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14 *Plaintiff Kathleen Sloan*

15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**

17 KATHLEEN SLOAN, on behalf of herself
18 and all others similarly situated,

19 Plaintiff,
20 vs.

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

24 Defendants.

Case No. 8:15-cv-2166

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Kathleen Sloan (“Plaintiff”), on behalf of herself and the proposed Class
2 defined herein, brings this class action suit against Defendants Vizio, Inc. (“Vizio”) and
3 Cognitive Media Networks, Inc. (“Cognitive”) (collectively “Defendants”). In support of
4 this Class Action Complaint, Plaintiff alleges, based on her personal experience and the
5 investigation of her counsel, as follows:

6 **NATURE OF THE ACTION**

7 1. Vizio manufactures and sells flat-screen televisions (“TVs”), including TVs
8 with integrated Internet, called “Smart TVs”. Vizio’s Smart TVs come with the
9 capability to connect to the Internet so that owners can access movies, shows and music
10 online through various applications installed on the TVs.

11 2. Unbeknownst to consumers, the Vizio Smart TVs contain software designed
12 to track them. The TVs capture detailed data about the Vizio Smart TV owners, from
13 their viewing preferences and usage to information about their home networks.
14 Defendants store the owners’ data on remote servers and share it with third party
15 companies.

16 3. The average consumers do not have the technical savvy to discover that their
17 Vizio Smart TVs are recording their actions and network characteristics and storing the
18 data remotely. Instead, the consumers rely on Defendants to disclose the existence of the
19 tracking software. But, Defendants did not disclose its existence.

20 4. Vizio Smart TVs, unlike competitors’ Smart TVs, come with tracking
21 software that is enabled by default. Defendants did not notify purchasers that the
22 tracking software is automatically enabled, and did not give them an opportunity to
23 provide informed, written consent to the tracking before it began.

24 5. To disable the tracking feature, Vizio Smart TV owners would have had to
25 learn about the existence of the feature from an outside source and navigate through
26 multiple on-screen settings menus using their remotes. Even if an owner is able to learn
27 about and disable the invasive software, his or her personal data that was collected prior

1 to disabling the feature would still be accessible to Defendants and third parties. Further,
2 if the owner reset the TV to its factory settings for any reason, the tracking software is
3 once again be enabled.

4 6. This lawsuit seeks both to prevent Defendants from continuing to track
5 Vizio Smart TV owners without their consent, and seeks damages for the owners of Vizio
6 Smart TVs.

7 **THE PARTIES**

8 7. Plaintiff Kathleen Sloan is a citizen of California and resides in Concord,
9 California. In March 2014, Plaintiff purchased the Vizio M471ia2 Smart TV, which she
10 used to watch Netflix, among other things.

11 8. Defendant Vizio, Inc. is a citizen and resident of California. Vizio is a
12 California corporation headquartered at 39 Tesla, Irvine, California 92618. Vizio
13 conducts business in this district, and throughout California and the nation.

14 9. Defendant Cognitive Media Networks, Inc., is citizen and resident of
15 California. It is a Delaware corporation registered to do business in California. Its
16 principal executive offices are located at 39 Tesla, Irvine, California 92618.

17 **JURISDICTION AND VENUE**

18 10. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 as
19 this action arises under a federal statute.

20 11. This Court further has subject matter jurisdiction pursuant to the Class
21 Action Fairness Act, 28 U.S.C. § 1332(d), because the aggregate amount in controversy
22 exceeds \$5 million, exclusive of interests and costs; the number of members of the
23 proposed Class exceeds 100; and Plaintiff and at least one Defendant are citizens of
24 different states.

25 12. This Court has *in personam* jurisdiction over Defendants because
26 Defendants are present and licensed to do business in this Judicial District, regularly
27 conduct business in this Judicial District, and/or have extensive contacts with this forum.

1 13. Venue is proper in this Court pursuant to 28 U.S.C. § 1391. Defendants
2 transact substantial business in this District (including sales and advertising) and reside in
3 this District.

4 14. This Court has supplemental jurisdiction over the state law claims pursuant
5 to 28 U.S.C. § 1367.

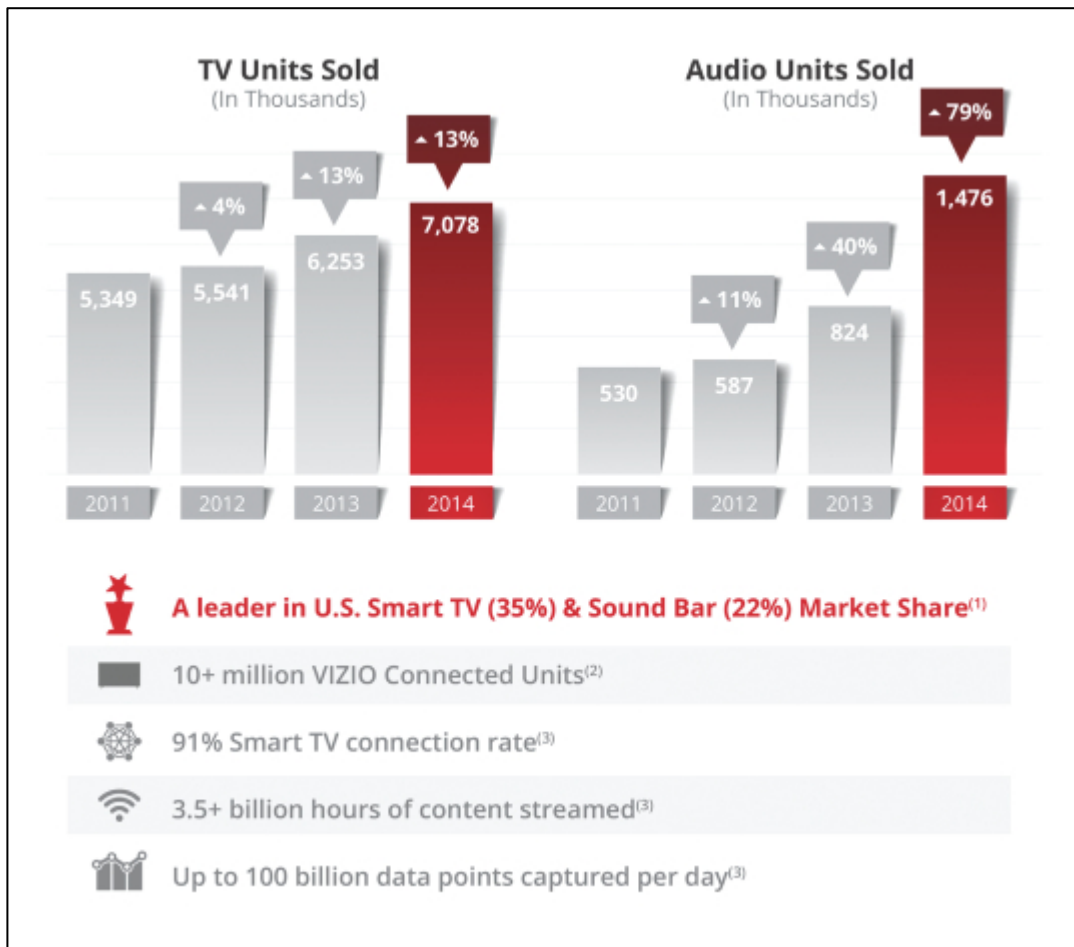
6 **FACTUAL ALLEGATIONS**

7 ***Introduction to Smart TVs and Vizio***

8 15. A Smart TV is a television set with integrated Internet capabilities and an
9 operating system. Smart TVs represent a fast-growing segment of the consumer
10 electronics market in the United States, and they are poised to soon become the primary
11 type of televisions in the market. It is predicted that by 2016, 100 million TV sets in
12 North America and Western Europe will have Internet connectivity. A hybrid between
13 traditional televisions and computers/tablets, Smart TVs allow users to access a wide
14 variety of entertainment through applications that connect to the Internet.

15 16. Vizio is a leading manufacturer of Smart TVs. Started in 2002, Vizio grew
16 quickly by aggressively pricing its TVs. In July 2015, Vizio filed with the U.S.
17 Securities and Exchange Commission to commence an initial public offering of Class A
18 common stock. In its preliminary prospectus, Vizio told the SEC that it held the #2 unit
19 share position in the U.S. market for Smart HDTVs. Vizio's sales in recent years have
20 been massive; the prospectus reported \$3.1 Billion in sales for 2014.

1 17. Vizio attributes its recent growth largely to Smart TV technology. For the
 2 first six months of 2015, Vizio reported that approximately 74% of the televisions it
 3 shipped were Smart TVs. Of the 41 TVs advertised on Vizio’s website at the time of
 4 writing, 31 were Smart TVs.



(Figure 1, above, demonstrates Vizio’s Smart TV market share and key statistics about the company).

Vizio’s Smart TV Features Advertised

18. Smart TVs require an Internet connection for much of their functionality. Vizio’s smart TVs are designed to connect to owners’ home networks through wireless networking (“Wifi”). Vizio Smart TVs are installed and sold with the company’s Vizio Internet App (“VIA”) and the newer Vizio Internet App Plus (“VIA Plus”) software to

1 provide owners access to Internet content. Vizio Smart TVs come with popular
2 applications such as Netflix, Hulu and YouTube preinstalled.

3 19. Vizio touts the ease of use of its Internet platforms as a major selling point
4 of its smart TVs. Vizio's advertisements promise ease of setup and use. For example,
5 Vizio's advertisement for its model E322AR Smart TV claims that the device "puts the
6 best of the web right on your TV, giving you instant access to VUDU™, Netflix™, Hulu
7 Plus™, Pandora®, Facebook™, Twitter® and more with built-in Wifi for easy set-up."
8 Vizio's advertisement for its E48-C2 model Smart TV promises a remote with a
9 simplified layout for ease-of-use. This remote has buttons at the top for three
10 applications: Amazon, Netflix and iHeartradio.

11 20. Vizio's prospectus notes that a vast majority (91%) of the company's Smart
12 TVs sold have in fact been connected to the Internet; Vizio boasts 10+ million Internet-
13 connected devices.

14 21. Because the Vizio Smart TVs have built-in Wifi connectivity and content
15 applications preinstalled, buyers do not need to buy a set-top box or other device to pair
16 with the television. Buyers typically pay more for the Smart TVs than otherwise
17 equivalent TVs without Smart TV features.

18 22. The Vizio Smart TVs at issue in this litigation include models: Vizio E-
19 Series Smart TVs (24", 28", 32", 40", 42", 43", 47", 48", 49", 50", and 55"); Vizio M-
20 Series Smart TVs (55", 60", 65", 70", 75", and 80"); Vizio P-Series Smart TVs (50", 60",
21 65", and 70"); Vizio Reference Series Smart TVs (47", 65", and 120"); and Vizio XVT
22 Series Smart TVs (47", 50", 55", 58", and 71").

23 ***Defendants Worked Together to Secretly Record Vizio Smart TV Owners with***
24 ***Automatic Content Recognition and Store Their Data Remotely***

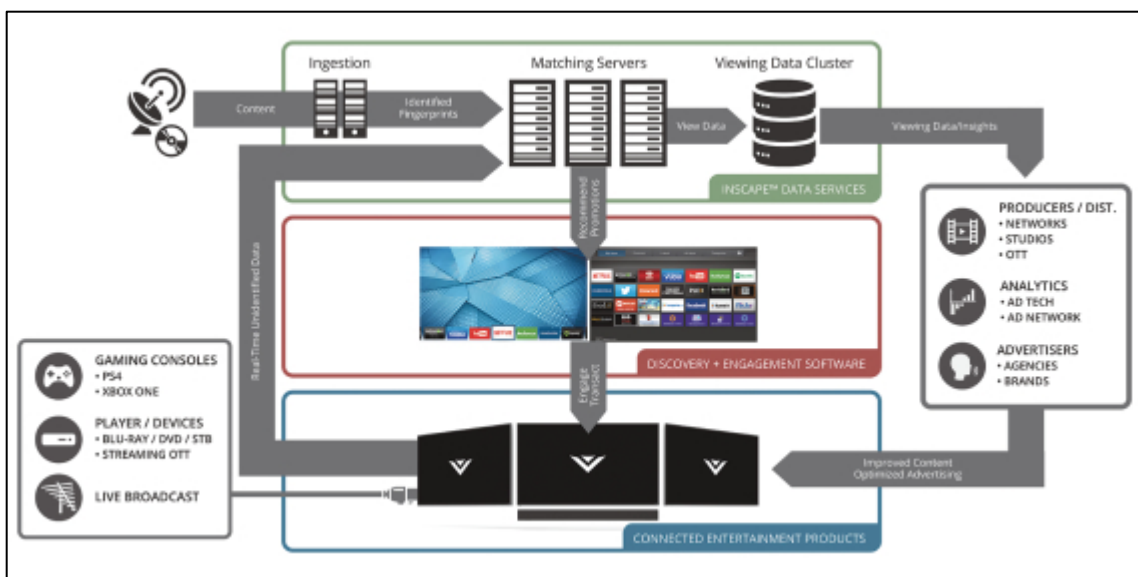
25 23. Cognitive provides Automatic Content Recognition ("ACR") software.
26 ACR software records the audio and visual content of whatever Smart TV owners are
27 watching or doing on their Smart TV, as well as information about their home network.

1 Cognitive’s Bloomberg Company Profile claims it is the leading provider of ACR
 2 services. Vizio acquired Cognitive in August 2015, according to its prospectus, and paid
 3 approximately \$50 million for a controlling stake in Cognitive. Cognitive supplied the
 4 ACR software and Defendants jointly installed the software on Vizio Smart TVs. Thus,
 5 Plaintiff’s allegations, unless stated otherwise, are against both Vizio and Cognitive.

6 24. Defendants partnered to install ACR software in Vizio Smart TVs, allowing
 7 Vizio to track users’ activities on the Smart TVs. ACR also fishes for information about
 8 the user’s home network. Defendants’ ACR software collects and instantly transmits
 9 network information, including: IP addresses, MAC addresses, chipset IDs, product serial
 10 numbers, device nicknames (e.g. “Plaintiff’s MacBook Air”), region and language
 11 settings, online services used, and zip codes. The ACR software also records the
 12 presence of other devices connected to the home network and information gathered from
 13 Internet-connected products and services such as Vizio’s own online store.

14 25. Defendants combine the users’ recorded activities with their home network
 15 information to create very detailed and valuable data. The data gathered by the ACR
 16 software is transmitted simultaneously and stored on remote servers.

17 26. Figure 2, below, illustrates how Defendants use ACR to collect and
 18 transmits detailed user data to remote servers, for sale to advertisers.



1 ***Defendants Share the ACR-Collected Data with Third Parties for Profits***

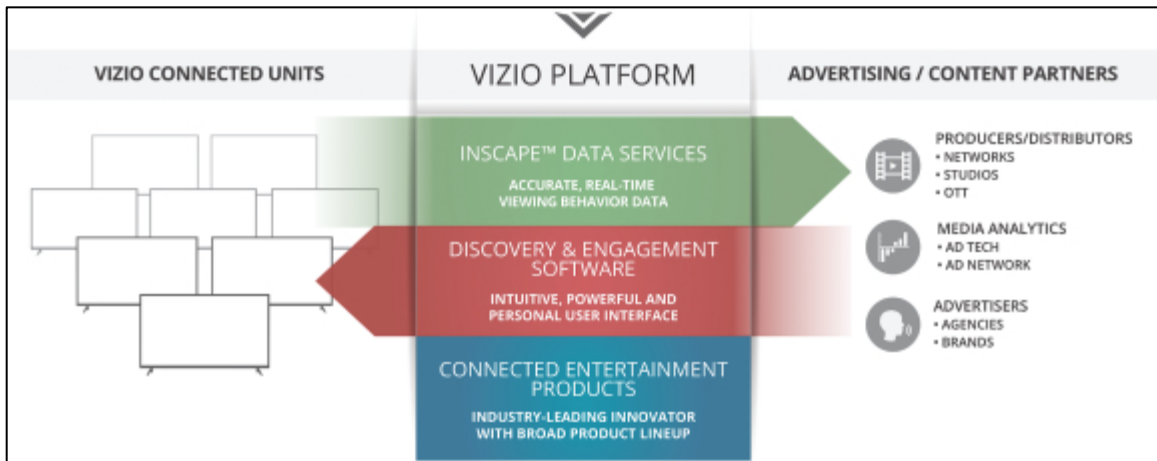
2 27. Defendants engage in their invasive tracking activities for economic
3 purposes. The sale of owners' viewing data and personal network information is part of
4 Defendants' business model. Specifically, Vizio's prospectus states: "[T]he ability to
5 collect and analyze real-time viewing data will enable measurable and increased return on
6 marketing investment, enhance the value of television advertising, and drive increased
7 television advertising spend."

8 28. As discussed above, the ACR software collects information about other
9 devices connected to the same home network as the Vizio Smart TV. This identifying
10 information is sold to third party advertisers who use the owners' Smart TV viewing
11 history, combined with the identifying home network information, to advertise to Vizio
12 TV owners on their other devices. Vizio admits this practice on its website: "Beginning
13 October 31, 2015, tailored ads based upon your viewing history may be displayed on the
14 smartphones or other devices that share an IP address or other identifiers with your
15 VIZIO television, unless you have disabled Smart Interactivity."

16 29. Vizio refers to this advertising effort as "Inscape Data Services." Vizio's
17 prospectus states the following about the scope and detail of the data being collected and
18 sold, and its potential for advertising profits: "Our Inscape data services capture, in real
19 time, up to 100 billion anonymized viewing data points each day from our over 10
20 million VCUs. Inscape collects, aggregates and stores data regarding most content
21 displayed on VCU television screens, including content from cable and satellite
22 providers, streaming devices and gaming consoles. Inscape provides highly specific
23 viewing behavior data on a massive scale with great accuracy, which can be used to
24 generate intelligent insights for advertisers and media content providers and to drive their
25 delivery of more relevant, personalized content through our VCUs. Although we are still
26 in the early stages of commercializing Inscape and have yet to generate meaningful
27 revenue from it, we believe it provides an attractive value proposition to advertisers and

1 media content providers which will enable us to further monetize it in the future.”

2 30. Figure 3, below, illustrates Vizio’s business model of selling information
 3 from Smart TV owners to third party advertisers, analytics companies and producers
 4 under the “Inscape Data Services” program.



13
 14 ***Defendants Do Not Disclose the ACR Software’s Functions or Obtain Informed,***
 15 ***Written Consent from Users***

16 31. Defendants fail to disclose the existence of ACR, or what it does, to buyers
 17 of Vizio Smart TVs. Such a description is absent from Vizio’s packaging,
 18 advertisements, user manuals, and its privacy policy. Nor do any of the forementioned
 19 materials disclose the existence of ACR software.

20 32. Defendants instead refer to ACR as “Smart Interactivity,” obscuring its
 21 nature to consumers. While “Smart Interactivity” is not mentioned in the User Manual or
 22 defined on the product packaging, the Smart Interactivity page on Vizio’s website says
 23 “Smart Interactivity collects information from your product which triggers events, such
 24 as pop-ups, about what you are viewing.” Vizio’s FAQ provides the following
 25 explanation of how Smart Interactivity works: “Smart Interactivity intelligently
 26 recognizes the content on the screen and in the future may display related interactive
 27 features on your device. This may allow viewers to enjoy additional, related content for a

1 richer, more interactive TV experience.”

2 33. During the initial setup of a Vizio Smart TV, there is no menu option to
3 disable “Smart Interactivity.” Initial setup prompts the Vizio Smart TV owner to connect
4 to their home Internet network and enter his or her network password. The Smart TV
5 owner is then prompted to enter his or her contact information for registration. As
6 discussed above, ACR is enabled by default on all Vizio Smart TVs. Thus, ACR begins
7 to function immediately upon the completion of initial setup by gathering information
8 about the owner’s home network.

9 34. After initial setup, owners do have the option to turn off “Smart
10 Interactivity.” They can do so by navigating through the settings menu on their TV
11 screen and toggling “Smart Interactivity” to the “disabled” setting. There are several
12 barriers to owners actually exercising the option to “opt out” of having their personal
13 information collected through ACR and sold to third parties: (1) First, the owner would
14 need to be aware that they have been “opted in” to the program, and no such warning is
15 contained on the product packaging, sales receipt, user manual, or initial setup screen; (2)
16 Second, even if the owner found the appropriate screen and saw that “Smart Interactivity”
17 was enabled, the screen does not provide information about what the feature is; the screen
18 states incompletely that it “Enables program offers and suggestions;” and (3) Third, even
19 if the user disables “Smart Interactivity” from this menu, Defendants and third-party
20 companies with which they have partnered still have access to all of the data that ACR
21 collected and stored about the owner prior to electing to disable the feature.

22 35. Defendants’ concealment is deliberate, given their concerns about ACR
23 alienating customers, as expressed in Vizio’s SEC filing: “some individuals may be
24 reluctant or unwilling to connect to the Internet through our Smart TVs because they have
25 concerns regarding the risks associated with data privacy and security. If the wider public
26 perceives data privacy or security concerns with respect to our Smart TVs, this could
27 negatively impact the growth potential for the net sales of our Smart TVs and our Inscape

1 data services.”

2 **CLASS ACTION ALLEGATIONS**

3 36. Plaintiff brings this action on behalf of herself and all other members of the
4 proposed Class initially defined as follows:

5 All person or entities in the United States, in United States territories, and U.S.
6 service people and citizens who bought a Vizio Smart Television and viewed
7 content broadcast over the Internet using the Vizio Smart Television.

8 37. Excluded from the Class are Defendants, their affiliates, employees, agents
9 and attorneys, and any judge and its staff to whom this case is assigned.

10 38. Plaintiff reserves the right to amend the class definition if discovery and
11 further investigation reveal that the Class should be expanded, divided into additional
12 subclasses, or modified in any other way.

13 39. All members of the proposed Class are readily ascertainable. Vizio has
14 access to contact information for most members of the Class, which can be used for
15 providing notice to many Class members.

16 40. This action has been properly brought and may properly be maintained as a
17 class action under Rule 23(a)(1-4), Rule 23(b)(1), (2) or (3) and Rule 23(c)(4) of the
18 Federal Rules of Civil Procedure and case law thereunder.

19 **Numerosity of the Class**
20 **(Fed. R. Civ. P. 23(a)(1))**

21 41. The Class is so numerous that joinder of all members would be
22 impracticable. While the precise number of Class members has not yet been determined,
23 Vizio has stated that it has 10+ million Smart TVs connected to the Internet.

24 **Predominance of Common Questions of Fact and Law**
25 **(Fed. R. Civ. P. 23(a)(2); 23(b)(3))**

26 42. Questions of law and fact common to all Class members exist and
27 predominate over any questions affecting only individual Class members, including, but
not limited to the following:

- a. Whether Defendants intercepted communications in violation of the Federal Wiretap Act;
- b. Whether Defendants disclosed Personal Identifying Information in violation of the Federal Video Privacy Protection Act;
- c. Whether Defendants disclosed Personal Information and records in violation of California Civil Code Section 1799.3;
- d. Whether Defendants engaged in unlawful, unfair, or fraudulent conduct in violation of California Business and Professions Code § 17200 *et seq.*, California’s Unfair Competition Law (“UCL”);
- e. Whether Plaintiff and Class members are entitled to damages, and if so, the proper measure of those damages; and
- f. Whether Plaintiff and Class members are entitled to equitable and/or injunctive relief.

Typicality of Claims
(Fed. R. Civ. P. 23(a)(3))

43. Plaintiff’s claims are typical of the claims of the Class. Plaintiff and all Class members were injured through Defendants’ uniform misconduct described above and assert the same claims for relief. The same events and conduct that give rise to Plaintiff’s claims are identical to those that give rise to the claims of every other Class member because each Plaintiff and Class member is a person that has suffered harm as a direct result of the same conduct engaged in (including omissions) by Defendants.

Adequacy of Representation
(Fed. R. Civ. P. 23(a)(4))

44. Plaintiff and her counsel will fairly and adequately represent the interests of the Class members. Plaintiff has no interest antagonistic to, or in conflict with, the interests of the Class members. Plaintiff’s lawyers are highly experienced in the prosecution of consumer class actions and complex commercial litigation.

Superiority of a Class Action
(Fed. R. Civ. P. 23(b)(3))

1
2 45. A class action is superior to all other available methods for fairly and
3 efficiently adjudicating the claims of Plaintiff and the Class members.

4 46. Plaintiff and the Class members have been harmed by Defendants' wrongful
5 actions and inaction. Litigating this case as a class action will reduce the possibility of
6 repetitious litigation relating to Defendants' wrongful actions and inaction.

7 47. A class action is an appropriate method for the fair and efficient adjudication
8 of this controversy. There is no special interest in the members of the Class individually
9 controlling the prosecution of separate actions. The loss of money and other harm
10 sustained by many individual Class members will not be large enough to justify
11 individual actions, especially in proportion to the significant costs and expenses
12 necessary to prosecute this action. The expense and burden of individual litigation makes
13 it impossible for many members of the Class individually to address the wrongs done to
14 them. Class treatment will permit the adjudication of claims of Class members who could
15 not afford individually to litigate their claims against Defendants. Class treatment will
16 permit a large number of similarly situated persons to prosecute their common claims in a
17 single form simultaneously, efficiently and without duplication of effort and expense that
18 numerous individual actions would entail. No difficulties are likely to be encountered in
19 the management of this class action that would preclude its maintenance as a class action,
20 and no superior alternative exists for the fair and efficient adjudication of this
21 controversy. Furthermore, Defendants transact substantial business in and perpetuated its
22 unlawful conduct in California. Defendants will not be prejudiced or inconvenienced by
23 the maintenance of this class action in this forum. Class certification, therefore, is
24 appropriate under Fed. R. Civ. P. 23(a) and (b)(3). The above common questions of law
25 or fact predominate over any questions affecting individual members of the Class, and a
26
27

1 class action is superior to other available methods for the fair and efficient adjudication of
2 the controversy.

3 48. Class certification is also appropriate under Fed. R. Civ. P. 23(a) and (b)(2),
4 because Defendants have acted or have refused to act on grounds generally applicable to
5 the Class, so that final injunctive relief or corresponding declaratory relief is appropriate
6 as to the Class as a whole.

7 49. The expense and burden of litigation will substantially impair the ability of
8 Plaintiff and Class members to pursue individual lawsuits to vindicate their rights. Absent
9 a class action, Defendants will retain the benefits of its wrongdoing despite their serious
10 violations of the law.

11 **Risk of Inconsistent or Dispositive Adjudications and the**
12 **Appropriateness of Final Injunctive or Declaratory Relief**
13 **(Fed. R. Civ. P. 23(b)(1) and (2))**

14 50. In the alternative, this action may properly be maintained as a class action,
15 because:

16 (a) the prosecution of separate actions by individual Class members would
17 create a risk of inconsistent or varying adjudication with respect to individual Class
18 members, which would establish incompatible standards of conduct for Defendants; or

19 (b) the prosecution of separate actions by individual Class members would
20 create a risk of adjudications with respect to individual members of the Class which
21 would, as a practical matter, be dispositive of the interests of other Class members not
22 parties to the adjudications, or substantially impair or impede their ability to protect their
23 interests; or

24 (c) Defendants have acted or refused to act on grounds generally applicable
25 to the Class, thereby making appropriate final injunctive or corresponding declaratory
26 relief with respect to the Class as a whole.

1 **Issue Certification**

2 **(Fed. R. Civ. P. 23(c)(4))**

3 51. In the alternative, the common questions of fact and law, set forth in
4 Paragraph 42, are appropriate for issue certification on behalf of the proposed class.

5 **FIRST CAUSE OF ACTION**

6 **(Violation of the Federal Wiretap Act)**

7 52. Plaintiff repeats and realleges every allegation above as if set forth herein in
8 full.

9 53. Plaintiff brings this claim on her own behalf and on behalf of a proposed
10 nationwide class of owners of Vizio Smart TVs.

11 54. Defendants, by way of their design, authorship, programming, knowing and
12 intentional installation, activation, and/or other involvement with the ACR Software, as
13 alleged herein, have intentionally intercepted, endeavored to intercept, and/or procured
14 others to intercept or endeavor to intercept, wire and/or electronic communications as
15 described herein, all without the knowledge, consent or authorization of Plaintiff or the
16 prospective class, in violation of 18 U.S.C. § 2511(1). *See* 18 U.S.C. § 2511(1)(a).

17 55. Defendants, by way of their design, authorship, programming, knowing and
18 intentional installation, activation, and/or other involvement with the ACR Software, as
19 alleged herein, have intentionally disclosed, or endeavored to disclose, to other persons
20 the contents of wire and/or electronic communications, knowing or having reason to
21 know that the information was obtained through the interception of wire or electronic
22 communications, as described in 18 U.S.C. § 2511(1)(c). Accordingly, Defendants have
23 violated 18 U.S.C. § 2511(1).

24 56. As a result of these violations of law, Plaintiff and the proposed Class have
25 suffered harm and injury, including the interception and transmission of private and
26 personal, confidential, and sensitive communications, content, and data as alleged herein.
27

1 57. Accordingly, Defendants are subject to civil suit, and Plaintiff is entitled to
2 appropriate relief, including that set forth in 18 U.S.C. § 2520(b). 18 U.S.C. § 2520(a).
3 Such appropriate relief includes “preliminary or other equitable or declaratory relief as
4 may be appropriate”; “damages” as described in the statute; and “a reasonable attorney’s
5 fee and other litigation costs reasonably incurred.” 18 U.S.C. § 2520(b). As for damages,
6 “the court may assess as damages whichever is the greater of—(A) the sum of the actual
7 damages suffered by the plaintiff and any profits made by the violator as a result of the
8 violation; or (B) statutory damages of whichever is the greater of \$100 a day for each day
9 of violation or \$10,000.” 18 U.S.C. § 2520(c)(2).

10 58. Plaintiff, on her own behalf and on behalf of the proposed class, seeks all
11 such appropriate relief, including, but not limited to, statutory damages as set forth above.

12 **SECOND CAUSE OF ACTION**

13 **(Violations of the Video Privacy Protection Act, 18 U.S.C. § 2710)**

14 **(Against Defendant Vizio)**

15 59. Plaintiff repeats and realleges every allegation above as if set forth herein in
16 full.

17 60. This claim is brought by Plaintiff on behalf of herself and all Class
18 members.

19 61. The Video Privacy Protection Act (“VPPA”) requires that Vizio keep its
20 customers’ personally identifiable information (“PII”) confidential. 18 U.S.C. §
21 2710(b)(1). “Personally identifiable information” cannot be disclosed to “any person
22 without the informed, written consent of the consumer given at the time the disclosure is
23 sought.” 18 U.S.C. § 2710(b)(1).

24 62. The VPPA also provides, among other things, that a video tape service
25 provider “shall destroy personally identifiable information as soon as practicable, but no
26 later than on the date the information is no longer necessary for the purpose for which it
27 was collected.” 18 U.S.C. § 2710(e).

1 63. “A video tape service provider who knowingly discloses, to any person,
2 personally identifiable information concerning any consumer of such provider shall be
3 liable to the aggrieved person for the relief provided in subsection (d).” 18 U.S.C. §
4 2710(b)(1).

5 64. Defendant Vizio is a video tape service provider under the VPPA because it
6 is “engaged in the business, in or affecting interstate or foreign commerce, of rental, sale
7 or delivery of prerecorded video cassette tapes or similar audio visual materials...” as
8 defined in 18 U.S.C. § 2710(a)(4). Vizio engages in the business of delivering audio
9 visual materials to VIZIO Smart TV owners through its proprietary VIA and VIA Plus
10 app platforms.

11 65. Plaintiff is a “consumer” under the VPPA.

12 66. Vizio recorded, through ACR software, the various audio and visual content
13 Plaintiff watched. Defendant further scanned Plaintiff’s home network for information
14 that could be used to identify the viewer of the content, including: IP addresses, MAC
15 addresses, product serial numbers, and device names.

16 67. Vizio bundled the data and disclosed it to third party advertisers, analysts
17 and developers for profits. The data is clearly personally identifying information (“PII”)
18 because it is so specific that it allows the third party advertisers to advertise to the viewer
19 based on content they watched through pop-up ads on the Vizio TV or other devices that
20 were identified by the ACR software on the same network. Vizio’s prospectus further
21 makes the case that the information it gathers and transmits to advertisers is PII: “Inscape
22 provides highly specific viewing behavior data on a massive scale with great accuracy,
23 which can be used to generate intelligent insights for advertisers and media content
24 providers and to drive their delivery of more relevant, personalized content through our
25 VCUs.”

26 68. Plaintiff never provided informed, written consent required by the VPPA to
27 Vizio. Vizio disclosed Plaintiff’s PII in violation of the VPPA. Plaintiff seeks to enjoin

1 Vizio from continuing to collect and disclose the PII of Plaintiff and the proposed Class.
2 Plaintiff further seeks the maximum statutory and punitive damages available under the
3 VPPA for herself and on behalf of the proposed Class, and an award of attorneys' fees
4 and costs pursuant to Cal. Code Civ. Proc. § 1021.5, as well as such other and further
5 relief as the Court deems just and proper.

6 **THIRD CAUSE OF ACTION**

7 **Violation of Cal. Civ. Code § 1799.3**

8 **(Against Defendant Vizio)**

9 69. Plaintiff repeats and realleges every allegation above as if set forth herein in
10 full. This claim is brought by Plaintiff on behalf of herself and all Class members.

11 70. Section 1799.3 states: "No person providing video recording sales or rental
12 services shall disclose any personal information or the contents of any record, including
13 sales or rental information, which is prepared or maintained by that person, to any person,
14 other than the individual who is the subject of the record, without the written consent of
15 that individual."

16 71. Vizio provides "video recording sales or rental services" to Vizio Smart TV
17 owners by delivering video content to their TVs with its VIA Plus and VIA application
18 platforms.

19 72. Plaintiff viewed video recordings through the VIA Plus platform on her
20 Vizio Smart TV. Vizio recorded Plaintiff's personal information, including her viewing
21 history, purchase and rental history, IP addresses, MAC addresses, product serial
22 numbers, and/or device names.

23 73. Vizio willfully disclosed this personal, sales and rental information to
24 advertisers without Plaintiff's informed, written consent, and none of the statute's
25 enumerated exceptions apply here.

26 74. Vizio's willful, unauthorized disclosures violated Plaintiff's and putative
27 class members' rights to privacy under the California Civil Code. Plaintiff seeks

1 injunctive relief and the maximum statutory and punitive damages available under Cal.
2 Civ. Code § 1799.3(c)(1).

3 **FOURTH CAUSE OF ACTION**

4 **(Violation of the Consumers Legal Remedies Act (“CLRA”),**
5 **California Civil Code §§ 1750, *et seq.*)**

6 75. Plaintiff repeats and realleges every allegation above as if set forth herein in
7 full.

8 76. Plaintiff and each Class member is a “consumers” within the meaning of
9 Civil Code § 1761(d).

10 77. Plaintiff’s purchase of a Vizio Smart TVs is a “transaction” within the
11 meaning of Civil Code § 1761(e) and Vizio Smart TVs are “goods” within the meaning
12 of Civil Code § 1761(a).

13 78. Defendants violated and continue to violate the CLRA, including Civil Code
14 §§ 1770(a)(5), (a)(7), and (a)(9) in that Defendants represented that Vizio Smart TVs
15 were capable of delivering entertainment through Internet-connected applications, but did
16 not disclose that the Smart TVs were instantaneously recording users’ activities and
17 transmitting private information to third parties.

18 79. Defendants’ non-disclosures and omissions were material.

19 80. Plaintiff has attached hereto the declaration of venue required by Civil Code
20 § 1780(d).

21 81. Plaintiff seeks an order enjoining the acts and practices described above, and
22 awarding attorneys’ fees and costs and will amend this complaint to seek damages under
23 the CLRA if Defendants do not cure as provided thereunder.

24 **FIFTH CAUSE OF ACTION**

25 **(For Unlawful Business Practices in Violation of the Unfair Competition**
26 **Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*)**

1 82. Plaintiff repeats and realleges every allegation above as if set forth herein in
2 full.

3 83. Defendants' practices constitute unlawful business practices in violation of
4 the UCL because, among other things, they violate: (i) the Video Privacy Protection Act,
5 18 U.S.C. § 2710; (ii) California Civil Code § 1799.3; (iii) the Consumers Legal
6 Remedies Act, California Civil Code §§ 1750, *et seq.*; and (iv) the Federal Wiretap Act,
7 18 U.S.C. § 2511(1).

8 84. As a result of Defendants' alleged misconduct, Plaintiff has suffered injury
9 in fact and lost money or property.

10 85. Accordingly, Plaintiff, on behalf of herself and all others similarly situated,
11 seeks equitable relief in the form of an order requiring Defendants to stop recording and
12 transmitting Vizio Smart TV owners' viewing and network data.

13 **SIXTH CAUSE OF ACTION**

14 **(For Unfair Business Practices in Violation of the Unfair Competition Law,**
15 **Cal. Bus. & Prof. Code §§ 17200, *et seq.*)**

16 86. Plaintiff repeats and realleges every allegation above as if set forth herein in
17 full.

18 87. The conduct and actions of Defendants complained of herein constitute
19 unfair business practices in violation of the Unfair Competition Law.

20 88. Defendants' practices constitute unfair business practices in violation of the
21 UCL because, among other things, they are immoral, unethical, oppressive, unscrupulous
22 or substantially injurious to consumers, and/or any utility of such practices is outweighed
23 by the harm caused to consumers. Defendants' practices caused substantial injury to
24 Plaintiff and Class members, are not outweighed by any benefits, and Plaintiff and Class
25 members could not have reasonably avoided their injuries.

26 89. As a result of Defendants' alleged misconduct, Plaintiff has suffered injury
27 in fact and lost money or property.

1 90. Accordingly, Plaintiff, on behalf of herself and all others similarly situated,
2 seeks equitable relief in the form of an order requiring Defendants to stop recording and
3 transmitting Vizio Smart TV owners' viewing and network data.

4 **SEVENTH CAUSE OF ACTION**

5 **(For Fraudulent Business Practices in Violation of the Unfair Competition**
6 **Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*)**

7 91. Plaintiff incorporates by reference each and every allegation set forth above
8 as if fully stated herein.

9 92. The conduct and actions of Defendants complained of herein constitute
10 fraudulent business practices in violation of the Unfair Competition Law.

11 93. Defendants' practices constitute fraudulent business practices in violation of
12 the UCL because, among other things, they are likely to deceive reasonable consumers.

13 94. As a result of Defendants' alleged misconduct, Plaintiff has suffered injury
14 in fact and lost money or property.

15 95. Accordingly, Plaintiff, on behalf of herself and all others similarly situated,
16 seeks equitable relief in the form of an order requiring Defendants to stop recording and
17 transmitting Vizio Smart TV owners' viewing and network data.

18 **EIGHTH CAUSE OF ACTION**

19 **(False Advertising in Violation of the False Advertising Law ("FAL")**
20 **Cal. Bus. & Prof. Code §§ 17500, *et seq.*)**

21 96. Plaintiff incorporates by reference each and every allegation set forth above
22 as if fully stated herein.

23 97. Defendants use advertising on Vizio Smart TV packaging to sell Smart TVs.
24 Defendants disseminate advertising concerning Vizio Smart TVs which by its very nature
25 is deceptive, untrue or misleading within the meaning of the FAL because omitting the
26 ACR software's function is misleading, likely to deceive and continues to deceive Class
27 members and the general public as described throughout this Complaint.

1 98. In making or disseminating the Vizio Smart TV labeling described herein,
2 Defendants knew or should have known that the Vizio Smart TV labeling was misleading
3 and acted in violation of the FAL.

4 99. Defendants' material non-disclosures as described throughout this
5 Complaint constitute false and misleading advertising and therefore violate the FAL.

6 100. As described herein, Defendants obtained money from Plaintiff through its
7 unlawful acts and practices because Plaintiff purchased a Vizio Smart TV relying on the
8 accuracy of Defendants' advertising and the accuracy of Vizio Smart TV advertising was
9 a material part of Plaintiff's purchasing decisions. As a result of Defendants' alleged
10 conduct, Plaintiff has suffered injury in fact and has lost money or property.

11 101. Accordingly, Plaintiff requests the Court declare Vizio Smart TV advertising
12 unlawful and enjoin Defendants from continuing to violate the FAL by selling or offering
13 for sale the mislabeled Smart TVs in California, or causing the mislabeled Smart TVs to
14 be sold or offered for sale in California. Unless Defendants are permanently enjoined
15 from continuing to engage in such violations of the FAL, future consumers of
16 Defendants' products will be harmed by their acts and practices in the same way as
17 Plaintiff. Plaintiff seeks only declaratory and injunctive relief and seeks no monetary
18 relief, such as damages or restitution, either individually or on behalf of the Class
19 pursuant to the FAL cause of action.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff, on behalf of herself and the Class set forth herein,
22 respectfully requests the following relief:

23 A. That the Court certify this case as a class action pursuant to Fed. R. Civ. P.
24 23(a), (b)(1), (b)(2), (b)(3), and/or (c)(4), and pursuant to Fed. R. Civ. P. 23(g), appoint
25 the named Plaintiff to be the Class representative and her undersigned counsel as Class
26 counsel;

1 B. That the Court award Plaintiff and the Class appropriate relief, including
2 actual damages, restitution and disgorgement;

3 C. That the Court award Plaintiff and the Class equitable, injunctive and
4 declaratory relief as maybe appropriate under applicable state laws. Plaintiff, on behalf of
5 herself and on behalf of the Class, seeks appropriate injunctive relief that would include,
6 without limitation, an order and judgment directing Defendants to stop recording and
7 transmitting Vizio Smart TV owners' viewing and network data;

8 D. That the Court award Plaintiff and the Class pre-judgment and post-
9 judgment interest;

10 F. That the Court award Plaintiff and the Class reasonable attorney fees and
11 costs as allowable by law;

12 G. Such additional orders or judgments as maybe necessary to prevent these
13 practices and to restore any interest or any money or property which may have been
14 acquired by means of the violations set forth in this Complaint;

15 H. That the Court award Plaintiff and the Class such other, favorable relief as
16 allowable under law or at equity.

17 **JURY TRIAL DEMANDED**

18 Plaintiff demands a trial by jury on all issues so triable.

19 DATED: December 29, 2015

FINKELSTEIN THOMPSON LLP

20 By: /s/ Rosemary M. Rivas
21 Rosemary M. Rivas

22 One California Street, Suite 900
23 San Francisco, California 94111
24 Telephone: (415) 398-8700
25 Facsimile: (415) 398-8704

26 *Counsel for Individual and Representative*
27 *Plaintiff Kathleen Sloan*

**DECLARATION OF ROSEMARY M. RIVAS
PURSUANT TO CALIFORNIA CIVIL CODE § 1780(d)**

I, Rosemary M. Rivas, declare as follows:

1. I am an attorney with the law firm Finkelstein Thompson LLP, counsel for Plaintiff Kathleen Sloan and the Proposed Class in this action. I am admitted to practice law in California and before this Court, and am a member in good standing of the State Bar of California. This declaration is made pursuant to California Civil Code section 1780(d). I make this declaration based on my research of public records and also upon personal knowledge, and if called upon to do so, could and would testify competently thereto.
2. Based on my research of publicly available records, and as alleged above, Defendant Cognitive Media Networks, Inc. maintains its principal executive offices at 39 Tesla, Irvine, California, and conducts business within this judicial district.
3. Based on my research of publicly available records, and as alleged above, Defendant Vizio, Inc. maintains its headquarters at 39 Tesla, Irvine, California 92618, and conducts business within this judicial district.

I declare under penalty of perjury under the laws of the United States and the State of California this 29th day of December 2015 in San Francisco, California that the foregoing is true and correct.

/s/ Rosemary M. Rivas
Rosemary M. Rivas