

1 Eric H. Gibbs (Bar No. 178658)  
2 Andre Mura (Bar No. 298541)  
3 Linda Lam (Bar No. 301461)

4 **GIRARD GIBBS LLP**  
5 505 14th Street, Suite 1110  
6 Oakland, CA 94612  
7 Tel: (510) 350-9700  
8 Fax: (510) 350-9701  
9 [ehg@classlawgroup.com](mailto:ehg@classlawgroup.com)  
10 [amm@classlawgroup.com](mailto:amm@classlawgroup.com)  
11 [lpl@classlawgroup.com](mailto:lpl@classlawgroup.com)

12 Joseph W. Cotchett (Bar No. 36324)  
13 Adam J. Zapala (Bar No. 245748)  
14 Gwendolyn R. Giblin (Bar No. 181973)  
15 **COTCHETT, PITRE & MCCARTHY, LLP**  
16 840 Malcolm Road, Suite 200  
17 Burlingame, CA 94010  
18 Tel: (650) 697-6000  
19 Fax: (650) 697-0577  
20 [jcotchett@cpmlegal.com](mailto:jcotchett@cpmlegal.com)  
21 [azapala@cpmlegal.com](mailto:azapala@cpmlegal.com)  
22 [ggiblin@cpmlegal.com](mailto:ggiblin@cpmlegal.com)

23 *Co-lead Counsel for Plaintiffs*

24 **UNITED STATES DISTRICT COURT FOR THE**  
25 **CENTRAL DISTRICT OF CALIFORNIA**  
26 **SANTA ANA DIVISION**

27 IN RE: VIZIO, INC., CONSUMER  
28 PRIVACY LITIGATION

Case No. 8:16-ml-02693-JLS (KESx)

This document relates to:

**SECOND CONSOLIDATED  
COMPLAINT**

ALL ACTIONS

Hon. Josephine L. Staton

1 Plaintiffs Dieisha Hodges, Rory Zufolo, Mark Queenan,<sup>1</sup> John Walsh, Chris  
2 Rizzitello, and Linda Thomson on behalf of themselves and all others similarly situated,  
3 allege the following against Defendants VIZIO, Inc.; VIZIO Holdings, Inc.; VIZIO  
4 Inscape Technologies, LLC; and VIZIO Inscape Services, LLC (collectively referred to  
5 as “VIZIO”) in this Consolidated Complaint:

6 **I. INTRODUCTION AND SUMMARY OF CASE**

7 1. If you own a VIZIO Smart TV, Friday night movie night in the privacy of  
8 your home is a surprisingly public affair. This is because VIZIO Smart TVs watch what  
9 you’re watching while you’re watching it.

10 2. VIZIO collects highly specific data about consumers’ viewing histories and  
11 preferences through invasive software secretly installed on millions of its Smart TVs. It  
12 then immediately discloses this data to advertisers and media content providers so they  
13 can deliver targeted advertisements and content in real-time, or on a second-by-second  
14 basis. These targeted ads and content are sent not just to the Smart TVs, but also to any  
15 smartphones, tablets, PCs, or other devices within the home that share the same Internet  
16 connection as the Smart TV.

17 3. Monetizing consumer data is a critical part of VIZIO’s business plan. The  
18 television market is saturated and highly competitive. VIZIO’s growth strategy hinges not  
19 only on sales of its Smart TVs, but also on its ability to profit from the collection and  
20 disclosure of a rich portfolio of consumer data, including personal viewing habits and  
21 preferences, among other information.

22  
23  
24 \_\_\_\_\_  
25 <sup>1</sup> Defendants have provided written consent via e-mail that Plaintiffs may amend the  
26 consolidated complaint to add Mark Queenan as a named Plaintiff. Plaintiff Queenan’s  
27 civil case is No. 8:17-cv-00462-JLS-KES (filed Mar. 15, 2017); he has filed a Notice of  
28 Related Case. Plaintiffs anticipate filing forthwith a stipulation and proposed order  
requesting leave to add Queenan as a named Plaintiff herein, and to list his underlying  
case as a member case.

1 4. In essence, VIZIO’s business plan treats consumers as VIZIO’s very own  
2 Nielsen family. The critical difference is that, unlike VIZIO consumers, Nielsen family  
3 members agree to share their viewing habits and are paid for their participation.

4 5. VIZIO single-handedly and deceptively created “a community of over 8  
5 million VIZIO connected units, or VCUs,” referring to Internet-connected Smart TVs  
6 that transmit data that is collected by VIZIO’s Inscape software.<sup>2</sup>

7 6. This is community by conscription, not consent. The data collection  
8 software—Smart Interactivity—is turned “on” by default. Consumers of VIZIO’s Smart  
9 TVs are therefore automatically included in this community. No other major television  
10 manufacturer—not Samsung, not LG Electronics— tracks users’ viewing habits unless  
11 they affirmatively elect to share their sensitive information.

12 7. Though consumers may turn off Smart Interactivity, VIZIO obscures that  
13 option to discourage opt-outs. Even assuming consumers discovered that VIZIO was  
14 collecting their viewing data and then managed to navigate the opt-out process, the opt-  
15 out function was broken during much of the relevant time period. An independent  
16 investigation by security software company Avast, published in the fall of 2015, found  
17 that the “off” function was not operational “for months, if not years. That means  
18 consumer data has been shared without consent for this entire span of time.”<sup>3</sup>

19 8. VIZIO disclosed extensive consumer data to advertisers, data brokers, media  
20 content providers, and other third parties. That information included viewing habits and  
21 other information particularly useful to uniquely identify individuals. Such information  
22 includes, but is not limited to, the online services a consumer visited and the presence of  
23 a consumer’s other Internet-connected devices. VIZIO also collected and disclosed  
24 consumers’ Internet Protocol (IP) addresses, media access control (MAC) addresses, and  
25

26 <sup>2</sup> VIZIO Form S-1 Registration Statement, [https://www.sec.gov/Archives/edgar/data/  
1648158/000119312515262817/d946612ds1.htm#toc946612\\_2](https://www.sec.gov/Archives/edgar/data/1648158/000119312515262817/d946612ds1.htm#toc946612_2) (last visited Aug. 11,  
27 2016).

28 <sup>3</sup> Aaron McSorley, *The Anatomy of an IoT Hack*, [https://blog.avast.com/2015/11/11/the-  
anatomy-of-an-iot-hack/#more-38414](https://blog.avast.com/2015/11/11/the-anatomy-of-an-iot-hack/#more-38414) (last visited Aug. 11, 2016).

1 zip codes, among other information. This personally identifiable information can be used  
2 to pinpoint a consumer’s physical location (*i.e.*, “geolocation” information).

3 9. VIZIO knows advertisers and data brokers can and do connect these dots.  
4 And yet VIZIO falsely and deceptively tells consumers that the information it collects  
5 and discloses along with viewing habits cannot be traced back to them. For instance, it  
6 characterizes the information it discloses as “non-personal” or “anonymous” information  
7 even though it uniquely identifies individuals and their viewing habits.

8 10. Because a large number of opt-outs would threaten VIZIO’s ability to profit  
9 from its Inscap data services business, VIZIO purposefully omits information about  
10 Inscap data collection practices or Smart Interactivity in advertising, marketing, or  
11 television packaging. VIZIO’s Smart TV packaging, for example, touts its  
12 “connectivity,” by which it means the ability of the television to deliver programming  
13 available through the Internet and also from cable and satellite providers, streaming  
14 devices, and other connected media sources. Nowhere on its packaging, however, does  
15 VIZIO tell consumers that it discloses to advertisers and data brokers their viewing  
16 histories and information used to link them to their viewing histories. Neither does VIZIO  
17 disclose this in advertising and marketing.

18 11. Any reference to Inscap data services or Smart Interactivity which may (or  
19 may not) be found in obscure sections of its website, in some (but not all) iterations of its  
20 privacy policies, or pop-ups which appear on the television screen and then quickly  
21 disappear, is not an adequate disclosure. Such disclosures are hard to find, tough to  
22 understand, fleeting, or buried alongside other ads or messages to minimize their  
23 significance and implications.

24 12. Plaintiffs are consumers of VIZIO’s Smart TVs who did not consent to this  
25 invasive data collection program. They bring this putative class action suit against VIZIO  
26 to enforce their and other VIZIO owners’ privacy and consumer rights under federal and  
27 state law.

28

1           13. The privacy violations occur because VIZIO has collected and disclosed  
2 Plaintiffs’ sensitive viewing histories and personal information without their consent,  
3 since at least May 2014. The movies or television consumers watch may reveal sensitive  
4 information suggestive of their politics, religious views, or sexuality—in other words,  
5 their most personal and intimate details. As Congress itself has recognized, “films are the  
6 intellectual vitamins that fuel the growth of individual thought.”<sup>4</sup> The “intimate process”  
7 of “intellectual growth is one of privacy” which “should be protected from the disruptive  
8 intrusion of a roving eye.”<sup>5</sup> VIZIO has violated the federal and state privacy rights of its  
9 consumers by, intercepting, collecting, and disclosing their sensitive viewing histories,  
10 and information capable of linking them to their viewing histories, without their consent.

11           14. In addition, VIZIO’s material omissions regarding its data collection and  
12 dissemination programs and invasive tracking software are false, deceptive, and  
13 misleading in violation of state consumer protection laws. This includes the unauthorized  
14 collection and/or disclosure of information or data from a VIZIO Smart TV about the  
15 content viewed on that television, as well as the collection, combining and/or disclosure  
16 of data from a variety of sources such as product registration data; IP addresses; MAC  
17 addresses; User IDs or other identifiers; geolocation or information that can be used to  
18 derive geolocation; and reports or data derived therefrom or combined with such data.  
19 Combined data can come from third parties, and other sources of VIZIO data such as data  
20 collected by apps, smart phones, or other VIZIO products.

21           15. This data and information was collected, combined, and/or disclosed to spy  
22 on consumers’ viewing habits and to deliver targeted ads through televisions and across a  
23 range of other electronic devices, as well as to determine the effectiveness of the ads. Had  
24 Plaintiffs known the truth about VIZIO’s data collection and dissemination practices and  
25  
26

---

27 <sup>4</sup> Committee Report, S. Rep. 100-599, at 7 (Oct. 21, 1988) (citing Senate Judiciary  
28 Subcommittee on Technology and the Law, Hearing Tr. at 10 (Aug. 3, 1988)).

<sup>5</sup> *Id.*

1 tracking software, they would not have purchased Smart TVs or would have paid less for  
2 them.

3 16. These harms are independently actionable and justify the relief sought here,  
4 including statutory damages, actual damages, and restitution. In addition, because VIZIO  
5 continues to collect sensitive consumer data without consent and has not changed its  
6 practice of automatically including consumers in the Inscope data collection program,  
7 equitable relief, including an injunction, is appropriate here.

## 8 II. PARTIES

### 9 A. Plaintiffs

10 17. Plaintiff Dieisha Hodges is a resident of Oakland, California. Ms. Hodges  
11 purchased a VIZIO Smart TV, Model No. E550i-A0, in Oakland, California. Ms. Hodges  
12 connected her VIZIO Smart TV to the Internet via a Wi-Fi connection shortly after  
13 purchasing it, and used the Netflix, Hulu, and YouTube “apps” on the television to  
14 stream video content. She also uses her Smart TV to watch cable provided by Xfinity.  
15 Ms. Hodges connects her Smart TV to a PlayStation 3 and Google Chromecast. When  
16 Ms. Hodges purchased her Smart TV, she was not aware that VIZIO would collect her  
17 viewing data or other information and data identified herein or would disseminate that  
18 information to third parties. After she learned of this by reading an online article, Ms.  
19 Hodges tried to find a way to disable the tracking software on her television.

20 18. Plaintiff Rory Zufolo is a resident of Oxnard, California. Mr. Zufolo  
21 purchased a VIZIO Smart TV, Model No. M552i-B2, in Oxnard, California. Mr. Zufolo  
22 connected his VIZIO Smart TV to the Internet via a Wi-Fi connection shortly after  
23 purchasing it and used the Netflix, Amazon, Hulu, and YouTube “apps” on the television  
24 to stream video content. Mr. Zufolo also uses his Smart TV to watch cable provided by  
25 Time Warner. Up until September 2015, he watched television provided by DirecTV. He  
26 occasionally connects his Smart TV to a Xbox or PlayStation. When Mr. Zufolo  
27 purchased his Smart TV, he was not aware that VIZIO would collect his viewing data or  
28 other information and data identified herein or would disseminate that information to

1 third parties. After he learned of this, he stopped using the television to stream videos  
2 through Netflix and other apps.

3 19. Plaintiff Mark Queenan is a resident of Plantation, Florida. Mr. Queenan  
4 purchased a VIZIO Smart TV, Model No. M55-C2, in Miami, Florida. Mr. Queenan  
5 connected his VIZIO Smart TV to the Internet via a Wi-Fi connection shortly after  
6 purchasing it, and used the Netflix and YouTube “apps,” among others, on the television  
7 to stream video content. Mr. Queenan also connects his Smart TV to a DVD player and  
8 cable box. When Mr. Queenan purchased his Smart TV, he was not aware that VIZIO  
9 would collect his viewing data and other information and data identified herein or would  
10 disseminate that information to third parties. After he learned of this on a local radio  
11 news program, he proceeded to learn how to deactivate the data collection.

12 20. Plaintiff John Walsh is a resident of Boston, Massachusetts. Mr. Walsh  
13 purchased a VIZIO Smart TV, Model No. E400i-B2, in Boston, Massachusetts. Mr.  
14 Walsh connected his Smart TV to the Internet via an Ethernet cable connection shortly  
15 after purchasing it, and used it to stream video content from the Netflix and YouTube  
16 “apps.” Mr. Walsh also uses his Smart TV to watch cable provided by Comcast, and  
17 connects his Smart TV to a DVD receiver that also has TiVo. When Mr. Walsh  
18 purchased his Smart TV, he was not aware that VIZIO would collect his viewing data or  
19 other information and data identified herein or would disseminate that information to  
20 third parties. After he learned of this, he disconnected his Smart TV from the Internet in  
21 order to prevent the collection of his viewing data. On January 13, 2016, Mr. Walsh,  
22 through his counsel, sent VIZIO a written demand letter detailing the acts and practices  
23 complained of herein and the injury suffered. VIZIO responded with a letter denying all  
24 allegations.

25 21. Plaintiff Chris Rizzitello is a resident of Cairo, New York. Mr. Rizzitello  
26 purchased a VIZIO Smart TV, Model No. M422I-B1, at a Walmart location in Catskill,  
27 New York. Mr. Rizzitello connected his VIZIO Smart TV to the Internet via a Wi-Fi  
28 connection shortly after purchasing it, and used the YouTube and other media apps to

1 stream video content. Mr. Rizzitello also connects his Smart TV to a PlayStation 4 and  
2 Raspberry PI3. When Mr. Rizzitello purchased his Smart TV, he was not aware that  
3 VIZIO would collect his viewing data or other information and data as identified herein  
4 or would disseminate that information to third parties. After he learned of this, he  
5 stopped using the Smart TV to watch videos on the YouTube app, disconnected the  
6 television from the Internet, and, when he learned he could do so, turned off the Smart  
7 Interactivity feature.

8 22. Plaintiff Linda Thomson is a resident of Bellingham, Washington. Ms.  
9 Thomson purchased a VIZIO Smart TV, Model No. M702iB3, in Bellingham,  
10 Washington. Ms. Thomson connected her Smart TV to the Internet shortly after  
11 purchasing it and has since used it to watch movies and television shows from the  
12 Amazon app. She also uses her Smart TV to watch cable provided by Xfinity and/or  
13 Comcast. When Ms. Thomson purchased her Smart TV, she was not aware that VIZIO  
14 would collect her viewing data or other information and data as identified herein or  
15 would disseminate that information to third parties. After she learned of this, she  
16 refrained from using certain apps on her Smart TV. Shortly after she filed her lawsuit,  
17 Ms. Thomson saw a message pop up on her Smart TV regarding privacy settings. The  
18 message disappeared before she could read it through, and she has not found a way to  
19 retrieve the message. She believes the message pertained to the privacy issues involved in  
20 this case.

21 23. When shopping for their Smart TVs, Plaintiffs looked at the description of the  
22 televisions provided on the boxes in which their VIZIO Smart TVs were packaged. The  
23 packaging for the VIZIO Smart TVs described its features and indicated that the  
24 televisions were equipped to deliver video content through the Internet and could display  
25 content from cable and satellite providers, streaming devices, and other connected media  
26 sources. The packaging, however, failed to inform Plaintiffs that if they took advantage  
27 of those features or watched live broadcast programming on their Smart TVs, their  
28 viewing data would be collected by VIZIO and disseminated to third parties. Had



1 Plaintiffs known the truth about VIZIO's collection and dissemination of Plaintiffs'  
2 viewing data, Plaintiffs would not have purchased, or would have paid less for, their  
3 VIZIO Smart TVs.

4 24. At no time did Plaintiffs consent to having their viewing information, and  
5 other personally identifying data or information from their Smart TVs or other electronic  
6 devices, collected or disseminated to third parties.

7 **B. Defendants**

8 25. Defendant VIZIO, Inc. is a California corporation that maintains its principal  
9 place of business at 39 Tesla, Irvine, California. VIZIO, Inc. is registered to conduct  
10 business in California. VIZIO, Inc. designs, markets, and distributes for sale consumer  
11 electronic devices, including Smart TVs, throughout the United States, including in this  
12 District.

13 26. Defendant VIZIO Holdings, Inc. is a Delaware corporation that maintains its  
14 principal place of business at 39 Tesla, Irvine, California.

15 27. Defendant VIZIO Inscape Technologies, LLC, formerly known as Cognitive  
16 Media Networks, Inc., is a Delaware corporation that maintains its principal place of  
17 business at 39 Tesla, Irvine, California. VIZIO Inscape Technologies, LLC conducts  
18 business throughout the United States, including in this District.

19 28. Defendant VIZIO Inscape Services, LLC is a Delaware corporation that  
20 maintains its principal place of business at 39 Tesla, Irvine, California. VIZIO Inscape  
21 Services, LLC is registered to conduct business in California.

22 29. Defendants acted as one, jointly, collectively, or in concert unless a particular  
23 Defendant is identified by its full name.

24 **III. JURISDICTION AND VENUE**

25 30. This Court has jurisdiction over the subject matter of this action pursuant to  
26 28 U.S.C. § 1331, as this action arises under a federal statute. This Court has  
27 supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.  
28

1 31. This Court also has jurisdiction over this action pursuant to the Class Action  
2 Fairness Act, 28 U.S.C. § 1332(d), because: (i) at least one Plaintiff is a citizen of a  
3 different state than the Defendants; (ii) the amount in controversy exceeds \$5,000,000;  
4 and (iii) there are at least 100 individuals in the putative class that Plaintiffs seek to  
5 represent through this action.

6 32. This Court has personal jurisdiction over Defendants because Defendants  
7 regularly conduct business in California, are present and licensed to conduct business in  
8 California, and because the events giving rise to this lawsuit occurred, in substantial part,  
9 in California.

10 33. Venue is proper in this District pursuant to 28 U.S.C. 1391(b) because  
11 Defendant VIZIO is headquartered in this District, Defendants conduct substantial  
12 business in this District, and a substantial part of the events giving rise to Plaintiffs'  
13 claims occurred in this District.

#### 14 **IV. FACTUAL ALLEGATIONS**

##### 15 **Smart TVs**

16 34. Since the mid-2000s, Smart TVs have become increasingly popular in the  
17 United States. A Smart TV is essentially a technological cross between a computer and a  
18 television. Aside from the traditional function of a television set, a Smart TV is also  
19 equipped with integrated software applications that allow users to access the Internet, and  
20 on-demand services such as Netflix, Hulu, and Pandora, and other online media content,  
21 such as Facebook and Twitter.

22 35. Although Smart TVs are more expensive than traditional television sets,  
23 Smart TVs are popular because they are equipped to deliver movies and television shows  
24 on an on-demand basis, including programming that may not be conventionally available  
25 (*e.g.*, broadcast on network or cable television).

##### 26 **VIZIO's Business Platform**

27 36. VIZIO is a consumer electronics company headquartered in Irvine, California.  
28 Since its founding in 2002, it has sold over 65 million television and audio sets. VIZIO

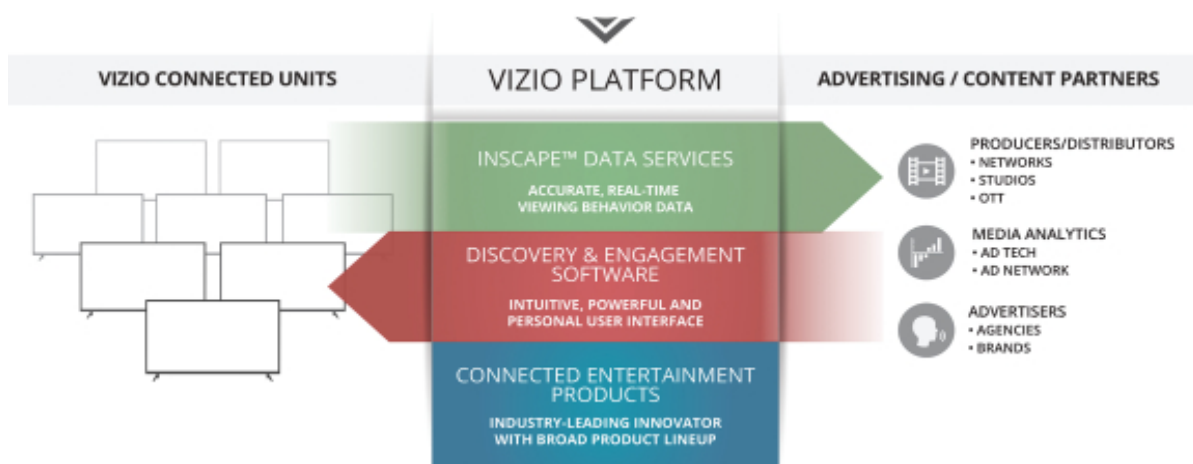
1 sells its products in over 8,000 retail stores throughout the United States, including large  
2 chains such as Costco, Sam’s Club, Walmart, and Best Buy. In 2014, it held the second-  
3 largest market share of Smart TVs in the country.

4 37. VIZIO has developed a business platform that rests on three pillars.

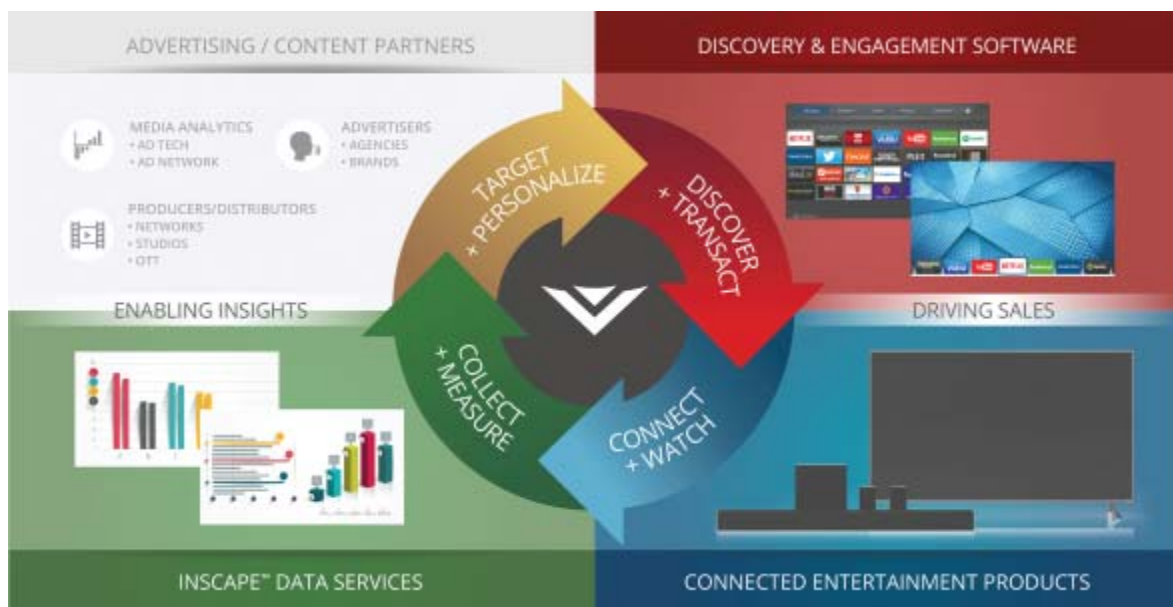
5 38. The first is its line of connected entertainment products, which include Smart  
6 TVs and audio products.

7 39. The second is its discovery and engagement software, called either VIZIO  
8 Internet Apps (and Apps Plus) or SmartCast, which delivers video and audio content.

9 40. The third is Inscape data services, which uses automatic content recognition  
10 technology to capture, in real time, up to 100 billion viewing data points each day from  
11 over 8 million VIZIO Smart TVs. VIZIO calls its automatic content recognition  
12 technology “Smart Interactivity.”



22 41. According to VIZIO, there is a market opportunity for audience and  
23 advertisement measurement. In 2014, the total global market spent on the industry was  
24 approximately \$1.9 billion. Competitors in the market for viewing behavior data and  
25 analysis include well-established companies such as A.C. Nielsen and Rentrak.



42. VIZIO believes the principal competitive factors impacting the market for its Inscape data services are the quality and accuracy of its data, the timeliness of its data, and the amount and level of detailed information and insight its data provides.

“Advertisers and media content providers are looking for access to accurate, real-time data regarding consumer preferences and behaviors so they can better measure and increase their return on content creation and advertising spend.”<sup>6</sup> VIZIO has partnered with media and analytics companies to provide them with “actionable viewership insights” collected and delivered in real time to “create more relevant, personalized entertainment experiences and drive further engagement.”<sup>7</sup>

43. To monetize its data collection platform, VIZIO has developed partnerships with advertisers, media content and analytics providers, and brands. VIZIO’s business growth is, by its own account, highly dependent on the success of its Inscape data services. VIZIO has sought to distinguish itself from market competitors such as Nielsen

<sup>6</sup> VIZIO Form S-1 Registration Statement at 90, [https://www.sec.gov/Archives/edgar/data/1648158/000119312515262817/d946612ds1.htm#toc946612\\_2](https://www.sec.gov/Archives/edgar/data/1648158/000119312515262817/d946612ds1.htm#toc946612_2) (last visited Aug. 11, 2016).

<sup>7</sup> *Id.* at 7.

1 by designing its Inscope data services to provide data of such quantity and quality to be  
2 highly valuable to advertisers. According to VIZIO, its current user base of 8 million  
3 Smart TVs reflects U.S. census demographics and provides more accurate viewing  
4 behavior data in real time than any other brand.

5 **VIZIO’S Collection and Dissemination of Viewing Histories and Personally**  
6 **Identifiable Information Is Critical to Its Business Model**

7 44. For the years 2013, 2014, and through the third quarter of 2015, VIZIO’s  
8 reported net income was \$25.7 million, \$45.0 million, and \$44.3 million, respectively.<sup>6</sup>  
9 VIZIO generates billions of dollars in annual revenues, demonstrating that it has slim  
10 margins. VIZIO attributes a substantial portion of its net income to sales of its Smart  
11 TVs. To make up for these slim margins, VIZIO sought to develop a new source of  
12 revenue by monetizing the viewing habits of its millions of customers and selling that  
13 information to advertisers without adequately disclosure to its customers.

14 45. VIZIO has recognized the threat to its business model that exists if consumers  
15 were to understand its tracking software. In an October 2015 filing with the Securities  
16 and Exchange Commission regarding its initial public offering, VIZIO revealed its  
17 concern that its customers might react negatively to the surreptitious collection of their  
18 data: “Our customers may also object to or opt out of the collection and use of their data,  
19 which may harm our business.”

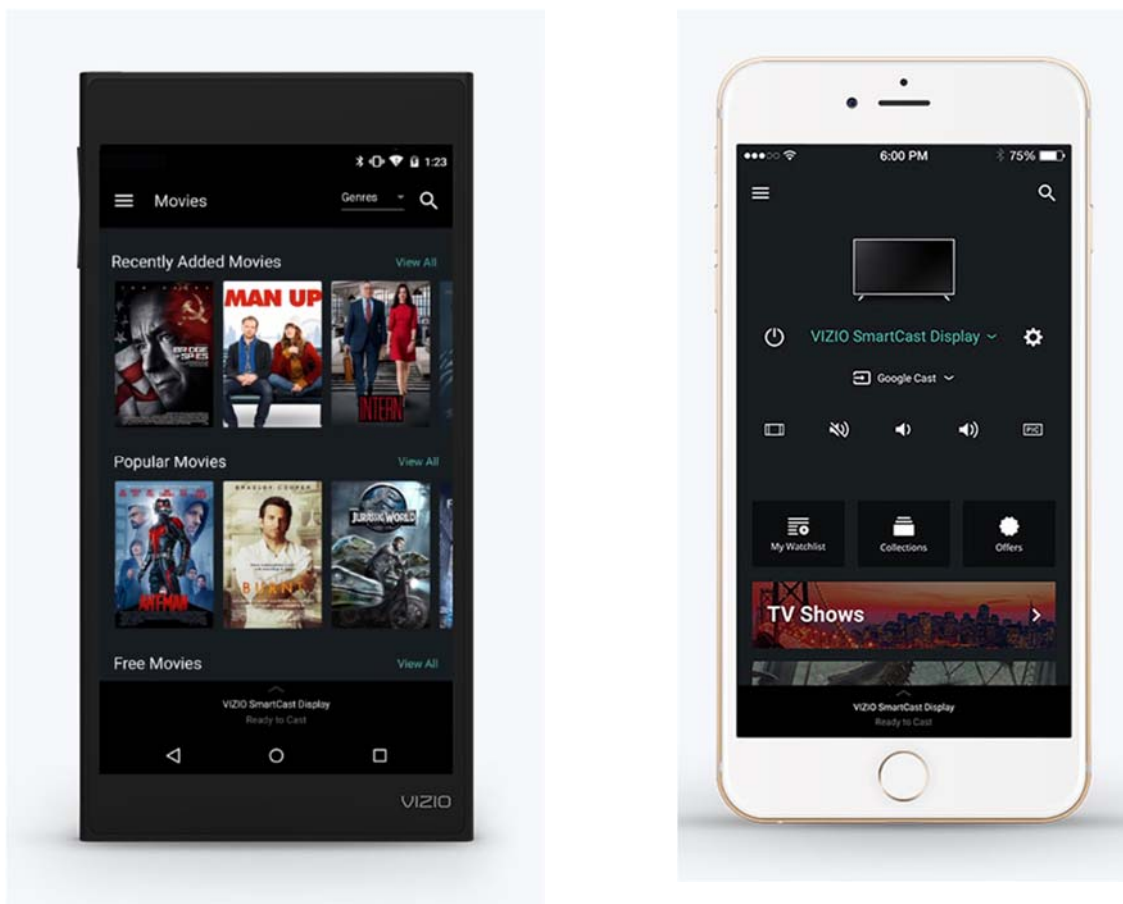
20 **VIZIO’s Data Collection Software and Program**

21 46. *Discovery and engagement software.* VIZIO delivers video content through  
22 VIZIO Internet Apps, Internet Apps Plus, and SmartCast. This software allows  
23 consumers to access programming available on Netflix, Hulu, YouTube, and Amazon  
24 Instant Video, among others. VIZIO Internet Apps, Internet Apps Plus, and SmartCast  
25 are software that are pre-installed on the television or installed through software updates.  
26 In turn, Netflix, Hulu, YouTube and Amazon Instant Video and the like are entertainment  
27 companies that create, produce, or license video programming either for free, for rent, or  
28 as part of a paid subscription.

1 47. The VIZIO Internet Apps and Internet Apps Plus user interface displays a  
2 streamlined App Launcher that allows users to select available programming. The app  
3 may also be accessed through the VIZIO Smart TV remote.

4 48. Certain VIZIO Smart TVs use “SmartCast” to deliver movies, TV shows, live  
5 streams and more across multiple apps at once. SmartCast is VIZIO’s latest delivery  
6 engagement software. It can be used on a tablet remote that comes with the television.  
7 This technology allows a user to watch programming on the tablet remote, or to “cast,” or  
8 display, content from the tablet remote to the television display or speakers.

9 49. This software is also available for use on a smartphone through the VIZIO  
10 SmartCast App, which is available for download for free from the Apple App Store or  
11 Google Play. This technology also “casts” content from a smartphone to the Smart TV.



1           50. *Inscape data services.* Inscap captures real-time viewing behavior data from  
2 VIZIO Smart TVs—up to 100 billion viewing data points each day—thereby enabling  
3 VIZIO to provide this “broader data set, at scale and with real-time delivery,” to  
4 advertisers and media content providers, who in turn delivered and re-targeted  
5 advertisements.<sup>8</sup> Ad re-targeting is the process of pushing ads to consumers based on  
6 their previous interactions with that ad, in situations where the consumers’ first view of  
7 the ad did not result in a sale or conversion.

8           51. This data program is powered by automatic content recognition (ACR)  
9 technology, which is designed to recognize attributes of the content being displayed on  
10 VIZIO Smart TVs and match those attributes to a database of existing content, such as  
11 movies, TV shows, and games.

12           52. A patent filed by Cognitive Networks, Inc. provides that in order to  
13 accomplish its “goal, the processing means within the TV device itself, or an associated  
14 device such as a set-top box, needs to have real time ‘awareness’ of what programming is  
15 being displayed on the TV screen at that moment.”<sup>9</sup> The technology “takes samples of  
16 the programming actually being displayed on that TV at any point in time and sends the  
17 fingerprints of those samples to the centralized fingerprint matching server to compare  
18 against already existing fingerprints in the database.”<sup>10</sup>

19           53. This second-by-second capture, collection, and analysis of content is required  
20 for “ACR detection [to operate] sufficiently fast for providing at least some context-  
21 sensitive content substantially simultaneously with at least one targeted video.”<sup>11</sup>  
22 Cognitive Networks’ ACR technology is capable of collecting, analyzing, and delivering  
23 such data “even when the television display is showing content where a user is changing  
24

---

25 <sup>8</sup> *Id.* at 97.

26 <sup>9</sup> U.S. Patent No. 9,071,868 (issued Jun. 30, 2015).

27 <sup>10</sup> *Id.*

28 <sup>11</sup> *Id.*

1 channels, rewinding, fast-forwarding or even pausing video from a digital video  
2 recorder.”<sup>12</sup> In fact, the technology can be used to collect and analyze data about what a  
3 viewer is *about to be* watching, “eliminat[ing] essentially all . . . delay by using a system  
4 and method that anticipates the arrival of a specific advertisement of interest so that the  
5 various required processes to confirm the arrival of the segment and locally generate and  
6 display the relevant graphics may be initiated slightly in advance of the actual arrival of  
7 the video segment of interest.”<sup>13</sup> Such instantaneous delivery is, of course, the point of  
8 the technology—maximizing the relevant content and advertising provided to consumers  
9 in real-time.

10 54. VIZIO calls its ACR technology “Smart Interactivity.” Smart Interactivity  
11 software was designed by Cognitive Media Networks, Inc. VIZIO acquired Cognitive  
12 Media in August 2015.

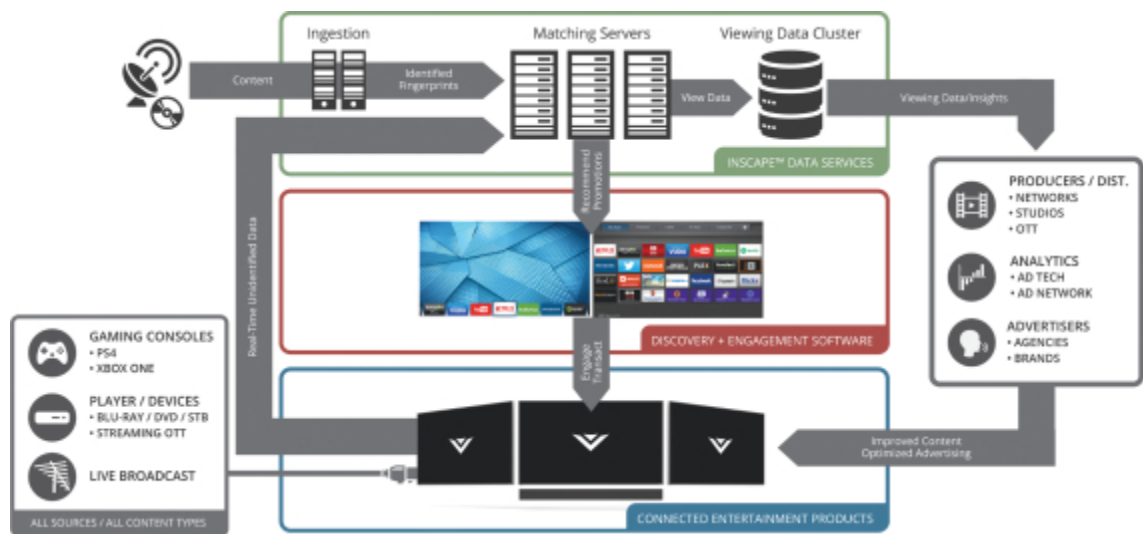
13 55. Using Smart Interactivity software, the Inscape program is able, second-by-  
14 second or instantaneously, to collect, analyze, and deliver data regarding most content  
15 displayed on VIZIO Smart TVs, including content from cable and satellite providers,  
16 streaming devices, and gaming consoles. It is also able to aggregate and store such data.  
17 In fact, Inscape collects viewing data behavior from all media sources that connect via  
18 external input to the Smart TVs—for example, set top boxes, digital video recorders,  
19 streaming media players, Blu-ray and DVD players and gaming consoles.

---

27 <sup>12</sup> U.S. Patent No. 9,055,335 (issued Jun. 9, 2015).

28 <sup>13</sup> U.S. Patent No. 9,055,309 (issued Jun. 9, 2015).





56. As depicted above, VIZIO’s data collection includes, but is not limited to, data related to publicly available content displayed on VIZIO Smart TVs, such as the identity of a broadcast, cable, or satellite television provider, and the television programs and commercials viewed (including time, date, channel, and whether they were viewed live or at a later time).

57. There is no lag time or delay between when data from (for example) a set-up cable box arrives at the Smart TV and when it is transmitted to the Inscap platform; the data is automatically captured and sent within the same second that it is displayed.

58. Inscap also collects consumers’ IP addresses (which are unique identifiers assigned to personal digital devices such as laptops, tablets, and Smart TVs), zip codes, and online services visited by the consumer, as well as MAC addresses, Wi-Fi access points and signal strength, product model numbers, hardware and software versions, chipset IDs, and region and language settings, among other information. In turn, this information can be used to learn even more about the user, including demographic details such as age, profession, and wealth indicators.

1 59. For SmartCast users, Inscap collects the above and also: (1) information  
2 about what video or audio is currently playing on the Smart TV, tablet remote, or mobile  
3 phone using the SmartCast App; and (2) programming choices requested, the date and  
4 time of these choices, user-initiated searches, content consumers browse while using the  
5 SmartCast tablet, or other commands communicated to the SmartCast Products through  
6 the SmartCast App.

7 60. SmartCast app users may create a myVIZIO account or log into an existing  
8 myVIZIO/Fandemonium account.

9 61. For SmartCast users, VIZIO associates the data collected with any myVIZIO  
10 account profile, which includes a first and last name and e-mail address.

11 62. VIZIO then discloses the associated data described above along with other  
12 data to advertisers and data brokers, and other third parties, including its partners.

### 13 **Smart Interactivity**

14 63. VIZIO initiated the Smart Interactivity feature in or about February 2014  
15 through an “over-the-air” update. It also began pre-installing Smart Interactivity software  
16 on its Smart TVs in or around that same time.

17 64. Unlike its competitors, VIZIO’s default policy is to turn on this data  
18 collection feature on all of its Smart TVs.

19 65. This default ‘on’ setting differentiates VIZIO from competing television  
20 manufacturers such as Samsung and LG Electronics, who only track users’ viewing  
21 habits if users voluntarily turn the feature on. Unless a Samsung or LG consumer opts  
22 into the data collection program, those companies will not collect the consumer’s  
23 personal viewing histories. VIZIO consumers, by contrast, must opt out of the data  
24 collection feature to avoid having their personal viewing habits collected.

25 66. In its Prospectus, VIZIO brags about the scope and detail of the data collected  
26 and sold and its potential advertising profits as follows:

27 Our Inscap data services capture, in real time, up to 100 billion  
28 anonymized viewing data points each day from our over 10 million

1 VCU [(VIZIO connected units)]. Inscape collects, aggregates and stores  
2 data regarding most content displayed on VCU television screens,  
3 including content from cable and satellite providers, streaming devices  
4 and gaming consoles. Inscape provides *highly specific viewing behavior*  
5 data on a massive scale with great accuracy, which can be used to  
6 generate intelligent insights for advertisers and media content providers  
7 and to drive their delivery of more relevant, personalized content through  
8 our VCUs.

9 67. VIZIO refers to the information it surreptitiously collects as “Non-Personal  
10 Information,” which VIZIO describes as “data in a form that does not, on its own, permit  
11 direct association with any specific individual.” As alleged, this includes, but is not  
12 limited to, the IP addresses products that are assigned to users’ internet-connected  
13 devices, their zip codes, the online services they visit, information about their VIZIO  
14 products (such as MAC addresses, product model numbers, hardware and software  
15 versions, chipset IDs, and region and language settings), as well as information about the  
16 products users request or purchase, the presence of other devices connected to their local  
17 networks, and the number of users and frequency of use of VIZIO products and services.  
18 VIZIO also collects “anonymous information regarding customer activities on our  
19 websites, on Internet-connected products and services, and on VIZIO’s Internet store.

20 68. Although VIZIO claims that the information collected is non-personal,  
21 technical experts have challenged this characterization. For example, Extreme Tech’s  
22 website contains the following excerpt from an article authored by Joel Hruska on  
23 November 10, 2015.

24 “Non-personally identifiable information” is a contradiction in terms,  
25 particularly when the companies in question have access to mobile data.  
26 The entire point of VIZIO’s advertising push is to sell this information to  
27 companies so they can track you on multiple devices. In order to do that,  
28 they’re going to need to find those devices. If an advertiser can pick up on  
the fact that you watch, say, Arrow in order to send you ads enticing you  
to watch The Flash, then that advertiser effectively knows who you are.<sup>14</sup>

---

<sup>14</sup> Joel Hruska, "Vizio TVs Caught Tracking Viewing Habits, Selling Data to Advertisers." ExtremeTech (Nov. 10, 2015) (available at

1 69. If a consumer wanted to opt out, that option was not functional for a  
2 considerable period of time during the relevant time period. According to an independent  
3 investigation by security software company Avast, published in the fall of 2015, the “off”  
4 function was not operational “for months, if not years. That means consumer data has  
5 been shared without consent for this entire span of time.”<sup>15</sup>

6 70. If a VIZIO Smart TV is ever reset to factory settings, either intentionally or  
7 inadvertently through an update or power failure, the TV will return to its default settings,  
8 thereby reactivating the Smart Interactivity feature.

9 71. Although intending to profit from selling personal information to third parties  
10 without consent, VIZIO itself recognized potential privacy law concerns. VIZIO stated  
11 the following:

12 We collect, process, store, use and to some extent disclose information  
13 collected from or about purchasers and users of our products, and from  
14 the devices themselves. **The collection and use of personal**  
15 **information**, and analysis and sharing of anonymous user data and  
16 unique identifiers to inform advertising or analyze viewing behaviors  
17 subject us to legislative and regulatory burdens, may expose us to  
18 liability, and our actual or perceived failure to adequately protect  
19 consumer data could harm our brand, our reputation in the marketplace  
20 and our business.

21 Privacy laws and regulations, if drafted or interpreted broadly, could be  
22 deemed to apply to the technologies we use to collect, analyze and  
23 share viewing behaviors or other data collected from our Smart TVs or  
24 consumers, and could restrict our information collection methods or  
25 decrease the amount and utility of the information that we would be  
26 permitted to collect and share. . . . In addition, a determination by a  
27 court or government agency that any of our practices, or those of our  
28 agents, do not meet these standards could result in liability, or result in  
negative publicity, and adversely affect our business.

25 [http://www.extremetech.com/internet/217762 viziotvs-caught-tracking-viewing-habits-](http://www.extremetech.com/internet/217762-viziotvs-caught-tracking-viewing-habits-selling-data-to-advertisers)  
26 [selling-data-to-advertisers](http://www.extremetech.com/internet/217762-viziotvs-caught-tracking-viewing-habits-selling-data-to-advertisers)) (emphasis in original)

27 <sup>15</sup> Joel Hruska, *New Vizio hack reveals company shares your data whether you accept its*  
28 *privacy policy or not*, [http://www.extremetech.com/extreme/217923-new-vizio-hack-](http://www.extremetech.com/extreme/217923-new-vizio-hack-reveals-company-shares-your-data-whether-you-accept-its-privacy-policy-or-not)  
[reveals-company-shares-your-data-whether-you-accept-its-privacy-policy-or-not](http://www.extremetech.com/extreme/217923-new-vizio-hack-reveals-company-shares-your-data-whether-you-accept-its-privacy-policy-or-not) (last  
visited Aug. 11, 2016).

1 **VIZIO Knows the Information It Discloses Identifies Individual Viewers and Their**  
2 **Viewing Habits**

3 72. As discussed, the consumer data VIZIO discloses to advertisers, data  
4 brokers, media content providers, and other third parties, such as its partners, includes  
5 viewing habits and information which identifies individuals. This information reveals  
6 sensitive geolocation information and is personally identifying.

7 73. MAC addresses, for example, are unique 12-digit identifiers that are  
8 assigned to individual mobile devices, computers, Smart TVs, or other electronic devices.  
9 These addresses are tied to the devices' physical embedded chipsets and thus are  
10 persistent throughout the life of the device. MAC addresses are automatically broadcast  
11 when devices search for networks or communicate with other devices.

12 74. MAC addresses often can be linked to individuals by name. For example,  
13 when you sign into a commercial Wi-Fi hotspot, your MAC address is tied to the  
14 information you use to sign up for the service. Additionally, automatic Wi-Fi probes also  
15 broadcast the names of the last networks a device has connected to, which can reveal  
16 additional information about the individual, such as the name of a home or work network.

17 75. MAC addresses can be used to develop highly specific geolocation data. For  
18 example, retail analytics firms have used MAC addresses to pinpoint customer  
19 locations—a practice which the Federal Trade Commission (“FTC”) has investigated.

20 76. When VIZIO collects and discloses MAC addresses of all the devices that  
21 connect to the same network as a VIZIO Smart TV, along with IP addresses, Wi-Fi signal  
22 strength, nearby Wi-Fi access points, zip codes, the online services consumers visit, the  
23 presence of other devices connected to the consumer's local network, the number of users  
24 and frequency of use of VIZIO products and services, and other information, such as a  
25 persistent identifier for each television (which is a unique number for each third party),  
26 the disclosure provides a “game plan” to associate individuals with their viewing habits.

27 77. Also, VIZIO provides third parties with data and information from other  
28 electronic devices on the same network, so that third parties can target consumers with

1 ads through their televisions or other digital devices. VIZIO also provides this data and  
2 information to third parties so they can analyze individual consumer behavior, such as  
3 responsiveness to targeted advertising, across a range of other personal devices that  
4 connect to the Internet. For instance, VIZIO provides third parties with data and  
5 information specific to consumers' viewing habits and their individual televisions so that  
6 these third parties can determine whether a consumer has visited a particular website  
7 following a television advertisement related to that website, or whether a consumer has  
8 viewed a particular television program following exposure to an online advertisement for  
9 that program.

10 78. Consumers did not consent to this invasive monitoring or data collection  
11 program, including the collection and/or disclosure of information or data from a VIZIO  
12 Smart TV about the content viewed on that television, as well as the collection,  
13 combining and/or disclosure of data from a variety of sources such as product registration  
14 data; IP addresses; MAC addresses; User IDs or other identifiers; geolocation or  
15 information that can be used to derive geolocation; and reports or data derived therefrom  
16 or combined with such data.

17 79. For SmartCast consumers, the association of myVizio account information,  
18 which includes first and last name and e-mail addresses along with viewing data and  
19 other personal information, makes it especially easy for third parties to associate viewing  
20 habits and other consumer behavior with actual persons.

21 80. Though VIZIO falsely and misleadingly informs consumers that it provides  
22 only non-personal or anonymized information, and that viewing data cannot be linked to  
23 actual individuals, VIZIO knows that individuals and their viewing histories can be, and  
24 are easily being, identified and linked by the information VIZIO discloses.

25 81. In fact, individuals can be identified with far less information than what  
26 VIZIO discloses. A groundbreaking study published in 2000 revealed that three pieces of  
27 information—zip code, birth date (including year), and sex—uniquely identified 87  
28

1 percent of the U.S. population.<sup>16</sup> Other studies have found similarly high rates of  
2 identification.<sup>17</sup>

3 82. At least since 2006, video service providers and data aggregators have  
4 known that the disclosure of viewing data not associated with individual names can  
5 nevertheless be associated with specific individuals. That year, Netflix released a data set  
6 representing the movies rated by over 480,000 Netflix customers and the date each rating  
7 was given. In an apparent effort by Netflix to anonymize the data, the company replaced  
8 customers' names with unique numbers and did not include addresses, phone numbers, or  
9 other direct identifiers.<sup>18</sup>

10 83. Netflix released the data "as part of its Netflix Prize 1 contest ("Prize 1"),  
11 through which researchers competed to improve the algorithm Netflix uses to recommend  
12 movies to its subscribers. Netflix's algorithm takes into account past viewing habits and  
13 movie preferences of each of its subscribers."<sup>19</sup>

14 84. Following the release of this data set, two researchers at the University of  
15 Texas announced that it was possible to identify a significant number of subscribers  
16 based on the data set released.<sup>20</sup> Using publicly-available movie reviews posted by  
17 Netflix subscribers on the popular site IMDb ([www.imdb.com](http://www.imdb.com)), "one could determine all  
18 of the Netflix movies that a subscriber had rated for a given period of time."<sup>21</sup> By way of

19 <sup>16</sup> Latanya Sweeney, *Uniqueness of Simple Demographics in the U.S. Population*,  
20 Carnegie Mellon University, School of Computer Science, Data Privacy Laboratory,  
21 Technical Report LIDAP-WP4 (2000).

22 <sup>17</sup> Philippe Golle, *Revisiting the Uniqueness of Simple Demographics in the US*  
*Population*, ACM Workshop on Privacy in the Elec. Society at 77, 78 (2006).

23 <sup>18</sup> March 12, 2010 Letter from Maneesha Mithal to Reed Freeman,  
24 [https://www.ftc.gov/sites/default/files/documents/closing\\_letters/netflix-inc./100312netflixletter.pdf](https://www.ftc.gov/sites/default/files/documents/closing_letters/netflix-inc./100312netflixletter.pdf) (last visited Aug. 11, 2016).

25 <sup>19</sup> *Id.*

26 <sup>20</sup> Arvind Narayanan & Vitaly Shmatikov, *Robust De-anonymization of Large Sparse*  
*Datasets*, Proceedings of the 2008 IEEE Symposium on Security and Privacy at 111-123  
27 (hereinafter "Netflix Prize Study"), [https://www.cs.utexas.edu/~shmat/shmat\\_oak08](https://www.cs.utexas.edu/~shmat/shmat_oak08/netflix.pdf)  
28 [netflix.pdf](https://www.cs.utexas.edu/~shmat/shmat_oak08/netflix.pdf) (last visited Aug. 11, 2016).

<sup>21</sup> Mithal Letter, *supra* note 8.

1 example, the researchers were able to identify one user’s movie choices, which may  
2 suggest facts about his or her politics (“Fahrenheit 9/11”), religious views (“Jesus of  
3 Nazareth”), or sexual preference (“Queer as Folk”).

4 85. Netflix nevertheless announced a second Prize contest in 2009. This time it  
5 planned to release an even more comprehensive data set of viewing habits and  
6 demographic information. In response, a group of Netflix customers filed a class action  
7 lawsuit, and the FTC warned Netflix that the second Prize contest raised privacy concerns  
8 as well as questions regarding whether its representations to consumers about its privacy  
9 policies were false or misleading under federal law. Netflix ultimately settled the private  
10 suit and agreed not to proceed with the contest as planned.

11 86. VIZIO thus knows that third parties to whom it discloses this information,  
12 which includes its partners, can and do connect these dots. The linkage between viewing  
13 data and individuals is firm and readily foreseeable to VIZIO, in particular because the  
14 information it discloses is effectively a correlated look-up table, complete with  
15 geolocation data.

16 87. As discussed, VIZIO has acknowledged to investors, but not consumers, that  
17 its activities may violate various privacy laws and regulations: “[W]e cannot assure you  
18 that our privacy policies and other statements regarding our practices will be sufficient to  
19 protect us from liability or adverse publicity relating to the privacy and security of  
20 information about consumers or their devices.” Further, VIZIO has informed investors  
21 that it may be the subject of litigation over these practices.

22 **VIZIO’s Product Packaging, Advertising, Marketing, Website, and Privacy Policy**  
23 **Omit Material Information and Are Misleading**

24 88. In advertising and marketing, and on product packaging, VIZIO promotes  
25 the connectivity of its Smart TVs in two critical ways. First, it tells consumers that its  
26 Smart TVs have built-in Wi-Fi and are Internet-enabled, and that its VIZIO Internet Apps  
27 (and Apps Plus), and SmartCast are a “passport to a world of entertainment, movies, TV  
28 shows and more.” Next, it tells consumers its Smart TVs are “perfect for connecting all



1 your high definition entertainment devices to the TV.” This feature is often promoted  
2 through pictures of HDMI and USB ports.

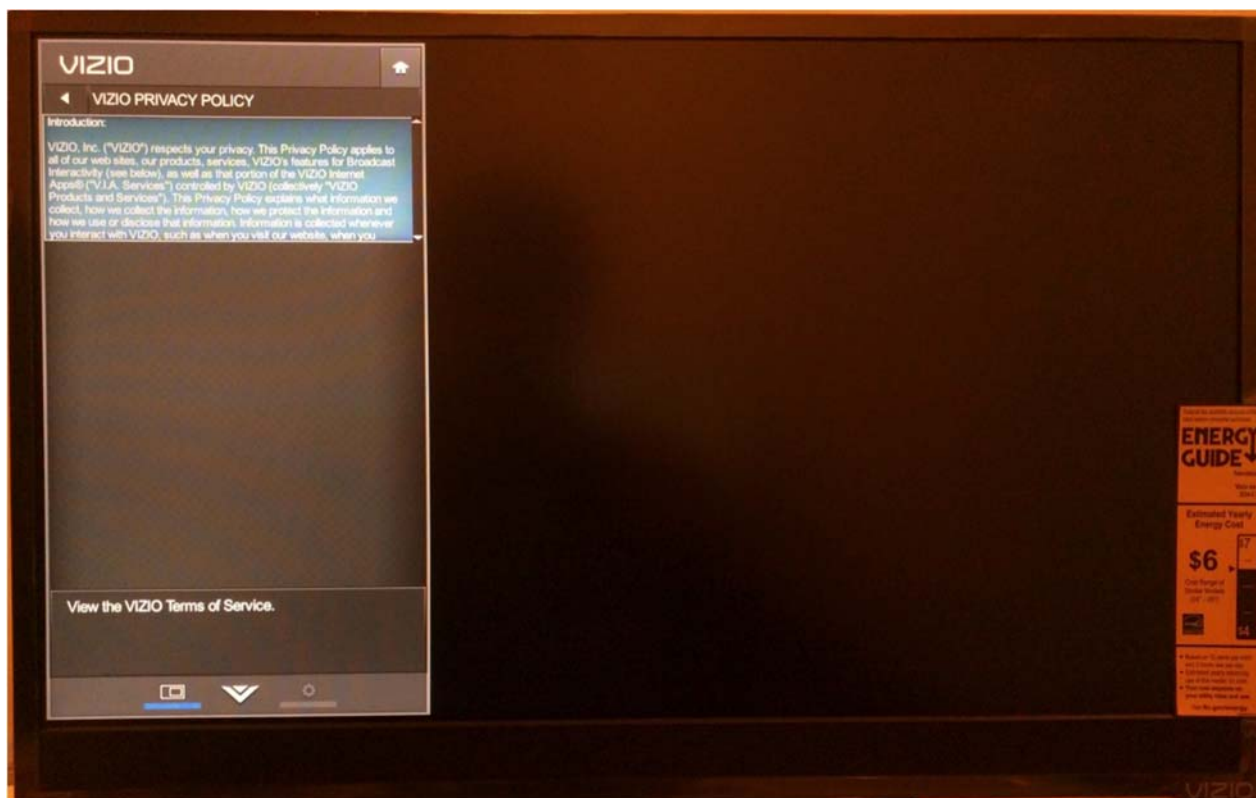
3 89. But VIZIO does not disclose that if consumers take advantage of those  
4 features and/or watch live broadcast programming on their Smart TVs, their viewing data  
5 will be collected by VIZIO and disseminated to third parties.

6 90. While the packaging on VIZIO’s Smart TVs describe its features and  
7 indicate that the televisions are equipped to deliver video content through the Internet and  
8 can display content from cable and satellite providers, streaming devices, and other  
9 connected media sources, the packaging fails to inform (let alone adequately inform)  
10 consumers that if they take advantage of the TV’s connectivity platform, their viewing  
11 data and personal information will be collected and shared with others.

12 91. Neither is Smart Interactivity and Inscape data services disclosed, let alone  
13 adequately disclosed, during the set up process for VIZIO Smart TVs. On the televisions  
14 themselves, any reference to Smart Interactivity is deeply embedded in an obscure  
15 settings menu. This reference is displayed in small font that is limited to a fraction of the  
16 screen size. This reference does not explain what Smart Interactivity is. A consumer  
17 would have no reason to know to turn it off.

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1           92. Also, on the televisions, Smart Interactivity and Inscape are not adequately  
2 disclosed in any Privacy Policy which may be viewed on the screen. The Privacy Policy  
3 is buried within the “Reset & Admin” section of a Smart TV’s settings menu, and is  
4 presented in extremely small font size.



5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20           93. Smart Interactivity and Inscape are not adequately disclosed in marketing or  
21 advertising on VIZIO’s website, either. VIZIO’s website touts its Smart TVs connectivity  
22 but does not disclose that VIZIO will collect and disseminate viewing habits and personal  
23 information upon connection. In fact, Smart Interactivity and Inscape data services are  
24 conspicuously absent from VIZIO’s online advertising for its entire M-Series and P-  
25 Series line.

26           94. To find any mention of Smart Interactivity on VIZIO’s website, a consumer  
27 would have to know to look for that term. What a consumer would find is VIZIO’s  
28 statement that “Smart Interactivity intelligently recognizes the content on the screen in

1 order to determine which interactive features to display on your device. This allows  
2 viewers to enjoy additional, related content for a richer, more interactive TV experience.”  
3 This statement is misleading and confusing in that it suggests that the collection and  
4 dissemination of viewing histories is for the benefit of the user, rather than a source of  
5 revenue for VIZIO, and does not disclose what Smart Interactivity actually does.

6 95. VIZIO’s privacy policies have been updated over time and are available on  
7 its website. In all iterations in which VIZIO discusses its data collection practices, its  
8 statements omit material information.

9 96. VIZIO falsely and deceptively tells consumers in its privacy policy that the  
10 information it discloses along with viewing habits cannot be traced back to consumers. It  
11 characterizes the information it discloses as “non-personal” or “anonymous” even though  
12 the information is useful for uniquely identifying individuals and their viewing habits.

13 97. Relatedly, VIZIO also fails to adequately inform consumers about its data  
14 collection program, including that viewing data and personally identifiable information is  
15 being disclosed to third parties. The information disclosed is valuable and useful  
16 precisely because it is not anonymous but instead is personally identifying. VIZIO does  
17 not properly disclose that it sells this information to third party advertisers and data  
18 brokers.

19 98. VIZIO gives consumers a false sense of security when it informs them it  
20 ‘hashes’ (i.e., transforms a string of characters into a shorter, fixed-length value that  
21 represents the original string) and replaces parts of IP addresses before sharing them with  
22 media and analytics partners. The FTC has criticized hashing as ineffective because it is  
23 so easy to circumvent. “Free precomputed tables of known hashes (*i.e.*, rainbow tables)  
24 are available that make reversing known hashes practically instantaneous.”<sup>22</sup> Also,  
25 hashing generates a unique number that can be used to identify a device throughout its  
26

---

27 <sup>22</sup> Ashkan Soltani, *Privacy trade-offs in retail tracking*, Federal Trade Commission:  
28 Tech@FTC Blog (Apr. 30, 2015, 11:59 AM), [https://www.ftc.gov/news-  
events/blogs/techftc/2015/04/privacy-trade-offs-retail-tracking](https://www.ftc.gov/news-events/blogs/techftc/2015/04/privacy-trade-offs-retail-tracking).

1 lifetime and is a process that can easily be reversed. Though VIZIO tells consumers in  
2 certain privacy policies that it takes measures to ensure that the data it discloses is  
3 securely transmitted, in or around 2015, Avast security discovered that the information  
4 transmitted to Cognitive Networks was being transferred insecurely because of a “known  
5 exploit” in the software. According to VIZIO, that exploit was closed when the software  
6 was updated in 2015.

7 99. Even today, Smart Interactivity and Inscape data services are also  
8 conspicuously absent from VIZIO’s online advertising for entire product lines. VIZIO’s  
9 website touts its Smart TVs connectivity but does not disclose that VIZIO will collect and  
10 disseminate viewing habits and personal information upon connection.

11 100. Any reference to Inscape data services or Smart Interactivity which may (or  
12 may not) be found in obscure sections of its website, in some (but not all) iterations of its  
13 privacy policies, or pop-ups which appear on the television screen and then quickly  
14 disappear, are not adequate disclosures because they are hard to find, tough to  
15 understand, fleeting, or buried alongside other ads or messages in order to distract from  
16 the disclosures.

17 101. This includes a pop-up notification that appeared on some televisions in  
18 March 2016, which obliquely referenced the collection of television viewing data. The  
19 pop-up disappeared after 30 seconds without any input from any household member who  
20 may or may not have been watching, and did not provide easy access to the settings  
21 menu.

## 22 V. CLASS ACTION ALLEGATIONS

23 102. Pursuant to Rules 23(a), 23(b)(2), or 23(b)(3) of the Federal Rules of Civil  
24 Procedure, Plaintiffs bring this class action on behalf of themselves and all Members of  
25 the Nationwide Class (the “Nationwide Class”), which shall initially be defined as:

26 All individuals in the United States who purchased a VIZIO Smart TV with Smart  
27 Interactivity capability for personal or household use, and not for resale, during the  
28 applicable statute of limitations period.

1 103. Additionally, or in the alternative, pursuant to Rules 23(a), 23(b)(2), or  
2 23(b)(3) of the Federal Rules of Civil Procedure, Plaintiffs bring this class action on  
3 behalf of themselves and all Members of the California Class (the “California Class”),  
4 which shall initially be defined as:

5 All persons in California who purchased a VIZIO Smart TV with Smart  
6 Interactivity capability for personal or household use, and not for resale,  
7 during the applicable statute of limitations period.

8 104. Additionally, or in the alternative, pursuant to Rules 23(a), 23(b)(2), or  
9 23(b)(3) of the Federal Rules of Civil Procedure, Plaintiffs bring this class action on  
10 behalf of themselves and all Members of the New York Class (the “New York Class”),  
11 which shall initially be defined as:

12 All persons in New York who purchased a VIZIO Smart TV with Smart  
13 Interactivity capability for personal or household use, and not for resale,  
14 during the applicable statute of limitations period.

15 105. Additionally, or in the alternative, pursuant to Rules 23(a), 23(b)(2), or  
16 23(b)(3) of the Federal Rules of Civil Procedure, Plaintiffs bring this class action on  
17 behalf of themselves and all Members of the Florida Class (the “Florida Class”), which  
18 shall initially be defined as:

19 All persons who purchased a VIZIO Smart TV with Smart Interactivity  
20 capability in Florida for personal or household use, and not for resale, during  
21 the applicable statute of limitations period.

22 106. Additionally, or in the alternative, pursuant to Rules 23(a), 23(b)(2), or  
23 23(b)(3) of the Federal Rules of Civil Procedure, Plaintiffs bring this class action on  
24 behalf of themselves and all members of the Massachusetts Class (the “Massachusetts  
25 Class”), which shall be initially defined as:

26 All persons who purchased a VIZIO Smart TV with Smart Interactivity  
27 capability in Massachusetts for personal or household use, and not for resale,  
28 during the applicable statute of limitations period.

1 107. Additionally, or in the alternative, pursuant to Rules 23(a), 23(b)(2), or  
2 23(b)(3) of the Federal Rules of Civil Procedure, Plaintiffs bring this class action on  
3 behalf of themselves and all Members of the Washington Class (the “Washington  
4 Class”), which shall initially be defined as:

5 All persons who purchased a VIZIO Smart TV with Smart Interactivity  
6 capability in Washington for personal or household use, and not for resale,  
7 during the applicable statute of limitations period.

8 108. Excluded from the Classes are governmental entities, Defendants, any entity  
9 in which Defendants have a controlling interest, and Defendants; officers, directors,  
10 affiliates, legal representatives, employees, co-conspirators, successors, subsidiaries, and  
11 assigns. Also excluded from the Classes are any judge, justice, or judicial officer  
12 presiding over this matter, and the members of their immediate families and judicial staff.

13 109. The Classes described in this Complaint may be jointly referred to as the  
14 “Class” and proposed Members of the Classes may be jointly referred to as “Class  
15 Members.”

16 110. Plaintiffs reserve the right to amend or modify the Class and/or Subclass  
17 definitions with greater specificity, further division into subclasses, or with limitation to  
18 particular issues as discovery and the orders of this Court warrant.

19 111. The Court can define the Class and create additional subclasses as may be  
20 necessary or desirable to adjudicate common issues and claims of the Class Members if,  
21 based on discovery of additional facts, the need arises.

22 112. Pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure,  
23 Defendants have acted or refused to act on grounds generally applicable to the Class,  
24 thereby making final injunctive relief or corresponding declaratory relief and damages  
25 appropriate with respect to the Class as a whole. Specifically, Defendants continue to  
26 obtain and disseminate sensitive viewing histories and personal information on an opt-in  
27 basis and without consent, and to date have not adequately disclosed the true nature of the  
28 VIZIO Smart TVs with integrated Smart Interactivity technology, including that the TVs  
collect and disseminate consumers’ personal information.

1 113. Numerosity and Ascertainability: The exact number of members of the Class  
2 is unknown as such information is unavailable to Plaintiffs at this time. However,  
3 Plaintiffs believe individual joinder in this case is impracticable. The Class likely consists  
4 of hundreds of thousands of individuals. These individuals can be readily ascertainable  
5 through Defendants or their agents' records and are obtainable to Plaintiffs only through  
6 the discovery process.

7 114. Predominance of Common Questions of Fact and Law: Questions of law and  
8 fact common to all Class members exist and predominate over any questions affecting  
9 only individual Class members, including, but not limited to, the following:

- 10 a. Whether Defendants unlawfully collected and disseminated Plaintiffs' and  
11 Class members' personal information;
- 12 b. Whether Defendants disclosed to Plaintiffs and Class members before the  
13 tracking software was activated on their VIZIO Smart TVs that their  
14 personal information would be collected and disseminated to third parties;
- 15 c. Whether Defendants omitted material facts with regard to the Smart  
16 Interactivity feature of the Smart TVs;
- 17 d. Whether Plaintiffs and Class members consented to the collection of their  
18 personal information and its sale to third parties;
- 19 e. Whether Plaintiffs and Class members have a reasonable expectation of  
20 privacy in the information collected and disseminated by Defendants;
- 21 f. Whether Defendants' conduct constitutes violations of the laws and statutes  
22 asserted herein;
- 23 g. Whether Defendants' conduct was knowing;
- 24 h. Whether, as a result of Defendants' conduct, Plaintiff and Class members  
25 are entitled to damages, including compensatory, statutory, or punitive, and  
26 the amount of such damages;
- 27 i. Whether, as a result of Defendants' conduct, Plaintiffs and Class members  
28 are entitled to equitable relief, such as declaratory or injunctive relief;

- 1 j. Whether Defendants were unjustly enriched by their conduct;
- 2 k. Whether, for the Nationwide Class noted above, California has a significant
- 3 contact to the claims of each class member to apply California law to all
- 4 members of the Nationwide Class;
- 5 l. Whether, for the Nationwide Class noted above, the Video Privacy
- 6 Protection Act applies to all members of the Nationwide Class; and
- 7 m. Whether, as a result of Defendants' conduct, Plaintiff and Class members
- 8 are entitled to an award of reasonable attorneys' fees, prejudgment interest,
- 9 or costs of suit.

10 115. Typicality: Plaintiffs' claims, and Defendants' defenses, are typical of the  
11 claims and defenses of and to the Class. Every member of the Class was similarly  
12 affected by Defendants' course of conduct and experienced the same harm, damages and  
13 loss based on Defendants' unlawful conduct. As such, Plaintiffs and Class members must  
14 establish the same facts in order to prove the claims asserted herein.

15 116. Adequacy of Representation: Plaintiffs do not have any conflicts with any  
16 other members of the Class, and will fairly and adequately represent and protect the  
17 interests of the members of the Class and any other subclass. Plaintiffs have retained  
18 counsel competent and experienced in consumer protection and class action litigation,  
19 trials, and appeals.

20 117. Superiority of a Class Action: A class action is superior to other available  
21 methods for fair and efficient adjudication of this controversy. The expense and burden of  
22 the individual litigation would make it impracticable or impossible for the Class members  
23 to prosecute their claims individually. Absent a class action, Defendants likely will retain  
24 the benefits of its wrongdoing. Because of the small size of the individual Class  
25 members' claims, few, if any, Class members could afford to seek legal redress for these  
26 wrongs. Absent a representative action, the Class members will continue to suffer losses  
27 and Defendants will be allowed to continue these violations of law and to retain the  
28 proceeds of its ill-gotten gains. The trial and litigation of Plaintiffs' and Class members'



1 claims are manageable. Individual litigation of the legal and factual issues raised by  
2 Defendants’ conduct would increase delay and expense to all parties and the court  
3 system. The class action device presents far fewer management difficulties and provides  
4 the benefits of a single, uniform court judgment. Thus, the benefits of proceeding as a  
5 class action outweigh the difficulties.

6  
7 **VI. CAUSES OF ACTION**  
8 **FIRST CLAIM FOR RELIEF**

9 **Violation of the Video Privacy Protection Act, 18 U.S.C. § 2710**  
10 **(On Behalf of All Plaintiffs and the Nationwide Class Against All Defendants)**

11 118. Plaintiffs incorporate by reference the foregoing allegations as if fully set  
12 forth herein.

13 119. VIZIO is a video tape service provider subject to 18 U.S.C. § 2710(a)(4) of  
14 the Video Privacy Protection Act (“VPPA”). VIZIO is “engaged in the business, in or  
15 affecting interstate or foreign commerce, of rental, sale, or delivery of prerecorded video  
16 cassette tapes or similar audio visual materials” by delivering videos to consumers  
17 through its Internet-connected Smart TVs. VIZIO facilitates the transmission of specific  
18 video titles to be made to consumers through its VIA and VIA Plus services that allow  
19 consumers to watch movies and TV shows, listen to music, and access applications on  
20 demand.

21 120. As users of VIZIO’s Smart TVs, Plaintiffs and members of the Class are  
22 consumers within the definition of 18 U.S.C. § 2710(a)(1) of the VPPA.

23 121. The collection of consumers’ viewing information – including movies,  
24 shows, and programs viewed, IP addresses, media access control (MAC) addresses, zip  
25 codes, computer names, and product serial numbers – constitutes the collection of  
26 personally identifiable information (“PII”) within 18 U.S.C. § 2710(a)(3), because it  
27 “includes information which identifies a person as having requested or obtained specific  
28 video materials or services from a video tape service provider.”

1 122. VIZIO has disclosed, and continues to disclose, PII to third-parties,  
2 including data brokers and advertisers, to generate revenue and profit.

3 123. VIZIO failed to solicit and/or obtain consent from Plaintiffs and the Class  
4 members to collect and disclose their PII, nor did VIZIO provide clear and conspicuous  
5 notice of the disclosure of PII, as defined in 18 U.S.C. § 2710 (b)(2)(B).

6 124. VIZIO's disclosures were not made in the ordinary course of business as  
7 defined by 18 U.S.C. § 2710(a)(2), which limits disclosures to "debt collection activities,  
8 order fulfillment, request processing, and the transfer of ownership."

9 125. The knowing disclosure and transmission of PII violates the VPPA within  
10 the meaning of 18 U.S.C § 2710(b)(1).

11 126. Accordingly, Plaintiffs and members of the Class are entitled under 18  
12 U.S.C. § 2710(c)(2) to an award of damages (actual, liquidated, or punitive), reasonable  
13 attorneys' fees, other litigation costs reasonably incurred, and such other preliminary and  
14 equitable relief as the Court deems appropriate.

15 **SECOND CLAIM FOR RELIEF**

16 **Violation of the Wiretap Act, 18 U.S.C. § 2510 *et seq.***  
17 **(On Behalf of All Plaintiffs and the Nationwide Class Against All Defendants)**

18 127. Plaintiffs reallege and incorporate by reference all of the preceding  
19 paragraphs.

20 128. The Federal Wiretap Act, 18 U.S.C. § 2510 *et seq.*, prohibits the interception  
21 of any wire, oral, or electronic communications. The statute confers a civil cause of  
22 action on "any person whose wire, oral, or electronic communication is intercepted,  
23 disclosed, or intentionally used in violation of this chapter." 18 U.S.C. § 2520(a).

24 129. "Electronic communication" is defined as "any transfer of signs, signals,  
25 writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part  
26 by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects  
27 interstate or foreign commerce..." 18 U.S.C. § 2510(12).

28

1 130. “Intercept” is defined as “the aural or other acquisition of the contents of any  
2 wire, electronic, or oral communication through the use of any electronic, mechanical, or  
3 other device.” 18 U.S.C. § 2510(4).

4 131. “Contents” is defined as “includ[ing] any information concerning the  
5 substance, purport, or meaning of that communication.” 18 U.S.C. § 2510(8).

6 132. “Person” is defined as “any employee, or agent of the United States or any  
7 State or political subdivision thereof, and any individual, partnership, association, joint  
8 stock company, trust, or corporation.” 18 U.S.C. § 2510(6).

9 133. Plaintiffs and Class members are persons as defined under § 2510(6) of the  
10 Act.

11 134. VIZIO’s automated content recognition software, Smart Interactivity, is a  
12 device for purposes of the Wiretap Act because it is software used to intercept electronic  
13 communication.

14 135. VIZIO, through its design, authorship, programming, knowing and  
15 intentional installation, activation, and/or other involvement with Smart Interactivity  
16 software and its Inscape data program has intentionally intercepted, endeavored to  
17 intercept, and/or procured others to intercept or endeavor to intercept, electronic  
18 communications as described herein, in violation of 18 U.S.C. § 2511(1)(a). This  
19 interception was acquired during transmission, as Smart Interactivity operated in real-  
20 time—or, in the FTC’s words, “second-by-second information”—to acquire the content  
21 of Plaintiffs’ and the Class members’ electronic communications, including their viewing  
22 habits and identifying information, as described above.

23 136. The contents intercepted include information concerning the substance,  
24 purport, or meaning of that communication, including, but not limited to, viewing habits,  
25 viewing requests, and viewing preferences, IP addresses, MAC addresses, zip codes,  
26 product model numbers, hardware and software versions, chipset IDs, and region and  
27 language settings.

28

1 137. As alleged in Paragraphs 49 to 58, 76, 100, and 104, among others,  
2 Plaintiffs' and the Class members' electronic communications were intercepted during  
3 transmission, simultaneous with the communications' arrival, and/or within a second of  
4 the communications' arrival without their consent and for the unlawful and/or wrongful  
5 purpose of monetizing their private information, including by using their private  
6 information to create targeted advertisements for profit, without Class members' consent,  
7 and for tortious purposes and for the purpose of committing unfair business practices.

8 138. As a result, Plaintiffs and Class members have suffered harm and injury,  
9 including due to the interception and transmission of private and personal, confidential,  
10 and sensitive communications, content, and data.

11 139. Plaintiffs and the Class have been damaged by the interception or disclosure  
12 of their communications in violation of the Wiretap Act, as described herein, and are thus  
13 entitled to preliminary, equitable, or declaratory relief; statutory and punitive damages;  
14 and reasonable attorney's fees and litigations costs reasonably incurred. 18 U.S.C. §  
15 2520(b).

16 **THIRD CLAIM FOR RELIEF**

17 **Violation of California's Invasion of Privacy Act, Cal. Penal Code § 630, et seq.**  
18 **(On Behalf Of Plaintiffs And The Nationwide Class**  
19 **And Separately, On Behalf Of Plaintiffs Hodges and Zufolo And The California**  
20 **Class Against All Defendants)**

21 140. Plaintiffs incorporate all allegations of the preceding and succeeding  
22 paragraphs as though fully set forth herein.

23 141. Under California's Invasion of Privacy Act ("CIPA"), it is unlawful to  
24 intentionally, willfully, and without consent tap or make any unauthorized connection by  
25 means of any machine, instrument, or contrivance, or in any other manner with any  
26 telegraph or telephone wire, line, cable, or instrument, in order to purposefully intercept a  
27 communication or its content that is in transit or passing over any wire, line, or cable, or  
28 is being sent from or received within California; and to use, attempt to use, or  
communicate any such information obtained by these means. *See* Cal. Penal Code § 631.

1           142. As alleged in Paragraphs 49 to 58, 76, 100, and 104, among others, VIZIO,  
2 Cognitive Media Networks, and/or Inscope Technologies, LLC, which operate in  
3 California, intentionally, willfully, and without consent, made unauthorized connections  
4 with Plaintiffs' and Class members' Smart TVs to purposefully intercept communications  
5 in transit. *See* Cal. Penal Code § 631. The contents were then collected and/or analyzed  
6 by these entities.

7           143. The contents intercepted include information concerning the substance,  
8 purport, or meaning of that communication, including, but not limited to, viewing  
9 histories, viewing requests, and viewing preferences, online services visited by the  
10 consumer, IP addresses, MAC addresses, zip codes, product model numbers, hardware  
11 and software versions, chipset IDs, and region and language settings.

12           144. Furthermore, VIZIO used, attempted to use, and communicated the  
13 information it obtained, through Smart Interactivity software and using its Inscope data  
14 services program, to data brokers and advertisers.

15           145. Plaintiffs' and the Class members' electronic communications were  
16 intercepted without their consent and for the unlawful and/or wrongful purpose of  
17 monetizing their private information, and for tortious purposes and for the purpose of  
18 committing unfair business practices.

19           146. As an actual and proximate result of the above actions, Plaintiffs and Class  
20 members have been injured and suffered actual damages in an amount to be determined  
21 at trial. For each violation of CIPA by VIZIO, Plaintiffs and Class members are entitled  
22 to damages pursuant California Penal Code § 637.2 of \$5,000 or three times the amount  
23 of their actual damages (at their election). *See* Cal. Penal Code § 637.2. Plaintiffs and  
24 Class members are also entitled to injunctive relief.

**FOURTH CLAIM FOR RELIEF**

**Violation of California’s Consumer Legal Remedies Act (“CLRA”)  
Cal. Civ. Code §§ 1750, *et seq.*  
(On Behalf Of Plaintiffs And The Nationwide Class  
And Separately, On Behalf Of Plaintiffs Hodges and Zufolo And The California  
Class Against All Defendants)**

147. Plaintiffs incorporate by reference the foregoing allegations as if fully set forth herein.

148. Plaintiffs and each member of the Class are “consumers” as defined by Cal. Civ. Code § 1761(d).

149. Defendants are each a “person” as defined by Cal. Civ. Code § 1761(c).

150. Defendants’ Smart TVs are “goods” as defined by Cal. Civ. Code § 1761(a).

151. Defendants’ sale of Smart TVs, to wholesalers and retailers constitutes transactions that were intended to result, or did result, in the sale of goods to consumers within the meaning of Cal. Civ. Code §§ 1761(e) and 1770(a).

152. The CLRA protects consumers against unfair and deceptive practices, and is intended to provide an efficient means of securing such protection.

153. Defendants violated the CLRA by engaging in unfair and deceptive practices, and by causing harm to Plaintiffs and the Class.

154. Specifically, Defendants installed the tracking software on their Smart TVs, used that software to monitor and collect consumer data and viewing habits, and then sold the aggregated data to various third parties.

155. Defendants did not, however, disclose to consumers the existence of the tracking software or the fact that the software collected consumers’ data, and never obtained consumer consent to monitor, collect, and/or sell consumers’ data.

156. Defendants’ failure to disclose the presence of the tracking software violated the CLRA in multiple ways:

- 1 a. In violation of Cal. Civ. Code § 1770(a)(5), Defendants represented that  
2 their Smart TVs had characteristics, ingredients, uses, benefits, or quantities  
3 which they did not have;
- 4 b. In violation of Cal. Civ. Code § 1770(a)(7), Defendants represented that  
5 their Smart TVs were of a particular standard, quality, or grade, when they  
6 were of another; and
- 7 c. In violation of Cal. Civ. Code § 1770(a)(9), Defendants advertised their  
8 Smart TVs with the intent not to sell them as advertised.
- 9 d. In violation of Cal. Civ. Code § 1770(a)(14), Defendants knowingly and  
10 intentionally withheld material information from Plaintiffs and the Class –  
11 namely that their Smart TV purchases would result in the collection and  
12 dissemination of their viewing history, in violation of their statutorily  
13 protected rights to privacy.
- 14 e. In violation of Cal. Civ. Code § 1770(a)(16), Defendants represented that  
15 their Smart TVs were in full compliance with all governing federal and  
16 state consumer protection and privacy laws, when in fact they were not.

17 157. Defendants' unfair or deceptive acts or practices were capable of deceiving a  
18 substantial portion of the purchasing public.

19 158. Defendants did not disclose facts about the tracking software to consumers  
20 who purchased the Smart TVs because they knew consumers would not purchase the  
21 Smart TVs if they knew of the tracking software, and how Defendants would use that  
22 software.

23 159. Defendants were under a duty to Plaintiffs and the Class to disclose that the  
24 Smart TVs contained the tracking software for several reasons including, but not limited  
25 to:

- 26 a. Defendants were in a superior position to know that the tracking software  
27 was installed on the Smart TVs;

28

- 1 b. Plaintiffs and the Class could not reasonably have been expected to learn or
- 2 discover that Defendant included the tracking software on the Smart TVs,
- 3 especially given the practices of VIZIO's competitors;
- 4 c. Defendants knew Plaintiffs and the Class members could not reasonably
- 5 have been expected to learn or discover that Defendants included the
- 6 tracking software on the Smart TVs; and
- 7 d. Defendants knew that Plaintiffs and the Class members would not purchase,
- 8 or would pay much less for, the Smart TVs if they knew of the tracking
- 9 software.

10 160. By failing to disclose the Smart TVs' tracking software, Defendants  
11 knowingly and intentionally concealed material facts and breached their duty to Plaintiffs  
12 and the Classes.

13 161. The facts concealed or not disclosed by Defendants to Plaintiffs and the  
14 Class are material in that a reasonable consumer would have considered them to be  
15 important in deciding whether or not to purchase, or how much to pay for, the Smart  
16 TVs.

17 162. Plaintiffs and the Class reasonably expected that their televisions would be  
18 free from tracking software.

19 163. The existence of tracking software on a television is a material term for the  
20 purchase of a television, and a primary reason not to purchase a particular television.

21 164. Defendants did not disclose facts about the tracking software to consumers  
22 that purchased the Smart TVs because they knew consumers, acting reasonably under the  
23 circumstances, would not purchase, or would pay less for, the Smart TVs if the fact that  
24 tracking software was installed on the Smart TVs was disclosed prior to purchase.

25 165. Through the omissions detailed herein, Defendants wrongfully induced  
26 Plaintiffs and the other members of the Class to purchase the Smart TVs when they  
27 otherwise would not have purchased, or paid less for, them.

28



1 166. As a direct and proximate result of Defendants' violations of the CLRA,  
2 Plaintiffs and each Class member have suffered harm in the form of paying moneys to  
3 purchase the Smart TVs when they otherwise would not have purchased. Or paid less for,  
4 them.

5 167. Pursuant to Cal. Civ. Code § 1780(a) and (b), Plaintiffs, individually and on  
6 behalf of the Classes, seek an injunction requiring Defendants to cease and desist the  
7 illegal conduct alleged in this Complaint, damages for Defendants' violations, and all  
8 other appropriate remedies for Defendants' violations of the CLRA.

9 168. Pursuant to Cal. Civ. Code § 1782(a), Plaintiff Hodges served Defendants  
10 with notice of their alleged violations of the CLRA by certified mail return receipt  
11 requested on December 16, 2015.

12 169. Defendants' conduct in (1) developing the software and technology capable  
13 of collecting consumers' viewing habits and personally identifiable information on a  
14 massive scale, and (2) their scheme in disclosing this information to third parties,  
15 including advertisers, data brokers and data aggregators for profit without adequate  
16 disclosure to consumers, all emanated from California and has a substantial connection to  
17 the State of California.

18 **FIFTH CLAIM FOR RELIEF**

19 **Violation of California's Unfair Competition Law ("UCL")**  
20 **Cal. Bus. & Prof. Code §§ 17200, et seq.**  
21 **(On Behalf Of Plaintiffs And The Nationwide Class,**  
22 **And Separately, On Behalf Of Plaintiffs Hodges and Zufolo And The California**  
23 **Class)**

24 170. Plaintiffs incorporate by reference the foregoing allegations as if fully set  
25 forth herein.

26 171. The UCL protects consumers and competitors by promoting fair competition  
27 in commercial markets for goods and services.  
28

1 172. The UCL prohibits any unlawful, unfair, or fraudulent business act or  
2 practice, including the employment of any deception, fraud, false pretense, false promise,  
3 misrepresentation, or the concealment, suppression, or omission of any material fact.

4 173. Defendants violated the UCL by engaging in unlawful, unfair and fraudulent  
5 business acts or practices.

6 174. Defendants' conduct is unlawful because, as explained above, it violates the  
7 Video Privacy Protection Act (18 U.S.C. § 2710), the Wiretap Act (18 U.S.C. § 2510 et  
8 seq.), California's Invasion of Privacy Act (Penal Code § 630 et seq.), Cal. Civ. Code §  
9 1799.3(a), California's Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 et  
10 seq.), Florida's Deceptive and Unfair Trade Practices Act (Fla. Stat. § 501.201 et seq.),  
11 New York General Business Law § 349, Massachusetts' Unfair and Deceptive Trade  
12 Practices Statute (Massachusetts General Laws ch. 93A et seq.), Massachusetts' Statutory  
13 Right to Privacy (Massachusetts General Laws ch. 214, § 1B), Washington's Consumer  
14 Protection Act (Wash Rev. Code § 19.86 et seq.) and constitutes unjust enrichment,  
15 privacy based on intrusion, and/or fraud by omission.

16 175. Defendants' conduct is unfair because it is substantially injurious to  
17 consumers, and is immoral, unethical, oppressive and unscrupulous. Defendants'  
18 conduct is not outweighed by any countervailing benefits to consumers or competition,  
19 and Defendants' conduct, and the harm it causes, is not reasonably avoidable by  
20 consumers.

21 176. Defendants monitor, collect, and record consumer viewing habits and other  
22 information in order to sell it to third parties for profit, and do so without disclosing their  
23 data practices to consumers or obtaining consumer consent for the collection or sale of  
24 consumer data.

25 177. Had consumers known Defendants' Smart TVs employed software that  
26 monitored, collected and disseminated consumer viewing habits and other data,  
27 consumers would not have purchased, or would have paid less for Defendants' Smart  
28 TVs.

1 178. Moreover, by surreptitiously monitoring, collecting, and recording consumer  
2 viewing habits and other information, and by selling, or otherwise disclosing, that  
3 information to third parties without consumer knowledge or consent, Defendants prevent  
4 consumers from avoiding Defendants' data practices, and prevent consumers from  
5 protecting their right to privacy and their right to control the dissemination of their  
6 personal information.

7 179. Defendants knew or had reason to know that Plaintiffs and the Class could  
8 not have reasonably known or discovered the existence of the tracking software, without  
9 disclosure by Defendants.

10 180. The injury to consumer privacy rights, and the causing of consumers to buy  
11 products they otherwise would not have purchased, or would have paid less for,  
12 outweighs the profit motive for Defendants' unauthorized and secretive monitoring,  
13 collection and dissemination of consumer data.

14 181. Defendants' conduct is fraudulent because it is reasonably likely to deceive  
15 consumers.

16 182. The specifications of a consumer product are a material term of any  
17 transaction in that they directly affect a consumer's choice and conduct in purchasing  
18 product.

19 183. Despite the importance of specifications to consumer purchase decisions,  
20 Defendants do not disclose that their Smart TVs have the tracking software installed, and  
21 that the tracking software monitors, collects and disseminates consumer data.

22 184. Defendants' failure to disclose this specification of their Smart TVs, as well  
23 as Defendant's failure to gain consumer authorization to allow Defendants to monitor and  
24 collect consumer information by use of the tracking software, deceived consumers into  
25 believing they were merely purchasing a benign entertainment device.

26 185. Had Defendants disclosed to consumers that their Smart TVs employed the  
27 tracking software, and that consumer viewing habits and other information would be  
28 collected without consent or knowledge, consumers would not have bought, or would

1 have paid less for, Defendants' Smart TVs, and also would have avoided Defendants'  
2 products and data practices.

3 186. Defendants' unlawful, fraudulent and unfair conduct occurred during the  
4 marketing, distribution, and sale of Smart TVs, and therefore occurred in the course of  
5 Defendants' business practices.

6 187. Defendants' conduct directly and proximately caused Plaintiffs and the Class  
7 actual monetary damages in the form of the price paid for the Smart TVs.

8 188. Defendants' also profited from their unlawful, fraudulent and unfair conduct  
9 in that they obtained the personal information of Plaintiffs and Class members without  
10 their knowledge or consent, and then sold that information to third parties for profit.

11 189. Had Defendants disclosed that their tracking software was installed and  
12 operating on the VIZIO Smart TVs, Plaintiffs and Class members would not have  
13 purchased the Smart TVs, or would have paid less for them.

14 190. In fact, Defendants did not disclose facts about the tracking software to  
15 consumers that purchased the Smart TVs because they knew consumers, acting  
16 reasonably under the circumstances, would not purchase, or would pay less for, the Smart  
17 TVs if the fact that tracking software was installed on the Smart TVs was disclosed prior  
18 to purchase.

19 191. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiffs seeks an order (1)  
20 requiring Defendants to cease the fraudulent and unfair practices described herein; (2)  
21 requiring Defendants to restore to Plaintiffs and each Class member any money acquired  
22 by means of unfair competition (restitution); and, (3) awarding reasonable costs and  
23 attorneys' fees pursuant to Cal. Code Civ. Proc. § 1021.5.

**SIXTH CLAIM FOR RELIEF**

**Violation of Florida’s Deceptive And Unfair Trade Practices Act (“FDUTPA”)  
Fla. Stat. § 501.201, et seq.  
(On Behalf Of Plaintiff Mark Queenan and The Florida Class Against All  
Defendants)**

192. Plaintiffs incorporate by reference the foregoing allegations as if fully set forth herein.

193. Plaintiffs and each member of the Class are “consumers” as defined by Fla. Stat. § 501.203(7).

194. Defendants, through their conduct alleged herein, are engaged in “trade or commerce” as defined by Fla. Stat. § 501.203(8).

195. The FDUTPA was enacted to protect consumers and businesses from unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.

196. To this end, the FDUTPA declares as unlawful all unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.

197. Defendants violated the FDUTPA because their conduct, as alleged herein, is deceptive and unfair.

198. Defendants’ conduct is deceptive because it is likely to mislead a reasonable consumer.

199. The specifications of a consumer product are a material term of any transaction in that they directly affect a consumer’s choice and conduct in purchasing a product.

200. Despite the importance of specifications to consumer purchase decisions, Defendants do not disclose that their Smart TVs have the tracking software installed, and that the tracking software monitors, collects and disseminates consumer data.

201. On the boxes in which the Smart TVs were packaged, Defendants informed Plaintiffs that one would be able to stream and view video content from the Smart TVs,

1 as well as connect the Smart TVs to other devices such as Blu-ray DVD players and  
2 gaming consoles. However, Defendants failed to inform Plaintiffs that if they take  
3 advantage of these features and/or watch live broadcast programming on their Smart  
4 TVs, their viewing data is collected and disseminated to third parties. Had Plaintiffs  
5 known the full truth about Defendants' collection and dissemination of Defendants'  
6 viewing data, Plaintiffs would not have purchased or would have paid less for their Smart  
7 TVs.

8 202. Defendants' failure to disclose these specifications of their Smart TVs, as  
9 well as Defendants' failure to gain consumer consent to allow Defendants to monitor and  
10 collect consumer information by use of the tracking software, deceived consumers into  
11 believing they were purchasing a benign entertainment device.

12 203. Had Defendants disclosed to consumers that their Smart TVs employed the  
13 tracking software, and that consumer viewing habits and other information would be  
14 collected and disseminated without consent or knowledge, consumers would not have  
15 bought, or would have paid less for, Defendants' Smart TVs and would have avoided  
16 Defendants' products and data practices.

17 204. In fact, Defendants did not disclose facts about the tracking software to  
18 consumers that purchased the Smart TVs because they knew consumers, acting  
19 reasonably under the circumstances, would not purchase, or would pay less for, the Smart  
20 TVs if the fact that tracking software was installed on the Smart TVs was disclosed prior  
21 to purchase.

22 205. Defendants' conduct is unfair because it offends established public policy  
23 and is immoral, unethical, oppressive, unscrupulous and substantially injurious to  
24 consumers.

25 206. Defendants' conduct offends established public policy because it violated 18  
26 U.S.C. § 2710 and 18 U.S.C. § 2510 et seq., as explained above.

27 207. Defendants' conduct is substantially injurious, and is immoral, unethical,  
28 oppressive and unscrupulous because Defendants monitor, collect, and record consumer

1 viewing habits and other information in order to sell it to third parties for profit, and does  
2 so without disclosing its data practices to consumers or obtaining consumer consent for  
3 the collection and sale of consumer data.

4 208. Had consumers known Defendants' Smart TVs employed software that  
5 monitored, collected and disseminated consumer viewing habits and other data,  
6 consumers would not have purchased, or would have paid less for, Defendants' Smart  
7 TVs.

8 209. Moreover, by surreptitiously monitoring, collecting, and recording consumer  
9 viewing habits and other information, and by selling, or otherwise disclosing, that  
10 information to third parties without consumer knowledge or consent, Defendants prevent  
11 consumers from avoiding its data practices and from protecting their right to privacy and  
12 their right to control the dissemination of their personal information.

13 210. Defendants knew or had reason to know that Plaintiffs and the Class could  
14 not have reasonably known or discovered the existence of the tracking software, without  
15 disclosure by Defendants.

16 211. The injury to consumer privacy rights, and the causing of consumers to buy  
17 products they otherwise would have avoided, outweighs the profit motive and ultimate  
18 goal for Defendants' unauthorized and secretive monitoring, collection and dissemination  
19 of consumer data.

20 212. Defendants' deceptive and unfair conduct occurred during the marketing,  
21 distribution, and sale of Smart TVs, and therefore occurred in the course of Defendants'  
22 business practices.

23 213. Defendants' conduct directly and proximately caused Plaintiffs and the Class  
24 actual monetary damages in the form of the price paid for the Smart TVs.

25 214. If Defendants had disclosed that their tracking software was installed and  
26 operating on the VIZIO Smart TVs, Plaintiffs and Class members would not have  
27 purchased, or would have paid less for, the Smart TVs.

28

1 215. Pursuant to Fla. Stat. § 501.211, Plaintiffs seek an order (1) requiring  
2 Defendants to cease the deceptive and unfair practices described herein; (2) requiring  
3 Defendants to pay damages to Plaintiffs and the Class; and (3) awarding attorney's fees  
4 and court costs.

5 **SEVENTH CLAIM FOR RELIEF**  
6 **Violation Of N.Y. Gen. Bus. Law § 349**  
7 **(On Behalf Of Plaintiff Chris Rizzitello And The New York Class**  
8 **Against All Defendants)**

8 216. Plaintiffs incorporate by reference the foregoing allegations as if fully set  
9 forth herein.

10 217. N.Y. Gen. Bus. Law § 349 prohibits deceptive acts or practices in the  
11 conduct of any business, trade or commerce or in the furnishing of any service in this  
12 state.

13 218. Defendants' conduct as alleged herein is covered under New York Gen. Bus.  
14 Law § 349 because such conduct is properly defined as consumer-oriented conduct.

15 219. Defendants' uniform omission regarding the tracking software installed on  
16 its Smart TVs, and its disclosure of consumer information collected by its Smart TVs to  
17 third parties affects and deceives consumers at large, and has invaded the privacy rights  
18 of millions of consumers.

19 220. Defendants violated N.Y. Gen. Bus. Law § 349 by engaging in conduct that  
20 is likely to mislead a reasonable consumer.

21 221. The specifications of a consumer product are a material term of any  
22 transaction in that they directly affect a consumer's choice and conduct in purchasing a  
23 product.

24 222. Despite the importance of specifications to consumer purchase decisions,  
25 Defendants do not disclose that their Smart TVs have the tracking software installed, and  
26 that the tracking software monitors, collects and disseminates consumer data.

27 223. As discussed, on the boxes in which the Smart TVs were packaged,  
28 Defendants informed Plaintiffs that one would be able to stream and view video content



1 from the Smart TVs, as well as connect the Smart TVs to other devices such as Blu-ray  
2 DVD players and gaming consoles. However, Defendants failed to further inform  
3 Plaintiffs that if they take advantage of these features and/or watch live broadcast  
4 programming on their Smart TVs, their viewing data is collected and disseminated to  
5 third parties. Had Plaintiffs known the full truth about Defendants' collection and  
6 dissemination of Defendants' viewing data, Plaintiffs would not have purchased or would  
7 have paid less for their Smart TVs.

8 224. Defendants' failure to disclose these specifications of their Smart TVs, as  
9 well as Defendants' failure to gain consumer authorization to allow Defendants to  
10 monitor and collect consumer information by use of the tracking software, deceived  
11 consumers into believing they were purchasing a benign entertainment device.

12 225. Had Defendants disclosed to consumers that their Smart TVs employed the  
13 tracking software, and that consumer viewing habits and other information would be  
14 collected and disseminated without consent or knowledge, consumers would not have  
15 bought, and would have paid less for, Defendants' Smart TVs, and would have avoided  
16 Defendants' products and data practices.

17 226. In fact, Defendants did not disclose facts about the tracking software to  
18 consumers that purchased the Smart TVs because they knew consumers, acting  
19 reasonably under the circumstances, would not purchase, or would pay less for, the Smart  
20 TVs if the fact that tracking software was installed on the Smart TVs was disclosed prior  
21 to purchase.

22 227. Defendants' conduct directly and proximately caused Plaintiffs and the Class  
23 actual monetary damages in the form of the price paid for the Smart TVs.

24 228. Defendants' conduct also caused direct harm to the privacy rights of  
25 Plaintiffs and the Class, and harmed the ability of Plaintiffs and Class members to control  
26 the dissemination of their private information.

27 229. Pursuant to N.Y. Gen. Bus. Law § 349(h), Plaintiffs seek an order: (1)  
28 requiring Defendants to cease the deceptive and unfair practices described herein; (2)

1 requiring Defendants to pay damages to Plaintiffs and the Class, or fifty dollars to  
2 Plaintiffs and each class member, whichever is greater; (3) treble damages for  
3 Defendants’ knowing and willful violations; and (4) reasonable attorneys’ fees.

4 **EIGHTH CLAIM FOR RELIEF**

5 **Violation Of Massachusetts’ Unfair and Deceptive Trade Practices Statute**  
6 **Massachusetts General Laws ch. 93A, et seq.**  
7 **(On Behalf Of Plaintiff John Walsh And The Massachusetts Class Against All**  
8 **Defendants)**

9 230. Plaintiffs incorporate by reference all the preceding allegations as if fully set  
10 forth herein.

11 231. Defendants’ acts and practices complained of herein—including but not  
12 limited to installing tracking software on its Smart TVs, surreptitiously monitoring and  
13 acquiring the personally identifiable information of Plaintiff Walsh and members of the  
14 Massachusetts Class, and selling that information to third parties without consent—  
15 amount to “[u]nfair methods of competition and unfair or deceptive acts or practices in  
16 the conduct of any trade or commerce,” as proscribed by Massachusetts General Laws ch.  
17 93A, § 2(a). Pursuant to the notice requirement in Massachusetts General Laws ch. 93A,  
18 § 9(3), Plaintiff Walsh delivered a written demand letter detailing the acts and practices  
19 complained of herein and the injury suffered to Defendant thirty days before the filing of  
20 his underlying class action, *Walsh et. al v. VIZIO, Inc.*, Case No. 1:16-cv-10758-DJC (D.  
21 Mass). Defendant responded with a letter denying all allegations.

22 232. Plaintiff Walsh and members of the Massachusetts Class suffered actual  
23 injury as the result of Defendant’s acts, practices, and omissions described herein.

24 233. As a result of Defendant’s violations of Massachusetts’ Unfair and  
25 Deceptive Trade Practices Statute, Plaintiff Walsh and members of the Massachusetts  
26 Class are entitled to—and accordingly seek—actual damages and attorneys’ fees,  
27 pursuant to Massachusetts General Laws ch. 93A, § 9.  
28

1 **NINTH CLAIM FOR RELIEF**  
2 **Violation Of Massachusetts’ Statutory Right to Privacy**  
3 **Massachusetts General Laws ch. 214, § 1B**  
4 **(On Behalf Of Plaintiff John Walsh And The Massachusetts Class Against All**  
5 **Defendants)**

6 234. Plaintiffs incorporate by reference all the preceding allegations as if fully set  
7 forth herein.

8 235. Pursuant to Massachusetts General Laws ch. 214, § 1B, Massachusetts  
9 guarantees persons freedom from unreasonable, substantial, or serious interference with  
10 their privacy.

11 236. Defendants’ acts and practices complained of herein—including but not  
12 limited to installing tracking software on its Smart TVs, surreptitiously monitoring and  
13 acquiring the personally identifiable information of Plaintiff Walsh and members of the  
14 Massachusetts Class, and selling that information to third parties without consent—have  
15 violated the law guaranteeing the rights of Plaintiff Walsh and Members of the  
16 Massachusetts Class to be free from unreasonable, substantial, or serious interference  
17 with their privacy.

18 237. As a result of Defendants’ acts and practices complained of herein, Plaintiff  
19 Walsh and Members of the Massachusetts Class have suffered and will continue to suffer  
20 actual and irreparable harm, and are entitled to (and accordingly seek) damages and  
21 equitable relief.

22 **TENTH CLAIM FOR RELIEF**  
23 **Violation of Washington’s Consumer Protection Act (“WCPA”)**  
24 **Wash Rev. Code §§ 19.86, et seq.**  
25 **(On Behalf Of Plaintiffs Linda Thomson And The Washington Class Against All**  
26 **Defendants)**

27 238. Plaintiffs incorporate by reference the foregoing allegations as if fully set  
28 forth herein.

239. Plaintiff Linda Thomson resides and bought her VIZIO Smart TV in the  
state of Washington. She brings this claim on behalf of Washington Class members who

1 live in the state of Washington or who purchased their VIZIO Smart TV in the state of  
2 Washington.

3 240. Plaintiffs, the Class members and Defendants are “persons” within the  
4 meaning of Wash. Rev. Code § 19.86.010(1).

5 241. Defendants conduct “trade” and “commerce” within the meaning of the  
6 Wash. Rev. Code § 19.86.010(2).

7 242. The WCPA declares as unlawful unfair methods of competition and unfair  
8 or deceptive acts or practices in the conduct of any trade of commerce.

9 243. Defendants violated the WCPA by engaging in deceptive and unfair acts or  
10 practices.

11 244. Defendants’ conduct, as alleged herein, is deceptive because it has the  
12 capacity to deceive a substantial portion of the population.

13 245. The specifications of a consumer product are a material term of any  
14 transaction in that they directly affect a consumer’s choice and conduct in purchasing a  
15 product.

16 246. Despite the importance of specifications to consumer purchase decisions,  
17 Defendants do not disclose that their Smart TVs have the tracking software installed, and  
18 that the tracking software monitors, collects and disseminates consumer data through the  
19 Inscape data collection program.

20 247. Defendants’ failure to disclose these specifications of their Smart TVs, as  
21 well as Defendants’ failure to gain consumer authorization to allow Defendants to  
22 monitor and collect consumer information by use of the tracking software, deceived  
23 consumers into believing they were purchasing a benign entertainment device.

24 248. Had Defendants disclosed to consumers that their Smart TVs employed the  
25 tracking software, and that consumer viewing habits and other information would be  
26 collected and disseminated without consent or knowledge, consumers would not have  
27 have bought, or would have paid less for, Defendants’ Smart TVs and would have  
28 avoided Defendants’ products and data practices.

1           249. In fact, Defendants did not disclose facts about the tracking software to  
2 consumers that purchased the Smart TVs because they knew consumers, acting  
3 reasonably under the circumstances, would not purchase, or would pay less for, the Smart  
4 TVs if the fact that tracking software was installed on the Smart TVs was disclosed prior  
5 to purchase.

6           250. Defendants' conduct is unfair because it offends established public policy  
7 and is immoral, unethical, oppressive, unscrupulous and substantially injurious to  
8 consumers.

9           251. Defendants' conduct offends established public policy because it violated 18  
10 U.S.C. § 2710 as explained above.

11           252. Defendants' conduct is substantially injurious, and is immoral, unethical,  
12 oppressive and unscrupulous because Defendants monitor, collect, and record consumer  
13 viewing habits and other information in order to sell it to third parties for profit, and do so  
14 without disclosing their data practices to consumers or obtaining consumer consent for  
15 the collection and sale of consumer data.

16           253. Had consumers known Defendants' Smart TVs employed software that  
17 monitored, collected and disseminated consumer viewing habits and other data,  
18 consumers would not have purchased, or would pay less for, Defendants' Smart TVs.

19           254. Moreover, by surreptitiously monitoring, collecting, and recording consumer  
20 viewing habits and other information, and by selling, or otherwise disclosing, that  
21 information to third parties without consumer knowledge or consent, Defendants prevent  
22 consumers from avoiding its data practices, and from protecting their right to privacy and  
23 their right to control the dissemination of their personal information.

24           255. Defendants knew or had reason to know that Plaintiffs and the Class could  
25 not have reasonably known or discovered the existence of the tracking software, without  
26 disclosure by Defendants.

27           256. The injury to consumer privacy rights, and the causing of consumers to buy  
28 products they otherwise would have avoided, outweighs the profit motive and ultimate

1 goal for Defendants' unauthorized and secretive monitoring, collection and dissemination  
2 of consumer data.

3 257. Defendants' unfair acts and practices were capable of injuring a substantial  
4 portion of the public, and have caused widespread public injury.

5 258. Defendants' unfair acts are ongoing and thus, have a substantial likelihood  
6 of continuing to harm the general consuming public.

7 259. Defendants' deceptive and unfair conduct occurred during the marketing,  
8 distribution, and sale of Smart TVs, and therefore occurred in the course of Defendants'  
9 business practices.

10 260. Defendants' conduct directly and proximately caused Plaintiffs' and the  
11 Class's actual monetary damages in the form of the price paid for the Smart TVs.

12 261. If Defendants had disclosed that their tracking software was installed and  
13 operating on the VIZIO Smart TVs, Plaintiffs and Class members would not have  
14 purchased, or would have paid less for, the Smart TVs.

15 262. Pursuant to Wash. Rev. Code § 19.86.090, Plaintiffs seek an order (1)  
16 requiring Defendants to cease the deceptive and unfair practices described herein; (2)  
17 requiring Defendants to pay actual and treble damages to Plaintiffs and the Class; and, (3)  
18 awarding attorneys' fees and court costs.

19 **ELEVENTH CLAIM FOR RELIEF**  
20 **Unjust Enrichment/Quasi-Contract**

21 **(On Behalf of Plaintiffs Hodges, Zufolo, Queenan, Walsh, Rizzitello, and Thomson**  
22 **and the California, Florida, Massachusetts, New York, and Washington Classes**  
23 **Against All Defendants)**

24 263. Plaintiffs incorporate by reference the foregoing allegations as if fully set  
25 forth herein.

26 264. Plaintiffs and the California, Florida, Massachusetts, Washington, and New  
27 York Classes have conferred a benefit on VIZIO in the form of their personal information  
28 and viewing habits. Absent the unauthorized collection of such information and its  
disclosure to third parties, VIZIO would have had to pay Plaintiffs and the Classes money

1 in exchange for this viewing habits. In addition, Plaintiffs would not have purchased or  
2 would have paid less for their Smart TVs, had VIZIO disclosed that its Smart TVs collect  
3 user data and viewing habits for dissemination.

4 265. VIZIO has obtained moneys which rightfully belong to Plaintiffs and the  
5 Classes to the detriment of Plaintiffs and the Classes.

6 266. It would be inequitable and unjust for VIZIO to retain these wrongfully  
7 obtained profits and benefits at Plaintiffs' and the Classes' expense.

8 267. VIZIO's retention of these wrongfully-obtained profits would violate the  
9 fundamental principles of justice, equity, and good conscience.

10 268. Plaintiffs and the Classes are entitled to restitution of the profits unjustly  
11 obtained, plus interest.

12 **TWELFTH CLAIM FOR RELIEF**  
13 **Privacy Violation Based On Intrusion**

14 **(On Behalf of All Plaintiffs and the Nationwide Class Against All Defendants, And**  
15 **Separately, On Behalf Of Plaintiffs Hodges, Zufolo, Queenan, Walsh, And Thomson**  
16 **on Behalf of their Respective State Classes, under the laws of California (both the**  
17 **California Constitution and common law), Florida, Massachusetts, and Washington**  
18 **Against All Defendants)**

19 269. Plaintiffs incorporate by reference the foregoing allegations as if fully set  
20 forth herein.

21 270. VIZIO, by collecting and disseminating Plaintiffs' viewing habits without  
22 their knowledge, intentionally intruded into a realm in which Plaintiffs have a reasonable  
23 expectation of privacy.

24 271. VIZIO obtained unwanted access to Plaintiffs' data, including but not  
25 limited to, the media content Plaintiffs are viewing, when Plaintiffs are viewing it, and  
26 whether they are viewing it live or at a later time.

27 272. VIZIO's intrusion into Plaintiffs' privacy would be highly offensive to a  
28 reasonable person, namely because it occurred without Plaintiffs' consent or knowledge.

1 273. By invading Plaintiffs' privacy, VIZIO has obtained moneys which  
2 rightfully belong to Plaintiffs and the Class.

3 274. It would be inequitable and unjust for VIZIO to retain these wrongfully  
4 obtained profits and benefits at Plaintiffs' and the Class's expense.

5 275. Plaintiffs and the Class are entitled to restitution of the profits unjustly  
6 obtained (plus interest), as well as damages for VIZIO's invasion of privacy.

7  
8 **THIRTEENTH CLAIM FOR RELIEF**  
9 **Fraud By Omission**

10 **(On Behalf of Plaintiffs Hodges, Zufolo, Queenan, Walsh, Rizzitello, and Thomson**  
11 **and the California, Florida, Massachusetts, New York, and Washington Classes**  
12 **Against All Defendants)**

13 276. Plaintiff incorporates by reference the foregoing allegations as if fully set  
14 forth herein.

15 277. Defendants concealed, suppressed, or omitted material facts concerning  
16 Vizio Smart TVs, to wit, the existence of the Smart Interactivity software that tracks and  
17 collects the users' information and viewing history as well as information from other  
18 devices that are connected to the user's Wi-Fi network and its disclosure of such viewing  
19 history, along with personally identifiable information.

20 278. Defendants were under a duty to Plaintiff and Class members to disclose that  
21 the Smart TVs contained the pre-enabled tracking software and that VIZIO disclosed the  
22 information collected by that software and other software due to the following:

- 23 a. Defendant Vizio, as the manufacturer, was in a superior position to  
24 know of the existence of the pre-enabled tracking software on Vizio  
25 Smart TVs and its dissemination of such data;  
26 b. The Video Protection Privacy Act prohibits the collection,  
27 interception, disclosure, and/or transmission of the information at  
28 issue without the prior, informed consent of Plaintiff and the Class



1 members or the opportunity, given in a clear and conspicuous manner,  
2 to prohibit the disclosure;

3 c. Plaintiff and Class members could not reasonably have been expected  
4 to learn or discover that Vizio included pre-enabled tracking software  
5 on its TVs and its dissemination of such information;

6 d. Vizio should have known that Plaintiff and Class members could not  
7 reasonably have been expected to learn or discover that Vizio  
8 included pre-enabled tracking software on its TVs, and in fact, Vizio  
9 took steps to actively conceal the tracking software; and

10 e. Vizio should have known that the existence and nature of the pre-  
11 enabled software and the dissemination of such data was a material  
12 fact that influenced the purchasing decision of Plaintiff and Class  
13 members.

14 279. Defendants intentionally concealed, suppressed, or omitted the material facts  
15 described above with the intent to defraud Plaintiff and Class members because  
16 Defendants knew or should have known that Plaintiff and Class members would not have  
17 purchased the Smart TVs, or would have paid less, if the existence of the software were  
18 disclosed.

19 280. A significant part of Defendants' marketing of Vizio Smart TVs was  
20 informing consumers that the TVs could be connected to the internet through a home  
21 network, or to cable and satellite television, or to gaming consoles. Defendants  
22 deliberately chose, however, to omit the fact that connecting to the internet or these  
23 devices would allow Defendants to track, record, and disseminate for profit the personal  
24 viewing histories and personally identifiable information without the consumers'  
25 affirmative consent.

26 281. Defendants recognize the materiality of the tracking software in Defendants'  
27 Prospectus, as set forth above, by admitting that if the public knew the truth, it could  
28

1 significantly impact sales of its Smart TVs and its ability to profit from the sale of users'  
2 personally identifiable information to third parties.

3 282. Plaintiff and Class members were unaware of the existence of the tracking  
4 software on Vizio's Smart TVs at the time of the purchases. Had they known, Plaintiff  
5 and Class members would not have purchased Vizio Smart TVs, or would have paid less  
6 for them.

7 283. Defendants' conduct directly and proximately caused Plaintiff and Class  
8 members actual monetary damages as a result of the unauthorized use, and dissemination  
9 of, their personal information.

10 284. Plaintiff and Class members seek damages, including punitive damages,  
11 reasonable attorneys' fees, and costs as a result of Defendants' fraudulent omissions.

## 12 **VII. PRAYER FOR RELIEF**

13 Plaintiffs, individually and on behalf of all others similarly situated, respectfully  
14 request that this Court:

- 15 a. Determine that this action may be maintained as a class action under Rule 23  
16 of the Federal Rules of Civil Procedure, that Plaintiffs are proper class  
17 representatives, and appoint Plaintiffs' Counsel as counsel for the Class;
- 18 b. Enter an order declaring Defendants' actions are unlawful;
- 19 c. Award Plaintiffs and class members appropriate relief, including actual,  
20 statutory, and punitive damages;
- 21 d. Award Plaintiffs and class members restitution, disgorgement, and other  
22 equitable relief as the Court deems proper;
- 23 e. Award injunctive and declaratory relief as may be appropriate;
- 24 f. Award attorneys' fees and all other costs of prosecuting this action;
- 25 g. Award Plaintiffs and the Class pre- and post-judgment interest, to the extent  
26 allowable;
- 27 h. Grant additional legal or equitable relief as this Court may find just and  
28 proper.

1 **VIII. DEMAND FOR JURY TRIAL**

2 Plaintiffs demand a trial by jury for all issues so triable.

3  
4 Dated: March 23, 2017

**GIRARD GIBBS LLP**

5 /s/ Eric H. Gibbs

6 Eric H. Gibbs

7 ehg@classlawgroup.com

8 Andre Mura

9 amm@classlawgroup.com

Linda Lam

10 lpl@classlawgroup.com

11 505 14th Street, Suite 1110

Oakland, CA 94612

12 Tel: (510) 350-9700

13 Fax: (510) 350-9701

14  
15 **COTCHETT, PITRE & MCCARTHY, LLP**

16 /s/ Joseph W. Cotchett

17 Joseph W. Cotchett

18 jcotchett@cpmlegal.com

19 Adam J. Zapala

[azapala@cpmlegal.com](mailto:azapala@cpmlegal.com)

Gwendolyn R. Giblin

20 ggiblin@cpmlegal.com

21 840 Malcolm Road, Suite 200

22 Burlingame, CA 94010

23 Tel: (650) 697-6000

24 Fax: (650) 697-0577

25 *Co-lead Counsel for Plaintiffs*

26 Gary F. Lynch

27 glynch@carlsonlynch.com

28 **CARLSON LYNCH SWEET & KILPELA,  
LLP**

1 1133 Penn Avenue, 5th Floor  
2 Pittsburgh, Pennsylvania 15222  
3 Telephone: 412-322-9243  
4 Facsimile: 412-231-0246

5 Andrew N. Friedman  
6 afriedman@cohenmilstein.com  
7 **COHEN MILSTEIN SELLERS & TOLL**  
8 **PLLC**

9 1100 New York Avenue, N.W.  
10 West Tower, Suite 500  
11 Washington, DC 20005  
12 Telephone: 202-408-4600  
13 Facsimile: 202-408-4699

14 Brian C. Gudmundson  
15 brian.gudmundson@zimmreed.com  
16 **ZIMMERMAN REED, LLP**  
17 1100 IDS Center 80 South 8th St.  
18 Minneapolis, MN 55402  
19 Telephone: (612) 341-0400

20 Ashleigh E. Aitken  
21 ashleigh@aitkenlaw.com  
22 **AITKEN COHN**  
23 3 MacArthur Pl #800  
24 Santa Ana, CA 92707  
25 Phone: (714) 434-1424  
26 Fax: (714) 434-3600

27 *Plaintiffs' Interim Steering Committee*  
28