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*Attorneys for Plaintiff,*  
Software Freedom Conservancy, Inc.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ORANGE-CENTRAL JUSTICE CENTER**

SOFTWARE FREEDOM  
CONSERVANCY, INC.,  
a New York Non-Profit Corporation,

Plaintiff,

v.

VIZIO, INC., a California Corporation; and  
DOES 1 through 50, Inclusive,

Defendant.

**CASE NO. 30-2021-01226723-CU-BC-CJC**

**JOINT STATEMENT REGARDING TRIAL  
SETTING SCHEDULE**

The Hon. Sandy Leal

Dept. C33

Action Filed: October 19, 2021

Trial Date: TBD

1 **JOINT STATEMENT**

2 Pursuant to this Court's minute order dated August 29, 2024, Plaintiff Software Freedom  
3 Conservancy ("SFC") and Defendant VIZIO Inc. ("VIZIO") (collectively, the "Parties") hereby  
4 submit a joint report to advise the Court of the status of this case. On July 25, 2024, the Parties  
5 conducted a mediation before Greg Derin of Signature Resolutions. The Parties were unable to  
6 resolve the matter at the mediation; however, they continued to have further discussions and  
7 conducted a subsequent in-person mediation on September 5, 2024. Since then, the Parties have  
8 made additional efforts to reach a resolution but remain unable to do so. At this time, the Parties  
9 believe the Court should reset the trial date, subject to the outstanding issues noted below, although  
10 the parties are not opposed to continuing settlement discussions concurrently as they prepare for  
11 trial.

12 First, the Parties respectfully request that the Court continue the current trial setting  
13 conference on November 14, 2024 to a new date in order to accommodate lead counsel for VIZIO  
14 who will be out of the country on that date. The Parties could be available on November 21, 2024  
15 or December 5, 2024 if the Court is available on either of those dates. The Parties are submitting  
16 concurrently herewith a Stipulation and Proposed Order requesting that continuance.

17 Second, with respect to the discovery motions currently scheduled for hearing on  
18 November 14, 2024, the Parties have met and conferred, resolved two of the pending motions<sup>1</sup> and  
19 are continuing to meet and confer in an effort to resolve the third discovery motion related to SFC's  
20 inspection of VIZIO's firmware<sup>2</sup>. Therefore, the Parties jointly request that the Court continue the  
21 hearing on that motion until the week of December 16, 2024 or later to allow the Parties sufficient  
22 time to conduct the inspection of the firmware and identify any remaining issues for which the  
23 Court's guidance is needed as indicated in the Court's tentative ruling on this motion dated June 6,  
24 2024, a copy of which is attached hereto as **Exhibit 1**.

25  
26 \_\_\_\_\_  
27 <sup>1</sup> Namely, VIZIO's Motion to Compel Answers to Form Interrogatories (ROA #290) and SFC's  
28 Motion to Compel Further Responses to Special Interrogatories (ROA #301).

<sup>2</sup> SFC's Motion to Compel Further Responses to Requests for Production, Set One (ROA #305).

1 Third, the Parties have met and conferred regarding the trial and agree that given the issues  
2 to be decided and the remedies sought, the trial should proceed as a bench trial instead of a jury trial.  
3 Counsel for the Parties have also discussed their respective calendars and, subject to the Court's  
4 availability, will be prepared to address the timing of the trial at the trial setting conference. The  
5 Parties estimate a bench trial of five (5) to seven (7) days.

6  
7 Respectfully submitted,

8 DATED: October 29, 2024

**VAKILI & LEUS, LLP**

9  
10 By: /s/ *Sa'id Vakili*

Sa'id Vakili, Esq.

11 Attorneys for Plaintiff,

12 Software Freedom Conservancy, Inc.

13 DATED: October 29, 2024

**QUINN EMANUEL URQUHART & SULLIVAN, LLP**

14  
15 By: /s/ *Michael E. Williams*

16 Michael E. Williams, Esq.

17 Attorneys for Defendant,

18 VIZIO, Inc.  
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Exhibit: “1”

## **TENTATIVE RULINGS**

### **DEPARTMENT C33**

**Judge Sandy N. Leal**

**June 6, 2024 at 10:00 a.m.**

**Civil Court Reporters:** The Court does not provide court reporters for law and motion hearings. Please see the Court's website for rules and procedures for court reporters obtained by the Parties.

**Tentative rulings:** The Court endeavors to post tentative rulings on the Court's website in the morning, prior to the hearing. However, ongoing proceedings such as jury trials may prevent posting by that time. Tentative rulings may not be posted in every case. Please do not call the Department for tentative rulings if tentative rulings have not been posted. The Court will not entertain a request to continue a hearing or the filing of further documents once a tentative ruling has been posted.

**Submitting on tentative rulings:** If all counsel intend to submit on the tentative ruling and do not desire oral argument, please advise the Courtroom Clerk or Courtroom Attendant by calling (657) 622-5233. Please do not call the Department unless all parties submit on the tentative ruling. If all sides submit on the tentative ruling and so advise the Court, the tentative ruling shall become the Court's final ruling and the prevailing party shall give notice of the ruling and prepare an order for the Court's signature if appropriate under Cal. R. Ct. 3.1312.

**Non-appearances:** If nobody appears for the hearing and the Court has not been notified that all parties submit on the tentative ruling, the Court shall determine whether the matter is taken off calendar or the tentative ruling becomes the final ruling. The Court also might make a different order at the hearing. (*Lewis v. Fletcher Jones Motor Cars, Inc.*, 205 Cal.App.4th 436, 442, fn. 1 (2012.))

**Appearances:** Department C33 conducts non-evidentiary proceedings, such as law and motion hearings, remotely by Zoom videoconference pursuant to Code of Civil Procedure section 367.75 and Orange County Local Rule 375. Any party or attorney, however, may appear in person by coming to Department C33 at the Central Justice Center, located at 700 Civic Center Drive West in Santa Ana, California.

All counsel and self-represented parties appearing in-person must check in with the courtroom clerk or courtroom attendant before the designated hearing time. All counsel and self-represented parties appearing remotely must check-in online through the court's civil video appearance website at <https://www.occourts.org/media-relations/civil.html> before the designated hearing time. Once the online check-in is completed, participants will be prompted to join the courtroom's Zoom hearing session. Participants will initially be directed to a virtual waiting room pending the start of their specific video hearing. Check-in instructions and instructional video are available at <https://www.occourts.org/media-relations/aci.html>. The Court's "Appearance Procedures and Information--Civil Unlimited and Complex" and "Guidelines for Remote Appearances" also are available at <https://www.occourts.org/media-relations/aci.html>. Those procedures and guidelines will be strictly enforced.

**Public Access:** The courtroom remains open for all evidentiary and non-evidentiary proceedings. Members of the media or public may obtain access to law and motion hearings in this Department by either coming to the Department at the designated hearing time or contacting the Courtroom Clerk at (657) 622-5233 to obtain login information. For remote appearances by the media or public, please contact the Courtroom Clerk 24 hours in advance so as not to interrupt the hearings.

No filming, broadcasting, photography, or electronic recording is permitted of the video session pursuant to California Rules of Court, rule 1.150 and Orange County Superior Court rule 180.

		<p>Plaintiff is ORDERED to pay \$800 in sanctions to Defendant (Code Civ. Proc., § 2033.280, subd. (c) and Cal. Rules of Court, rule 3.1348) no later than 20 days from the date of the service of notice of this order.</p> <p>Defendant is to give notice.</p>
14	<p><b>21-01226723</b></p> <p><b><i>Software Freedom Conservancy, Inc. vs, Vizio, Inc.</i></b></p>	<p><b>1) Motion to Compel Answers to Form Interrogatories</b>  <b>2) Motion to Compel Further Responses to Special Interrogatories</b>  <b>3) Motion to Compel Production</b>  <b>4) Motion to Compel Production</b></p> <p><b>Motion No. 1</b></p> <p>Defendant Vizio, Inc.’s (Vizio) Motion to Compel Further Responses to Form Interrogatories, Set Two (ROA 290) is CONTINUED to 6/20/24 at 10:00 a.m.</p> <p>Code of Civil Procedure section 2030.300 provides a party may move to compel a further response to interrogatories if the response is evasive or incomplete.</p> <p>Here, Vizio moves to compel Plaintiff Software Freedom Conservancy, Inc. (Plaintiff) to provide a further response to form interrogatory (FROG) 17.1 (identify facts, witnesses, and documents regarding each request for admission [RFA] that is not an unqualified admission) regarding RFA 16, which states:</p> <p>“Admit that VIZIO’s SOURCE CODE CANDIDATE produced and marked as VIZIO_OCSC_00014931 is the COMPLETE CORRESPONDING SOURCE CODE for the SMARTCAST WORKS AT ISSUE.”</p> <p>Plaintiff initially objected to the request as premature among other grounds. On 5/23/24 Plaintiff served a supplemental response which explains in detail why it contends the source code candidate is incomplete. (Defendant’s Reply Exhibit 1 [ROA 370].)</p> <p>In reply, Vizio contends the supplemental response is insufficient because Plaintiff failed to use the appropriate version of the Linux operating system (“Fedora” instead of “Ubuntu”) to review the source code. Therefore, Vizio contends the source code is not incomplete, rather Plaintiff merely failed to follow the correct process to review the code.</p> <p>The Court finds the parties have failed to engage in sufficient attempts to meet and confer regarding Plaintiff’s supplemental response, including whether Plaintiff should provide a second supplemental response after attempting to review the source code with another version of the Linux operating system. (See Code Civ. Proc., § 2016.040; <i>Clement v. Alegre</i> (2009) 177 Cal.App.4th 1277, 1293 [Discovery Act requires moving party to declare he or she has made a serious attempt to</p>

obtain an informal resolution of each issue]; *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 402 [central precept of Discovery Act that discovery be self-executing].)

The attorneys for the parties are ordered to engage in additional attempts to meet and confer, including at least one in-person, telephonic, or videoconference meeting of counsel, no later than 6/10/24. The parties shall submit a joint statement describing their compliance with this order and the status of the dispute, not to exceed six pages, no later than 12:00 p.m. on 6/14/24. Failure to engage in exhaustive efforts to meet and confer will result in sanctions against the noncompliant party and counsel.

In light of the 7/15/24 trial date, the motion is continued to 6/20/24. (Code Civ. Proc. § 2024.020 [discovery motions to be heard on or before the 15th day before trial].)

## **Motion No. 2**

Plaintiff's Motion to Compel Further Responses to Requests for Production, Set One (ROA 305) is CONTINUED to 6/20/24 at 10:00 a.m.

This motion involves Vizio's responses to requests for production (RFPs) 38 and 39, which state the following:

RFP 38: "All versions of FIRMWARE that were installed onto or otherwise incorporated into any of the SMARTCAST TVS, during the period from January 1, 2015, through the present."

RFP 39: "All versions of FIRMWARE that were made available for installation onto or other incorporation into any of the SMARTCAST TVS, during the period from January 1, 2015, through the present."

Plaintiff subsequently narrowed the requests to a specific version of the firmware – version 3.0.11.3-1.

Vizio's counsel explains, "firmware is the software embedded into a device's hardware that communicates with the hardware to control its functionality." (Yin Decl., ¶ 9.)

Vizio has generally agreed to allow inspection of its firmware under certain conditions. Vizio has asserted concerns about the method of production due to concerns that handing the firmware over could lead to unauthorized disclosure of proprietary third-party information owned by other entities. Plaintiff states it is not interested in obtaining proprietary third-party information or confidential source code, and has proposed technical methods for viewing the firmware while addressing Vizio's confidentiality concerns. Vizio's counsel declares they have prepared a secured laptop with the firmware which is available for Plaintiff's

inspection at its counsel's office closest to Plaintiff's expert. Plaintiff responded with requests for information that Defendant's counsel states they were unable to understand or comply with.

The parties have failed to adequately meet and confer regarding this dispute. The attorneys for the parties are ordered to engage in additional attempts to meet and confer, including at least one in-person, telephonic, or videoconference meeting of counsel, no later than 6/10/24. The parties shall submit a joint statement describing their compliance with this order and the status of the dispute, not to exceed six pages, no later than 12:00 p.m. on 6/14/24. Plaintiff should attempt to complete as much of the inspection as possible under conditions the parties can agree upon, and if those conditions are insufficient Plaintiff shall be prepared to present specific evidence explaining why the inspection could not be completed. Failure to engage in exhaustive efforts to meet and confer will result in sanctions against the noncompliant party and counsel.

### **Motion No. 3**

Plaintiff's Motion to Compel Further Responses to Requests for Production, Set Two is GRANTED.

Code of Civil Procedure section 2031.310 provides that a party may move to compel further responses to RFPs if a statement of compliance with the demand is incomplete, a representation of inability to comply is inadequate, incomplete, or evasive, or an objection in the response is without merit or too general.

Code of Civil Procedure section 2031.220 states, "A statement that the party to whom a demand for inspection, copying, testing, or sampling has been directed will comply with the particular demand shall state that the production, inspection, copying, testing, or sampling, and related activity demanded, will be allowed either in whole or in part, and that all documents or things in the demanded category that are in the possession, custody, or control of that party and to which no objection is being made will be included in the production."

Code of Civil Procedure section 2031.230 states, "A representation of inability to comply with the particular demand for inspection, copying, testing, or sampling shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand. This statement shall also specify whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party. The statement shall set forth the name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item."

Code of Civil Procedure section 2031.240 provides that if a party is partially complying with an RFP, it must specifically describe the extent



		<p>of its compliance and state the grounds for objection as to documents which are being withheld.</p> <p>Plaintiff moves to compel Vizio to serve further responses and produce documents in response to RFPs, Set Two, Nos. 1-4, 8-9, and 12-13.</p> <p>RFPs 1-4 seek Vizio’s contracts with chip supplier, Mediatek regarding specified matters.</p> <p>RFPs 8-9 seek Vizio’s policies and procedures for responding to requests for certain code/scripts.</p> <p>RFPs 12-13 seek certain of Vizio’s communications with Mediatek regarding specified matters.</p> <p>Vizio asserts it has fully complied with RFPs 1-4 by producing the subject written agreements with Mediatek. Vizio contends Plaintiff failed to meet and confer regarding RFPs 8-9 and 12-13 before filing the motion, and that it doesn’t have any responsive, non-privileged documents. In reply, Plaintiff contends that Vizio has failed to certify that its production is complete.</p> <p>While Plaintiff should have engaged in efforts to meet and confer regarding RFPs 8-9 and 12-13, the Court will address the merits of each of the disputed RFPs at this time in the interest of efficiency.</p> <p>The motion is GRANTED as to RFPs 1-4. Vizio’s written responses to RFPs 1-4 describe documents taht Vizio will produce. For example, its response to RFP 1 states:</p> <p>“VIZIO agrees to produce responsive and non-privileged written agreements between VIZIO and MEDIATEK, from January 1, 2018 onward, that refer to the use of software licensed under GPLv2 or LGPLv2.1 on SMARTCAST TVS, that are within VIZIO’s possession, custody, or control and can be located with a reasonable search.”</p> <p>However, Vizio’s written responses to RFPs 1-4 are not Code-compliant. For example, they do not specify whether Vizio’s production is “in whole or in part” as required under section 2031.220. Vizio is ordered to serve further written responses which strictly comply with the statutory language regarding full compliance, inability to comply, or partial compliance set out in the Code of Civil Procedure provisions above within five days of this order.</p> <p>The motion is also GRANTED as to RFPs 8-9 and 12-13. In opposition, Vizio contends it does not have any response documents to these RFPs – only privileged documents prepared during the course of this litigation. However, its written responses state, “VIZIO agrees to produce responsive, nonprivileged documents from January 1, 2018 onward that are within its possession, custody, or control and can be located with a reasonable search.” Therefore, Vizio’s written responses are inconsistent with the position taken in its opposition. Vizio is ordered to serve further</p>
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written responses which strictly comply with the statutory language regarding full compliance, inability to comply, or partial compliance set out in the Code of Civil Procedure provisions above within five days of this order.

The Court declines to impose sanctions against either party. Imposition of sanctions in this case would be unjust because, while Vizio's responses were insufficient, Plaintiff failed to engage in adequate attempts to meet and confer before filing the motion. (Code Civ. Proc. § 2031.310(h).)

#### **Motion No. 4**

Plaintiff's Motion to Compel Further Responses to Special Interrogatories, Set One is CONTINUED to 6/20/24.

Plaintiff moves to compel further responses to special interrogatories (SPROGs) 1-16. Vizio served supplemental responses on 5/23/24. In reply, Plaintiff states the supplemental responses narrow the dispute to SPROGs 1-3, 5, 7, and 11.

The remaining dispute involves certain information regarding the smart TV software/source code which Vizio contends is in exclusive possession of its chip supplier, Mediatek. Plaintiff contends Vizio is contractually entitled to request the information from Mediatek and is required to request the information and provide it to Plaintiff.

The parties apparently have not attempted to meet and confer regarding Vizio's supplemental interrogatory responses. The attorneys for the parties are ordered to engage in additional attempts to meet and confer, including at least one in-person, telephonic, or videoconference meeting of counsel, no later than 6/10/24. The parties shall submit a joint statement describing their compliance with this order and the status of the dispute, not to exceed six pages, no later than 12:00 p.m. on 6/14/24. In the joint statement, the parties shall provide citations to legal authority regarding whether Vizio is required to request information from its contracted supplier in order to obtain information responsive to Plaintiff's interrogatories. Failure to engage in exhaustive efforts to meet and confer will result in sanctions against the noncompliant party and counsel.

1 **PROOF OF SERVICE**

2 *Software Freedom Conservancy, Inc. v. VIZIO, Inc., et al.*  
3 *OCSC Case No.: 30-2021-01226723-CU-BC-CJC*

4 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and  
5 not a party to the within action. My business address is 3701 Wilshire Boulevard, Suite 1135, Los  
6 Angeles, California 90010.

7 On October 29, 2024, I served the foregoing document described as **JOINT STATEMENT**  
8 **REGARDING TRIAL SETTING SCHEDULE** on all interested parties in this action at the addresses  
9 listed below, as follows:

10 **QUINN EMANUEL URQUHART & SULLIVAN, LLP**

11 Michael E. Williams, Esq. ([michaelwilliams@quinnemanuel.com](mailto:michaelwilliams@quinnemanuel.com))

12 Daniel C. Posner, Esq. ([danposner@quinnemanuel.com](mailto:danposner@quinnemanuel.com))

13 John Z. Yin, Esq. ([johnyin@quinnemanuel.com](mailto:johnyin@quinnemanuel.com))

14 Arian J. Koochesfahani, Esq. ([ariankoochesfahani@quinnemanuel.com](mailto:ariankoochesfahani@quinnemanuel.com))

15 865 South Figueroa Street, 10<sup>th</sup> Floor

16 Los Angeles, California 90017

17 **213/443-3000** | Fax: 213/443-3100

18 *Counsel for Defendant VIZIO, Inc.*

19 ( ) **FOR COLLECTION.** By placing true copies thereof enclosed in sealed envelopes,  
20 addressed as above, and by placing said sealed envelopes for collection and mailing on that date  
21 following ordinary business practices. I am “readily familiar” with the business’ practice for collection  
22 and processing of correspondence for mailing the U.S. Postal Service. Under that practice, the sealed  
23 envelopes would be deposited with the U.S. Postal Service on that same day with postage thereon fully  
24 prepaid at Los Angeles, California, in the ordinary course of business.

25 ( ) **OVERNIGHT DELIVERY (DROP-OFF) (CCP §1013(c)).** By placing a true copy  
26 thereof enclosed in a sealed envelope or package as designated by an overnight mail courier, addressed  
27 as above, and depositing said envelope or package, with delivery fees provided for, in a box regularly  
28 maintained by the overnight mail courier at 3701 Wilshire Boulevard, Los Angeles, California 90010.

(☒) **VIA ELECTRONIC TRANSMISSION.** I caused to be transmitted a true copy thereof  
to the designated counsel listed above to his respective e-mail address, pursuant to California *Code of*  
*Civil Procedure* § 1010.6. I did not receive, within a reasonable time after the transmission, any  
electronic message or other indication that the transmission was unsuccessful.

( ) **PERSONAL DELIVERY.** I caused to be served by messenger for personal delivery that  
same day the foregoing documents in a sealed envelope to the above persons at the address(es) listed in  
the attached Service List.

I declare under penalty under the laws of the State of California that the above is true and correct.  
Executed on October 29, 2024, at Los Angeles, California.

27 Malou de la Paz  
28 (Printed Name)

/s/ Malou de la Paz  
(Signature)