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13
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF ORANGE — CENTRAL JUSTICE CENTER**
16

17 **SOFTWARE FREEDOM CONSERVANCY,**)
18 **INC., a New York Non-Profit Corporation,**)
19 **Plaintiff,**)
20 **v.**)
21 **VIZIO, INC., a California Corporation; and**)
22 **DOES 1 to 50, Inclusive,**)
23 **Defendants.**)
24

Case No.: 30-2021-01226723-CU-BC-CJC
[Hon. Sandy Leal / Dept. C33]
FIRST AMENDED COMPLAINT FOR:
(1) BREACH OF CONTRACT; and
(2) DECLARATORY RELIEF
JURY TRIAL DEMANDED

1 COMES NOW THE PLAINTIFF, Software Freedom Conservancy, Inc., and alleges as follows
2 against VIZIO, Inc. (“VIZIO”) and DOES 1 to 50 (collectively, “Defendants”):

3 1. This is an action to enforce two vital and ubiquitous software license agreements, the
4 GNU General Public License version 2, also known as “GPLv2,” and its close cousin, the GNU Lesser
5 General Public License version 2.1, also known as “LGPLv2.1,” together “the GPL Agreements.” At
6 their heart is a simple bargain. Recipients of the licensed software are entitled to use, examine, modify,
7 adapt, and improve the software however they see fit. In exchange, the recipients must allow their
8 licensees to use, examine, modify, adapt, and improve the software as they see fit. In this way, the
9 licensed software is continuously being tinkered with, improved upon, re-purposed, and learned from.
10 For this bargain to work, however, all recipients and licensees of the software must have a right to
11 obtain a copy of the software’s “source code”—the form of the software that can be understood and
12 edited by computer programmers—so its workings are laid bare. Further, this right must travel with any
13 improvements, adaptations, or other modifications that might have been made to the software, so those
14 new versions may themselves be used, examined, modified, adapted, and improved upon. In contrast to
15 conventional license agreements, nothing is secret under the GPL Agreements. Instead, users of
16 software licensed under these agreements are free to do with the software what they like, so long as
17 they give their users the same freedom.

18 2. This case primarily concerns the right to obtain source code under the GPLv2 and
19 LGPLv2.1—and how one recipient of software governed by the GPL Agreements has taken full
20 advantage of the rights granted by these agreements but refuses to let others enjoy the same rights.

21 3. Since their introduction in 1991, the GPL Agreements have been an unqualified success
22 and have given rise to an entirely new way of managing software projects. Entire communities of
23 software developers can make major or incremental improvements to software, fixing bugs, adding new
24 features, and adapting the software to new uses, confident that their contributions can be used by all
25 and will lead to further improvements and innovations. Today, the GPLv2, and its offshoot, the
26 LGPLv2.1, are the software license agreements governing a major mobile operating system, significant
27 components of the Internet, personal electronic devices, wireless routers, and “smart” home appliances.

1 4. This action seeks to enforce the GPL Agreements with respect to the operating system
2 used by commercially-available “smart TVs” manufactured by the defendant VIZIO. VIZIO has taken
3 advantage of the hard work performed by the thousands of developers over nearly three decades to
4 build, improve and maintain key components of VIZIO’s operating system. Yet, VIZIO will not
5 comply with its reciprocal obligation to disclose the source code of its versions of these key software
6 programs.

7 THE PARTIES

8 5. The plaintiff, Software Freedom Conservancy, Inc. (“Software Freedom Conservancy”
9 or “Plaintiff”) is a not-for-profit corporation, organized under the laws of New York, with its principal
10 place of business located at 137 Montague Street, Suite 380 in Brooklyn, New York 11201.

11 6. Software Freedom Conservancy is centered around ethical technology. Its primary
12 mission is to ensure the right to repair, improve, and reinstall software. It promotes and defends these
13 rights by fostering free (in the sense of “freedom” not “gratis”) and open source software (“FOSS”)
14 projects, driving initiatives that make technology more inclusive, and advancing policy strategies that
15 defend FOSS.

16 7. Further to this mission, Software Freedom Conservancy works with companies to obtain
17 their compliance with the software license agreements, such as the GPL Agreements, that govern FOSS
18 projects and make them possible. This lawsuit to enforce the GPL Agreements governing Defendants’
19 use of certain FOSS programs is thus part of Software Freedom Conservancy’s mission to promote
20 FOSS projects.

21 8. Plaintiff is a purchaser of several of the Defendants’ smart TVs and is a third-party
22 beneficiary of the GPL Agreements.

23 9. Defendant VIZIO, Inc. (“VIZIO”) is a for-profit corporation, organized under the laws
24 of California and registered and qualified to do business in California, with its principal place of
25 business located at 39 Telsa in Irvine, California 92628.

26 10. VIZIO manufactures, among other things, “smart TVs,” which are essentially internet-
27 enabled televisions with computers built in so users can enjoy streaming services through a
28 sophisticated user interface.

1 16. The GNU Library General Public License version 2.0 was released contemporaneously
2 with the GPLv2 in June 1991. In 1999, minor changes were made to version 2 of the “Library” license,
3 including changing the word “Library” to “Lesser,” and the version number was incremented to 2.1.

4 17. The GPL Agreements are an integral part of software freedom. In this context,
5 “freedom” is moral, not pecuniary—not that software cost nothing but that it should be freely
6 examined, modified and shared. The GPL Agreements were written to ensure that “free” software
7 remained “free.”

8 18. Most software is distributed in a manner that cannot, as a practical matter, be examined
9 or modified. It is distributed in a form that can be executed by a computer but not, as a practical matter,
10 in a form understood by a computer programmer.

11 19. As the GPL Agreements explain, in their preambles, “The licenses for most software are
12 designed to take away your freedom to share and change it. By contrast, the GNU General Public
13 License[s] are intended to guarantee your freedom to share and change free software—to make sure the
14 software is free for all its users. ... When we speak of free software, we are referring to freedom, not
15 price.”

16 20. The GPL Agreements’ “freedom to share and change free software” reflects a major
17 goal of software freedom: to improve software and developers’ skills through community collaboration.
18 If other interested software developers can examine a program’s source code, they can, for example,
19 see how the program works, make changes to it, then circulate the modified source code to the
20 community for comments and further development. Such changes might be minor, such as fixing a
21 specific software bug. Others might be significant, such as adding entirely new features to the program.

22 21. Thus, to ensure the freedom to change software, the GPL Agreements must ensure that
23 recipients of software receive the software’s “source code.”

24 22. A computer program’s “source code” refers to its original “source,” i.e., text written by a
25 software programmer in a programming language that other programmers conversant in that language
26 can comprehend. With a computer program’s source code, a programmer can learn how the program
27 operates, make changes and improvements to the program, or re-purpose parts of the program for
28

1 another computer program. As the GPL Agreements define it, “Source code for a work means the
2 preferred form of the [computer program] for making modifications to it.”

3 23. Computers cannot execute source code. For that, the source code must be “compiled”
4 into an executable form, sometimes known as an “executable.” The reverse, converting the executable
5 software back into source code, is extremely difficult, if not impossible.

6 24. Thus, the GPL Agreements emphasize in their preambles that one of their purposes is, as
7 the GPLv2 puts it, “that you receive source code or can get it if you want it, that you can change the
8 software or use pieces of it in new free programs; and that you know you can do these things.” The
9 LGPLv2.1’s preamble has nearly identical language.

10 25. It is not enough to require the public availability of source code for only the initial
11 distribution of the software. Improvement of software is iterative and incremental. Thus, downstream
12 developers must have the benefit of not only the source code of the original program, but also of any
13 modifications to the original program. For this reason, the GPL Agreements contain provisions such
14 that they “travel with” any modifications to software or libraries subject to a GPL Agreement.

15 26. The GPL Agreements’ preambles elaborate on the importance of passing the
16 agreements’ rights and responsibilities to downstream recipients. As the GPLv2 puts it, “To protect
17 your rights, we need to make restrictions that forbid anyone to deny you these rights or to ask you to
18 surrender the rights. These restrictions translate to certain responsibilities for you if you distribute
19 copies of the software, or if you modify it. For example, if you distribute copies of such a program ...
20 you must give the recipients all the rights that you have. You must make sure that they, too, receive or
21 can get the source code.” The LGPLv2.1 has equivalent language.

22 27. Thus, there can be no proprietary version of software that is subject to the GPL
23 Agreements. If a developer obtains the source code to software that was released under a GPL
24 Agreement, and the developer makes modifications to the software, the developer must make the
25 source code of the modified version available to all. This is so, no matter how much effort the
26 developer put into the modifications, or how valuable the modifications are to the developer, financially
27 or otherwise.

1 28. To ensure the freedom to share and change free and open source software, the GPL
2 Agreements contain the following provisions:

3 (a) The GPL Agreements apply to any computer program originally distributed by
4 its author with a notice saying it is subject to the license (the “GPL Notice”). The GPLv2
5 provides, in pertinent part, “This License applies to any program or other work which contains a
6 notice placed by the copyright holder saying it may be distributed under the terms of this
7 General Public License.” The LGPLv2.1 has equivalent language.

8 (b) The GPL Agreements also cover not only the original computer program but also
9 modifications to, or any other works derivative of, that computer program. The GPLv2
10 provides, in pertinent part, “The ‘Program’, below, refers to any such program or work, and a
11 ‘work based on the Program’ means either the Program or any derivative work under copyright
12 law: that is to say, a work containing the Program or a portion of it, either verbatim or with
13 modifications and/or translated into another language.” The LGPLv2.1 has equivalent language.

14 (c) Recipients of a covered computer program’s source code are explicitly permitted
15 to modify it and to distribute the modified program, provided (among other things) the modified
16 version of the program is licensed to others under the GPL Agreement. The GPLv2 provides, in
17 pertinent part, “You may modify your copy or copies of the Program or any portion of it, thus
18 forming a work based on the Program, and copy and distribute such modifications or work
19 under the terms of Section 1 above, provided ... you ... cause any work you distribute or
20 publish, that in whole in or in part contains or is derived from the Program or any part thereof,
21 to be licensed as a whole at no charge to all third parties under the terms of this License.” The
22 LGPLv2.1 has equivalent language.

23 (d) Recipients of a covered computer program’s source code, whether in the original
24 or a modified form, may copy and distribute copies of that source code however they wish,
25 provided they, among other things, keep intact the GPL Notice and provide a copy of the GPL
26 Agreement along with the computer program when they further distribute the source code. The
27 GPLv2 provides, in pertinent part, “You may copy and distribute verbatim copies of the
28 Program's source code as you receive it, in any medium, provided that you conspicuously and

1 appropriately publish on each copy an appropriate copyright notice and disclaimer of warranty;
2 keep intact all the notices that refer to this License and to the absence of any warranty; and give
3 any other recipients of the Program a copy of this License along with the Program.” The
4 LGPLv2.1 has equivalent language.

5 (e) If a recipient of the computer program, or a modified version of the computer
6 program, wishes to distribute the program in an executable form, the distributor must
7 accompany the executable software with either (a) the complete corresponding source code or
8 (b) a written offer to provide the complete corresponding source code on demand. Where a
9 distributor chooses to provide the written offer, the distributor must also make a complete
10 machine-readable copy of the source code available to anyone who asks for it. The GPLv2
11 provides, in pertinent part: “You may copy and distribute the Program (or a work based on it...)
12 in object code or executable form under the terms [above] provided that you also do one of the
13 following: (a) Accompany it with the complete corresponding machine-readable source code...;
14 or, (b) Accompany it with a written offer, valid for at least three years, ... to give any third party
15 ... a complete machine-readable copy of the corresponding source code...” The LGPLv2.1 has
16 equivalent language.

17 (f) The LGPLv2.1 additionally requires that, if the licensed library is used by a
18 “work that uses the Library,” the recipient be provided with the object code or source code of
19 the “work that uses the Library” so that the library can be modified and recombined with the
20 “work that uses the Library.” The LGPLv2.1 provides, in pertinent part: “You must do one of
21 these things: accompany the work[,] ... if the work is an executable linked with the Library,
22 with the complete machine-readable ‘work that uses the Library’, as object code and/or source
23 code, so that the user can modify the Library and then relink to produce a modified executable
24 containing the modified Library.” The LGPLv2.1 also gives the licensor the option, in pertinent
25 part, of instead accompanying the executable programs with a written offer to provide such
26 materials or verify that users already have copies of such materials. The purpose of this
27 provision is to make sure modifications made to covered libraries continue to work with other
28 programs that rely on such libraries.

1 (g) The contractual obligation to provide source code for the licensed software
2 described in Sub-paragraph 27(e), and to also provide an object code or source code version of
3 the “work that uses the Library” (if applicable), as described in Sub-paragraph 27(f), is referred
4 to hereinafter as the “Source Code Provision.”

5 (h) Code that, if provided, would satisfy the requirements described in Sub-
6 paragraphs 27(e) or 27(f), as applicable, is referred to hereinafter as “Source Code.” Any
7 computer program or library subject to a GPL Agreement is hereinafter referred to as a
8 “Covered Program.”

9 (i) The GPL Agreements’ Source Code Provision further provides that the
10 corresponding source code must include all files and instructions necessary to compile it. The
11 GPLv2 provides, in pertinent part, “For an executable work, complete source code means all the
12 source code for all modules it contains, plus any associated interface definition files, plus the
13 scripts used to control compilation and installation of the executable.” The LGPLv2.1 has
14 equivalent language.

15 (j) Each recipient of the computer program, or modified version of the program,
16 automatically receives a license *from the original licensor* to copy, distribute, and modify the
17 program in accordance with the GPL Agreements.

18 (k) The GPL Agreements prohibit changing their terms in a manner that impinges
19 recipients’ rights under the agreements. Both GPL Agreement provide, “You may not impose
20 any further restrictions on the recipients’ exercise of the rights granted” by the GPL
21 Agreements.

22 29. In short, each recipient of a Covered Program obtains a license from all of the authors of
23 the program to copy, use, distribute, re-distribute and modify the program, and in return, the recipient
24 agrees to comply with the GPL Agreement’s requirements. These requirements include the obligation
25 to provide Source Code under the Source Code Provision.

26 30. The GPLv2 is attached hereto as **Exhibit A** and is incorporated by reference. It may also
27 be found at <https://www.gnu.org/licenses/old-licenses/gpl-2.0-standalone.html>.
28

1 31. The LGPLv2.1 is attached hereto as **Exhibit B** and is incorporated by reference. It may
2 also be found at <https://www.gnu.org/licenses/old-licenses/lgpl-2.1-standalone.html>.

3 **B. VIZIO’s SmartCast Platform**

4 32. Defendants manufacture and sell “smart TVs,” among other things.

5 33. What makes a television set “smart” is that a) it is capable of being connected to the
6 Internet (usually by WiFi), and b) has a user interface with numerous “apps” that allow the user to
7 enjoy different streaming services (such as Netflix, Hulu, and Amazon Prime). Owning and using a
8 Smart TV eliminates the need for external streaming devices, like those made by Apple, Roku, and
9 Amazon.

10 34. Smart TVs are now so ubiquitous that it is difficult to purchase any other kind of
11 television, whether the consumer wants “smart” features or not.

12 35. Even without Internet connectivity and the streaming apps, a digital television set still
13 relies on processors and programs to interpret and handle television signals for display, as well as to
14 handle basic television controls.

15 36. Like other Smart TVs, VIZIO Smart TVs are loaded with numerous computer programs
16 that help manage the smart TVs’ processors and provide their users with content in an accessible,
17 consumer-friendly way. Defendants refer to these programs variously as an “operating system” and a
18 “platform.” Defendants market this operating system or platform as “SmartCast.”

19 37. Defendants describe SmartCast as “Vizio’s operating system for our connected TVs and
20 ... our own built in-house solution.”

21 38. Defendants further describe SmartCast: “But from a content perspective, SmartCast is
22 where we bring together all of the amazing content that consumers are looking for. Whether that’s the
23 latest movie, whether that’s the latest TV show, whether that’s free and ad-supported, or whether that’s
24 their favorite subscription, it’s all right there in a single place within SmartCast.”

25 39. On a VIZIO Smart TV, SmartCast is both a streaming platform and an operating system.

26 40. The user’s main experience with SmartCast is the SmartCast user interface, which
27 displays a number of streaming apps that the user may access. The SmartCast user interface also
28 includes a number of features and tools, such as a universal search tool that will locate a title among the

1 various streaming services. In this respect, SmartCast is a “platform” through which the user may
2 stream entertainment and other content over the internet.

3 41. VIZIO’s SmartCast user interface and streaming platform is based on a popular
4 distribution of Linux called Ubuntu.

5 42. The SmartCast user interface does not function at all unless the Smart TV is connected
6 to the internet.

7 43. SmartCast is also an operating system because Smart TVs are controlled by built-in
8 computer processors, which require an operating system to perform basic tasks (file management,
9 memory management, process management, input-output control, and so forth) and to serve as an
10 interface between the computer hardware and user applications.

11 44. The SmartCast operating system is based on a custom version of the Linux kernel
12 provided by VIZIO’s chip supplier.

13 45. VIZIO’s Smart TVs thus have two full copies of a Linux kernel and associated Linux
14 operating system. One Linux operating system provides basic functionality for the Smart TVs’ basic
15 operation. The other Linux operating system, based on Ubuntu and entirely separate from the first
16 operating system, handles the SmartCast user interface and streaming platform. This second Ubuntu-
17 based operating system runs “on top of” the first, lower-level operating system. Such “virtualization,”
18 where one operating system runs on top of another, is common in modern computing.

19 46. In computer engineering, a “kernel” is the core of an operating system, performing the
20 most fundamental tasks, such as managing the processor, allocating computer memory, managing
21 input-output (including output to a display screen, and managing peripherals. It is the first component
22 of an operating system to load into memory, usually into a protected part, and the last to be purged.

23 47. Among the computer programs that comprise SmartCast are a number of programs
24 subject to the GPLv2 (hereinafter referred to as the “SmartCast Programs at Issue”):

25 (a) At least two versions of the Linux kernel. One version appears to be associated
26 with the Ubuntu distribution in the SmartCast user interface and streaming platform, while
27 another version appears to be a custom version supplied by VIZIO’s chip vendor for the lower-
28 level operating system.

1 (b) at least some constituent programs of alsa-utils, which is a suite of programs that
2 assist and manage ALSA, Linux's audio subsystem, including alsamixer.

3 (c) GNU bash, which is a "shell," a program that allows users to interface with the
4 operating system and is required for most operating systems.

5 (d) GNU awk, which is a popular scripting language with many uses.

6 (e) bluez, which is a suite of programs that assist and manage Bluetooth for Linux-
7 based devices.

8 (f) BusyBox, which is a popular "thin footprint" suite of utilities for Linux.

9 (g) coreutils, which is a popular suite of utilities for Linux, with a larger "footprint"
10 than BusyBox.

11 (h) dmesg, which is a utility for reading system logs on a Linux-based device.

12 (i) dnsmasq, which helps manage the infrastructure for small computer networks,
13 such as a home computer network that might include a smart TV.

14 (j) findutils, which is a suite of utilities for Linux that complements coreutils.

15 (k) dmsetup, which helps manage storage locations such as the hard drive or other
16 devices that a smart TV might use to store content.

17 (l) GNU tar, which is a program for storing groups of files as a single file.

18 (m) mount, which helps set up disk partitions.

19 (n) selinux, which provides additional security features for Linux.

20 48. Among the computer programs that comprise SmartCast are a number of programs
21 subject to the LGPLv2.1 (hereinafter referred to as the "SmartCast Libraries at Issue"):

22 (a) The GNU C Library, which is a library of resources that allows Linux users to
23 program in the popular C and C++ programming languages. It would be required for any Linux-
24 based operating system that wished to take advantage of these popular programming languages.

25 (b) ffmpeg, which is a suite of libraries for handling audio, video, and multimedia.

26 (c) glib, which is a library that facilitates programming in C.

27 (d) DirectFB, which is a library that allows Linux-based systems to work with video
28 hardware.

1 (e) libasound, which is a library that helps third-party programs interact with ALSA,
2 Linux's audio subsystem.

3 (f) libelf, which is a library for reading and modifying binary files.

4 (g) libgcrypt, which is a C programming library of encryption functions and utilities.

5 (h) libmount, which is a library that helps third-party programs interact with Linux
6 file systems.

7 (i) libnl, which is a suite of libraries related to using netlink, a popular network
8 communication protocol.

9 (j) selinux libraries, which help third-party programs interact with selinux.

10 (k) systemd, which is a large system that manages, organizes and handles shutdown
11 and restarting of system services on a Linux-based system.

12 49. The SmartCast Programs at Issue and the SmartCast Libraries at Issue are together
13 collectively referred to herein as the "SmartCast Works at Issue."

14 50. Each of the SmartCast Works at Issue was developed over the course of many years—in
15 some cases, over decades—as a free and open source software (FOSS) project.

16 51. The Linux kernel is perhaps the most successful FOSS project ever, for example. It was
17 made subject to the GPLv2 in 1992. In 1994, it consisted of about 175,000 lines of code, developed by
18 a small but vigorous community of programmers. By 2020, the Linux kernel consisted of millions of
19 lines of code and had an estimated 20,000 or more total different contributors. Where the Linux kernel
20 was once limited to personal computers, it now forms a crucial component of the Internet, where it
21 helps run major network servers. It is commonly embedded in hardware devices, such as routers and
22 smart TVs. A modified Linux kernel is used by the highly popular Android platform for mobile
23 devices.

24 52. Commercial uses of the Linux kernel often use a version specially adapted for the
25 purpose. Such adaptation is made possible by the Source Code Provision. These adapted versions of the
26 Linux kernel are themselves subject to the GPLv2.

1 53. Linux would not have become the robust, flexible operating system kernel it is today
2 unless it had attracted a huge community of software developers willing to work on the project. This
3 community of software developers arose as a result of the Source Code Provision.

4 54. Purchasers of one of these devices have the right to the Linux kernel's source code, not
5 only to examine it and see how it works, but also to make their own improvements or to write software
6 tools that will be compatible with the modified Linux kernel installed on the device.

7 55. The other SmartCast Works at Issue were also successfully developed according to the
8 FOSS model. Developers were able to access the source code of programs, make improvements to
9 them or adapt them to other environments, and those improvements or adaptations were then made
10 available for others to examine, improve upon, or adapt. With respect to the SmartCast Libraries at
11 Issue, developers would also be able to access at least the object code of programs that linked with the
12 libraries to ensure that their modifications to the libraries did not "break" programs that relied on the
13 libraries.

14 56. Some manufacturers might prefer to keep their modifications to the Linux kernel and
15 other SmartCast Works at Issue proprietary, despite their obligations under the GPL Agreements.

16 57. But the price of a robust, reliable Linux kernel and other SmartCast Works at Issue that
17 can be modified to suit one's needs is making one's own source code publicly available in accordance
18 with the GPL Agreements. That's the deal.

19 **C. Defendants' Breaches of the GPLv2 and LGPLv2.1**

20 58. Defendants' smart TVs are manufactured and distributed with the SmartCast Works at
21 Issue resident on them.

22 59. In distributing and selling their smart TVs, Defendants distribute to purchasers the
23 SmartCast Works at Issue in an executable form, on a chip located inside the smart TV.

24 60. Defendants do not accompany their smart TVs with any source code corresponding to
25 any of the SmartCast Works at Issue contained therein.

26 61. The smart TVs contain several "works that use the Library" that link to a SmartCast
27 Library at Issue subject to the LGPLv2.1. Yet, the Defendants do not accompany the smart TVs with
28

1 the object code or source code corresponding to that program so that users can modify the library and
2 relink it to produce a modified executable.

3 62. At least some of VIZIO smart TVs contain executable computer programs that link to
4 each of the SmartCast Libraries at Issue. Any executable program contained on a VIZIO smart TV that
5 links to any of the SmartCast Libraries at Issue is hereinafter referred to as a “Library Linking
6 Program.”

7 63. Several years ago, Software Freedom Conservancy started to receive reports that VIZIO
8 smart TVs use the Linux kernel, or a modified version thereof, without providing either the
9 corresponding source code or a written offer for such source code on demand.

10 64. On or about March 8, 2018, a Software Freedom Conservancy employee, on its behalf,
11 purchased a VIZIO smart TV from a major retailer. After unboxing and carefully examining the
12 contents and the smart TV itself, another employee found no source code or written offer for any source
13 code. Upon examination, Software Freedom Conservancy concluded that the VIZIO smart TV included
14 a version of the Linux kernel, which was resident on the device in an executable form.

15 65. In August 2018, Software Freedom Conservancy sent a letter to VIZIO’s Chief
16 Technology Officer and its General Counsel about VIZIO’s failure to accompany the VIZIO smart TV
17 with the source code corresponding to the Linux kernel used by the device or to include with the device
18 a written offer to provide such source code.

19 66. In response, VIZIO promised it would provide the corresponding source code by the end
20 of 2018.

21 67. On or about January 25, 2019, VIZIO provided to Software Freedom Conservancy what
22 it represented as the complete source code corresponding to the Linux kernel used by the VIZIO smart
23 TV. However, it did not include all files and scripts that would permit the code to be compiled into an
24 executable form.

25 68. In Software Freedom Conservancy’s experience, it is not unusual for the first or second
26 proffered source code to be incomplete or to have other problems. In these cases, Software Freedom
27 Conservancy provides a detailed report to the providing party showing what was provided and what it
28

1 believes, after its analysis, to be missing. Software Freedom Conservancy provided such a report to
2 VIZIO on or about February 13, 2019.

3 69. On or about May 10, 2019, VIZIO sent another supposedly complete version of the
4 source code to Software Freedom Conservancy. Again, it would not fully compile, and again, Software
5 Freedom Conservancy sent VIZIO another report.

6 70. This process continued throughout 2019. In all, VIZIO provided six purportedly
7 complete versions of the source code, and Software Freedom Conservancy provided VIZIO with six
8 detailed reports. None of VIZIO's proffered versions of the source code would fully compile.

9 71. On or about December 18, 2019, representatives of Software Freedom Conservancy,
10 VIZIO, and VIZIO's chip supplier held a conference call to discuss the problems with VIZIO's source
11 code versions and what could be done to resolve them. VIZIO assured Software Freedom Conservancy
12 it would be providing the complete, compilable source code.

13 72. On January 28, 2020, VIZIO's representative sent Software Freedom Conservancy an
14 email expressing hope that VIZIO's chip supplier "will have more substantial updates for you in the
15 next few weeks, and we will continue to press them to move this project along as their staff returns to
16 the office." This was the last communication Software Freedom Conservancy received from VIZIO.

17 73. Software Freedom Conservancy followed up with Vizio six times during the following
18 five months after this email. Software Freedom Conservancy never received a response to any of its
19 communications.

20 74. In July 2021, an employee of Software Freedom Conservancy purchased one of each of
21 the following models of VIZIO TVs: V435-J01, D32h-J09, and M50Q7-J01 (the "Subject TVs"), for
22 the purpose of investigating their compliance with the GPL Agreements.

23 75. On or about July 16, 2021, an employee of Software Freedom Conservancy, on its
24 behalf, purchased a VIZIO V435-J01 online from Best Buy, which shipped it to the employee in the
25 United States. Best Buy operates a well-known chain of "big-box" retail stores in the United States and
26 Canada and is a retail seller of electronics such as VIZIO Smart TVs.

27 76. After unboxing and carefully examining the contents of the VIZIO V435-J01, the
28 Software Freedom Conservancy employee found no source code.

1 77. Software Freedom Conservancy examined the VIZIO V435-J01 smart TV and
2 determined it contained each of the SmartCast Works at Issue resident on the device in an executable
3 form.

4 78. On or about July 13, 2021, an employee of Software Freedom Conservancy, on its
5 behalf, purchased a VIZIO D32h-J09 smart TV from a Target location in the United States. Target
6 operates a well-known chain of “big-box” retail stores in the United States and is a retail seller of
7 electronics such as VIZIO smart TVs.

8 79. After unboxing and carefully examining the contents of the VIZIO D32h-J09 smart TV,
9 the Software Freedom Conservancy employee found no source code.

10 80. Software Freedom Conservancy examined the VIZIO D32h-J09 Smart TV and
11 determined it contained each of the SmartCast Works at Issue resident on the device in an executable
12 form.

13 81. On or about July 21, 2021, an employee of Software Freedom Conservancy, purchased a
14 VIZIO M50Q7-J01 smart TV from a Best Buy location in the United States.

15 82. After unboxing and carefully examining the contents of the VIZIO M50Q7-J01, the
16 Software Freedom Conservancy employee found no source code.

17 83. Software Freedom Conservancy examined the VIZIO M50Q7-J01 Smart TV and
18 determined it contained each of the SmartCast Works at Issue resident on the device in an executable
19 form.

20 84. All of the Subject TVs were found to have each of the SmartCast Works at Issue loaded
21 on them.

22 85. None of the Subject TVs was accompanied by the source code for any of the SmartCast
23 Works at Issue, either on physical media inside the box, copied onto the Subject TVs themselves, or
24 any other way.

25 86. Each of the Subject TVs was also loaded with programs in executable form that linked
26 with the SmartCast Libraries at Issue. None of the Subject TVs was accompanied by the object code,
27 either on physical media in the box, copies onto the Subject TVs themselves, or any other way. No one
28 contacted the examining Software Freedom Conservancy employee (or anyone else with Software

1 Freedom Conservancy) to verify that they already had any source or object code for any such
2 executable programs.

3 87. The print on Subject TVs' boxes contain no written offer for source code (or, in the case
4 of Library Linking Programs, object code).

5 88. The Subject TVs were boxed with certain paper documentation, but this documentation
6 contained no written offer for source code (or, in the case of Library Linking Programs, object code).

7 89. The Subject TVs were not accompanied by paper user guides, but these user guides are
8 accessible at the VIZIO controlled website support.vizio.com (the "VIZIO Support Site"). The user
9 guides for the Subject TVs contain no written offer for source code (or, in the case of Library Linking
10 Programs, object code).

11 90. Soon after a Subject TV is switched on after unboxing, the user is presented with a set of
12 terms and conditions and privacy policies, all of which the user must agree to before the SmartCast user
13 interface can be accessed. One of these is the "VIZIO Terms of Service."

14 91. The VIZIO Terms of Service grants a license to the user for all of the software that
15 resides on the Subject TV, which includes several restrictions on use. The license grant and
16 accompanying restrictions do not apply, however, to any program "governed by a separate license."
17 The VIZIO Terms of Service do not identify these other licenses or how they might differ from
18 VIZIO's own licensing terms. The VIZIO Terms of Service has no written offer for source code (or, in
19 the case of Library Linking Programs, object code).

20 92. The VIZIO Terms of Service also include a "binding arbitration agreement," in which
21 the user agrees to arbitrate "any controversy or claim relating in any way to your VIZIO product." The
22 user must opt out of the arbitration provision within 60 days of purchase to avoid being bound by it.
23 The arbitration provision excepts "eligible claims in small claims court" but does not except claims
24 brought under any of the "separate licenses," such as the GPL Agreements. The user necessarily
25 waives his or her right to a jury trial, unless the user opts out. Under the binding arbitration agreement,
26 arbitrators are prohibited from granting equitable relief to users.

1 93. The VIZIO Terms of Service also include a “class action waiver,” in which the user
2 agrees not to bring or join a class action suit. There are no exceptions to this waiver. The user must opt
3 out of this provision within 60 days of purchase or else be bound by the class action waiver.

4 94. Average consumers are unlikely to learn of, or understand the importance of, the right to
5 opt out of the arbitration agreement or the class action waiver.

6 95. Once the user has accepted the VIZIO Terms of Service (and the other terms and
7 conditions), the user must further agree to allow VIZIO to collect and use the user’s “activity data.”
8 The SmartCast streaming platform cannot be accessed unless the user agrees to these terms.

9 96. Having agreed to the VIZIO Terms of Service and to allow VIZIO to collect and use the
10 user’s “activity data,” and having connected the device to the internet, the user finally may access the
11 SmartCast user interface.

12 97. A significant portion of users will not connect VIZIO smart TVs to the internet. It is
13 believed that about 20% of Americans do not have access to the internet. Other users (with internet
14 access) will prefer to connect their VIZIO smart TV to external streaming devices, like those made by
15 Apple, Roku, and Amazon, rather than use VIZIO’s built-in SmartCast streaming platform.

16 98. Regardless of whether the user connects the VIZIO smart TV to the internet, the user
17 always has access to the Smart TV’s basic menu. The menu provides both settings, for audio and video
18 output, for example; and information, such as the VIZIO privacy policies. Nowhere in the menu is
19 there a written offer for source code (or, in the case of Library Linking Programs, object code).

20 99. Under industry best practices, the written offer of source code (or, in the case of Library
21 Linking Programs, object code) should have been somewhere all users would expect to find such legal
22 language, such as in the written materials accompanying the device, among the Terms of Service that
23 the user must peruse before use, or in the device’s menu.

24 100. Assuming the user can connect, and has connected, the VIZIO smart TV to the internet
25 and agreed to let VIZIO use the user’s activity data, the user may access the SmartCast streaming
26 platform. The SmartCast streaming platform consists mostly of a large number of streaming apps,
27 together with large banner advertisements for specific movies and shows. The SmartCast streaming
28 platform also provides along its top a number of drop-down menus. These menus have varied over the

1 years, but today they are for search, for “home,” “Live TV,” “Free,” “Movies,” “Shows,” “Apps,”
2 “Extras,” “AirPlay,” and “Cast.”

3 101. VIZIO purports to include a written offer for source code via the SmartCast streaming
4 platform. To find it, the user must pull down the “Extras” menu. At that point, the user is presented
5 with a number of menu options, such as “VIZIO Account” and “Notifications.” The user must click on
6 “About.” At this point, the user is presented with more options, including “Terms of Service” (to
7 which the user must have already agreed to reach this point) and “Privacy Policy.” The purported
8 written offer, however, is found under “License List,” which mostly lists the “separate licenses” that
9 may govern some of the software resident of the Smart TV.

10 102. A paragraph in the “License List” states as follows: “Your VIZIO SmartCast™ device
11 may contain executable codes and libraries that are subject to the terms of the GNU General Public
12 License, GNU Lesser General Public License [among others]. VIZIO offers to provide applicable
13 source code upon request for a processing fee covering the cost of fulfilling the distribution... To make
14 a request, please contact VIZIO at [the VIZIO Support Site].”

15 103. The VIZIO Support Site provides no form or information about requesting source code.
16 The requester must instead contact VIZIO support personnel by telephone, “chat,” or text. In practice,
17 the process requires multiple telephone calls to fully explain the request for source, and some support
18 personnel have little idea what is being requested. VIZIO does not accept anonymous requests, even
19 though the GPL Agreements entitles “any third party” (whether or not a purchaser or possessor of a
20 VIZIO device) to take advantage of a written offer for source.

21 104. The purported written offer made via the SmartCast user interface at
22 Extras/About/License List is not a valid written offer, as required by the GPL Agreements, for any or
23 all of the following reasons: (a) it is not available to all users, (b) it is too difficult for users to find, (c)
24 it purports to add terms (such as an arbitration provision) to the GPL Agreements, (d) it requires users
25 to first agree to proprietary software licenses before accessing it, (e) it adds conditions not found in the
26 GPL Agreements to a request for source code, and/or (f) it is too difficult to make the request through
27 the VIZIO Support Site.

1 105. At least one attempt to request source code through the VIZIO Support Site, made in late
2 2021, did not result in the delivery of any source code.

3 106. Even when source code is provided in response to a request made through the VIZIO
4 Support Site, the provided source code candidate is obviously incomplete.

5 107. The source code recently provided by VIZIO includes only one version of the Linux
6 kernel, even though the Subject TVs have at least two independent and unrelated versions. It is not
7 clear whether source code for the Linux kernel provided by VIZIO even corresponds to any version of
8 the Linux kernel actually loaded on the Subject TVs.

9 108. The source code provided by VIZIO also has no source code for at least the following
10 SmartCast Works at Issue: BusyBox, FFmpeg, libasound, libelf, libsdl, and systemd.

11 109. The source code provided by VIZIO for at least some of the SmartCast Programs at
12 Issue will not compile, at least not by ordinary means, and, therefore, cannot be installed on the device.

13 110. VIZIO does not accompany the source code candidate with all “the scripts used to
14 control compilation and installation” of the SmartCast Works at Issue.

15 **D. Why it Matters**

16 111. With the source code for the SmartCast Works at Issue as used on the Subject TVs,
17 developers could continue to develop and improve an operating system for smart televisions, which
18 would benefit the public and further the goals of software freedom. Software Freedom Conservancy
19 already manages similar FOSS projects, such as BusyBox (a popular suite of utilities for Linux), and
20 OpenWrt (a popular alternative firmware for Linux-based wireless routers).

21 112. There is, for example, a need to include features in such operating systems that protect
22 the user’s privacy and personal data. Smart TVs collect, use and sell information about users and their
23 viewing habits, including through technology known as “automatic content recognition.”

24 113. On or about February 14, 2017, VIZIO and an affiliate settled a case with the U.S.
25 Federal Trade Commission and the Attorney General of New Jersey for collecting such consumer data,
26 without obtaining consent, from more than 11 million VIZIO smart TVs and then selling that data to
27 advertisers and others. The case is captioned as *Federal Trade Commission et al. v. Vizio, Inc. et al.*,
28

1 and identified as Case No. 2:17-cv-00758, filed on or about February 6, 2017 in the U.S. District Court
2 for the District of New Jersey.

3 114. It can be difficult to opt out data-collection and data-selling schemes. In the case of the
4 Subject TVs, one must initially agree to data collection to even access the SmartCast user interface. It is
5 possible to turn off at least some of this data collection, if one is persistent enough to find the correct
6 setting. On information and belief, even if one turns off the automatic content recognition on the
7 Subject TVs, the Subject TVs still collects some data about the viewers and their viewing habits.

8 115. There is, to take another example, a need to improve accessibility to accommodate those
9 who are deaf, hard of hearing, blind or disabled. SmartCast has a number of features along these lines,
10 but they could stand to be improved.

11 116. Had VIZIO produced the Source Code for the SmartCast Programs at Issue, and for the
12 Library Linking Programs, as used on the Subject TVs, a community of software developers would
13 have had the opportunity to modify them to protect user privacy or improve accessibility. This remains
14 true today, and this need for consumer privacy and accessibility will be even more important in the
15 future as consumers become more integrated and dependent on computers and other interconnected
16 “smart” devices for their daily lives.

17 117. VIZIO is unlikely to unilaterally implement features that prevent the collection of such
18 user data, as such user data is valuable to VIZIO. For 2022, VIZIO reported gross profits of nearly
19 \$300 million for its “Platform+” business, as compared to only \$15 million for sales of its hardware.
20 The “Platform+” business is VIZIO’s advertising and data-sales business.

21 118. Access to the Source Code of the Linux kernel, the other SmartCast Works at Issue, and
22 for the Library Linking Programs, as used on VIZIO smart TVs, would enable software developers to
23 preserve useful but obsolete features. It would also allow software developers to maintain and update
24 the operating system should VIZIO or its successor ever decide to abandon it or go out of business. It
25 would also allow for the maintenance of older models that are no longer supported by VIZIO. In these
26 ways, purchasers of VIZIO smart TVs can be confident that their devices would not suffer from
27 software-induced obsolescence, planned or otherwise.

1 119. VIZIO is unlikely to go to the trouble and expense of giving its customers the option of
2 keeping features that VIZIO has decided are obsolete, despite the usefulness of maintaining and
3 improving on such features for the benefit of users, the general public, and the software-developing
4 community.

5 120. Encouraging these types of uses is the core purpose of the GPL Agreements, a purpose
6 that Defendants have entirely subverted by failing to comply with the Source Code Provision.

7 **FIRST CAUSE OF ACTION**
8 **BREACH OF CONTRACT**
9 **(By Plaintiff against All Defendants)**

10 121. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs of
11 this Complaint as though fully set forth herein.

12 122. The SmartCast Programs at Issue are subject to the GPLv2.

13 123. The SmartCast Libraries at Issue are subject to the LGPLv2.1.

14 124. From the first-hand analyses conducted by Plaintiff, the Subject TVs have versions of
15 the SmartCast Works at Issue resident on chips located within the devices.

16 125. By distributing the SmartCast Libraries at Issue on the Subject TVs to the public, VIZIO
17 became a party to the GPLv2. If VIZIO were not a party to the GPLv2, it would have no rights to use or
18 distribute any of these libraries, or any modified versions thereof, at all.

19 126. By distributing the SmartCast Libraries at Issue on the Subject TVs to the public, VIZIO
20 became a party to the LGPLv2.1. If VIZIO were not a party to the LGPLv2.1, it would have no rights
21 to use or distribute any of these libraries, or any modified versions thereof, at all.

22 127. Pursuant to both the GPLv2 and LGPLv2.1, when distributing an executable computer
23 program covered by the license, the licensee must accompany the executable software with either (a)
24 the source code corresponding to the executable software, or (b) a written offer to provide such source
25 code on demand.

26 128. VIZIO did not accompany the Subject TVs with either the source code corresponding to
27 the executable of the SmartCast Works at Issue residing on those devices, or with a valid written offer
28 to provide such source code on demand.

1 129. Pursuant to the LGPLv2.1 license, when distributing an executable computer program
2 that links with a library subject to the LGPLv2.1, the licensee must accompany the executable program
3 with either (a) the source code or object code corresponding to the executable program so that users can
4 modify the library and then relink to produce a modified executable, (b) a written offer for such
5 material, or (c) verify that the user has already received a copy of such materials.

6 130. On information and belief, the Subject TVs contain executable programs that link with
7 each of the SmartCast Libraries at Issue, which are subject to the LGPLv2.1.

8 131. Defendants did not accompany the Subject TVs with the source code or object code
9 corresponding to the executable program that links with the SmartCast Libraries at Issue or a written
10 offer for such materials, and Defendants do not verify that their users already have such materials.

11 132. Defendants also do not provide the source code for all SmartCast Works at Issue upon
12 request.

13 133. Defendants also do not provide the source code for all SmartCast Works at Issue in a
14 form that permits the source code to be compiled by ordinary means and installed on the Subject TVs.

15 134. Due to their complete failure to accompany the Subject TVs with such source code or a
16 valid written offer to provide same, Defendants are in material breach of the GPLv2 and the LGPLv2.1.

17 135. Defendants commit further breaches of the GPLv2 and the LGPLv2.1 every time they
18 distribute a smart TV without such source code or such valid written offer.

19 136. Due to their failure to provide all source code for all of the SmartCast Works at Issue
20 upon request, Defendants are in material breach of the GPLv2 and the LGPLv2.1.

21 137. Due to their failure to provide source code for the SmartCast Works at Issue in a form
22 that permits it to be compiled by ordinary means and installed on the Subject TVs, Defendants are in
23 material breach of the GPLv2 and the LGPLv2.1.

24 138. Defendants commit further breaches of the LGPLv2.1 every time they distribute a smart
25 TV without such source or object code or written offer for such source or object code, or fail to verify
26 their customers already possess such source or object code.

27 139. Purchasers of VIZIO smart TVs would have benefited from the GPLv2 and LGPLv2.1
28 had Defendants complied with the terms thereof, such that said purchasers could have received the

1 source code corresponding to the SmartCast Works at Issue residing on such Smart TV, either with the
2 smart TV itself or after having made a request to VIZIO for it.

3 140. Because VIZIO does not accompany its smart TVs with either the corresponding source
4 code or a valid written offer to provide such source code on demand, purchasers are unaware of their
5 rights to the source code under the GPLv2 and LGPLv2.1.

6 141. Because VIZIO does not provide the complete corresponding source code upon request,
7 purchasers cannot analyze, learn from, modify, or improve the SmartCast Works at Issue.

8 142. Purchasers of VIZIO smart TVs would have further benefited from the LGPLv2.1 had
9 Defendants provided the source or object code for executable programs resident on such devices that
10 link to libraries subject to the LGPLv2.1, or a written offer for such materials. It is highly unlikely that
11 purchasers of VIZIO smart TVs would already possess such materials.

12 143. The purpose of the GPLv2 and LGPLv2.1 is, among other things, to enable
13 collaboration in developing software, which, in turn, tends to lead to improvements or innovations in
14 the software and the software industry at large.

15 144. Such collaboration inures to the benefit of the general public as well as the persons and
16 entities who use and adhere to the GPLv2 and LGPLv2.1. For example, an entity such as VIZIO can
17 lower its research and development and software development costs by providing outside software
18 developers with the source code, who could then create and improve features and interfaces which
19 VIZIO could use in its products. Indeed, the SmartCast Works at Issue are examples of the power of
20 this sort of open and free collaboration.

21 145. However, such collaboration on a particular program is possible only if developers have
22 access to the Source Code. Therefore, the GPLv2 and LGPLv2.1 requires, as a condition of their
23 licenses, that developers make their source code (or, in special cases, object code) available to the
24 public.

25 146. Therefore, a motivating purpose—indeed, the *sine qua non*—of the GPLv2 and
26 LGPLv2.1 is to provide the Source Code to downstream recipients of computer programs covered by
27 those license agreements.

1 147. At the same time, a contracting party to the GPLv2 or LGPLv2.1 might not be aware of
2 the breach of, or have the motivation or means to enforce, this provision of the license agreements.
3 Despite being subject to the GPLv2 or LGPLv2.1, a licensee such as VIZIO might prefer to keep its
4 own version of the SmartCast Works at Issue, or the Library Linking Programs, secret or proprietary.

5 148. It is consistent with the objectives and express language of the GPLv2 and LGPLv2.1 to
6 permit recipients of executable software covered by those license agreements, such as purchasers of
7 VIZIO smart TVs, to seek court assistance to enforce their right to the corresponding Source Code.

8 149. It is reasonable to expect downstream recipients of executables of the SmartCast Works
9 at Issue or Library Linking Programs, such as purchasers of VIZIO smart TVs, to seek court assistance
10 to enforce their right to the corresponding Source Code.

11 150. Plaintiff is a purchaser of VIZIO smart TVs, specifically the Subject TVs. Therefore,
12 Plaintiff is a recipient of the executables of the SmartCast Works at Issue and Library Linking
13 Programs thereon.

14 151. Plaintiff has a right under the GPLv2 and LGPLv2.1 to the Source Code corresponding
15 to the executables of the SmartCast Works at Issue and Library Linking Programs that reside on the
16 VIZIO smart TVs purchased by it.

17 152. Plaintiff is not a contracting party to the GPLv2 or the LGPLv2.1 as that agreement
18 relates to the Subject TVs, in that it is not asserting that it is the licensor of the software used in the
19 Subject TVs or any works based on the software or derivative thereof.

20 153. Plaintiff is a member of a class of persons for whose benefit the GPLv2 and LGPLv2.1
21 were created and intended.

22 154. A motivating purpose of VIZIO and the developers of the SmartCast Works at Issue, in
23 accepting the terms of the GPLv2 or LGPLv2.1 (as appropriate), was for said class of persons to benefit
24 from that license agreement.

25 155. Permitting Plaintiff to bring this cause of action is consistent with the objectives of the
26 GPLv2 and LGPLv2.1 and the reasonable expectations of VIZIO and the developers of the SmartCast
27 Works at Issue.

1 156. Therefore, Plaintiff is an intended third-party beneficiary of the GPLv2 and LGPLv2.1
2 between VIZIO and the developers of the SmartCast Works at Issue and, because of this, may seek to
3 enforce the Source Code Provision against VIZIO.

4 157. As a third-party beneficiary under the GPLv2 and LGPLv2.1, Plaintiff has a right to the
5 Source Code corresponding to the executables of the SmartCast Works at Issue and Linking Library
6 Programs that reside on the VIZIO smart TVs purchased by it.

7 158. Some or all of the source code that corresponds to the executables of the SmartCast
8 Works at Issue residing on the Subject TVs is different in material ways from other versions of the
9 SmartCast Works at Issue that are publicly available. This source code is unique and cannot be readily
10 found elsewhere.

11 159. Some or all of the source or object code that corresponds to the executables of the
12 Library Linking Programs residing on VIZIO smart TVs, including the Subject TVs, is not publicly
13 available and thus cannot be used to relink with the SmartCast Libraries at Issue after modifying such
14 library. Such source or object code is unique and cannot be readily found elsewhere.

15 160. If purchasers of VIZIO smart TVs cannot enforce the GPLv2 and LGPLv2.1 as third-
16 party beneficiaries, the Source Code Provision is effectively unenforceable. No one other than the
17 purchaser has both the information and motive to enforce the Source Code Provision. Purchasers will
18 both know whether the Source Code Provision has been honored and have a desire to examine and
19 further develop the corresponding source code.

20 161. Due to Defendants' failure to comply with the duties, responsibilities, and covenants
21 they assumed pursuant to the GPLv2 and LGPLv2.1—namely, their failure to provide the Source Code
22 to purchasers of their smart TVs pursuant to the Source Code Provision—Plaintiff and other members
23 of the class of persons intended to benefit from the GPLv2 and LGPLv2.1 have been damaged in an
24 amount that cannot be readily determined.

25 **SECOND CAUSE OF ACTION**
26 **DECLARATORY RELIEF**
27 **(Cal. Code Civ. Proc. § 1060)**
28 **(By Plaintiff against All Defendants)**

1 162. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs of
2 this Complaint as though fully set forth herein.

3 163. Upon information and belief, Defendants' business plan is to continue to manufacture
4 smart TVs and/or other devices based upon the Linux kernel and some or all of the other SmartCast
5 Works at Issue, but without compliance with GPLv2 and LGPLv2.1 (as appropriate).

6 164. An actual controversy has arisen and now presently exists between Plaintiff and
7 Defendants concerning their respective legal rights and duties under the GPLv2 and LGPLv2.1 in
8 connection with Defendants' modification and distribution of the Linux kernel and some or all of the
9 other SmartCast Works at Issue on their smart TVs.

10 165. Upon information and belief, Defendants take each of the following positions in direct
11 contravention of Plaintiff's position and the GPLv2 and LGPLv2.1:

12 (a) Defendants contend, and Plaintiff disputes, that Defendants are not obligated to
13 provide purchasers of their smart TVs with the complete corresponding Source Code or a valid
14 written offer for same as required by the Source Code Provision of the GPLv2 and LGPLv2.1;

15 (b) Defendants contend, and Plaintiff disputes, that Defendants are not obligated
16 under GPLv2 and LGPLv2.1 to maintain, on hand, for immediate distribution on request,
17 compilable (by ordinary means) and installable versions of their Source Code for all existing
18 VIZIO smart TVs;

19 (c) Defendants contend, and Plaintiff disputes, that Defendants are not obligated
20 under GPLv2 and LGPLv2.1 to do the same for all smart TVs that Defendants may build,
21 manufacture, or distribute in the future based upon the Linux kernel and some or all of the other
22 SmartCast Works at Issue, or any modified variant of any of them.

23 (d) Plaintiff contends, and Defendants dispute, that Defendants' attempt to add
24 material terms to the GPLv2 and LGPLv2.1, including an arbitration agreement and a class
25 action waiver, violates the GPLv2 and LGPLv2.1.

26 166. Plaintiff has advised Defendants that, by their failure to provide the Source Code or a
27 valid written offer for same with their smart TVs, they are in breach of the duties, responsibilities, and
28

1 covenants that they agreed to and assumed pursuant to the Source Code Provision of the GPLv2 and
2 LGPLv2.1.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays judgment against Defendants as follows:

5 **AS TO THE FIRST CAUSE OF ACTION FOR BREACH OF CONTRACT:**

- 6 a. An order directing Defendants to produce to Plaintiff the complete source code
7 corresponding to whatever versions of the SmartCast Works at Issue, and any other
8 program subject to the GPLv2 or LGPLv2.1 that are resident on VIZIO smart TVs having
9 model numbers V435-J01, D32h-J09, and M50Q7-J01, including the Linux kernel used
10 with VIZIO's SmartCast operating system, in a format that may be compiled and installed
11 without undue difficulty. For purposes of this prayer for relief, "complete source code"
12 means all source code for all modules contained in such version or versions of the
13 SmartCast Works at Issue, plus any associated interface definition files, plus the scripts
14 used to control compilation and installation of the executable.
- 15 b. An order directing Defendants to produce to Plaintiff the complete source code or object
16 code for any program resident on VIZIO smart TVs having model numbers V435-J01,
17 D32h-J09, or M50Q7-J01 that links with any of the SmartCast Libraries at Issue, or any
18 other library subject to the LGPLv2.1, so that the Plaintiff can modify the library and then
19 relink to produce a modified executable;
- 20 c. For costs of suit incurred herein;
- 21 d. For attorney's fees to the extent authorized by law; and
- 22 e. For such other and further relief as the Court deems just and proper.

23 **AS TO THE SECOND CAUSE OF ACTION FOR DECLARATORY RELIEF:**

- 24 f. For a judicial determination of Plaintiff's and Defendants' rights and duties and a
25 declaration that:
- 26 (i) The terms and conditions of the GPLv2 and LGPLv2.1 agreements require that
27 Defendants provide the source code for the executables of the SmartCast Works at
28

1 Issue, and the source or object code for any Library Linking Programs, or a valid
2 written offer for same that users can both find and exercise without undue difficulty;

3 (ii) The terms and conditions of the GPLv2 and LGPLv2.1 forbid adding terms thereto,
4 yet Defendants have sought to make those agreements subject to such additional
5 terms as an arbitration agreement and a class action waiver;

6 (iii) The terms and conditions of the GPLv2 and LGPLv2.1 agreements require that
7 Defendants do the same for all smart TVs that Defendants may build, manufacture,
8 or distribute in the future based upon the Linux kernel, or any modified variant of it,
9 and any other SmartCast Works at Issue; and

10 (iv) Defendants' failure to do so is a material breach of the GPLv2 and LGPLv2.1.

11 g. For costs of suit incurred herein;

12 h. For attorney's fees to the extent authorized by law; and

13 i. For such other and further relief as the Court deems just and proper.

14
15 DATED: January 10, 2024

RICHARD G. SANDERS, PLLC
VAKILI & LEUS, LLP
SHADES OF GRAY LAW GROUP, P.C.

16
17
18 By: /s/ Naomi Jane Gray
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20 Richard Sanders, Esq.
21 Naomi Jane Gray, Esq.
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23 *Conservancy, Inc.*
24
25
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1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby demands trial by jury to the extent authorized by law.

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4 DATED: January 10, 2024

RICHARD G. SANDERS, PLLC
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