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*\*Pro hac vice* admission to be sought  
*Attorneys for Plaintiff and the Putative Class*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

ROBIN ANDERSON, individually  
and on behalf of all others similarly  
situated,

*Plaintiff,*

v.

VIZIO, INC., a California  
corporation, and COGNITIVE  
MEDIA NETWORKS, INC., a  
Delaware corporation,

*Defendants.*

Case No. 3:16-cv-00409

**CLASS ACTION COMPLAINT FOR:**

- 1. Violations of the Video Privacy Protection Act, 18 U.S.C. § 2710;**
- 2. Violations of Cal. Civ. Code § 1799.3;**
- 3. Violations of Cal. Bus. & Prof. Code §§ 17200, et seq.;**
- 4. Violations of Cal. Bus. & Prof. Code §§ 17500, et seq.;**
- 5. Violations of Cal. Civ. Code §§ 1750 et seq.;**
- 6. Fraudulent Omission; and**
- 7. Negligent Omission.**

**DEMAND FOR JURY TRIAL**

1 Plaintiff Robin Anderson (“Plaintiff” or “Anderson”) brings this class action  
2 complaint (“Complaint”) against Defendants Vizio, Inc., (“Vizio”) and Cognitive  
3 Media Networks, Inc. (“Cognitive”) (“Defendants”) based on their tracking of  
4 consumers who purchased their “Smart TVs.” For her complaint, Plaintiff alleges as  
5 follows upon personal knowledge as to herself and her own acts and experiences,  
6 and, as to all other matters, upon information and belief, including investigation  
7 conducted by her attorneys.

### 8 NATURE OF THE ACTION

9 1. Defendant Vizio, one of the largest sellers of internet-connected Smart  
10 TVs, and Defendant Cognitive, an advertising software company, have partnered to  
11 secretly monitor millions of consumers as they watch television in their homes.  
12 Without making any disclosures, Defendants pre-installed certain “automatic content  
13 recognition” (“ACR”) software on millions of TVs, waited until consumers put them  
14 in in their homes and connect them to their home networks, and then began data-  
15 collection on a massive scale.

16 2. Despite raising serious privacy concerns, Defendants never obtain  
17 consumers’ consent before they started collecting data. Instead, they hid all mention  
18 of the ACR software from consumers, hoping that they would not be found out.  
19 Defendants knew that consumers in the market for Smart TVs lack the requisite  
20 technical expertise to uncover Defendants’ tracking program on their own and that  
21 they rely on Defendants to disclose that the Smart TVs contain the intrusive  
22 monitoring program. Defendants abused that trust.

23 3. Accordingly, this putative class action lawsuit seeks (i) to prevent  
24 Defendants from continuing to monitor consumers with their Smart TVs, and (ii)  
25 actual damages for those who purchased Vizio Smart TVs.

### 26 PARTIES

27 4. Plaintiff Robin Anderson is a natural person and citizen of the State of  
28 Oregon.

1 5. Defendant Vizio, Inc., is a California corporation with its principal place  
2 of business located at 39 Tesla, Irvine, California 92618. Vizio does business  
3 throughout the United States and the State of California, including in this District.

4 6. Defendant Cognitive Media Networks, Inc., is a California corporation  
5 with its principal place of business located at 1663 Mission Street, San Francisco,  
6 California 94103. Cognitive does business throughout the United States and the State  
7 of California, including in this District.

8 **JURISDICTION AND VENUE**

9 7. This Court has jurisdiction over the subject matter of this action pursuant  
10 to 28 U.S.C. § 1331 as this action arises under the Video Privacy Protection Act, 18  
11 U.S.C. § 2710 (“VPPA”), which is a federal statute. Furthermore, the Court has  
12 jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2), because (i) at least  
13 one member of the Class is a citizen of a different state than the Defendants, (ii) the  
14 amount in controversy exceeds \$5,000,000, exclusive of interests and costs, and (iii)  
15 none of the exceptions under that subsection apply to this action. In addition,  
16 pursuant to 28 U.S.C. §1367, this Court has supplemental jurisdiction over Plaintiff’s  
17 state law claims

18 8. This Court has personal jurisdiction over Defendants because  
19 Defendants conduct business in California, are headquartered in California, and  
20 because the events giving rise to this lawsuit occurred, in substantial part, in  
21 California.

22 9. Venue is proper in the United States District Court for the Northern  
23 District of California pursuant to 28 U.S.C. § 1391(b) because Defendant Cognitive  
24 maintain its headquarters in this District, and Defendant Vizio conducts significant  
25 business in this District.

26 **INTRADISTRICT ASSIGNMENT**

27 10. Pursuant to Civil Local Rule 3-2(e), this case shall be assigned to the  
28 San Francisco Division.

## FACTUAL BACKGROUND

### **Vizio Partners with Cognitive to Track Smart TV Buyers**

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11. Defendant Vizio manufactures and sells millions of Smart TVs per year, generating over three billion dollars in annual revenues. But while it sells millions of televisions per year, its margins are increasingly slim. To make up for the slim margins, Vizio sought to develop a new source of revenue by monetizing the viewing habits of its millions of customers.

12. In order to monitor the view habits of its customers, Vizio required to first gain access to consumers' viewing habits. To wit, Vizio partnered with Defendant Cognitive, an advertising company that provides "Automatic Content Recognition" software ("ACR") for Smart TVs. Cognitive's customers use the ACR to determine what consumers are watching as the programs are being watched, in real time.

13. Defendants' partnership culminated in the eventual sale of a controlling stake in Cognitive to Vizio for approximately \$50 million in 2015.

14. Each Smart TV with Cognitive's software installed is able to access the Vizio Internet App ("VIA") and Vizio Internet App Plus ("VIA Plus") services. VIA and VIA Plus lets consumers connect to various applications, such as Netflix, YouTube, Amazon, and others. Additionally, consumers can use VIA and VIA Plus to download other applications to let them listen to music over the Internet and connect to social media. By providing these applications and the ability to install other applications, Defendants have created a system whereby they allow for the delivery of video content.

15. The features specific to Smart TVs command a premium in the television market. And, consumers pay that premium for continued access to the Smart TV functions.

### **Defendants Monitor Consumers As They Watch Their TVs**

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16. As introduced above, Defendants partnered to create a system whereby

1 they monitor, in real time, what consumers are watching and create detailed profiles  
2 of what specific consumers and households have watched.

3 17. Defendants' Smart TVs with the ACR installed continuously  
4 communicate with "control.tvinteractive.tv," a server owned and operated by  
5 Defendant Cognitive and accessible (and controlled by) Defendant Vizio. The  
6 communications between the Smart TVs and the Cognitive server are encrypted,  
7 meaning the contents cannot be determined without the key known only by  
8 Defendants.

9 18. However, Defendant Vizio recently revealed in its SEC filings that the  
10 encrypted communications contain the content being viewed on the Smart TVs. That  
11 is, the encrypted communications are reporting what a user is watching, no matter if  
12 what is being watched is from cable and satellite providers, streaming devices, or  
13 even a gaming console. Defendant claimed that it was collecting up to 100 billion  
14 "viewing points" per day, and the viewing points contained "highly specific viewing  
15 data."

16 19. Defendants claim that the information they collect is so specific that they  
17 can determine what show or movie is being watched and even, what video game is  
18 being played. Defendants ACR works by matching snippets of the program being  
19 watched against a large database of movies, TV shows, and games. Like a digital  
20 fingerprint, Defendants analyze media for unique features and cross-reference with an  
21 existing set of known media. Once a match is found, it is recorded and attributed to a  
22 specific viewer.

### 23 **Defendants Invade and Inventory Home Networks.**

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24 20. Defendants also programmed the Smart TVs to collect identifying  
25 information normally inaccessible to them and data brokers. Defendants knew that  
26 consumers would invariably connect their Smart TV to their private home network,  
27 which are typically protected by a confidential security key or password. Once inside  
28 the private home network, Defendants exploited that access to scan for each and

1 every device connected to the consumer's home network. Through the scan,  
2 Defendants' Smart TVs obtain information about the devices, including products'  
3 names and model numbers along with potentially sensitive data as product serial  
4 numbers and device identifiers.

5 21. Defendants' Smart TVs also use the scan to obtain the personalized  
6 names of computers (*e.g.*, "Robin Anderson's Laptop"), devices' unique MAC  
7 addresses (a unique, identifying string of letters and number given to a specific  
8 device) and details about consumers' Wifi networks. Such information is usually  
9 protected behind consumers' Internet firewalls and home network privacy settings,  
10 and only trusted devices are provided access to consumers' private home networks.

11 **Defendants Profit From The Collected Information.**

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12 22. Defendant Vizio admits that it discloses information collected by the  
13 Smart TVs to various third parties. In recent SEC filings, Vizio explains that it  
14 installed the ACR on the Smart TVs so that it can collect "real-time viewing behavior  
15 data" to sell and present "targeted" advertisements on the Smart TVs. Defendant  
16 explains that it can "target" the ads by compiling information collected through the  
17 Smart TVs and contracting with data brokers to "enhance" the information.

18 23. By contracting with data brokers, Defendants obtain information about  
19 the individuals watching particular programs and media, including their names,  
20 addresses, other demographic data, and likely more. Vizio provides as much  
21 identifying information it has about particular viewers to the broker, the broker  
22 matches and links that information to its database of consumers, and then the broker  
23 appends any information it has to the original received data, sending the "enhanced"  
24 data back to Vizio. Vizio then discloses, for profit, certain of that "enhanced"  
25 information to media and data analytics companies, amongst others.

26 **Defendants Never Get Consent To Monitor And Collect Consumers' Viewing**  
27 **Habits.**

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28 24. Defendants automatically "opt in" all purchasers of the Vizio Smart TVs

1 and never obtain consent before monitoring and collecting information about  
2 consumers' viewing habits. Vizio has admitted that "some individuals may be  
3 reluctant or unwilling to connect to the Internet through our Smart TVs because they  
4 have concerns regarding the risks associated with data privacy and security. If the  
5 wider public perceives data privacy or security concerns with respect to our Smart  
6 TVs, this could negatively impact the growth potential for the net sales of our Smart  
7 TVs and our Inscape data services."

8         25. But, rather than confront those risks through disclosure, Defendants  
9 concealed the existence of the ACR on the Smart TVs. Defendants never disclose that  
10 the Smart TVs are pre-installed with ACR during setup, in advertising, or anywhere  
11 else. Defendants also do not alert consumers that they are being monitored or ask  
12 consumers to agree to any terms or privacy policy relevant to the ACR.

13         26. Defendants instead relegated any mention of ACR to deceptively named  
14 and obscure television settings and menus. Defendants did so because they knew that  
15 no consumer would uncover the purported disclosures without aid. For instance,  
16 Defendants hid their privacy policy that purportedly governs how the Smart TVs  
17 collect data and how Defendants use the data in a location that requires the consumer  
18 to first load the settings menu, navigate to "System," then to "Reset & Admin"  
19 (which Defendants describe as the location to "Reset the TV to factory defaults.  
20 Administrative tasks are available here."), and then Vizio Privacy Policy.

21         27. Nevertheless, the buried privacy policy is further concealed by  
22 Defendants' choice to make the consumer attempt to read the policy in small-sized  
23 font, low contrast (white text against a light blue background), on only a small  
24 fraction of the total screen, requiring consumers to stand inches away from their TVs  
25 to view complex and dense boilerplate text. It can be inferred, then, that although  
26 Defendants market their Smart TVs of being high-definition and having great fidelity,  
27 they purposefully made the privacy unreadable.

28         28. Below the privacy, too, Defendants include an ability to turn a feature

1 “on” or “off.” Defendants do not provide any context as to the purpose of the feature,  
 2 only naming it “Smart Interactivity” and setting the default value to “On.” What  
 3 Defendants do not disclose is that the “Smart Interactivity” feature is actually the  
 4 ACR that monitors and reports in-real time what consumers are watching.

5 **Facts Specific to Plaintiff Anderson.**

6 29. On or about March 2015, Plaintiff purchased a Vizio E24-11B1 Smart  
 7 TV from a local retailer near her home in Oregon, paying \$159.99. Plaintiff Anderson  
 8 connected her Smart TV to the Internet and used the Smart TVs to watch shows and  
 9 movies. Plaintiff Anderson has not ever consented to Defendants monitoring and  
 10 collection of her viewing habits. Moreover, Defendants have not ever disclosed to her  
 11 that her Smart TV monitors and collects information about what media she watches.

12 30. Had Defendants disclosed such information, Plaintiff would not have  
 13 purchased the Vizio Smart TV. As it stands, Plaintiff has suffered damages as the  
 14 result of Defendants’ undisclosed practice of monitoring and collecting information  
 15 about what media she watches.

16 **CLASS ALLEGATIONS**

17 31. **Class Definition:** Plaintiff brings this action pursuant to Federal Rule of  
 18 Civil Procedure 23(b)(2) and Rule 23(b)(3) on behalf of herself and a Class of  
 19 similarly situated individuals defined as follows:

20 All individuals in the United States that purchased a Vizio Smart TV with  
 21 Defendants’ ACR.

22 The following people are excluded from the Class: (1) any Judge or Magistrate  
 23 presiding over this action and members of their families; (2) Defendants, Defendants’  
 24 subsidiaries, parents, successors, predecessors, and any entity in which the  
 25 Defendants or their parents have a controlling interest and its current or former  
 26 employees, officers and directors; (3) persons who properly execute and file a timely  
 27 request for exclusion from the Class; (4) persons whose claims in this matter have  
 28 been finally adjudicated on the merits or otherwise released; (5) Plaintiff’s counsel



1 and Defendants' counsel; and (6) the legal representatives, successors, and assigns of  
2 any such excluded persons.

3 32. **Numerosity:** The exact number of members of the Class is unknown and  
4 is not available to Plaintiff at this time, but individual joinder in this case is  
5 impracticable. The Class likely consists of hundreds of thousands of individuals.  
6 Class members can be easily identified through Defendants' or their agents' records.

7 33. **Commonality and Predominance:** There are many questions of law  
8 and fact common to the claims of Plaintiff and the other members of the Class, and  
9 those questions predominate over any questions that may affect individual members  
10 of the Class. Common questions for the Class include but are not limited to the  
11 following:

- 12 a) Whether Defendants disclosed that their ACR was installed on the  
13 Vizio Smart TVs;
- 14 b) Whether Defendant Vizio unlawfully disclosed and continues to  
15 unlawfully disclose consumers' personally identifiable  
16 information, including their video viewing records, in violation of  
17 18 U.S.C. § 2710(b);
- 18 c) Whether Defendant Vizio unlawfully disclosed and continues to  
19 unlawfully disclose consumers' personally information or records,  
20 including records of their video viewing history, in violation of  
21 Cal. Civ. Code § 1799.3.
- 22 d) Whether Defendant Vizio's disclosures were committed  
23 knowingly;
- 24 e) Whether Defendants' conduct described herein was willful;
- 25 f) Whether Defendants' conduct described herein constitutes a  
26 violation of California's Consumers Legal Remedies Act (Cal.  
27 Civ. Code. §§ 1750, *et seq.*);
- 28 g) Whether Defendants' conduct described herein constitutes a

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1 violation of the Unfair Competition Law (Cal. Bus. & Prof. Code  
2 §§ 17200, *et seq.*);

3 h) Whether Defendant Vizio’s conduct described herein constitutes a  
4 violation of the False Advertising Law (Cal. Bus. & Prof. Code §§  
5 17500, *et seq.*);

6 i) Whether Defendant Vizio’s conduct described herein constitutes  
7 fraudulent omission; and

8 j) Whether Defendant Vizio’s conduct described herein constitutes  
9 negligent omission.

10 34. **Typicality:** Plaintiff’s claims are typical of the claims of the other  
11 members of the Class. Plaintiff and the Class sustained damages as a result of  
12 Defendants’ uniform wrongful conduct during transactions with Plaintiff and the  
13 Class.

14 35. **Adequate Representation:** Plaintiff has and will continue to fairly and  
15 adequately represent and protect the interests of the Class, and she has retained  
16 counsel competent and experienced in complex litigation and class actions. Plaintiff  
17 has no interests antagonistic to those of the Class, and Defendants have no defenses  
18 unique to Plaintiff. Plaintiff and his counsel are committed to vigorously prosecuting  
19 this action on behalf of the members of the Class, and they have the resources to do  
20 so. Neither Plaintiff nor her counsel has any interest adverse to those of the other  
21 members of the Class.

22 36. **Policies Generally Applicable to the Class:** This class action is  
23 appropriate for certification because Defendants have acted or refused to act on  
24 grounds generally applicable to the Class, thereby requiring the Court’s imposition of  
25 uniform relief to ensure compatible standards of conduct toward the members of the  
26 Class and making final injunctive relief appropriate with respect to the Class as a  
27 whole. Defendants’ policies challenged herein apply and affect the members of the  
28 Class uniformly and Plaintiff’s challenge of these policies hinges on Defendants’

1 conduct with respect to the Class as a whole, not on facts or law applicable only to  
2 Plaintiff.

3 37. **Superiority:** This class action is also appropriate for certification  
4 because class proceedings are superior to all other available methods for the fair and  
5 efficient adjudication of this controversy and joinder of all members of the Class is  
6 impracticable. The damages suffered by the individual members of the Class will  
7 likely be small relative to the burden and expense of individual prosecution of the  
8 complex litigation necessitated by Defendants' wrongful conduct. Thus, it would be  
9 virtually impossible for the individual members of the Class to obtain effective relief  
10 from Defendants' misconduct. Even if members of the Class could sustain such  
11 individual litigation, it would not be preferable to a class action because individual  
12 litigation would increase the delay and expense to all parties due to the complex legal  
13 and factual controversies presented in this Complaint. By contrast, a class action  
14 presents far fewer management difficulties and provides the benefits of single  
15 adjudication, economy of scale, and comprehensive supervision by a single court.  
16 Economies of time, effort, and expense will be fostered and uniformity of decisions  
17 will be ensured.

18 38. Plaintiff reserves the right to revise the foregoing "Class Allegations"  
19 and "Class Definition" based on facts learned through additional investigation and in  
20 discovery.

21 **FIRST CAUSE OF ACTION**  
22 **Violations of the Video Privacy Protection Act**  
23 **18 U.S.C. § 2710**  
24 **(On Behalf of Plaintiff and the Class)**

25 39. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

26 40. Defendants are "video tape service providers" as defined by the VPPA  
27 because they "engage in the business, in or affecting interstate or foreign commerce,  
28 of rental, sale, or delivery or prerecorded video cassette tapes or similar audio visual  
materials," 18 U.S.C. § 2710(a)(4), by delivering videos (*i.e.*, "similar audio visual

1 materials” under the VPPA’s definition) to consumers through Smart TVs.

2 41. Through VIA and VIA Plus, Defendants facilitates the transmission of  
3 audiovisual materials to be made to consumers, such as Netflix and other on-demand  
4 videos.

5 42. Plaintiff is a “consumer” as defined by the VPPA because she is a  
6 “renter, purchaser, or subscriber of goods or services from a video tape service  
7 provider” of Defendants’ products. 18 U.S.C. § 2710(a)(1). Plaintiff paid a premium  
8 to purchase Defendants’ Smart TV and Plaintiff and Defendants intended to create a  
9 continuing and ongoing relationship between herself and Defendants for the Smart  
10 TV features.

11 43. Plaintiff has watched TV and movies on her Smart TV and Defendants  
12 have monitored and collected information about what she watches along with  
13 identifying information from her home network.

14 44. Under the VPPA, the term “personally identifiable information”  
15 “*includes* information which identifies a person as having requested or obtained  
16 specific video materials or services from a video tape service provider.” 18 U.S.C. §  
17 2710(a)(3) (emphasis added).

18 45. Defendants have violated the VPPA by “knowingly disclos[ing]”  
19 Plaintiff’s “personally identifiable information” to another person because they have  
20 disclosed and continue to disclose Plaintiff’s personally identifying information  
21 (“PII”) to third-party data brokers and advertisers.

22 46. Defendants have not ever obtained Plaintiff’s or any member of the  
23 Class’s consent—either written or otherwise—to collect their PII or disclose their PII  
24 to third parties.

25 47. Nor were Defendants’ disclosures made in the “ordinary course of  
26 business” as defined by the VPPA because the disclosures were not necessary for  
27 “debt collection activities, order fulfillment, request processing, [or] the transfer of  
28 ownership.” 18 U.S.C. § 2710(a)(2).

1 48. As a result of Defendants' unlawful disclosures, Plaintiff and the Class  
2 have had their statutorily defined right to privacy violated. Plaintiff seeks an  
3 injunction prohibiting Defendants from collecting and then releasing her and the  
4 Class's PII in the future, as well as the maximum statutory and punitive damages  
5 available under the VPPA.

6 **SECOND CAUSE OF ACTION**  
7 **Violations of Cal. Civ. Code § 1799.3**  
8 **(On Behalf of Plaintiff and the Class)**

9 49. Plaintiff incorporates by reference the foregoing allegations as if fully  
10 set forth herein.

11 50. California Civil Code § 1799.3(a) provides that "No person providing  
12 video recording sales or rental services shall disclose any personal information or the  
13 contents of any record, including sales or rental information, which is prepared or  
14 maintained by that person, to any person, other than the individual who is the subject  
15 of the record, without the written consent of that individual."

16 51. Defendants are each a "person providing video recording sales or rental  
17 services" because through VIA and VIA Plus they provide the sale and rental of  
18 videos to consumers.

19 52. Defendants have disclosed and continue to disclose Plaintiff's personal  
20 information and the contents of records prepared or maintained by them to third  
21 parties, including data brokers and advertisers.

22 53. At all times Defendant Vizio has acted willfully. And, no exemption  
23 provided by Cal. Civ. Code § 1799.3 (b) applies.

24 54. Defendants have not obtained Plaintiff's or any member of the Class's  
25 consent to allow them to collect their personal information and viewing records, nor  
26 to disclose their personal information and viewing records to third parties.

27 55. As a result of Defendants' unlawful disclosures, Plaintiff and the Class  
28 have had their statutorily defined right to privacy violated. Plaintiff seeks an

1 injunction prohibiting Defendant Vizio from collecting and then disclosing her and  
 2 the Class's personal information in the future, as well as the maximum statutory and  
 3 punitive damages available under Cal. Civ. Code § 1799.3(c)(1).

4 **THIRD CAUSE OF ACTION**  
 5 **Violations of California's Unfair Competition Law**  
 6 **Cal. Bus. & Prof. Code §§ 17200, *et seq.***  
 7 **(On Behalf of Plaintiff and the Class)**

8 56. Plaintiff incorporates by reference the foregoing allegations as if fully  
 9 set forth herein.

10 57. California's Unfair Competition Law ("UCL"), Cal Bus. & Prof. Code  
 11 §§ 17200, *et seq.*, protects both consumers and competitors by promoting fair  
 12 competition in commercial markets for goods and services.

13 58. The UCL prohibits any unlawful, unfair, or fraudulent business act or  
 14 practice, including the employment of any deception, fraud, false pretense, false  
 15 promise, misrepresentation, or the concealment, suppression, or omission of any  
 16 material fact. A business practice need only meet one of the three criteria to be  
 17 considered unfair competition.

18 59. The specifications of a consumer product is a material term of any  
 19 transaction because it directly affects a consumer's choice of, or conduct regarding,  
 20 whether to purchase a product. Any deception or fraud related to the specifications of  
 21 a product is materially misleading.

22 60. As described herein, Defendants have engaged in deceptive business  
 23 practices, as defined by the UCL, by installing their ACR on Vizio Smart TVs and  
 24 collecting, without authorization, consumers' viewing habits.

25 61. Defendants have violated the fraudulent and unfair prongs of the UCL  
 26 by knowingly installing their ACR that collects information on the specific movies or  
 27 shows being watched and that performs a network scan of home computer networks  
 28 to capture, amongst other things, the MAC identifiers and names of wireless routers,  
 mobile devices (*e.g.*, smartphones), and computers and then sends the collected

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1 information to Defendant Vizio, Inc.

2 62. Defendants did not disclose that the Smart TVs contain the ACR because  
3 they knew consumers would not purchase the Smart TVs if they knew of that fact.

4 63. Furthermore, Defendants never sought or obtained consumers' consent  
5 to install or operate their ACR on consumers' Smart TVs.

6 64. As such, Defendants have caused substantial injury to consumers  
7 through their fraudulent and unfair conduct described above. The injuries caused by  
8 Defendants' fraudulent and unfair conduct are not outweighed by any countervailing  
9 benefits to consumers or competition, and the injury is one that consumers  
10 themselves could not reasonably have avoided. Defendants knew or had reason to  
11 know that Plaintiff and the Class could not have reasonably known or discovered the  
12 existence of the ACR.

13 65. Defendants' fraudulent and unfair conduct occurred during the  
14 marketing, distribution, and sale of Smart TVs, and therefore occurred in the course  
15 of Defendants' business practices.

16 66. Defendants' conduct directly and proximately caused Plaintiff and the  
17 Class actual monetary damages in the form of the price paid for the Smart TVs.

18 67. If Defendants had disclosed that their ACR was installed and operating  
19 on the Vizio Smart TVs, Plaintiff and members of the Class would not have  
20 purchased the Smart TVs.

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

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28 ///

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**FOURTH CAUSE OF ACTION**  
**Violation of False Advertising Law**  
**Cal. Bus. & Prof. Code §§ 17500 *et seq.***  
**(On Behalf of Plaintiff and the Class)**

1  
2  
3 69. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

4 70. California’s False and Misleading Advertising Law (“FAL”) prohibits  
5 corporations from intentionally disseminating advertisements for products or services  
6 that are “unfair, deceptive, untrue, or misleading.” Cal. Bus. & Prof. Code §17500.

7 71. As detailed throughout this Complaint, Defendants have disseminated  
8 unfair, deceptive, untrue, and misleading advertisements because it does not disclose  
9 that their Smart TVs are installed with the ACR because they knew consumers would  
10 not purchase the Smart TVs if they knew of that fact.

11 72. A reasonable person is likely to be deceived by Defendants’ omissions.

12 73. Defendants knew or should have known when creating and  
13 disseminating advertisements without disclosing facts about the ACR that they  
14 contained materially false and misleading information.

15 74. Defendants’ conduct directly and proximately caused Plaintiff and the  
16 Class actual monetary damages in the form of the price paid for the Smart TVs.

17 75. Plaintiff seeks an order (1) requiring Defendants to cease the false  
18 advertising practices described herein; (2) requiring Defendants to restore to Class  
19 members any money acquired by means of false advertising (restitution); and, (3)  
20 awarding reasonable costs and attorneys’ fees pursuant to Cal. Code Civ. Proc. §  
21 1021.5.

**FIFTH CAUSE OF ACTION**  
**Violations of the Consumers Legal Remedies Act**  
**Cal. Civ. Code §§ 1750, *et seq.***  
**(On Behalf of Plaintiff and the Class)**

22  
23  
24  
25 76. Plaintiff incorporates by reference the foregoing allegations as if fully  
26 set forth herein.

27 77. The Consumers Legal Remedies Act (“CLRA”) applies to Defendants’  
28 actions and conduct as described herein because it extends to transactions that are



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1 intended to result, or which have resulted, in the sale of goods or services to  
2 consumers.

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

4 79. Plaintiff and each member of the Class are “consumers” as defined by  
5 Cal. Civ. Code § 1761(a).

6 80. Defendants’ Smart TVs are “goods” within the meaning of Cal. Civ.  
7 Code § 1761(a).

8 81. As described herein, Defendants have engaged in deceptive practices,  
9 unlawful methods of competition, and/or unfair acts as defined by Cal. Civ. Code §§  
10 1750 *et seq.*, to the detriment of Plaintiff and the Class.

11 82. Defendants, acting with knowledge, intentionally and unlawfully  
12 brought harm upon Plaintiff and the Class by installing their ACR on Vizio Smart  
13 TVs and collecting, without authorization, consumers’ viewing habits.

14 83. Specifically, by not disclosing that their ACR was installed on the Smart  
15 TVs, Defendants violated Cal. Civ. Code § 1750 in at least the following respects:

- 16 a. In violation of § 1770(5), by representing that the Smart TVs had  
17 characteristics, ingredients, uses, benefits, or quantities which they  
18 did not have;
- 19 b. In violation of § 1770(7), by representing that the Smart TVs were  
20 of a particular standard, quality, or grade of which they are not;  
21 and
- 22 c. In violation of § 1770(9), by advertising the Smart TVs with the  
23 intent not to sell its goods as advertised.

24 84. Defendants’ unfair or deceptive acts or practices were capable of  
25 deceiving a substantial portion of the purchasing public.

26 85. Defendants did not disclose facts about their ACR to consumers that  
27 purchased the Smart TVs because they knew consumers would not purchase the  
28 Smart TVs if they knew of the ACR.

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1 86. Defendants were under a duty to Plaintiff and the Class to disclose that  
2 the Smart TVs contained the ACR because:

- 3 a. Defendants were in a superior position to know that the ACR was  
4 installed on the Smart TVs;
- 5 b. Plaintiff and the Class could not reasonably have been expected to  
6 learn or discover that Defendants included the ACR on the Smart  
7 TVs;
- 8 c. Defendants knew that Plaintiff and the Class members could not  
9 reasonably have been expected to learn or discover that  
10 Defendants included the ACR on the Smart TVs; and
- 11 d. Defendants knew that Plaintiff and Class members would not  
12 purchase the Smart TVs if they knew of the ACR.

13 87. By failing to disclose that the Smart TVs contained the ACR,  
14 Defendants have knowingly and intentionally concealed material facts and breached  
15 their duty not to do so.

16 88. The facts concealed or not disclosed by Defendants to Plaintiff and the  
17 Class, including that the Smart TVs contained the ACR, are material in that a  
18 reasonable consumer would have considered them to be important in deciding  
19 whether or not to purchase the Smart TVs.

20 89. Plaintiff and the Class reasonably expected that their televisions would  
21 be free from ACR.

22 90. The existence of ACR on a television is a material term for the purchase  
23 of a television, and a primary reason to not purchase a particular television.

24 91. Defendants did not disclose facts about their ACR to consumers that  
25 purchased the Smart TVs because they knew consumers, acting reasonably under the  
26 circumstances, would not purchase the Smart TVs if they knew of the ACR.

27 92. Through the omissions detailed herein, Defendants wrongfully induced  
28 Plaintiff and the other members of the Class to purchase the Smart TVs when they

1 otherwise would not have purchased them.

2 93. As a direct and proximate result of Defendants' violations of Cal. Civ.  
3 Code §§ 1750, *et seq.*, Plaintiff and each Class member have suffered harm in the  
4 form of paying monies to purchase the Smart TVs when they otherwise would not  
5 have purchased them.

6 94. Under Cal. Civ. Code § 1780(a) and (b), Plaintiff, individually and on  
7 behalf of the Class, seeks an injunction requiring Defendants to cease and desist the  
8 illegal conduct alleged in this Complaint, and all other appropriate remedies for its  
9 violations of the CLRA. For the sake of clarity, Plaintiff explicitly disclaims any  
10 claim for damages under the CLRA at this time.

11 **SIXTH CAUSE OF ACTION**  
12 **Fraudulent Omission**  
13 **(On Behalf of Plaintiff and the Class)**

14 95. Plaintiff incorporates by reference the foregoing allegations as if fully  
15 stated herein.

16 96. Defendants have concealed and/or suppressed material facts about the  
17 existence of ACR on their Smart TVs, including by concealing that Smart TVs collect  
18 information on what consumers are watching and details about consumers' home  
19 networks.

20 97. Defendants were under a duty to Plaintiff and the Class to disclose that  
21 the Smart TVs contained the ACR because:

- 22 a. Defendants were in a superior position to know that the ACR was  
23 installed on their Smart TVs;
- 24 b. Plaintiff and the Class could not reasonably have been expected to  
25 learn or discover that Defendants included the ACR on their Smart  
26 TVs; and
- 27 c. Defendants knew that Plaintiff and Class members would not have  
28 purchased the Smart TVs if it disclosed the ACR.

98. Defendants intentionally concealed or suppressed information about the

1 ACR with intent to defraud Plaintiff and members of the Class. Specifically,  
 2 Defendants knew that Plaintiff and Class members would not have purchased the  
 3 Smart TVs if it disclosed the ACR. Moreover, Defendants knew that, absent the  
 4 ACR, it would have to pay Plaintiff and members of the Class to be able to monitor  
 5 what they are watching.

6 99. Plaintiff and members of the Class did not know that the Smart TVs was  
 7 installed with the ACR prior to purchase, and would not have purchased the Smart  
 8 TVs had they known.

9 100. Defendants' conduct directly and proximately caused Plaintiff and the  
 10 Class actual monetary damages in the form of the prices paid for the Smart TVs.

11 101. Plaintiff, on behalf of herself and the Class, seeks damages from  
 12 Defendants' unlawful conduct.

13 **SEVENTH CAUSE OF ACTION**  
 14 **Negligent Omission**  
 15 **(On Behalf of Plaintiff and the Class)**

16 102. Plaintiff incorporates by reference the foregoing allegations.

17 103. Defendants have negligently concealed or suppressed material facts  
 18 regarding ACR installed on their Smart TVs, including by negligently omitting that  
 19 Smart TVs collect information on what consumers are watching and details about  
 20 consumers' home networks.

21 104. Defendants were under a duty to Plaintiff and the Class to disclose that  
 22 the Smart TVs contained the ACR because:

- 23 a. Defendants were in a superior position to know that the ACR was  
 24 installed on their Smart TVs;
- 25 b. Plaintiff and the Class could not reasonably have been expected to  
 26 learn or discover that Defendants included the ACR on their Smart  
 27 TVs; and
- 28 c. Defendants knew that Plaintiff and Class members would not have  
 purchased the Smart TVs if it disclosed the ACR.

1 105. Defendants negligently concealed or suppressed information about the  
2 ACR. Specifically, Defendants should have known that Plaintiff and Class members  
3 would not have purchased the Smart TVs if they disclosed that the Smart TVs were  
4 installed with ACR or that they would have had to pay for access to information  
5 about what consumers watch in real time.

6 106. Plaintiff and members of the Class did not know that the Smart TVs was  
7 installed with the ACR prior to purchase, and would not have purchased the Smart  
8 TVs had they known.

9 107. Defendants' conduct directly and proximately caused Plaintiff and the  
10 Class actual monetary damages in the form of the prices paid for the Smart TVs.

11 108. Plaintiff, on behalf of herself and the Class, seeks damages from  
12 Defendants' unlawful conduct.

### 13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff Robin Anderson on behalf of herself and the Class  
15 respectfully requests that the Court enter an order:

16 A. Certifying this case as a class action on behalf of the Class defined  
17 above, appointing Robin Anderson as representative of the Class, and appointing his  
18 counsel as class counsel;

19 B. Declaring that Defendants' actions, as set out above, violate the VPPA  
20 (18 U.S.C. § 2710), Cal. Civ. Code § 1799.3, the CLRA (Cal. Civ. Code §§ 1750, *et*  
21 *seq.*), the UCL (Cal. Bus. & Prof. Code §§ 17200 *et seq.*), the FAL (Cal. Bus. & Prof.  
22 Code §§ 17500, *et seq.*), and constitute fraudulent omission and negligent omission;

23 C. Awarding damages, including statutory and punitive damages where  
24 applicable, to Plaintiff and the Class in an amount to be determined at trial;

25 D. Awarding Plaintiff and the Class their reasonable litigation expenses and  
26 attorneys' fees;

27 E. Awarding Plaintiff and the Class pre- and post-judgment interest, to the  
28 extent allowable;

1 F. Awarding such other injunctive and declaratory relief as is necessary to  
2 protect the interests of Plaintiff and the Class; and

3 G. Awarding such other and further relief as the Court deems reasonable  
4 and just.

5 **DEMAND FOR JURY TRIAL**

6 Plaintiff demands a trial by jury for all issues so triable.

7 Respectfully submitted,

8 Dated: January 22, 2016

9 **ROBIN ANDERSON**, individually and on  
10 behalf of all others similarly situated,

11 By: /s/ Abbas Kazerounian  
12 One of Plaintiff's Attorneys  
13 ABBAS KAZEROUNIAN, ESQ.

14 \**Pro hac vice* admission to be sought

15 *Attorneys for Plaintiff and the Putative Class*

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question, 4 Diversity

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE