

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

Central Justice Center
700 W. Civic Center Drive
Santa Ana, CA 92702

SHORT TITLE: Software Freedom Conservancy, Inc. vs. Vizio, Inc.

**CLERK'S CERTIFICATE OF MAILING/ELECTRONIC
SERVICE**

CASE NUMBER:
30-2021-01226723-CU-BC-CJC

I certify that I am not a party to this cause. I certify that that the following document(s), Minute Order dated 12/23/25, was transmitted electronically by an Orange County Superior Court email server on December 23, 2025, at 10:41:37 AM PST. The business mailing address is Orange County Superior Court, 700 Civic Center Dr. W, Santa Ana, California 92701. Pursuant to Code of Civil Procedure section 1013b, I electronically served the document(s) on the persons identified at the email addresses listed below:

QUINN EMANUEL URQUHART & SULLIVAN, LLP
DANPOSNER@QUINNEMANUEL.COM

QUINN EMANUEL URQUHART & SULLIVAN, LLP
JOHNYIN@QUINNEMANUEL.COM

QUINN EMANUEL URQUHART & SULLIVAN, LLP
MICHAELWILLIAMS@QUINNEMANUEL.COM

RICHARD G SANDERS, PLLC
RICK@RICKSANDERSLAW.COM

SHADES OF GRAY LAW GROUP, P.C
DON@TCO.LAW

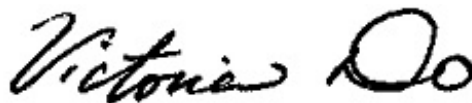
SHADES OF GRAY LAW GROUP, P.C
DTHOMPSON@SHADESOFGRAY.LAW

SHADES OF GRAY LAW GROUP, P.C
NERMAKOVA@SHADESOFGRAY.LAW

SHADES OF GRAY LAW GROUP, P.C
NGRAY@SHADESOFGRAY.LAW

VAKILI & LEUS, LLP
VAKILI@VAKILI.COM

Clerk of the Court, by:



, Deputy

CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER**

MINUTE ORDER

DATE: 12/23/2025

TIME: 10:08:00 AM

DEPT: C33

JUDICIAL OFFICER PRESIDING: Sandy Leal

CLERK: V. Do

REPORTER/ERM:

BAILIFF/COURT ATTENDANT:

CASE NO: **30-2021-01226723-CU-BC-CJC** CASE INIT.DATE: 10/19/2021

CASE TITLE: **Software Freedom Conservancy, Inc. vs. Vizio, Inc.**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Breach of Contract/Warranty

EVENT ID/DOCUMENT ID: 74735333

EVENT TYPE: Under Submission Ruling

APPEARANCES

There are no appearances by any party.

The Court, having taken the above-entitled matter under submission on 11/13/2025 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

Defendant Vizio, Inc.'s Motion for Summary Adjudication is GRANTED.

Plaintiff Software Freedom Conservancy, Inc.'s Objections to Defendant's Memorandum of Points and Authorities and Separate Statement are overruled. Plaintiff may object to specified evidence, not argument or facts. (See Rules of Court, Rule 3.1354; Code Civ. Proc. § 437c(c & q).) Plaintiff's objections to the Williams Declaration are overruled. Plaintiff's objections to Defendant's exhibits are overruled. Defendant's objections to evidence are also overruled. The Court has reviewed Defendant's Amended Separate Statement of Facts, filed on 7/11/25 under ROA 530, which identifies the issues applicable to each fact. Defendant's separate statement sufficiently identifies the issues for summary adjudication under Rule 3.1350 and the Court will address the merits of the motion.

Legal Standard:

Aguilar v. Atlantic Richfield Co. (2001) 25 Cal.4th 826, 849 (cleaned up, quoting Code Civ. Proc. § 437c), holds:

"In moving for summary judgment, a defendant has met his burden of showing that a cause of action has no merit if he has shown that one or more elements of the cause of action cannot be established, or that there is a complete defense to that cause of action. Once the defendant has met that burden, the burden shifts to the plaintiff to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto. The plaintiff may not rely upon the mere allegations or denials of his pleadings to show that a triable issue of material fact exists but, instead, must set forth the specific facts showing that a triable issue of material fact exists as to that cause of action or a defense thereto."

Code of Civil Procedure section 437c(f)(1) provides, "A party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for

damages, or one or more issues of duty, if the party contends that the cause of action has no merit, that there is no affirmative defense to the cause of action, that there is no merit to an affirmative defense as to any cause of action, that there is no merit to a claim for damages, as specified in Section 3294 of the Civil Code, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs. A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty.

Summary of Relevant Allegations:

In the First Amended Complaint (FAC), Plaintiff alleges Defendant manufactures smart TVs which use a "SmartCast" system that relies on certain open-source software subject to the GPLv2 (General Public License version 2) and LGPLv2.1 (GNU Lesser General Public License version 2.1), agreements by which users of certain licensed open-source software may use and modify the software but must provide a public copy of the resulting software's source code. (¶¶ 1, 32-48.) Plaintiff alleges, "users of software licensed under these agreements are free to do with the software what they like, so long as they give their users the same freedom." (¶ 1.) Plaintiff alleges Defendant has violated the GPLv2 by distributing their smart TVs without providing the source code that would allow users to "modify the library and relink it to produce a modified executable." (¶ 61.) Plaintiff alleges allowing software developers and users outside of Vizio to access and modify the source code would improve the consumer experience including allowing increased privacy/reduced data collection and disability accessibility, as well as preserving useful features which Vizio determines are obsolete. (¶¶ 111-120.)

Summary of Motion:

Defendant moves for summary adjudication as to the following issue of duty within the first and second causes of action (breach of contract and declaratory relief):

Whether the open-source software licenses in question require Vizio to provide information necessary to install modified versions of the licensed software back onto the Smart TVs with which the software was originally distributed while ensuring the TVs continue to function properly.

Defendant contends the GPLv2 and LGPLv2.1 (sometimes collectively "Agreements") does not require it to include with the source code "all the information that 'a person of ordinary skill' would need to modify the software and reinstall such modified versions of the GPLv2- and LGPLv2.1-licensed software back onto the same VIZIO Smart TVs while ensuring the TVs continue to function properly." (Motion, 1:10-14.)

In opposition, Plaintiff cites the following portions of the Agreements:

"Section 3 of the GPLv2 provides, in pertinent part:

'You may copy and distribute [a GPLv2-licensed] Program (or a work based on it...) in object code or executable form under the terms of Sections 1 and 2 above provided that you also do one of the following:

- a) Accompany it with the complete corresponding machine-readable source code...; or,
- b) Accompany it with a written offer, valid for at least three years, to give any third party ... a complete machine-readable copy of the corresponding source code....'

(AMF No. 15.) Section 3 of the GPLv2 defines "source code" as follows:

'The source code for a work means the preferred form of the work for making modifications to it. For an executable work, complete source code means all the source code for all modules it contains, plus any associated interface definition files, plus the scripts used to control compilation and installation of the executable.'"

(Opp. at 5:5-15, emphasis removed.)

In addition to the language of the Agreements, Plaintiff relies on the understanding of representatives of Plaintiff and third-parties involved in the open software community. (Opp. at p. 6.)

Defendant contends that the Agreements are not ambiguous but if ambiguity exists, a later version of the

Agreements which is not applicable to the subject software, GPLv3, contains express reinstallation requirements as to certain products which are not applicable here, thereby evidencing that GPLv2 does not include such a requirement. (Motion, pp. 10-16.) Defendant further contends Plaintiff's public statements reflect admissions that GPLv2 did not include a reinstallation requirement which is why such a requirement was subsequently included in version 3.

The Issue Raised in the Motion is Properly Before the Court:

First, Plaintiff contends the issue presented by Defendant is not raised by Plaintiff in Plaintiff's response to special interrogatory no. 4 which forms the basis for the motion. (Opp. at p. 8-9.) Interrogatory No. 4 stated, "For each computer program identified in SFC's response to Special Interrogatory No. 1, state with particularity every piece of technical material and source code that SFC contends VIZIO is obligated to provide upon request to comply with Section 3(a) of the GPLv2." (Plaintiff's Ex. 3.)

Plaintiff's response stated in part, "Under the GPLv2, Propounding Party is obligated to provide all the source code for all of the computer program's modules, together with associated interface definition files, the scripts used to control compilation and installation of the executable on the same device on which the computer program was originally distributed. At a minimum, Propounding Party should deliver files such that a person of ordinary skill can compile the source code into a functional executable and install it onto the same device, such that all features of the original program are retained, without undue difficulty."

Plaintiff argues, "Nowhere in its Interrogatory Response does SFC state that, under the GPLv2, VIZIO needs to provide SFC with information necessary to reinstall modified software back onto VIZIO's Smart TVs." (Opp. at 9:1-3.) Therefore, "the alleged duty that is the subject of VIZIO's Motion is not even mentioned in SFC's Interrogatory Response and thus is not before the Court. For this reason alone, the Motion fails." (Opp. at 9:9-10.) Plaintiff further contends that ruling on the merits would not "completely" dispose of the duty identified in its response to interrogatory no. 4 because the motion does not address "whether VIZIO owes a duty to SFC under the GPLv2s to provide information necessary to allow SFC to reinstall unmodified software licensed under the GPLv2s." (Id. at 9:23-24.) Plaintiff contends Defendant's alleged duty could "extend to software that is not modified and to ensuring that the software that is licensed under the GPLv2s continues to function properly." (Id. at 10:13-14.)

Plaintiff's interrogatory response can be reasonably construed to include the issue raised in the motion. Moreover, Plaintiff has chosen to oppose the motion on the merits rather than concede the issue of duty raised in the motion, indicating Plaintiff alleges the disputed duty applies to Defendant. Moreover, Defendant cites paragraphs 116 and 118 of Plaintiff's FAC and the testimony of Plaintiff's witnesses which have asserted the existence of such a duty. (Reply. at pp. 2-3.)

Plaintiff also argues the Court previously denied Plaintiff's motion for summary adjudication as to Defendant's duty under the Agreements to produce certain information to Plaintiff on grounds including that the motion did not completely dispose of an issue of Defendant's duty to provide the source code to third parties. (3/26/24 Minute Order.) "[I]f, under the facts and circumstances of a given case, a court finds it appropriate to determine the existence or nonexistence of a duty in the nature of a contractual obligation, it may properly do so by a ruling on that issue presented by a motion for summary adjudication." (*Linden Partners v. Wilshire Linden Associates* (1998) 62 Cal.App.4th 508, 519.) In Plaintiff's motion, Plaintiff sought summary adjudication as to only one of the alternative options available to Defendant for providing source code, which would therefore have not necessarily resolved the issue of Defendant's breach of the subject provision. Here, unlike in Plaintiff's motion, Defendant has presented a discrete issue of duty which may be fully resolved via this motion for summary adjudication because there are not alleged alternative measures available to satisfy the duty.

Applicable Standard for Interpretation of Contracts:

"When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible; subject, however, to the other provisions of this Title." (Civ. Code § 1639.)

"The proper interpretation of a contract is disputable if the contract is susceptible of more than one reasonable interpretation, that is, if the contract is ambiguous. An ambiguity may appear on the face of a contract, or extrinsic evidence may reveal a latent ambiguity. A court determining whether a contract is ambiguous must first consider extrinsic evidence offered to prove the parties' mutual intention. If the court determines that the contract is reasonably susceptible of an interpretation supported by extrinsic evidence, the court must admit that evidence for purposes of interpreting the contract. A court cannot determine based on only the four corners of a document, without provisionally considering any extrinsic evidence offered by the parties, that the meaning of the document is clear and unambiguous. Instead, a court must provisionally consider extrinsic evidence offered by the parties in the manner we have stated." (*Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 114 [cleaned up].)

"All things that in law or usage are considered as incidental to a contract, or as necessary to carry it into effect, are implied therefrom, unless some of them are expressly mentioned therein, when all other things of the same class are deemed to be excluded." (Civ. Code § 1656.)

"Implied terms are not favored in the law and should be read into contracts only upon grounds of obvious necessity.

A court may find an implied contract provision only if: (1) the implication either arises from the contract's express language or is indispensable to effectuating the parties' intentions; (2) it appears that the implied term was so clearly within the parties' contemplation when they drafted the contract that they did not feel the need to express it; (3) legal necessity justifies the implication; (4) the implication would have been expressed if the need to do so had been called to the parties' attention; and (5) the contract does not already address completely the subject of the implication." (*In re Marriage of Corona* (2009) 172 Cal.App.4th 1205, 1222 [cleaned up].)

The Plain Language of the Agreements does not Support the Alleged Duty:

The Agreements require Defendant to include access to the "machine-readable" source code with their smart TVs, with "source code" defined to include "the preferred form of the work for making modifications to it. For an [executable work or library], complete source code means all the source code for all modules it contains, plus any associated interface definition files, plus the scripts used to control compilation and installation of the [executable or library]." (Defendant's Ex. 3, pp. 25-27.)

The Preamble to the Agreements states in part that they are designed to ensure "that you can change the software or use pieces of it in new free programs..." (Ex. 3, p. 25.) Under "Terms and Conditions, the Agreement states, "Activities other than copying, distribution and modification are not covered by this License; they are outside its scope." (Id. at p. 26.)

Plaintiff contends the phrases, "machine-readable" and "scripts used to control compilation and installation" support their assertion in response to special interrogatory no. 4 that Defendant should "deliver files such that a person of ordinary skill can compile the source code into a functional executable and install it onto the same device, such that all features of the original program are retained, without undue difficulty."

The language of the Agreements is unambiguous. It does not impose the duty which is the subject of this motion.

Read as a whole, the Agreements require Vizio to make the source code available in such a manner that the source code can be readily obtained and modified by Plaintiff or other third parties. While source code is defined to include "the scripts used to control compilation and installation," this does not mean that Vizio must allow users to reinstall the software, modified or otherwise, back onto its smart TVs in a manner that preserves all features of the original program and/or ensures the smart TVs continue to function properly. Rather, in the context of the Agreements, the disputed language means that Vizio must provide the source code in a manner that allows the source code to be obtained and revised by Plaintiff or others for use in other applications.

In other words, Vizio must ensure the ability of users to copy, change/modify, and distribute the source code, including using the code in other free programs consistent with the Preamble and Terms and Conditions of the Agreements. However, nothing in the language of the Agreements requires Vizio to allow modified source code to be reinstalled on its devices while ensuring the devices remain operable after the source code is modified. If this was the intent of the Agreements, the Agreements could have been readily modified to state that users must be permitted to modify and reinstall modified software on products which use the program while ensuring the products continue to function. The absence of such language is dispositive and there is no basis to find that such a term was implied here. Therefore, the motion is granted.