Sa'id Vakili, Esq. (SBN: 176322)
vakili@vakili.com
David N. Schultz. Esq. (SBN: 123094)
Schu1984@yahoo.com
Stephen P. Hoffman, Esq. (SBN: 287075)
hoffman@vakili.com
VAKILI & LEUS, LLP
3701 Wilshire Boulevard, Suite 1135
Los Angeles, CA 90010-2822

(213) 380-6010 | Fax: (213) 380-6051

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 to 50, Inclusive,** **Defendants.**	**CASE NO.: 30-2021-01226723-CU-BC-CJC** [*Hon. Sandy Leal / Dept. C33*] **PLAINTIFF SOFTWARE FREEDOM CONSERVANCY, INC.'S SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY ADJUDICATION OF ISSUES** [*Notice of Motion and Motion; Memorandum of Points and Authorities; Declarations of Bradley M. Kuhn, Paul Visscher, Sa'id Vakili and Zoe Kooyman; Proposed Order; Appendix of Exhibits; and Request for Judicial Notice submitted concurrently herewith*] Date: October 16, 2025 Time: 10:00 a.m. Dept.: C33 Complaint Filed: 10/19/2021 Trial Date: 09/15/2025

Plaintiff Software Freedom Conservancy, Inc. ("SFC" or "Plaintiff") hereby submits the following Separate Statement of Undisputed Material Facts and Reference to Supporting Evidence, pursuant to Section 437c of the California *Code of Civil Procedure* and Rule 3.1350 of the California *Rules of Court*, in support of SFC's Motion for Summary Adjudication of Issues.

UNDISPUTED MATERIAL FACTS RELEVANT TO ISSUE NO. 1:

ISSUE NO. 1: VIZIO has a contractual duty to provide SFC with the complete corresponding machine-readable source code (as that term is defined in Section 3 of the GNU General Public License, version 2 (the GPLv2")) for any software on its Smart TV Model No. D32h-J09 that is licensed under the GPLv2 and the complete corresponding machine-readable source code (as that term is defined in Section 0 of the GNU Lesser General Public License version 2.1 (the "LGPLv2.1")) for any library that is licensed under the LGPLv2.1.

SFC'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE:	VIZIO'S RESPONSE AND SUPPORTING EVIDENCE:
1. The software license agreements at issue in this action are the GNU General Public License Version 2 (the "GPLv2") and the GNU Lesser General Public License Version 2.1 (the "LGPLv2.1") (collectively, the "GPLs"). **Supporting Evidence:** GPLs, attached as Exhs. "1" and "2" to SFC's Appendix of Exhs., submitted separately herewith (the "Appendix"); Declaration of Bradley M. Kuhn, submitted separately herewith (the "Kuhn Declaration"), ¶¶ 7, 8; First Amended Complaint, ¶ 1.	

SFC'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE:	VIZIO'S RESPONSE AND SUPPORTING EVIDENCE:
2. VIZIO manufactures and sells "Smart TVs." **Supporting Evidence:** Appx., Exhs. "9", "10"	
3. Smart TVs are televisions capable of streaming content via a built-in internet connection and user interface. **Supporting Evidence:** Appx., Exhs. "9", "10"	
4. Smart TVs require computer software and processors to stream content. **Supporting Evidence:** Appx., Exhs. "9", "10"	
5. Many of the computer programs on VIZIO's Smart TVs, such as the Linux kernel, are subject to the GPLs. **Supporting Evidence:** Kuhn Decl., ¶¶ 18, 21-23	
6. In or about July 2021, SFC purchased certain models of VIZIO "Smart TVs," including model number D32h-J09. **Supporting Evidence:** Kuhn Decl., ¶ 21	

PLAINTIFF SOFTWARE FREEDOM CONSERVANCY, INC.'S SEPARATE STATEMENT OF
UNDISPUTED MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY ADJUDICATION

	SFC'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE:	VIZIO'S RESPONSE AND SUPPORTING EVIDENCE:
7.	The models of VIZIO Smart TVs purchased by SFC contained software that was subject to the GPLs. **Supporting Evidence:** Kuhn Decl., ¶¶ 22-23	
8.	VIZIO made an offer to provide SFC with source code in connection with the Smart TVs that SFC had purchased from VIZIO. **Supporting Evidence:** Kuhn Decl., ¶¶ 24-25; Declaration of Paul Visscher, submitted separately herewith (the "Visscher Declaration"), ¶ 2; Appx., Exh. "3".	
9.	VIZIO's offer was set forth on the "License List" menu on the user interface of the Smart TV. **Supporting Evidence:** Kuhn Decl., ¶¶ 24-25; Visscher Decl., ¶ 2; Appx., Exh. 3"; Declaration of Sa'id Vakili, submitted separately herewith ("Vakili Declaration"), ¶ 3; Appx., Exh. "5".	
10.	The offer stated that VIZIO's Smart TVs may contain "executable codes and libraries that are subject to the terms of the GNU General Public License (GPL), GNU Lesser General License (LGPL) … and other open source licenses. VIZIO offers to provide applicable	

- 3 -

SFC'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE:	VIZIO'S RESPONSE AND SUPPORTING EVIDENCE:
source code upon request for a processing fee covering the cost of fulfilling the distribution, such as the cost of the medium used and shipping and handling. To make a request, please contact VIZIO at support.vizio.com." **Supporting Evidence:** Kuhn Decl., ¶¶ 23-24; Visscher Decl., ¶ 2; Appx., Exh. "3".	
11. On or about April 26, 2023, an SFC representative contacted VIZIO and requested, on behalf of SFC, the applicable source code for VIZIO's Smart TV Model No. D32h-J09. **Supporting evidence:** Visscher Decl., ¶ 3; Appx., Exh. "4".	

UNDISPUTED MATERIAL FACTS RELEVANT TO ISSUE NOS 2 AND 3:

ISSUE NO. 2:

Under the GPLv2, VIZIO has a contractual duty to provide to the purchasers of any VIZIO Smart TVs, including SFC:

(a) the complete corresponding machine-readable source code (as defined in Section 3 of the GPLv2) for any software on its Smart TVs that is licensed under the GPLv2; or

(b) a written offer, valid for at least three years, to give any third party, for a charge no more than the cost of physically performing source distribution, a complete machine-readable copy of the corresponding source code.

ISSUE NO. 3:

Under the GNU General Public License, version 2.1 (the LGPLv.2.1), VIZIO has a contractual duty to provide to the purchasers of any VIZIO Smart TVs, including SFC:

(a) the complete corresponding machine-readable source code (as defined in Section 0 of the LGPLv2.1) for any library (as defined in Section 0 of the LGPLv2.1) on its Smart TVs that is licensed under the LGPLv2.1; or

(b) otherwise comply with Section 6 of the LGPLv2.1.

SFC'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE:	VIZIO'S RESPONSE AND SUPPORTING EVIDENCE:
12. The software license agreements at issue in this action are the GNU General Public License Version 2 (the "GPLv2") and the GNU Lesser General Public License Version 2.1 (the "LGPLv2.1") (collectively, the "GPLs"). **Supporting Evidence**: The GPLs, attached as Exhs. "1" and "2" to the Appendix; Kuhn Decl., ¶¶ 7-8; First Amended Complaint, ¶ Version 2.1 ("LGPLv2.1")	
13. The GPLs are two of the most vital, widely used, and successful software license agreements. **Supporting Evidence:** Kuhn Decl., ¶ 7.	
14. Software developed under the GPLs helps operate such consumer devices as wireless home routers and television sets. **Supporting Evidence:** Kuhn Decl., ¶ 9.	
15. The GPLs play a central role in the development of "free and open source software" ("FOSS").	

Supporting Evidence: Kuhn Decl., ¶ 7.	
16. FOSS is a software development model that encourages and relies on collaboration and the free exchange of knowledge. **Supporting Evidence:** Kuhn Decl., ¶¶ 3-6.	
17. FOSS projects are successful because many software developers work on them, adding new features, tweaking old features, and fixing bugs, and these new versions are available to other developers to learn from, tweak and improve. **Supporting Evidence:** Kuhn Decl., ¶¶ 3-6.	
18. Many popular software programs are FOSS, including the Linux kernel. **Supporting Evidence:** Kuhn Decl., ¶ 18.	
19. Software exists in object or executable code that computers can understand and implement. **Supporting Evidence:** Kuhn Decl., ¶ 10.	
20. Because humans cannot easily understand binary code, humans use programming languages, also known as "source code," to instruct computers. **Supporting Evidence:** Kuhn Decl., ¶¶ 10-13.	

21. Software is often distributed in an executable form, including in "smart TVs." **Supporting Evidence:** Kuhn Decl., ¶ 9, 10, 18.	
22. The GPLs make FOSS possible by requiring those who distribute software in an executable form to accompany that software either with the complete corresponding source code, or with a written offer to give any third party the complete corresponding source code upon request. **Supporting Evidence:** Kuhn Decl., ¶ 17-20; GPLv2, Section 3, found at Appx., Exh. "1"; LGPLv2.1, Section 4, found at Appx., Exh. "2".	
23. Section 3 of the GPLv2 states as follows: You may copy and distribute [a GPL-licensed] Program (or a work based on it…) in object code or executable form under the terms of Sections 1 and 2 above provided that you also do one of the following: a) Accompany it with the complete corresponding machine-readable source code…; or, b) Accompany it with a written offer, valid for at least three years, to give any third party	

… a complete machine-readable copy of the corresponding source code…. **Supporting Evidence:** GPLv2, Section 3, found at Appx., Exh. "1"	
24. Section 4 of the LGPLv2.1 states: "You may copy and distribute the Library (or a portion or derivative of it, under Section 2) in object code or executable form under the terms of Sections 1 and 2 above provided that you accompany it with the complete corresponding machine-readable source code, which must be distributed under the terms of Sections 1 and 2 above on a medium customarily used for software interchange." **Supporting Evidence:** LGPLv2.1, Section 4, found at Appx., Exh. "2".	
25. Section 6 of the LGPLv2.1 states: "As an exception to the Sections above, you may also combine or link a 'work that uses the Library' with the Library to produce a work containing portions of the Library, and distribute that work under terms of your choice, provided that the terms permit modification of the work for the customer's own use and reverse engineering for debugging such modifications. You must give prominent notice with each copy of the work that the Library is used in it and that the Library and its use are covered by	

this License. You must supply a copy of this License.   If the work during execution displays copyright notices, you must include the copyright notice for the Library among them, as well as a reference directing the user to the copy of this License. Also, you must do one of these things:

• a) Accompany the work with the complete corresponding machine-readable source code for the Library including whatever changes were used in the work (which must be distributed under Sections 1 and 2 above); and, if the work is an executable linked with the Library, with the complete machine-readable 'work that uses the Library', as object code and/or source code, so that the user can modify the Library and then relink to produce a modified executable containing the modified Library. (It is understood that the user who changes the contents of definitions files in the Library will not necessarily be able to recompile the application to use the modified definitions.)

• b) Use a suitable shared library mechanism for linking with the Library. A suitable mechanism is one that (1) uses at run time a copy of the library already present on the user's computer system, rather than copying library functions into the executable, and (2) will operate properly with a modified version

- 9 -

of the library, if the user installs one, as long as the modified version is interface-compatible with the version that the work was made with.

• c) Accompany the work with a written offer, valid for at least three years, to give the same user the materials specified in Subsection 6a, above, for a charge no more than the cost of performing this distribution.

• d) If distribution of the work is made by offering access to copy from a designated place, offer equivalent access to copy the above specified materials from the same place.

• e) Verify that the user has already received a copy of these materials or that you have already sent this user a copy.

For an executable, the required form of the 'work that uses the Library' must include any data and utility programs needed for reproducing the executable from it. However, as a special exception, the materials to be distributed need not include anything that is normally distributed (in either source or binary form) with the major components (compiler, kernel, and so on) of the operating system on which the executable runs, unless that component itself accompanies the executable.

It may happen that this requirement contradicts the license restrictions of other proprietary libraries that do not normally accompany the operating system. Such a contradiction means you cannot use both them and the Library together in an executable that you distribute."

Supporting Evidence: LGPLv2.1, Section 6, found at Appx., Exh. "2".

26. Section 2b) of the GPLv2 states that "[y]ou must cause any work that you distribute or publish, that in whole or in part contains or is derived from the Program or any part thereof, to be licensed as a whole at no charge to all third parties under the terms of this License.

Supporting Evidence: GPLv2, Section 2, found at Appx., Exh. "1".

27. Section 2c) of the LGPLv2.1 states that "[y]ou must cause the whole of the work to be licensed at no charge to all third parties under the terms of this License."

Supporting Evidence: LGPLv2.1, Section 2, found at Appx., Exh. "2".

28. The Preamble of the GPLs states that the GPLs are "intended to guarantee your freedom to share and change free software— to make sure the software is free for all its users" and that the GPLs "are designed to

- 11 -

make sure that you have the freedom to distribute copies of free software …, that you receive source code or can get it if you want it, that you can change the software or use pieces of it in new free programs; and that you know you can do these things." **Supporting Evidence:** GPLv2, Preamble, ¶ 1, found at Appx., Exh. "1"; LGPLv2.1, Preamble, ¶ 1, found at Appx., Exh. "2"	
29. The Preamble of the GPLs states that the GPLs create "certain responsibilities for you if you distribute copies of the software, or if you modify it." **Supporting Evidence:** GPLv2, Preamble, ¶ 3, found at Appx., Exh. "1"; LGPLv2.1, Preamble, ¶ 4, found at Appx., Exh. "2"	
30. The Preamble of the GPLs states: "For example, if you distribute copies of such a program, whether gratis or for a fee, you must give the recipients all the rights that you have. You must make sure that they, too, receive or can get the source code. And you must show them these terms so they know their rights." **Supporting Evidence:** GPLv2, Preamble, ¶ 4, found at Appx., Exh. "1"; LGPLv2.1, Preamble, ¶ 5, found at Appx., Exh. "2"	
31. The notice preceding the Preamble in the GPLs states that "[e]veryone is permitted to	

PLAINTIFF SOFTWARE FREEDOM CONSERVANCY, INC.'S SEPARATE STATEMENT OF
UNDISPUTED MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY ADJUDICATION

copy and distribute verbatim copies of this license document, but changing it is not allowed." **Supporting Evidence:** GPLv2, p. 1, Notice, found at Appx., Exh. "1"; LGPLv2.1, p. 1, Notice, found at Appx., Exh. "2"	
32. VIZIO manufactures and sells "Smart TVs." **Supporting Evidence:** Appx., Exhs. "9", "10"	
33. Smart TVs are televisions capable of streaming content via a built-in internet connection and user interface. **Supporting Evidence:** Appx., Exhs. "9", "10"	
34. Smart TVs require computer software and processors to stream content. **Supporting Evidence:** Appx., Exhs. "9", "10"	
35. Many of the computer programs on VIZIO's Smart TVs, such as the Linux kernel, are subject to the GPLs. **Supporting Evidence:** Kuhn Decl., ¶¶ 21-23	
36. In or about July 2021, SFC purchased certain models of VIZIO "Smart TVs," including model number D32h-J09. **Supporting Evidence:** Kuhn Decl., ¶ 21	

PLAINTIFF SOFTWARE FREEDOM CONSERVANCY, INC.'S SEPARATE STATEMENT OF
UNDISPUTED MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY ADJUDICATION

37. The models of VIZIO Smart TVs purchased by SFC contained software that was subject to the GPLs. **Supporting Evidence:** Kuhn Decl., ¶¶ 21-23	
38. Because the models of VIZIO Smart TVs purchased by SFC contained software that was subject to the GPLs, SFC was entitled to receive complete copies of the source code for these programs or a written offer from VIZIO to obtain the source code. **Supporting Evidence:** Kuhn Decl., ¶¶ 21-23; GPLv2, Section 3, found at Appx., Exh. "1"; LGPLv2.1, Section 4, found at Appx., Exh. "2".	
39. Provisions of the GPLs require VIZIO to provide purchasers of its Smart TVs with complete copies of the source code or an offer to provide the source code. **Supporting Evidence:** GPLv2, Section 3, found at Appx., Exh. "1"; LGPLv2.1, Section 4, found at Appx., Exh. "2".	
40. The GPLs provide that recipients of software licensed under the GPLs would benefit by receiving the source code for that software. **Supporting Evidence:** GPLv2, Preamble, found at Appx., Exh. "1"; LGPLv2.1, Preamble, found at Appx., Exh. "2"	

PLAINTIFF SOFTWARE FREEDOM CONSERVANCY, INC.'S SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY ADJUDICATION

41. The Preamble to the GPLs provides that a purpose of the GPLs is to ensure that recipients of GPL-licensed software would receive source code and would know it. **Supporting Evidence:** GPLv2, Preamble, found at Appx., Exh. "1"; LGPLv2.1, Preamble, found at Appx., Exh. "2"	
42. In a March 2021 filing with the Securities and Exchange Commission, VIZIO states that its devices use software governed by the GPLs and that the GPLs thus may require VIZIO to disclose its source code. **Supporting Evidence:** Appx., Exh. "11" (selected pages from SEC filing)	
43. In a March 2021 filing with the Securities and Exchange Commission, VIZO states that it "could be subject to suits and liability for … breach of contract by parties … demanding release of, what we believe to be open source software or noncompliance with open source licensing terms," **Supporting Evidence:** Appx., Exh. "11" (selected pages from SEC filing)	
44. The Free Software Foundation never intended to restrict, hinder, or limit any means for users to assert their rights and freedoms under the	

PLAINTIFF SOFTWARE FREEDOM CONSERVANCY, INC.'S SEPARATE STATEMENT OF
UNDISPUTED MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY ADJUDICATION

GPLs through methods other than a straightforward claim under copyright law. **Supporting Evidence:** Declaration of Zoe Kooyman, submitted separately herewith, ¶17.	
45. The Free Software Foundation believes that third parties that request complete and corresponding source code under the GPLs are entitled to receive that source code. **Supporting Evidence:** Declaration of Zoe Kooyman, submitted separately herewith, ¶ 20.	

DATED: May 23, 2025

VAKILI & LEUS, LLP

By: _____

Sa'id Vakili, Esq.
David N. Schultz, Esq.
Attorneys for Plaintiff Software Freedom Conservancy, Inc.

PLAINTIFF SOFTWARE FREEDOM CONSERVANCY, INC.'S SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY ADJUDICATION

PROOF OF SERVICE

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

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

On May 23, 2025, I served the foregoing document described as **PLAINTIFF SOFTWARE FREEDOM CONSERVANCY, INC.'S SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY ADJUDICATION OF ISSUES** on all interested parties in this action at the addresses listed below, as follows:

QUINN EMANUEL URQUHART & SULLIVAN, LLP
Michael E. Williams, Esq. (*michaelwilliams@quinnemanuel.com*)
Daniel C. Posner, Esq. (*danposner@quinnemanuel.com*)
John Z. Yin, Esq. (*johnyin@quinnemanuel.com*)
Arian J. Koochesfahani, Esq. (*ariankoochesfahani@quinnemanuel.com*)
865 South Figueroa Street, 10th Floor
Los Angeles, California 90017-5003

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

Counsel for Defendant Vizio, Inc.

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

( )   OVERNIGHT DELIVERY (DROP-OFF) (CCP §1013(c)). By placing a true copy thereof enclosed in a sealed envelope or package as designated by an overnight mail courier, addressed as above, and depositing said envelope or package, with delivery fees provided for, in a box regularly 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 May 23, 2025, at Los Angeles, California.

Jason C. Ming
(Printed Name)

(Signature)