 second) when they do not.

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1 47. VIZIO knows, or at the very least should know, that its televisions with 120Hz
2 display panels have a refresh rate of only 120 images per second and that backlight manipulation
3 cannot and does not increase the effective Hz (refresh rate) of a television.

4 48. Not only are VIZIO's statements about the technical specifications of its
5 televisions misleading and untrue, but the refresh rate (Hz) of the display panel used by a
6 television is not something that can be readily verified by the end consumer.

7 49. VIZIO repeats these misleading and false statements in its user manuals. For
8 example, in its user manual for its model M50-E1 television, attached hereto as Exhibit A, VIZIO
9 states that the television has the following specifications:

	M50-E1
Screen Size:	50"
Viewable Area:	49.50"
Dimensions w/ Stand:	44.40" x 27.98" x 8.70"
w/o Stand:	44.40" x 25.61" x 2.68"
Weight w/ Stand:	30.86 lbs
w/o Stand:	29.32 lbs
LCD Backlight:	Full Array LED
Active LED Zones:	32
Refresh Rate:	120 Hz Effective Refresh Rate
Maximum Resolution:	3840 x 2160 (UHD)
Dynamic Contrast Ratio:	20M:1

21 Exhibit A at Section B, page 35.

22 50. VIZIO's statement that the Refresh Rate of the M50-E1 is "120 Hz Effective
23 Refresh Rate" is false and misleading. Upon information and belief, VIZIO's model M50-E1
24 television uses a 60Hz display panel, and therefore, it has an "effective refresh rate" of 60Hz, not
25 120Hz.

26 51. VIZIO's misleading and untrue statements about the refresh rates (Hz) of its
27 televisions is likely to deceive members of the public and are intended to try and influence their
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1 decisions on whether to purchase a VIZIO television or one manufactured by a competitor.

2 52. Upon information and belief, VIZIO also made these misleading and untrue
3 statements so that retailers would provide adequate and attractive space in their stores for
4 VIZIO's televisions and to motivate them to recommend VIZIO's televisions to consumers. If
5 VIZIO's retailers did not adequately display VIZIO's televisions or chose to promote
6 competitors' televisions over VIZIO's products, including through more prominent or higher-
7 impact store displays and through in-store recommendations to consumers from their sales
8 personnel, then VIZIO's net sales would have decreased and its business would have been
9 harmed.

10 53. Not only are VIZIO's statements misleading and untrue, but the refresh rate (Hz)
11 of a television cannot be readily verified by the consumer.

12 54. VIZIO's misleading and untrue statements about the technical specifications and
13 performance of its televisions allowed VIZIO to sell its lesser-quality product at a higher price
14 and allowed VIZIO to realize sales it may not have otherwise made if it were truthful regarding
15 the performance capabilities of its televisions.

16 **Plaintiff Koenig's purchase of a VIZIO television**

17 55. VIZIO markets and sells its televisions through its website, Vizio.com, as well as
18 through other online retailers.

19 56. VIZIO makes available "Tech Specs" on its website for its television models. It
20 also makes the user manuals for VIZIO television models available for inspection and viewing.
21 The Hz rating and refresh rate are among the specifications listed in the "Tech Specs" section of
22 VIZIO'S website and in the user manuals.

23 57. In the "Tech Specs" section, VIZIO markets the M65-D0 model television as
24 having a technical specification of "240Hz Effective Refresh Rate"; in the user manual, the M65-
25 D0 model television is listed as having a "Refresh Rate" of "240Hz w/ Effective Refresh Rate."

26 58. Upon information and belief, the model M65-D0 television VIZIO markets on its
27 website has a refresh rate and Hz value of 120, not 240.

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1 59. On August 1, 2016, Plaintiff Koenig purchased a 65-inch VIZIO television, model
2 M65-D0, through Bestbuy.com.

3 60. Before he purchased this VIZIO television, Plaintiff Koenig reviewed this model
4 on VIZIO's website, reviewed its stated specifications and saw VIZIO's representations that this
5 model had a refresh rate of 240Hz. Indeed, one of the reasons Plaintiff Koenig purchased the
6 model M65-D0 VIZIO television was the advertised 240Hz refresh rate as he intended the
7 television to be used to watch sporting events and action movies.

8 61. The advertised 240Hz refresh rate was false. The VIZIO television Plaintiff
9 Koenig purchased has a refresh rate of 120Hz.

10 62. As a result of VIZIO's false and misleading statements, Plaintiff Koenig paid more
11 for his VIZIO television than he would have paid had VIZIO's advertising and representations
12 been truthful.

13 63. As a result of VIZIO's false and misleading statements, Plaintiff Koenig paid for a
14 television that VIZIO misrepresented as using technology it did not actually have and having
15 technical capabilities it did not actually have.

16 64. Indeed, Plaintiff Koenig experiences noticeable motion blur when using the VIZIO
17 television to watch sporting events and action movies.

18 **Plaintiff Marcellus Holt's purchase of a VIZIO television**

19 65. VIZIO markets and sells its televisions through Target.

20 66. Upon information and belief, VIZIO provides Target with marketing and other
21 advertising materials, including technical specifications about the refresh rates of different
22 models, for Target to use to advertise VIZIO's products in its stores and online.

23 67. VIZIO provides Target with false and misleading information about the refresh
24 rates of its LCD televisions so that Target will advertise the 120Hz or 240Hz refresh rate to end-
25 consumers.

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1 the State of California that VIZIO labeled as having a “Hz” rating twice as high as
2 its actual refresh rate.

3 Plaintiff reserves the right to modify the class definitions or add sub-classes as necessary prior to
4 filing a motion for class certification.

5 76. The “Class Period” is the time period beginning on the date established by the
6 Court’s determination of any applicable statute of limitations, after consideration of any tolling
7 and accrual issues, and ending on the date of entry of judgment.

8 77. Excluded from the Class is VIZIO; any affiliate, parent, or subsidiary of VIZIO;
9 any entity in which VIZIO has a controlling interest; any officer, director, or employee of VIZIO;
10 any successor or assign of VIZIO; anyone employed by counsel in this action; any judge to whom
11 this case is assigned, his or her spouse and immediate family members; and members of the
12 judge’s staff.

13 78. Numerosity/Ascertainability: The members of the Class are so numerous that
14 joinder of all members would be unfeasible and not practicable. The exact number of Class
15 members is unknown to Plaintiff at this time; however, it is estimated that there are more than one
16 thousand (1,000) individuals in the Class. The identity of such membership is readily
17 ascertainable from VIZIO’s records and the records of its retailers.

18 79. Common Questions of Law and Fact Predominate/Well Defined Community of
19 Interest: There are common questions of law and fact as to Plaintiff and all other similarly
20 situated employees, which predominate over questions affecting only individual members
21 including, without limitation, the following:

- 22 a. Whether VIZIO’s statements and representations about the Hz (refresh rate) of
23 its televisions are false or misleading;
- 24 b. Whether VIZIO violated California’s Unfair Competition Law (“UCL”),
25 Business and Professions Code, § 17200 *et seq.*, by, *inter alia*, (i) advertising
26 its televisions as using technology that they actually do not; and (ii)
27 misrepresenting the Hz (refresh rate) of its televisions; and
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- c. Whether VIZIO violated California’s False Advertising Law, Business and Professions Code, § 17500 *et seq.*, by, *inter alia*, (i) advertising its televisions as using technology that they actually do not use; and (ii) misrepresenting the Hz (refresh rate) of its televisions.
- d. Whether VIZIO violated California’s Consumer Legal Remedies Act (“CLRA”), Civil Code, § 1770, by, *inter alia*, (i) representing that its LCD televisions have characteristics, uses, benefits, or quantities that they do not have, in violation of Ca. Civil Code § 1770(a)(5); (ii) representing that its televisions are of a particular standard, quality, or grade, when they are not, in violation of Ca. Civil Code § 1770(a)(7); or (iii) advertising its televisions with intent not to sell them as advertised, in violation of Ca. Civil Code § 1770(a)(9).

80. Predominance of Common Questions: Common questions of law and fact predominate over questions that affect only individual members of the Class. The common questions of law set forth above are numerous and substantial and stem from Defendant’s policies and/or practices applicable to each individual Class member. As such, these common questions predominate over individual questions concerning each individual Class member’s showing as to his or her eligibility for recovery or as to the amount of his or her damages.

81. Typicality: Plaintiffs’ claims are typical of the claims of the Class because Plaintiffs purchased a VIZIO televisions that VIZIO represented and sold at a higher price by claiming it used a higher quality display panel to increase Hz (refresh rate) and reduce motion blur that, in reality, it did not have.

82. Adequacy of Representation: Plaintiffs are fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Class. Moreover, Plaintiffs’ attorneys are ready, willing and able to fully and adequately represent the members of the Class and Plaintiffs. Plaintiffs’ attorneys are experienced in prosecuting class actions and consumer fraud and product liability cases and are committed to vigorously prosecuting this

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1 action on behalf of the members of the Class.

2 83. Superiority: The California statutory law on unfair competition is broadly remedial
3 in nature and serves an important public interest in preventing or deterring unfair, deceptive,
4 untrue or misleading advertising. The nature of this action and the format of laws available to
5 Plaintiffs and members of the Class make the class action format a particularly efficient and
6 appropriate procedure to redress the violations alleged herein.

7 84. As such, the Class is maintainable under Section 382 of the Code of Civil
8 Procedure.

9 **CAUSES OF ACTION**

10 **FIRST CAUSE OF ACTION**

11 **FOR VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW, BUSINESS &**
12 **PROFESSIONS CODE SECTION 17200**

13 85. Plaintiffs re-allege and incorporates by reference each of the preceding paragraphs
14 as though fully set forth herein.

15 86. Plaintiffs brings this claim on behalf of themselves and the Class.

16 87. VIZIO has engaged and continues to engage in unlawful, fraudulent and/or unfair
17 business acts or practices in California, as well as unfair, deceptive, untrue or misleading
18 advertising in California, in violation of California's Unfair Competition Law ("UCL"), Business
19 and Professions Code, § 17200 *et seq.*

20 88. VIZIO violated the unlawful prong of section 17200 by its violation of Cal. Bus. &
21 Prof. Code § 17500 and the Consumer Legal Remedies Act, Civil Code section 1770 *et seq.*, as
22 alleged below.

23 89. VIZIO violated the fraud prong of section 17200 by making statements about the
24 refresh rates (Hz) and technology used in its television that are likely to deceive consumers and
25 did deceive Plaintiffs.

26 90. VIZIO violated the unfair prong of the UCL because the acts and practices set
27 forth in the Complaint offend established policy and work harm to Plaintiffs and the Class as well
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1 as competition.

2 91. VIZIO violated the unfair, deceptive, untrue or misleading advertising prong of the
3 UCL because the acts and practices set forth in the Complaint regarding their misrepresentations
4 and untrue statements to Plaintiffs and the Class that are intended to deceive them and influence
5 the Plaintiffs' and the Class members' decision to purchase VIZIO's products.

6 92. VIZIO's utilization of these unlawful or unfair business practices, and the unfair,
7 deceptive, untrue or misleading advertising practices, injured Plaintiff and the Class because they
8 paid more for their televisions than they otherwise would have paid absent VIZIO's deceptive and
9 sharp practices.

10 93. Because Plaintiffs are victims of VIZIO's conduct alleged herein, Plaintiffs and
11 the members of the Class seek full restitution of monies, as necessary and according to proof.

12 94. The acts complained of herein occurred within the last four years immediately
13 preceding the filing of the Complaint in this action.

14 95. All of the wrongful conduct alleged herein occurred, and continues to occur, in the
15 conduct of VIZIO's business. VIZIO's wrongful conduct is a part of a pattern of generalized
16 course of conduct that is still perpetuated and repeated in the State of California.

17 96. Plaintiff request that this Court enter such orders or judgments as may be
18 necessary to enjoin VIZIO from continuing its unfair, unlawful and/or deceptive practices, and to
19 restore to Plaintiffs and the Class the monies that VIZIO acquired by means of such unfair
20 competition, including restitution and/or restitutionary disgorgement, unjust enrichment and for
21 such other relief as may be appropriate.

22 97. Plaintiffs were compelled to retain the services of counsel to file this action to
23 protect their interests and those of the Class, to obtain restitution, to secure injunctive relief and to
24 enforce important rights affecting the public interest. Plaintiff and the Class is therefore entitled to
25 an award of attorneys' fees that should not in the interest of justice be paid out of a recovery, if
26 any, under Code of Civil Procedure § 1021.5.

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1 **SECOND CAUSE OF ACTION**

2 **FOR VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW, BUSINESS &**
3 **PROFESSIONS CODE SECTION 17500**

4 98. Plaintiffs re-allege and incorporate by reference each of the preceding paragraphs
5 as though fully set forth herein.

6 99. Plaintiffs bring this claim on behalf of themselves and the Class.

7 100. VIZIO has disseminated, or caused to be disseminated, to Plaintiffs and the public
8 in California statements that are untrue or misleading, and which are known, or which by the
9 exercise of reasonable care should be known, to be untrue or misleading, in violation of
10 California's False Advertising Law, Business and Professions Code, § 17500 *et seq.* Specifically,
11 and as alleged above, VIZIO marketed and advertised the technical specifications its 60Hz
12 televisions with backlight manipulation as having a "120Hz Effective Refresh Rate," when in fact
13 it is 60Hz. VIZIO marketed and advertised the technical specifications its 120Hz televisions with
14 backlight manipulation as having a "240Hz Effective Refresh Rate" when in fact it is 120Hz.

15 101. VIZIO's utilization of these unlawful advertising practices injured Plaintiff and the
16 Class because they paid more for their televisions than they otherwise would have paid absent
17 VIZIO's deceptive practices.

18 102. Because Plaintiffs are victims of VIZIO's conduct alleged herein, Plaintiffs and
19 the members of the Classes seek full restitution of monies, as necessary and according to proof.

20 103. All of the wrongful conduct alleged herein occurred, and continues to occur, in the
21 conduct of VIZIO's business. VIZIO's wrongful conduct is a part of a pattern of generalized
22 course of conduct that is still perpetuated and repeated in the State of California.

23 104. Plaintiffs request that this Court enter such orders or judgments as may be
24 necessary to enjoin Defendants from continuing their unfair, unlawful and/or deceptive practices,
25 and to restore to Plaintiffs and the Class the monies that VIZIO acquired by means of such unfair
26 competition, including restitution and/or restitutionary disgorgement, unjust enrichment and for
27 such other relief as may be appropriate.
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