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9 SOFTWARE FREEDOM CONSERVANCY, INC.

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF ORANGE - CENTRAL JUSTICE CENTER**

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

14 Plaintiff,

15 v.

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

18 Defendants.

Case No. 30-2021-01226723-CU-BC-CJC

**PLAINTIFF SOFTWARE FREEDOM  
CONSERVANCY, INC.'S  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN REPLY TO  
DEFENDANT'S OPPOSITION TO  
PLAINTIFF'S MOTION FOR  
SUMMARY ADJUDICATION**

Assigned for All Purposes to Judicial  
Officer: The Honorable Sandy N. Leal

Dept. C33

Action Filed: October 19, 2021

Hearing Date: February 15, 2024, 10:00 a.m.

Hearing Reservation ID: 74084781

Trial Date: July 15, 2024

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
PRELIMINARY STATEMENT .....	1
FURTHER PROCEDURAL BACKGROUND .....	2
ARGUMENT .....	2
I.    VIZIO HAS A DUTY TO SHARE SOURCE CODE WITH SFC UNDER THE PLAIN TEXT OF THE GPLS .....	2
A.    VIZIO Raises No Triable Issue of Material Fact. ....	3
B.    There Is No Need to Continue this Motion, Much Less to Deny It. ....	6
C.    This Motion is Not Moot.....	8
D.    SFC Is Not Judicially Estopped from Bringing this Motion.....	9
II.   THE COURT SHOULD TERMINATE VIZIO’S AFFIRMATIVE DEFENSE OF PREEMPTION.....	10
CONCLUSION.....	10

**TABLE OF AUTHORITIES**

**Page**

**Cases**

*Aguilar v. Atl. Richfield Co.*, 25 Cal. 4th 826 (2001) ..... 1, 8, 10

*Blix St. Records, Inc. v. Cassidy*, 191 Cal. App. 4th 39 (2010) ..... 9

*Chavez v. 24 Hour Fitness USA, Inc.*, 238 Cal. App. 4th 632 (2015) ..... 6

*Daar & Newman v. VRL Int'l*, 129 Cal. App. 4th 482 (2009) ..... 9

*Ellena v. Dep't of Ins.*, 230 Cal. App. 4th 198 (2014) ..... 4

*Goonewardene v. ADP, LLC*, 6 Cal. 5th 817, 831 (2019) ..... 2

*Hollister Canning Co. v. Superior Court*, 26 Cal. App. 3d 186 (1972)..... 8

*Jackson v. County of Los Angeles*, 60 Cal. App. 4th 171 (1992)..... 9

*Kitty-Anne Music Co. v. Swan*, 112 Cal. App. 4th 30 (2003) ..... 1, 9

*Lake Almanor Assocs. L.P. v. Huffman-Broadway Grp., Inc.*,  
178 Cal. App. 4th 1194 (2009) ..... 4

*Lloyd's Underwriters v. Craig & Rush, Inc.*, 26 Cal. App. 4th 1194 (1994) ..... 3

*McPheeters v. Bd. of Med. Exam'rs*, 82 Cal. App. 2d 709 (1947)..... 8

*MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co.*,  
36 Cal. 4th 412 (2005) ..... 9

*Shaw v. Regents of Univ. of Cal.*, 58 Cal. App. 4th 44 (1997) ..... 7

*Spinks v. Equity Residential Briarwood Apartments*, 171 Cal. App. 4th 1004 (2009)..... 6

*Williams v. Apple, Inc.*, 338 F.R.D. 629 (N.D. Cal. 2021) ..... 1, 4

**Statutes**

CCP § 437c(h)..... 7

**Other Authorities**

Restatement Second of Contracts § 211 ..... 1, 4, 5, 8

1 Software Freedom Conservancy (“SFC”) respectfully replies as follows in further support  
2 of its motion for summary adjudication.

3 **PRELIMINARY STATEMENT**

4 VIZIO cannot defeat the plain text of the GPLs with proposed discovery and proffered  
5 commentary that it did not read or rely upon before accepting those standardized agreements.  
6 According to case law that both parties cite, such standardized agreements are “interpreted  
7 wherever reasonable as treating alike all those similarly situated, *without regard to their*  
8 *knowledge or understanding of the standard terms of the writing.*” *Williams v. Apple, Inc.*,  
9 338 F.R.D. 629, 638 (N.D. Cal. 2021) (emphasis in original) (quoting Restatement Second of  
10 Contracts § 211(2)). Moreover, each is “as an integrated agreement with respect to the terms  
11 included in the writing.” Restatement Second of Contracts § 211(1). As such, the proposed  
12 discovery and proffered commentary—gathered from the internet for litigation purposes—does  
13 not and cannot change the plain text of the GPLs. It is irrelevant. It is hearsay. It reaches a legal  
14 conclusion. Moreover, it cannot reveal the parties’ *reasonable* expectations while thwarting  
15 their expressed contractual objective—to ensure that source code is shared. If it prevents  
16 enforcement of the right to source code and the duty to share source code, it is unreasonable  
17 *per se*.

18 This motion is neither moot nor barred by judicial estoppel. “There is a triable issue of  
19 material fact if, and only if, the evidence would allow a reasonable trier of fact to find the  
20 underlying fact in favor of the party opposing the motion . . .” *Aguilar v. Atl. Richfield Co.*,  
21 25 Cal. 4th 826, 850 (2001). The Court denied VIZIO’s motion for summary judgment because  
22 a reasonable trier of fact could find for SFC. (*See* ROA No. 162 at 2-3 & 10.) The Court did  
23 not consider—and had not yet been asked to consider—whether a reasonable trier of fact could  
24 find for VIZIO. That issue is now ripe for adjudication. *See Kitty-Anne Music Co. v. Swan*,  
25 112 Cal. App. 4th 30, 32, 35-36 (2003) (affirming summary judgment for one party following  
26 denial of summary judgment to the other; declining to apply judicial estoppel).

1 Finally, the Court should terminate VIZIO’s affirmative defense of preemption as a  
2 matter of law. VIZIO does not contest this motion as to that issue.

### 3 **FURTHER PROCEDURAL BACKGROUND**

4 VIZIO moved for summary judgment on April 28, 2023. (ROA Nos. 54, 56, 58-59.) In  
5 its moving papers, VIZIO made arguments like those it now makes in opposition to SFC’s  
6 motion. Specifically, it characterized the Free Software Foundation (“FSF”) as the “drafter and  
7 primary interpreter” of the GPLs (*compare* ROA No. 58 at 10:11 *with* ROA No. 186 at 2:1-2  
8 and n.1) and argued that third-party enforcement would disrupt the “reasonable expectations”  
9 of the parties (*compare* ROA No. 58 at 18:17-20:4 *with* ROA No. 186 at 6:18-7:23). On  
10 December 29, 2023, the Court denied VIZIO’s motion for summary judgment because VIZIO  
11 had not carried its burden as movant. The Court reasoned in part:

12 *Allowing third parties such as SFC to enforce their rights to receive source*  
13 *code is not only consistent with the GPLs objectives, it is both essential*  
14 *and necessary to achieve these objectives. Recipients of GPL-licensed*  
15 *software will be assured of their right to receive source code only if they*  
*have standing to enforce that right.*

16 (ROA No. 162 at 9; *see also id.* at 2 (“The party moving for summary judgment bears the  
17 burden of persuasion that there is no triable issue of material fact . . .”) (citation omitted) & *id.*  
18 at 10 (“[T]here is no evidence from FSF that speaks to [third-party enforcement]”).) In the  
19 interim, SFC had moved for summary adjudication on December 1, 2023.

20 VIZIO did not seek to take any discovery from FSF before moving for summary  
21 judgment. (Gray Reply Decl. ¶¶ 5-6.) Rather, VIZIO began proceedings to depose FSF on  
22 January 30, 2024, two days before opposing this motion. (*Id.*)

### 23 **ARGUMENT**

#### 24 **I. VIZIO HAS A DUTY TO SHARE SOURCE CODE WITH SFC UNDER THE** 25 **PLAIN TEXT OF THE GPLS**

26 The opposition is notable for what it does *not* say. VIZIO does not dispute that SFC  
27 “would benefit” from a right to source code under the GPLs. *Goonewardene v. ADP, LLC*,

1 6 Cal. 5th 817, 831 (2019). VIZIO does not dispute that a “motivating purpose” of the GPLs  
2 was to benefit recipients of licensed software, such as SFC, by conferring a right to source  
3 code. *Id.* VIZIO does not dispute that allowing recipients of licensed software, such as SFC, to  
4 enforce their right to source code is “consistent” with the “objectives of the contract” and the  
5 “reasonable expectations of the contracting parties” under the plain text of the GPLs. *Id.*  
6 (VIZIO does not address their text at all.) Finally, VIZIO does not cite to any authority that  
7 enforcement of the right to source code would disrupt the “reasonable expectations” of the  
8 parties—though that test “reflects the teaching of prior California decisions.” *Id.* at 831.

9 A. VIZIO Raises No Triable Issue of Material Fact.

10 Instead, VIZIO attempts to raise a triable issue of fact based on inadmissible and  
11 immaterial legal conclusions—pulled from the internet for litigation purposes—that it never  
12 read or relied upon before accepting the GPLs. “There is a triable issue of material fact if, and  
13 only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor  
14 of the party opposing the motion . . .” *Aguilar v. Atl. Richfield Co.*, 25 Cal. 4th 826, 850  
15 (2001). No reasonable trier of fact could prevent SFC from enforcing its right to source code  
16 based on the material cited by VIZIO. “[T]he objective intent, as evidenced by the words of the  
17 contract, is controlling.” *Lloyd’s Underwriters v. Craig & Rush, Inc.*, 26 Cal. App. 4th 1194,  
18 1197 (1994). Accordingly, this motion should be granted.

19 The parties do not dispute material facts. Rather, the parties present different *arguments*  
20 about how to interpret standardized agreements, the GPLs. SFC invokes their plain text. VIZIO  
21 invokes inadmissible and immaterial legal conclusions which it pulled from the internet for  
22 litigation purposes. VIZIO is mistaken that “[t]he Court has already rejected SFC’s reliance on  
23 the GPLs’ text alone.” (Opp. at 5.) On the contrary, the Court rejected VIZIO’s motion for  
24 summary judgment for disregarding that text. (*See* ROA No. 162 at 10 (“Plaintiff has presented  
25 sufficient evidence, including language from the license itself that suggests third parties were  
26 intended to benefit from the license through the right to receive the source code.”))

27 Accordingly, the Court should grant this motion.

1 According to case law that both parties have cited, it is an “axiom of contract law” that  
2 a standardized agreement is “interpreted wherever reasonable as treating alike all those  
3 similarly situated, *without regard to their knowledge or understanding of the standard terms of*  
4 *the writing.*” *Williams v. Apple, Inc.*, 338 F.R.D. 629, 638 (N.D. Cal. 2021) (emphasis in  
5 original) (applying California law and quoting Restatement Second of Contracts § 211(2)).  
6 “Rather than weigh each [party]’s subjective understanding, courts in construing and applying  
7 a standardized contract seek to effectuate the reasonable expectations of the average member of  
8 the public who accepts it.” *Id.* (quoting Restatement Second of Contracts § 211(2) cmt. e).  
9 Moreover, according to the quoted section of the Restatement, each party adopts the  
10 standardized contract “as an integrated agreement with respect to the terms included in the  
11 writing.” Restatement Second of Contracts § 211(1); *see also Lake Almanor Assocs. L.P. v.*  
12 *Huffman-Broadway Grp., Inc.*, 178 Cal. App. 4th 1194, 1201 (2009) (the Restatement Second  
13 of Contracts is “entitled to great consideration”); *e.g., Ellena v. Dep’t of Ins.*, 230 Cal. App. 4th  
14 198, 213 n.7 (2014) (quoting and approving Restatement Second of Contracts § 211).

15 Against this background, VIZIO’s proffered online commentary—to the effect that “the  
16 copyright holders of the software are the ones who have the power to enforce” the GPLs (ROA  
17 No. 186 at 7)—is neither admissible nor material for several reasons.

18 First, it is not found in the agreements. Hence, it is irrelevant—and immaterial if  
19 considered at all. A party to a standardized agreement “adopts the writing as *an integrated*  
20 *agreement with respect to the terms included in the writing.*” Restatement Second of  
21 Contracts § 211(1) (emphasis added). Such a party does *not* adopt online commentary about  
22 the integrated agreement published in different places at later times. That is particularly true of  
23 an integrated agreement that cannot be changed, such as the GPLs.

24 Second, it did not influence all parties—not even VIZIO. A standardized agreement is  
25 “interpreted wherever reasonable as treating alike all those similarly situated, *without regard to*  
26 *their knowledge or understanding of the standard terms of the writing.*” Restatement Second  
27 of Contracts § 211(2) (emphasis added). VIZIO implies that licensees who read its proffered  
28

1 commentary will have a different understanding of the GPLs than licensees who do not. (*See*  
2 ROA No. 186 at 7.) That does not treat all parties alike. Moreover, it cannot be presumed that  
3 all parties have read, much less relied upon, the proffered commentary from far corners of the  
4 internet—particularly since that commentary was published long after the GPLs. *See* SFC  
5 Compendium at 2 & 6 (GPLv2 dated June 1991 and LGPLv2.1 dated February 1999). Even  
6 today, it is highly doubtful that any given party would read and rely upon the proffered  
7 commentary about standing to enforce the GPLs. *See Goonewardene*, 6 Cal. 5th at 830 (“The  
8 parties to a contract are typically focused on the terms of performance of the contract rather  
9 than on the remedies that will be available in the event of a [breach]”). Notably, VIZIO itself  
10 does not claim to have read and relied upon the proffered commentary prior to accepting the  
11 GPLs. Hence, it is irrelevant hearsay—and immaterial if considered at all.

12 Third, it cannot shape the “reasonable expectations” of any party. On its face, the  
13 commentary reaches a legal conclusion about standing (and should be excluded for that reason  
14 alone). Moreover, it was published by non-attorneys, it does not cite to any case law, it does  
15 not cite to the text of the GPLs, and *it does not even purport to consider whether third parties*  
16 *may enforce their right to source code under the GPLs.* (*See* ROA No. 162 at 10 (“[T]here is  
17 no evidence from FSF that speaks to this issue.”)) The construction of a standardized  
18 agreement should “effectuate the *reasonable* expectations of the average member of the public  
19 who accepts it.” Restatement Second of Contracts § 211(2) cmt. e (emphasis added).  
20 Similarly, the application of third-party standing should effectuate the “*reasonable*  
21 expectations of the contracting parties.” *Goonewardene*, 6 Cal. 5th at 831 (emphasis added).  
22 In each case, the text of the agreement is paramount. It would not be reasonable to ignore the  
23 text of the GPLs in favor of a tangential and unsubstantiated legal conclusion from non-  
24 attorneys on the internet. Here, the legal conclusion is also irrelevant because it did not address  
25 third-party standing at all.

26 To the extent there are circumstances relevant to this motion outside the operative  
27 provisions of the GPLs, *Goonewardene*, 6 Cal. 5th at 831, they are spelled out in the



1 preambles. The GPLs are “designed to make sure” that “you have the freedom to distribute  
2 copies of free software,” that “you receive source code or can get it if you want it,” that “you  
3 can change the software or use pieces of it in new free programs,” and that “you know you can  
4 do these things.” (SUMF Nos. 3-4, 18-19.) The GPLs create “responsibilities for you if you  
5 distribute copies of the software . . . You must give the recipients all the rights that you have.  
6 You must make sure that they, too, receive or can get the source code. And you must show  
7 them these terms so they know their rights.” (SUMF Nos. 3-4, 18-19.)

8         On this motion, there is no triable issue of material fact because no reasonable  
9 factfinder could decide that tangential legal conclusions pulled from the internet for litigation  
10 purposes—even if admissible—somehow erase the right to source code from the GPLs. As this  
11 Court properly held when denying VIZIO’s motion for summary judgment: “Allowing third  
12 parties such as SFC to enforce their rights to receive source code is not only consistent with the  
13 GPLs objectives, it is both *essential* and *necessary* to achieve those objectives.” (ROA  
14 No. 162 at 9) (emphasis added). As a matter of law, the reasonable expectations of the parties  
15 cannot foreclose the objectives of their contract. That should be the end of the matter. *See*  
16 *Spinks v. Equity Residential Briarwood Apartments*, 171 Cal. App. 4th 1004, 1025 (2009) (“If  
17 the issue can be answered by interpreting the contract as a whole doing so in light of the  
18 uncontradicted evidence of the circumstances and negotiations of the parties in the contract, the  
19 issue becomes one of law that the court can resolve independently.”)

20         B.         There Is No Need to Continue this Motion, Much Less to Deny It.

21         “[I]n deciding whether to continue a summary judgment to permit additional discovery  
22 courts consider various factors, including (1) how long the case has been pending; (2) how  
23 long the requesting party had to oppose the motion; (3) whether the continuance motion could  
24 have been made earlier; (4) the proximity of the trial date or the 30-day discovery cutoff before  
25 trial; (5) any prior continuances for the same reason; and (6) the question whether the evidence  
26 sought is truly essential to the motion.” *Chavez v. 24 Hour Fitness USA, Inc.*, 238 Cal. App.  
27 4th 632, 644 (2015).

1           These factors do not support continuing this motion. First, VIZIO could have easily  
2 taken the proposed discovery at any time since the case was filed over two years ago.  
3 (Tellingly, VIZIO did not deem this discovery necessary before filing its own motion in April  
4 2023, long before discovery was scheduled to close). Second, VIZIO could also have taken the  
5 proposed discovery at any time since this motion was filed over two months ago. Third, VIZIO  
6 waited until the last minute to request a continuance in its opposition. Fourth, discovery will  
7 now close on June 17, 2024—in just a few months—following a recent continuance of the trial  
8 date. (Gray Reply Decl. ¶ 7.) Finally, and most importantly, the requested discovery is not  
9 essential to the opposition—indeed, not relevant at all.

10           VIZIO does not need belated discovery to authenticate websites. (Declaration of  
11 Michael E. Williams in Opposition (“Williams Decl.”) ¶ 2.) SFC does not dispute their  
12 authenticity for the purpose of this motion, and VIZIO admits that authentication “is not an  
13 issue.” (ROA 186 at 7:5-8:16.) VIZIO does not need belated discovery to “confirm the intent  
14 behind the GPLs.” (Williams Decl. ¶ 2.) “[T]he relevant intent is . . . the objective intent as  
15 evidenced by the words of the instrument, not a party’s subjective intent.” *Shaw v. Regents of*  
16 *Univ. of Cal.*, 58 Cal. App. 4th 44, 54-55 (1997). VIZIO does not need belated discovery to  
17 confirm “the FSF’s understanding of who may enforce the GPLs.” (Williams Decl. ¶ 2.) Its  
18 subjective understanding is no more relevant than its subjective intent. Moreover, to the extent  
19 its subjective understanding may depart from the plain text of the GPLs, it is a *post hoc* legal  
20 conclusion and irrelevant as well. VIZIO does not need belated expert testimony—which it  
21 could have pursued at any time—about “issues related to third party beneficiary status.”  
22 (Williams Decl. ¶ 2.) Those are also legal conclusions and equally irrelevant to the extent they  
23 depart from the plain text of the GPLs. Finally, no expert could ascribe “reasonable”  
24 expectations to the parties that thwart their undisputed contractual objective—to ensure that  
25 source code is shared.

26           VIZIO identifies no other “facts essential to justify opposition” that may exist but have  
27 yet to be discovered. CCP § 437c(h). No such facts are even possible. No testimony can  
28

1 change the plain text of the GPLs. They are “adopt[ed] as an integrated agreement with respect  
2 to the terms included in the writing”—no less and no more. Restatement Second of Contracts  
3 § 211(1). VIZIO already possesses the terms of the GPLs and “changing [them] is not  
4 allowed.” (SUMF Nos. 8-9.) Hence, any further discovery to oppose this motion would be  
5 pointless. It would be inadmissible and immaterial for the same reasons as the proffered online  
6 commentary. Plus, it could not shape the expectations of the contracting parties as a logical  
7 matter, since it has not been published or made available to them.

8 If VIZIO is nevertheless allowed further discovery into “facts essential to justify  
9 opposition,” the motion should be *briefly* continued pending such discovery—and not denied.

10 C. This Motion is Not Moot.

11 Although VIZIO asserts that this motion is “moot” on the issue of third-party standing,  
12 it does not mean “moot” in the usual sense of the term. VIZIO is not arguing that this motion  
13 has become pointless. *See Hollister Canning Co. v. Superior Court*, 26 Cal. App. 3d 186, 197  
14 (1972); *McPheeters v. Bd. of Med. Exam'rs*, 82 Cal. App. 2d 709, 715-16 (1947). Instead,  
15 VIZIO appears to be arguing that this motion has already been decided—*i.e.*, that this motion  
16 must meet the same fate as its own.

17 In doing so, VIZIO appears to be misreading the Order denying its own motion. (*See*  
18 ROA No. 186. at 5.) In relevant part, that Order reasoned as follows:

19 The party moving for summary judgment bears the burden of persuasion  
20 that there is no triable issue of material fact and that he is entitled to  
21 judgment as a matter of law. (*Aguilar v. Atl. Richfield Co.*, 25 Cal. 4th  
22 826, 850 (2001)). “That is because of the general principle that a party  
23 who seeks a court’s action in his favor bears the burden of persuasion  
24 thereon.” (*Id.*) Further, “the party moving for summary judgment bears an  
25 initial burden of production to make a prima facie showing of the  
26 nonexistence of any triable issue of material fact . . . .” (*Id.*)

27 None of the evidence submitted by Defendant Vizio strongly suggests that  
28 the GPLs intended to preclude third parties from bringing a claim against  
29 Defendant Vizio for violating the terms of the GPL license. There is no  
30 exclusionary language in the GPLs, and there is no evidence from FSF  
31 that speaks to this issue. Moreover, the language of the GPLs is not so  
32 certain so as to preclude other interpretations.

1 On the other hand, Plaintiff has presented sufficient evidence, including  
2 language from the license itself that supports third parties were intended to  
benefit from the license by the right to receive the source code.

3 In light of the foregoing, the Court finds that a triable issue of material fact  
4 exists as to whether Plaintiff is a third[-party] beneficiary under the GPL  
license.

5 (ROA 162 at 2-3 & 10.) The holding is clear: VIZIO had failed to carry its burden to show that  
6 there was no triable issue of material fact and that it was entitled to judgment as a matter of  
7 law. The Court did not address—and had not yet been asked to address—whether SFC could  
8 enforce its right to source code as a matter of law. VIZIO cites no authority for its premise that  
9 a prior order is dispositive of an issue not raised or considered.

10  
11 D. SFC Is Not Judicially Estopped from Bringing this Motion.

12 Judicial estoppel is an equitable doctrine to protect against fraud on the courts. *Blix St.*  
13 *Records, Inc. v. Cassidy*, 191 Cal. App. 4th 39, 47 (2010). “Because of its harsh consequences,  
14 the doctrine should be applied with caution and limited to egregious circumstances.” *Id.*  
15 Indeed, it should be applied only to avoid “a miscarriage of justice.” *See Daar & Newman v.*  
16 *VRL Int'l*, 129 Cal. App. 4th 482, 491 (2009). Even if all elements of judicial estoppel are  
17 present, a court may still exercise its discretion not to apply the doctrine. *MW Erectors, Inc. v.*  
18 *Niederhauser Ornamental & Metal Works Co.*, 36 Cal. 4th 412, 422 (2005). For the doctrine to  
19 apply, the positions must be “totally inconsistent” so that “one excludes the other.” *Jackson v.*  
20 *County of Los Angeles*, 60 Cal. App. 4th 171, 182 (1992).

21 The Court of Appeal has rejected the precise argument VIZIO is making here. *See*  
22 *Kitty-Anne Music Co. v. Swan*, 112 Cal. App. 4th 30, 32, 35-36 (2003). As the Court of Appeal  
23 succinctly stated:

24 A party successfully opposes a summary judgment motion. He then  
25 moves for summary judgment based upon the same evidence used in  
26 the summary judgment motion he resisted. The rule of judicial estoppel  
27 does not apply against the party because he has not taken inconsistent  
28 positions, nor has he disrupted the orderly administration of justice.

1 *Id.* at 32. There is no inconsistency because the burdens for resisting and asserting motions for  
2 summary judgment are different. *See id.* at 35-36; *accord* ROA No. 162 at 2 (*citing Aguilar v.*  
3 *Atl. Richfield Co.*, 25 Cal. 4th. 825, 850 (2001)). Further, the second motion cannot “obtain an  
4 unfair advantage” because nothing prevents it from being opposed.

5 **II. THE COURT SHOULD TERMINATE VIZIO’S AFFIRMATIVE DEFENSE OF**  
6 **PREEMPTION.**

7 As VIZIO admits, the Court has already determined as a matter of law that the  
8 “Copyright Act does not preempt SFC’s claims against VIZIO.” (ROA No. 186 (*citing* ROA  
9 No. 162 at 8).) Accordingly, VIZIO’s motion for summary judgment was denied. In turn,  
10 SFC’s motion for summary adjudication should be granted, terminating VIZIO’s affirmative  
11 defense of preemption. This motion stands uncontested as to that issue.

12 **CONCLUSION**

13 For the foregoing reasons, SFC respectfully requests that the Court grant summary  
14 adjudication and enter an order declaring that (1) VIZIO has a legal duty to share source code  
15 (or, where applicable, object code) with SFC, as provided in the GPLs; and (2) the Copyright  
16 Act does not preempt SFC’s claims against VIZIO.

17  
18 Respectfully submitted,

19 DATED: February 9, 2024

SHADES OF GRAY LAW GROUP, P.C.

20  
21 By /s/ Naomi Jane Gray  
22 Naomi Jane Gray

23 Attorneys for Plaintiff  
24 SOFTWARE FREEDOM CONSERVANCY, INC.

1 **PROOF OF SERVICE**

2 I am employed at the law firm of Shades of Gray Law Group, P.C. in the County of  
3 Marin, State of California. I am over 18 years old and not a party to the within action.  
4 My business address is 100 Shoreline Highway, Suite 100B, Mill Valley, California 94941.

5 On February 9, 2024, I served true and correct copies of the documents described as  
6 **Plaintiff Software Freedom Conservancy, Inc.’s Memorandum of Points and Authorities**  
7 **in Reply to Defendant’s Opposition to Plaintiff’s Motion for Summary Adjudication,**  
8 **Reply Declaration of Naomi Jane Gray in Further Support of Plaintiff Software**  
9 **Freedom Conservancy, Inc.’s Motion for Summary Adjudication,**  
10 **Plaintiff Software Freedom Conservancy’s Consolidated Separate Statement of**  
11 **Undisputed Material Facts in Support of Plaintiff’s Motion for Summary Adjudication,**  
12 **Plaintiff Software Freedom Conservancy, Inc.’s Responses to Defendant Vizio, Inc.’s**  
13 **Objections to Plaintiff’s Exhibits and Declarations,**  
14 **Plaintiff Software Freedom Conservancy, Inc.’s Objections to Defendant Vizio, Inc.’s**  
15 **Evidence**  
16 **Consolidated [PROPOSED] Order on the Parties’ Evidentiary Objections Concerning**  
17 **Defendant’s Motion for Summary Adjudication**

18 on the parties in this action via electronic service to the emails below, pursuant to the parties’  
19 joint stipulation: “Electronic service will count as personal service on the day of that electronic  
20 service, if the electronic service occurs before midnight Pacific Time. If the electronic service  
21 occurs after midnight Pacific Time, that service will count as personal service for the following  
22 business day that is not a legal holiday.”

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I declare under penalty of perjury under the laws of the State of California that the foregoing  
is true and correct.

Executed on February 9, 2024, in Mill Valley, California.

/s/ Natalia Ermakova  
Natalia Ermakova