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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ORANGE — CENTRAL JUSTICE CENTER**

## SOFTWARE FREEDOM CONSERVANCY, INC., a New York Non-Profit Corporation,

**Plaintiff,**

V

**VIZIO, INC., a California Corporation; and  
DOES 1 to 10, Inclusive.**

## Defendants.

CASE NO.: 30-2021-01226723-CU-BC-CJC

[Hon. Sandy N. Leal / Dept. C33]

**REPLY MEMORANDUM OF POINTS AND  
AUTHORITIES OF PLAINTIFF SOFTWARE  
FREEDOM CONSERVANCY, INC. IN  
SUPPORT OF MOTION FOR SUMMARY  
ADJUDICATION OF ISSUES;  
SUPPLEMENTAL DECLARATION OF SA'ID  
VAKILI IN SUPPORT THEREOF**

Date: August 28, 2025

Time: 10:00 a.m.

Dept.: C33

1

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1       **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

2       Apparently aware that it has no substantive response to the Motion for Summary Adjudication  
3       of Issues (the “Motion”) filed by Plaintiff Software Freedom Conservatory, Inc. (“SFC”), Defendant  
4       VIZIO, Inc. (“VIZIO”) has submitted a Memorandum of Points and Authorities in opposition to the  
5       Motion (the “Opp.”) that relies almost entirely on two misleading and mistaken procedural challenges.

6       First, VIZIO contends that SFC cannot obtain summary adjudication on Issue No. 1 because it  
7       has never previously alleged a direct contract between SFC and VIZIO, and it is now too late for SFC  
8       to amend its First Amended Complaint (the “FAC”), the current operative pleading. However, as  
9       explained below, VIZIO mischaracterizes the FAC by ignoring that: (a) the factual allegations  
10       underlying the contract are all set forth therein; and (b) the FAC explicitly states that VIZIO’s written  
11       offer was “only” invalid under the GPL Agreements, because it was too difficult to exercise, but  
12       obviously was a sufficient offer to form a contract under general contract law. Furthermore, VIZIO  
13       overlooks well-established California law that amending a complaint to conform to proof is liberally  
14       granted, particularly where, as here, VIZIO has known of the operative facts since at least May 26, 2023,  
15       when it received a copy of the FAC. Lastly, VIZIO’s legally and factually unsupported assertion that  
16       SFC’s direct contract theory lacks evidence—which VIZIO relegates to a footnote—is contrary to  
17       undisputed facts and settled California law. Therefore, VIZIO’s failed assertions provide no basis to  
18       deny the Motion as to Issue No. 1 [see Section II, below].

19       Second, VIZIO asserts that SFC cannot obtain summary adjudication on Issue Nos. 2 and 3  
20       because Section 437c(f)(2) and Section 1008 of the California *Code of Civil Procedure* bar the Court  
21       from considering this part of the Motion. However, as explained below, the plain language of both  
22       statutes and case law interpreting them show that neither Section 437c(f)(2) nor Section 1008 applies to  
23       SFC’s Motion. Furthermore, even if either statute did apply, SFC’s Motion complies with both statutes,  
24       and allows this Court to consider the Motion, because it is based on newly discovered facts. Therefore,  
25       VIZIO’s flawed contention provides no grounds to deny the Motion [see Section III, below].

26       **II. SFC IS ENTITLED TO SUMMARY ADJUDICATION ON ISSUE NO. 1 THAT VIZIO’S  
27       CONTRACTUAL DUTY IS TO PROVIDE SFC WITH THE COMPLETE  
28       CORRESPONDING SOURCE CODE FOR ITS SMART TV MODEL NO. D32h-J09  
29       SUBJECT TO THE GPLv2 AND THE LPGLv2.1**

30       SFC established in its moving papers that it was entitled to summary adjudication on Issue No.  
31       1 and that VIZIO had a contractual duty to provide SFC with the complete, corresponding machine-  
32       readable source code for its Smart TV Model No. D32h-J09. As SFC demonstrated, it was undisputed  
33       that: (1) VIZIO made an offer, set forth on the “License List” menu on the user interface of its Smart

1 TV, to provide the applicable source code upon request; (2) Paul Visscher, the Systems Administrator  
2 for SFC (“Visscher”), accepted the offer on behalf of SFC by requesting the applicable source code for  
3 VIZIO’s Smart TV Model No. D32h-J09 in a Live Chat with a VIZIO representative; and  
4 (3) consideration existed for the contract. (See Memorandum of Points and Authorities in support of  
5 SFC’s Motion (“Memo”) at 5:20-6:5, 8:11-10:7; Declaration of Bradley M. Kuhn (“Kuhn Decl.”), ¶¶  
6 24-26; Declaration of Paul Visscher (“Visscher Decl.”), ¶¶ 2-3; Appendix of Exhibits in support of the  
7 Motion (“Appx.”), Exhibit “3” (VIZIO’s offer), Exhibit “4” (screenshots of the Live Chat).).

8 Nowhere in its Opposition does VIZIO dispute that: (a) it made the offer to provide the applicable  
9 source code; (b) Visscher accepted the offer in a Live Chat with a VIZIO representative; and  
10 (c) consideration existed for the contract between SFC and VIZIO. Instead, VIZIO raises two separate  
11 assertions in an attempt to defeat the Motion, both of which are fatally flawed.

12 **A. *Vizio’s Contention that SFC May Not Assert in the Motion that Vizio and SFC Entered  
13 Into a Contract for Vizio to Provide the Source Code for Smart TV Model No. D32h-J09  
14 Ignores the Allegations of the First Amended Complaint and California Law Allowing  
15 Pleadings to Be Amended with Great Liberality***

16 VIZIO asserts that this Court should deny the Motion as to Issue No. 1 because: (1) SFC has  
17 never alleged until now that it had a direct contract with VIZIO; (2) the FAC specifically alleges that  
18 VIZIO’s offer to provide source code is not a valid offer; and (3) SFC cannot amend the FAC on the eve  
19 of trial to allege what a “direct contract” theory. (See Opp. at 4:24-8:19.) VIZIO’s assertion lacks merit  
20 and provides no grounds for this Court to deny the Motion as to Issue No. 1 for several reasons.

21 First, contrary to VIZIO’s misleading characterizations, the FAC specifically alleges both that  
22 VIZIO made an offer to provide the applicable source code and that SFC accepted the offer. Paragraph  
23 101 specifically references VIZIO’s “written offer for source code via the SmartCast streaming  
24 platform.” (FAC, ¶ 101.) Paragraph 102 then quotes VIZIO’s offer as set forth on the “License List”  
25 menu on the user interface of its Smart TV—the very same offer that forms the basis for SFC’s Motion.  
26 (Compare *id.*, ¶ 102 with Memo at 5:25:6-3, 8:24-28; Appx., Exhibit “3”.) Finally, Paragraph 107  
27 references the “source code recently provided by VIZIO” (*id.*, ¶ 107)—source code that was provided  
28 in response to Visscher’s acceptance of VIZIO’s written offer on April 26, 2023. (See Visscher Decl.,  
¶ 3; Appx., Exhibit “4”; *see also* FAC, ¶¶108-109 (further referencing the “source code provided by  
VIZIO”).) Indeed, although the FAC was not filed until January 10, 2024 (after this Court denied  
VIZIO’s summary judgment motion in a December 29, 2023 Minute Order), SFC provided VIZIO with  
a copy of the proposed FAC on May 26, 2023, pursuant to a stipulation between the parties. (See  
Supplemental Declaration of Sa’id Vakili (“Vakili Supp. Decl.”), ¶ 3 and Exhibit “14” (Stipulation and

1 [Proposed] Order (ROA#76) at 1:17-21.) Thus, contrary to VIZIO’s contentions, it was aware of the  
2 factual allegations supporting the direct contract between SFC and VIZIO for more than two years before  
3 the filing of its Opposition. Counsel for VIZIO even marked as an exhibit Visscher’s acceptance, on  
4 behalf of SFC, of VIZIO’s offer to provide source code, during the deposition of the Person Most  
5 Knowledgeable at SFC that took place on May 30, 2024, more than one year before. (See Vakili Supp.  
6 Decl., ¶¶ 4-5 and Exhibit “15” (Depo. Transcript at 239:19-21, 240:7:15), Exhibit “16” (screenshot of  
7 Live Chat). Thus, VIZIO’s claim that “[u]ntil now, SFC never alleged in its pleadings (or elsewhere)  
that it had a direct contract with VIZIO” (see Opp. at 5:10-12) is both disingenuous and incorrect.

8 Second, VIZIO misleadingly contends that the FAC and SFC’s interrogatory responses both state  
9 that VIZIO did not provide SFC with a valid written offer. (See Opp. at 5:15-24.) A review of both  
10 documents conclusively demonstrates that SFC was merely alleging that VIZIO’s offer was not “valid”  
11 under the GPL Agreements because it was too difficult for ordinary users to find and exercise, and not  
12 that the offer was somehow invalid and unable to form a contract. Therefore, in its response to Special  
13 Interrogatory No. 9, which asked SFC to identify what it believed was deficient in VIZIO’s written offer,  
14 SFC explicitly said that it “rejects the notion” that VIZIO’s offer “*is sufficient to comply with the GPLv2*  
15 *or GPLv2.1.*” (Vakili Supp. Decl., ¶ 6 and Exhibit “17” (Response to Special Interrogatory No. 9) at  
16 14:4-7 (emphasis added). VIZIO received this response in November 2022, nearly three years ago. (*Id.*)  
17 Likewise, Paragraph 104 of the FAC, which VIZIO only partially quotes (see Opp. at 5:22-24), actually  
18 states that “[t]he purported written offer made via the SmartCast user interface at Extras/About/License  
19 List is not a valid written offer, *as required by the GPL Agreements, for any or all of the following*  
20 *reasons:*” (FAC, ¶104.) VIZIO conveniently omits the highlighted part of Paragraph 104 in its  
21 Opposition, because it undermines VIZIO’s misleading contention. By contrast, SFC was able to locate  
22 and exercise the written offer, thus forming a binding contract with VIZIO. (FAC, ¶¶ 106-107.) For all  
23 these reasons, VIZIO’s claim that SFC’s assertion that VIZIO’s offer was sufficient to form a binding  
24 contract under California “is flatly contrary to SFC’s own pleaded allegations” (Opp. at 5:25-6:1) is  
simply incorrect and provides no reason to deny SFC’s Motion.

25 Third, VIZIO’s assertion that SFC cannot now amend the FAC is contrary to settled California  
26 law providing that amending a pleading to conform to proof is favored, and is allowed with great  
27 liberality, because the purpose is to do justice and avoid further useless litigation. (See, e.g., *Union Bank*  
28 *v. Wendland* (1976) 54 Cal.App.3d 393, 400; *Garcia v. Roberts* (2009) 173 Cal.App.4th 900, 909; *S.*  
*Bay Bldg. Enterprises, Inc. v. Riviera Lend-Lease, Inc.* (1999) 72 Cal.App.4th 1111, 1124 (reversing a  
denial of plaintiff’s motion to amend in conformance with proof where the new legal theory was based

1 on the same facts as an already-pled cause of action).) Indeed, this Court may allow the amendment of  
2 any pleading, including the FAC, “at any time before or after commencement of trial, in the furtherance  
3 of justice and upon such terms as may be proper.” (Cal. Civ. Proc. Code § 576.).

4 Because amending a pleading to conform to proof is allowed with great liberality, a pleading  
5 may be amended even at the time of trial unless the opposing party can establish prejudice. (See, e.g.,  
6 *United Farm Workers of America v. Agricultural Labor Relations Bd.* (1985) 37 Cal.3d 912, 915; *Brady*  
7 v. *Elixir Indus.* (1987) 196 Cal. App. 3d 1299, 1303.) Moreover, “if the same set of facts supports merely  
8 a different theory … no prejudice can result.” (*Roberts, supra*, 173 Cal.App.4th at 909; *City of Stanton*  
v. *Cox* (1989) 207 Cal.App.3d 1557, 1563 (same).).

9 Application of the above authorities compels the conclusion that there is no prejudice to VIZIO.  
10 As shown above, all the facts supporting SFC’s direct contract theory are alleged in the FAC, and VIZIO  
11 was aware of those allegations as early as May 26, 2023, when it received a copy of the proposed FAC.  
12 (See Vakili Supp. Decl., ¶ 3 and Exhibit “14”, at 1:17-21.) Moreover, VIZIO was aware of Visscher’s  
13 acceptance on behalf of SFC of VIZIO’s offer to provide source code by no later than May 30, 2024, if  
14 not one year earlier when it saw the allegations of Paragraphs 107-109 of the FAC regarding the source  
15 code VIZIO provided, and could have conducted discovery or sought to depose Visscher any time  
16 thereafter. Therefore, this Court should reject VIZIO’s mistaken assertions and its mischaracterization  
of the FAC’s allegations and allow SFC’s Motion as to Issue No. 1 to go forward on the merits.<sup>1</sup>

17 **B. VIZIO’s Mistaken Assertion that SFC’s Contract Theory is Factually Unsupported  
18 Provides No Basis for this Court to Deny the Motion**

19 VIZIO next asserts that SFC’s “direct-contract theory is factually unsupported.” VIZIO contends  
20 that: (1) “SFC presents no evidence that *it* ever accepted VIZIO’s written offer to provide source code;”  
21 (2) Visscher “never identified himself to VIZIO as purportedly acting on SFC’s behalf;” (3) there is no  
22 evidence that Visscher “was authorized to enter into contracts on SFC’s behalf;” and (4) “SFC relies on  
23 Mr. Visscher’s communication with VIZIO via an online chat” to support its theory that “SFC *as an*

24 <sup>1</sup> *Champlin/GEI Wind Holdings, LLC v. Avery* (2023) 92 Cal.App.5th 218 and *Record v. Reason*  
25 (1999) 73 Cal.App.4th 472, upon which VIZIO relies (see Opp. at 7:18-27), are not to the contrary. Both  
26 cases involved plaintiff’s attempt to amend a complaint in response to a summary judgment motion,  
27 after the motion was filed. (See *Champlin/GEI*, *supra*, 92 Cal.App.5th at 223; *Record*, *supra*, 73  
28 Cal.App.4th at 478.) As the *Champlin/GEI* court noted, “a party cannot avoid summary judgment by  
relying on theories that are not alleged in the pleadings,” because allowing a responding party to do so  
would allow it to create “a moving target” that would be “patently unfair.” (*Id.* at 224.) Here, by  
contrast, VIZIO complains that SFC, the moving party, is seeking summary adjudication on a new legal  
theory, even though that theory is based on allegations and facts of which VIZIO has long been aware.

1 *entity accepted an offer from VIZIO through Mr. Visscher, thereby forming a contract.”* (Opp. at 6 n.2.)  
2 As explained below, this contention, which VIZIO relegates to a footnote and for which it provides no  
3 legal authority whatsoever, is contrary to both fact and law, and provides no grounds to deny the Motion.

4 “It is well settled as a general rule that an undisclosed principal can either sue or be sued on the  
5 contract made by his agent....” (*Cowan v. Tremble* (1931) 111 Cal. App. 458, 462.) As one court has  
6 explained, “[i]t is a general rule that an undisclosed principal may elect to take the benefits of a contract  
7 made by an agent in his own name.” This rule applies even when the agent conceals the fact that he or  
8 she is acting as an agent. (*Buckley v. Shell Chemical Co.* (1939) 32 Cal.App.2d 209, 214-15; *see also*  
9 *Am. Builder’s Ass’n v. Au-Yang* (1990) 226 Cal. App. 3d 170, 176.) That an undisclosed principal may  
sue on a contract made by its agent is consistent with California *Civil Code* § 2330, which states:

10 An agent represents his principal for all purposes within the scope of his actual or  
11 ostensible authority, and *all the rights and liabilities which would accrue to the agent*  
12 from transactions within such limit, if they had been entered into on his own account,  
*accrue to the principal.* (*Cal. Civ. Code* § 2330 (emphasis added).)

13 Here, VIZIO does not dispute, and cannot dispute, that it made a written offer to provide the  
14 applicable source code, which Visscher accepted with respect to Smart TV Model No. D32h-J09.  
15 Furthermore, the undisputed evidence is that Visscher accepted the offer on behalf of SFC, thereby  
16 creating a binding contract between VIZIO and SFC. Visscher testified that he “was asked by [Bradley]  
17 Kuhn to contact VIZIO to request the source code for one of VIZIO’s Smart TVs” and that, around April  
18 26, 2023, he “contacted VIZIO support online and ***requested, on behalf of SFC, the applicable source***  
19 ***code for VIZIO’s Smart TV Model No. D32h-J09.***” (Visscher Decl., ¶¶ 2-3 (emphasis added); *see also*  
20 Appx., Exhibit “4” (screenshot of Visscher’s Live Chat.) Bradley Kuhn testified that, on or about April  
21 26, 2023, he “instructed” Visscher “to contact VIZIO to request the complete, corresponding source  
22 code” in response to VIZIO’s offer. (Kuhn Decl., ¶ 26.) As a director of SFC, Kuhn certainly has the  
23 authority to bind SFC. VIZIO’s Opposition ignores all such evidence. Moreover, nowhere in its  
24 Opposition does VIZIO challenge Kuhn’s authority to instruct Visscher to act on behalf of SFC and  
25 request the source code for Smart TV Model No. D32h-J09.<sup>2</sup> Furthermore, application of the above case  
26 law compels the conclusion that Visscher’s purported failure to inform VIZIO that he was acting on  
behalf of SFC in no way prevents SFC from enforcing the contract with VIZIO to provide the source  
code for Smart TV Model No. D32h-J09. (*See, e.g., Buckley, supra*, 32 Cal.App.2d at 214-15.)

27  
28 <sup>2</sup> Furthermore, such a challenge would be directly contrary to VIZIO’s repeated assertions that  
Kuhn’s statements and writing are binding on SFC. (*See, e.g.,* VIZIO’s Memorandum of Points and  
Authorities in Support of its Motion for Summary Adjudication (ROA#478), at 6:1-12, 14:4-21.)

1        In short, VIZIO does not have a substantive response to SFC's argument that a binding contract  
2 exists for VIZIO to provide SFC with the applicable source code subject to the GPLv2 and LGPLv2.1  
3 for VIZIO's Smart TV Model No. D32h-J09. VIZIO fails to show that a triable issue of material fact  
4 exists as to this matter. Accordingly, for the reasons stated above, this Court should reject VIZIO's  
5 baseless assertions and grant summary adjudication in favor of SFC on Issue No. 1.

6 **III. VIZIO'S MISINTERPRETATION OF CALIFORNIA STATUTES AND CASE LAW  
7 PROVIDES NO BASIS FOR THIS COURT TO DENY SFC'S MOTION FOR  
8 SUMMARY ADJUDICATION ON ISSUE NOS. 2 AND 3**

9        SFC also established that it was entitled to summary adjudication on the following two issues  
10 because the plain language of the GPLs compelled the conclusion that SFC and other buyers of VIZIO's  
11 Smart TVs are third-party beneficiaries of the GPLs and their source code provision:

12 **ISSUE NO. 2:**

13        Under the GPLv2, VIZIO has a contractual duty to provide to the purchasers of any  
14 VIZIO Smart TVs, including SFC:

15        (a) the complete corresponding machine-readable source code (as defined in Section 3  
16 of the GPLv2) for any software on its Smart TVs that is licensed under the GPLv2; or  
17        (b) a written offer, valid for at least three years, to give any third party, for a charge no  
18 more than the cost of physically performing source distribution, a complete machine-  
19 readable copy of the corresponding source code.

20 **ISSUE NO. 3:**

21        Under the GNU General Public License, version 2.1 (the GPLv2.1), VIZIO has a  
22 contractual duty to provide to the purchasers of any VIZIO Smart TVs, including SFC:

23        (a) the complete corresponding machine-readable source code (as defined in Section 0  
24 of the GPLv2.1) for any library (as defined in Section 0 of the GPLv2.1) on its Smart  
25 TVs that is licensed under the GPLv2.1; or  
26        (b) otherwise comply with Section 6 of the GPLv2.1.

27        (See Memo at 10:7-17:4; Notice of Motion at 2:13-26.)

28        VIZIO's Opposition does not raise any substantive challenge whatsoever to this portion of SFC's  
Motion. Instead, VIZIO raises a single procedural argument, contending that this Court lacks  
jurisdiction to consider this part of SFC's Motion because it is "a renewed motion for summary  
adjudication" and "SFC has not complied with the requirements for a motion for reconsideration." (Opp.  
at 8:25-28; *see also id.* at 9:1-12:16.) As explained below, VIZIO is wrong, for two separate reasons.

29        ***A. Sections 437c(F)(2) and 1008 of the California Code of Civil Procedure Do Not Bar this  
30 Court From Considering SFC's Motion As to Issue Nos. 2 and 3***

31        VIZIO's misguided assertion that Section 437c(f)(2) and Section 1008 of the California *Code of  
32 Civil Procedure* prevent this Court from considering SFC's Motion is undermined by the plain language

1 of both statutes and the cases interpreting them, which conclusively establish that neither statute even  
2 applies to SFC’s Motion. As VIZIO concedes, Section 437c(f)(2) states, in relevant part:

3 ***A party shall not move for summary judgment based on issues asserted in a prior***  
4 ***motion for summary adjudication*** and denied by the court unless that party establishes,  
5 to the satisfaction of the court, newly discovered facts or circumstances or a change of  
6 law supporting the issues reasserted in the summary judgment motion.

7 (Cal. Civ. Proc. Code § 437c(f)(2) (emphasis added); *see* Opp. at 9:15-19, *quoting id.*) The plain  
8 language of Section 437c(f)(2) thus clearly states that ***the statute applies only to a motion for summary***  
9 ***judgment that follows a previous motion for summary adjudication.*** As one court noted in addressing  
10 a similar question, defendant’s “motion for summary judgment falls outside the scope of [Section  
11 437c(f)(2)], as the prior motion was one for summary judgment rather than summary adjudication.”  
12 (*Nieto v. Blue Shield of Cal. Life & Health Ins. Co.*, 181 Cal.App.4th 60, 72.)

13 Here, SFC’s Motion is for *summary adjudication* (not summary judgment), following a previous  
14 motion for summary adjudication. Accordingly, by its own terms, Section 437c(f)(2) does not apply to  
15 this Motion. In fact, Section 437c(a)(4) states that “[a] party shall not bring more than one motion for  
16 summary judgment against an adverse party to the action or proceeding” but “[t]his limitation does not  
17 apply to motions for summary adjudication.” (Cal. Civ. Proc. Code § 437c(a)(4).) Nothing in the  
18 legislative history contradicts the clear language of Section 437c(f)(2), which simply means what it says:  
19 the statute only bars a motion for summary judgment filed after a motion for summary adjudication. For  
20 this reason alone, VIZIO’s claim that Section 437c(f)(2) applies here and prevents this Court from  
21 considering SFC’s Motion is fundamentally flawed and provides no basis to deny the Motion.

22 VIZIO also asserts that Section 1008 applies to SFC’s Motion as to Issue Nos. 2 and 3. (*See*  
23 Opp. at 9:1-10:3.) VIZIO’s assertion is incorrect, for two distinct reasons.

24 First, California courts have held that Section 437c(f)(2), the specific statute governing motions  
25 for summary judgment and summary adjudication, and not Section 1008, the general statute governing  
26 motions for reconsideration, governs motions such as SFC’s. (*See, e.g., Bagley v. TRW, Inc.* (1999) 73  
27 Cal. App. 4th 1092, 1096 n.3 (case involving second motion for summary judgment “must be decided  
28 by the specific requirements of the summary judgment statute, not the general provisions of the  
reconsideration statute.”);<sup>3</sup> *Schachter v. Citigroup, Inc.* (2005) 126 Cal.App.4th 726, 738 (“[S]ection  
437c(f)(2), not the provisions of section 1008, governs where the motion is for summary judgment.”))

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1 For this reason alone, Section 1008 has no relevance or application to SFC’s Motion.

2 Second, even if this Court concludes that Section 1008 may apply to SFC’s Motion (which it  
3 should not, for the reasons set forth above), the Motion still does not need to comply with the provisions  
4 of the statute. Section 1008(b) states, in relevant part, as follows:

5 A party who originally made an application for an order which was refused in whole  
6 or part, or granted conditionally or on terms, ***may make a subsequent application for the  
same order*** upon new or different facts, circumstances, or law ...

7 (Cal. Civ. Proc. Code §1008(b) (emphasis added).) California courts interpreting this language have  
8 “assume[d] that the statute means what it says,” and therefore have held that when “two motions do not  
9 seek the same order, the second is not subject to [Section] 1008(b).” (*Standard Microsystems Corp. v.  
10 Winbond Electronics Corp.* (2009) 179 Cal.App.4th 868, 892, *overruled in part on other grounds, Even  
11 Zohar Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC* (2015), 61 Cal.4th 830, 844 n.14);  
12 *see also California Correctional Peace Officers Ass’n v. Virga* (2010) 181 Cal.App.4th 30, 43 (“An  
13 ‘application for the same order’ as used in [Section] 1008(b) means a motion seeking the same relief as  
in the earlier motion.”).).

14 Here, SFC’s Motion clearly does not seek the same order as SFC’s previous motion for summary  
15 adjudication (the “Prior Motion”). SFC’s Motion requests summary adjudication on Issue Nos. 2 and  
16 3, as quoted above. In contrast, the Prior Motion sought summary adjudication as follows:

17 1. that Defendant VIZIO, Inc. (“VIZIO”) has a duty under the GNU General Public  
18 License version 2 (“GPLv2”) and GNU Lesser General Public License version 2.1  
19 (“GPLv2.1”) (together, the “GPLs”) to produce to SFC:

20 a. the complete source code (as defined in Section 3 of GPLv2 and in Section 0  
21 of GPLv2.1) for any GPL-licensed software on VIZIO Smart TV Model Nos. V435-  
22 J01, D32h-J09, or M50Q7-J01; and

23 b. the complete source code or object code for any software that links to an  
24 GPLv2.1-licensed library on VIZIO Smart TV Model Nos. V435-J01, D32h-J09, or  
25 M50Q7-J01 (or otherwise comply with GPLv2.1 § 6).

26 (See SFC’s Notice of Motion and Motion for Summary Adjudication (ROA#156) at i:6-14.)

27 A review of Issue Nos. 2 and 3 establishes that SFC’s Motion seeks an order that VIZIO has a  
28 contractual duty to provide to the purchasers of any VIZIO Smart TVs, including SFC, either the  
complete source code for any software licensed under the GPLv2 or a written offer, valid for three years,  
to provide such source code. By contrast, the Prior Motion sought an order limited to SFC and three  
VIZIO Smart TV models and said nothing whatsoever about whether VIZIO had the option to provide  
a written offer to produce the source code. Accordingly, because SFC’s Motion does not seek the same  
order or relief as the Prior Motion, Section 1008 does not apply to the Motion. For this reason as well,

1 VIZIO’s assertion that Section 1008 prevents this Court from considering SFC’s Motion lacks merit.

2 ***B. SFC’s Motion Presents New Facts that Permit this Court to Consider the Motion***

3 Even if this Court determines that Section 437c(f)(2) or Section 1008 applies to the Motion (and  
4 it should not, for the reasons discussed above), the Court still may consider the Motion. As explained  
5 below, the Motion presents new facts not available at the time of the Prior Motion that allow this Court  
6 to decide the Motion under both statutes. (*See, e.g.*, Cal. Civ. Proc. Code §437c(f)(2) (court may consider  
7 a summary judgment motion based on issues asserted in a prior summary adjudication motion that  
includes “newly discovered facts … supporting the issues reasserted in the summary judgment motion”.)

8 In its March 26, 2024 Minute Order denying the Prior Motion, this Court stated, among other  
9 things, that VIZIO had presented evidence that the Free Software Foundation (the “FSF”), the publisher  
10 of the GPLs, “did not intend for third parties to enforce the rights under the” GPLs. (Minute Order at  
11 4-5, found at Appx., Exhibit “8”.) About one month later, on May 1, 2024, VIZIO took the deposition  
12 of Zoë Kooyman (“Kooyman”), the Executive Director of the FSF. During her deposition, Kooyman  
13 testified for the first time that users should be able to enforce the GPLs even if they are not the copyright  
14 holders of the works at issue. (*See, e.g.*, Vakili Supp. Decl., ¶ 7 and Exhibit “18” (Kooyman Depo.  
Transcript at 34:13-22, 74:2-75:12, 337:24-340:1).)

15 Accordingly, after reviewing Kooyman’s new testimony, SFC obtained a declaration from  
16 Kooyman in which she confirms that: (i) the FSF never intended to restrict, hinder, or limit any means  
17 for users to assert their rights and freedoms under the GPLs through methods other than a copyright law  
18 claim; and (ii) the FSF believes that third parties requesting complete and corresponding source code  
19 under the GPLs are entitled to receive that source code. The Kooyman Declaration also stated that, since  
20 the Court’s ruling on the Prior Motion, the FSF had changed the language of its FAQ entry to better  
reflect the above positions. (Declaration of Zoe Kooyman (ROA#496), ¶¶ 17, 20, 22-26; Appx., Exhibit  
21 “12” (updated FAQ entry).) The Kooyman Declaration, especially Paragraphs 17-26, as well as the  
22 updated FSF FAQ entry, constitute new facts or evidence sufficient for this Court to consider the Motion  
23 under both Section 437c(f)(2) and Section 1008. (*See, e.g.*, *Pender v. Radin* (1994) 23 Cal.App.4th  
24 1807, 1812 (new facts revealed through discovery after first motion are sufficient to justify a second  
25 motion for summary judgment or summary adjudication under Section 437c(f)(2)).) Therefore, the new  
26 facts in Kooyman’s declaration provide a basis for this Court to consider SFC’s Motion as to Issue Nos.  
27 2 and 3, even if Section 437c(f)(2) or Section 1008 applies.

28 VIZIO asserts, however, that the Kooyman Declaration is not new evidence because Kooyman  
testified at her deposition that in May and June 2023, she worked on a draft affidavit with SFC that was

1 never used, that “spoke about whether or not users … can enforce the GNU general public license.”  
2 (Opp. at 10:23-27, *citing* Kooyman Depo. Transcript at 32:9-20.) Therefore, according to VIZIO, about  
3 six months before SFC filed the Prior Motion, it “already had a draft affidavit from Ms. Kooyman  
4 representing FSF’s supposed actual position on third-party enforcement of the GPL.” (Opp. at 11:1-3).

5 VIZIO’s assertion is both misleading and mistaken. The deposition testimony that VIZIO  
6 improperly relies on is from page 32 of the transcript, before Kooyman was shown a copy of the draft  
7 affidavit. The draft affidavit was not introduced until pages 290-292 of the transcript, as Exhibit 23.  
8 (Kooyman Depo. Transcript at 290:18-292:16, found at Vakili Supp. Decl., Exhibit “18”.) The draft  
9 affidavit, which VIZIO conveniently fails to submit, says nothing about the FSF’s intent behind the  
10 GPLs or its position as to whether users can enforce the GPLs. (See Vakili Supp. Decl., ¶ 8 and Exhibit  
11 “19” (draft affidavit marked as Exhibit 23 to the deposition of Zoe Kooyman).) Therefore, this Court  
12 should reject VIZIO’s incorrect contention and rule that the Kooyman Declaration contains new facts  
13 sufficient for this Court to rule on SFC’s Motion, even if Section 437c(f)(2) or Section 1008 applies.<sup>4</sup>

### 14 **C. VIZIO Fails to Raise Any Substantive Argument Against SFC’s Motion**

15 A review of VIZIO’s Opposition demonstrates that it does not raise any substantive argument  
16 against SFC’s Motion concerning Issue Nos. 2 and 3. The Opposition does not dispute the arguments  
17 advanced by SFC and does not assert that SFC is not a third-party beneficiary of the GPLs and their  
18 source code provision. The Opposition also fails to show that there is a triable issue of material fact  
19 with respect to Issue No. 2 or Issue No. 3. Therefore, once this Court decides that it may consider this  
portion of SFC’s Motion, it should grant summary adjudication in favor of SFC on Issue Nos. 2 and 3.

## 20 **IV. CONCLUSION**

21 For all the above reasons, and for all the reasons set forth in its moving papers, Plaintiff Software  
22 Freedom Conservancy, Inc. respectfully requests that this Court grant its Motion and rule that SFC is  
23 entitled to summary adjudication as a matter of law on Issue Nos. 1 through 3 of the Motion.

24 DATED: August 15, 2025

25 **VAKILI & LEUS, LLP**

26 By:

  
27 Sa'id Vakili, Esq. / David N. Schultz, Esq.  
28 Attorneys for Plaintiff Software Freedom  
Conservancy, Inc.

29 <sup>4</sup> VIZIO also asserts that SFC’s reliance on the Kooyman Declaration “does not meet the ‘strict  
30 requirement of diligence’ to satisfy Section 1008. (Opp. at 11:6-7.) As explained above, however, the  
31 requirements of Section 437c(f)(2), and not Section 1008, apply to SFC’s summary adjudication motion,  
32 and Section 437c(f)(2) does not contain any diligence requirement.

**SUPPLEMENTAL DECLARATION OF SA'ID VAKILI**

I, SA'ID VAKILI, state and declare as follows:

1. I am a partner with the law firm of Vakili & Leus, LLP, counsel of record for Plaintiff Software Freedom Conservancy, Inc. (“SFC”) in this action. I submit this supplemental declaration in support of SFC’s Motion for Summary Adjudication of Issues in this action (the “Motion”). Through my representation of SFC in this action, I have personal knowledge of the matters set forth herein and, if called as a witness, I could and would testify competently as to their truth, except as to the matters stated on information and belief and as to such matters, I believe them to be true. With respect to the documents identified in this declaration, except where otherwise specifically noted, each and every one of these documents is part of my firm’s litigation files with respect to this action, which I maintain and with which I am familiar. In the ordinary course of business, such documents are made a part of the litigation file when received by my offices from other counsel or the Court, or when created by counsel for SFC.

2. All of the exhibits attached to this supplemental declaration and discussed below are not being submitted as new evidentiary matter. Rather, these exhibits are submitted to impeach certain assertions set forth in the Memorandum of Points and Authorities in opposition to the Motion submitted by Defendant VIZIO, Inc. (“VIZIO”) and to explain why those assertions are incorrect.

3. Attached hereto as **Exhibit “14”** is a true and correct copy of a pleading entitled “Stipulation and [Proposed] Order Granting Leave to Amend and Continuance of Trial,” signed by me and by Michael E. Williams, counsel for VIZIO, and filed in this action on June 27, 2023, without the exhibit thereto (ROA#76). As may be seen by a review of **Exhibit “14”**, the Stipulation states, at page 1, lines 17-18, that “on May 26, 2023, SFC provided counsel for VIZIO with a draft redline copy of its [*PROPOSED*] First Amended Complaint (“Proposed FAC”).” The Proposed FAC provided to counsel for VIZIO eventually was filed as the First Amended Complaint, the currently operative pleading in this action, on January 10, 2024 (ROA#165).

4. Attached hereto as **Exhibit** “15” are true and correct copies of selected excerpts from the transcript of the deposition of Denver Gingerich as the Person Most Knowledgeable at SFC, taken in this action on May 30, 2024. As may be seen by a review of **Exhibit** “15”, during the course of the deposition, counsel for VIZIO marked as Exhibit “14” to the deposition a document that Mr. Gingerich described as “a screenshot of the start of a chat that Paul Visscher conducted in order to request source code for [a] VIZIO television.”

5. Attached hereto as Exhibit “16” is a true and correct copy of the document marked as Exhibit “14” to the deposition of Denver Gingerich as the Person Most Knowledgeable at SFC, taken in this action on May 30, 2024, and discussed in Paragraph 4, above.

6. Attached hereto as **Exhibit “17”** are true and correct copies of selected pages from the document entitled “Plaintiff’s Objections and Responses to Defendant VIZIO, Inc.’s First Set of Special Interrogatories, served by SFC in this action on or about November 11, 2022, including SFC’s Response to Special Interrogatory No. 9. As may be seen by a review of **Exhibit “17”**, SFC’s Response to Special Interrogatory No. 9 states, in part, that SFC “rejects the notion that merely placing the words ‘VIZIO offers to provide applicable source code upon request’ with an instruction that the requester somehow ‘contact VIZIO’ is sufficient to comply with the GPLv2 or GPLv2.1.”

7. Attached hereto as Exhibit “18” are true and correct copies of selected excerpts from the transcript of the deposition of Zoë Kooyman, taken in this action on May 1, 2024. Ms. Kooyman’s deposition testimony was the first time that SFC learned of the position of the Free Software Foundation regarding the intent underlying the GPL Agreements.

8. Attached hereto as Exhibit “19” is a true and correct copy of the document marked as Exhibit “23” to the deposition of Zoë Kooyman, taken in this action on May 1, 2024, and identified by Ms. Kooyman as her draft affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 15, 2025, at Los Angeles, California.

  
SA'ID VAKILI, DECLARANT

# Exhibit: “14”

21331784

1           **QUINN EMANUEL URQUHART &**  
2           **SULLIVAN, LLP**

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10           *Attorneys for Plaintiff*  
11           SOFTWARE FREEDOM CONSERVANCY, INC.

12           **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13           **COUNTY OF ORANGE – CENTRAL JUSTICE CENTER**

14           SOFTWARE FREEDOM  
15           CONSERVANCY, INC., a New York Non-  
16           Profit Corporation,

17           Plaintiff,

18           v.

19           VIZIO, INC., a California Corporation; and  
20           DOES 1 through 50, Inclusive,

21           Defendant.

22           **CASE NO: 30-2021-01226723-CU-BC-CJC**

23           **STIPULATION AND [PROPOSED] ORDER**  
24           **GRANTING LEAVE TO AMEND AND**  
25           **CONTINUANCE OF TRIAL**

26           The Hon. Sandy N. Leal

27           Dept. C33

28           Action Filed: October 19, 2021

29           Trial Date: September 25, 2023

1           WHEREAS, Plaintiff Software Freedom Conservancy, Inc. (“SFC”) filed its Complaint in  
2 this action on October 19, 2021. *See* Register of Actions (“ROA”) #2.

3           WHEREAS, Defendant VIZIO, Inc. (“VIZIO”) removed this action to federal district court  
4 on November 29, 2021. *See* ROA #19 (Stay Order).

5           WHEREAS, the federal district court remanded this action to this Court on May 13, 2022.  
6 *See* ROA #24 (Reassignment Order).

7           WHEREAS, on August 10, 2022, this Court (Hon. James Crandall) scheduled an initial trial  
8 date in this action for September 25, 2023 at 9:00 AM and a Mandatory Settlement Conference for  
9 August 25, 2023 at 9:00 AM. *See* ROA #51 (Scheduling Order).

10          WHEREAS, pursuant to this Court’s Scheduling Order and pursuant to the deadlines  
11 established by the California Code of Civil Procedure, fact discovery closes on August 28, 2023 and  
12 expert discovery closes on September 11, 2023.

13          WHEREAS, there have been no prior trial continuances in this action and this action was  
14 stayed for approximately six months while the motion to remand was being litigated in federal court.

15          WHEREAS, VIZIO filed its Motion for Summary Judgment/Adjudication (“MSJ”) on April  
16 28, 2023 and was scheduled to be heard on July 13, 2023 at 10:00 AM. *See* ROA #64 (Hearing).

17          WHEREAS, on May 26, 2023, SFC provided counsel for VIZIO with a draft redline copy  
18 of its [PROPOSED] First Amended Complaint (“Proposed FAC”), and requested from VIZIO that  
19 it stipulate to allow SFC leave to amend and/or supplement its Complaint in this action to add new  
20 factual allegations but without adding or changing the asserted causes of action, as set forth in the  
21 Proposed FAC attached hereto as Exhibit “1”.

22          WHEREAS, on June 23, 2023, this Court ordered the July 13, 2023 hearing date for the MSJ  
23 be advanced and continued to July 27, 2023 at 10:00 AM. *See* ROA #73 (Minute Order).

24          WHEREAS, in order to avoid having to put SFC through the exercise of filing a motion for  
25 leave to file a First Amended Complaint, VIZIO would stipulate to allow SFC to file the Proposed  
26 FAC in the event VIZIO’s MSJ is denied, provided that the Court could accommodate the parties’  
27 request to continue the trial and related dates, especially given that the case was stayed for nearly  
28 six months. Alternatively, if the Court were unable to accommodate the parties’ request for a

1 continuance of the trial and related dates, SFC would instead proceed by way of noticed motion and  
2 VIZIO would oppose leave to file a First Amended Complaint on various grounds, including but  
3 not limited to, prejudice because the Proposed FAC expands the scope of fact and expert discovery,  
4 leaving insufficient time to complete such additional discovery before the current deadlines.

5 WHEREAS, the parties further met and conferred to address VIZIO's objections, during  
6 which the parties agreed that (a) the Proposed FAC would have no impact on the substance or timing  
7 of the pending MSJ; (b) SFC would not be relying upon the Proposed FAC in opposing VIZIO's  
8 MSJ; and (c) the hearing date for the MSJ would remain on calendar for July 27, 2023, as ordered  
9 by the Court.

10 NOW, THEREFORE, VIZIO and SFC stipulate as follows:

- 11 (1) The trial date shall be continued to March 25, 2024 at 9:00 A.M. or a date thereafter  
12 consistent with the Court's and trial counsel's calendar, and all related deadlines  
13 imposed by the California Code of Civil Procedure shall be continued based upon the  
14 new trial date;
- 15 (2) SFC shall file its First Amended and/or Supplemental Complaint within seven (7) court  
16 after the Court has provided notice of its final ruling on VIZIO's July 27, 2023 MSJ  
17 unless the Court's ruling disposes of the entire action; and
- 18 (3) Since the Proposed FAC shall not be filed until after the notice of the Court's final  
19 ruling on VIZIO's MSJ, the filing of the Proposed FAC shall have no effect on VIZIO's  
20 pending MSJ, shall not be relied upon by SFC in opposing the MSJ, and the hearing  
21 date for the MSJ shall remain on calendar for July 27, 2023 at 10:00 A.M., as ordered  
22 by the Court.

23 ////

24 ////

25 **IT IS SO STIPULATED.**

26

27

28

1 DATED: June 27, 2023

QUINN EMANUEL URQUHART &  
SULLIVAN, LLP

6 DATED: June 27, 2023

4 By /s/ Michael E. Williams  
5 Michael E. Williams

5 Attorneys for Defendant, VIZIO, Inc.

7 VAKILI & LEUS, LLP

8

9 By /s/ Sa'id Vakili  
10 Sa'id Vakili

10 Attorneys for Plaintiff, Software Freedom  
11 Conservancy, Inc.

12 **[PROPOSED] ORDER**

13 Based on the parties' Stipulation and finding good cause, the Court hereby GRANTS the  
14 requested relief. The trial date will be continued to \_\_\_\_\_, 2024, \_\_\_\_ A.M. and  
15 all discovery and other dates will track this new trial date pursuant to the Code of Civil Procedure.  
16 The hearing on VIZIO's MSJ remains on calendar for July 27, 2023 at 10:00 A.M. SFC shall file  
17 its First Amended Complaint within seven (7) days from the Court's notice of its final ruling on  
18 VIZIO's July 27, 2023 MSJ unless the Court's ruling disposes of the entire action.

19 **IT IS SO ORDERED.**

20 DATED: \_\_\_\_\_

21 JUDGE OF THE SUPERIOR COURT  
22 **Hon. Sandy N. Leal**

# PROOF OF SERVICE

2 I am employed at the law firm of Quinn Emanuel Urquhart & Sullivan, LLP in  
3 the County of Los Angeles, State of California. I am over 18 years old and not a party  
4 to the within action. My business address is 865 South Figueroa Street, 10th Floor,  
5 Los Angeles, California 90017.

6 On June 27, 2023, I served a true and correct copy of the document described  
7 as **STIPULATION AND [PROPOSED] ORDER GRANTING LEAVE TO**  
8 **AMEND AND CONTINUANCE OF TRIAL** on the parties in this action via  
9 electronic service to the emails below, pursuant to the parties' joint stipulation:  
10 "Electronic service will count as personal service on the day of that electronic service,  
11 if the electronic service occurs before midnight Pacific Time. If the electronic service  
12 occurs after midnight Pacific Time, that service will count as personal service for the  
13 following business day that is not a legal holiday."

14 Richard G. Sanders, Esq.  
[rick@ricksanderslaw.com](mailto:rick@ricksanderslaw.com)  
15 **RICHARD G. SANDERS, PLLC**  
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20 I declare under penalty of perjury under the laws of the State of California that  
21 the foregoing is true and correct.

Executed on June 27, 2023.

/s/ Arian Koochesfahani

Arian Koochesfahani

# Exhibit: “15”

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

---

3 SOFTWARE FREEDOM )  
4 CONSERVANCY, INC., a New )  
5 York Non-Profit Corporation,) )  
6 Plaintiff, ) )  
7 vs. ) Case No. ) 30-2021-01226723-CU-BC-CJC  
8 )  
9 VIZIO, INC., a California )  
10 Corporation; and DOES 1 )  
11 through 50, Inclusive, )  
12 )  
13 Defendant. )

---

14 VIDEO-RECORDED DEPOSITION UPON ORAL EXAMINATION OF

15 PERSON MOST KNOWLEDGEABLE OF SFC

16 DENVER GINGERICH

---

17 \*\*\* Portions of transcript designated Confidential \*\*\*

18 9:21 A.M.

19 THURSDAY, MAY 30, 2024  
20 1200 SIXTH AVENUE, SUITE 610  
21 SEATTLE, WASHINGTON

22 Confidential Pages 24-25 and 237-238

23 Reported by: Tami Lynn Vondran, CRR, RMR, CCR/CSR  
24 WA CCR #2157; OR CSR #20-0477; CA CSR #14435  
25 Job Number 6722735

1 A P P E A R A N C E S  
2

3 FOR THE PLAINTIFF:

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8 415.746.9260

9 ngray@shadesofgray.law

10  
11 FOR THE DEFENDANT:

12 LANCE YANG

13 ARIAN J. KOOCHESFAHANI, via Zoom

14 Quinn Emanuel Urquhart & Sullivan, LLP

15 865 South Figueroa Street, 10th Floor

16 Los Angeles, California 90017

17 213.443.3000

18 lanceyang@quinnemanuel.com

19 ariankoochesfahani@quinnemanuel.com

20  
21 ALSO PRESENT:

22 RICK SANDERS, SFC General Counsel

23 CHARLES KOOLE, Vizio General Counsel

24 SHREVE VANZANTEN, Videographer

1 EXAMINATION

2 BY MR. YANG: 09:23

3 Q. Good morning. 09:23

4 Have you had your deposition taken before? 09:23

5 A. No. 09:23

6 MS. GRAY: Sorry. Are we not doing the 09:23

7 housekeeping things we just talked about before going on  
8 the record?

9 MR. YANG: Sorry. Which housekeeping? We 09:23

10 can.

11 MS. GRAY: You said you had a statement you 09:23  
12 wanted to make on the record to make the record clearer.

13 MR. YANG: I was going to do that when I get 09:23  
14 to it, but if you want to give me the documents now,  
15 that's fine.

16 MS. GRAY: Yeah, let me just do my little 09:23  
17 thing; otherwise, I will forget.

18 MR. YANG: Sure. 09:23

19 MS. GRAY: I just want to note that I'm 09:23  
20 handing over to opposing counsel a thumb drive bearing  
21 documents with the Bates numbers UPI-SFC-0010510 through  
22 UPI-SFC-0010530. These documents are responsive to the  
23 request contained in the PMK notice of SFC. I'm handing  
24 it to opposing counsel right now. There you go.

25 MR. YANG: Okay. 09:24

1 MS. GRAY: Thank you. 09:24

2 MR. YANG: And these have not previously been 09:24

3 produced; correct?

4 MS. GRAY: There is -- I think at least a few 09:24

5 of those documents have been previously produced, but

6 some of them have not been. They are responsive to the

7 request that we produce documents that Mr. Gingerich

8 reviewed or relied upon in connection with preparation

9 for the deposition.

10 MR. YANG: Understood. And will you also be 09:24

11 making an email production -- a formal production of

12 these documents, or is this going to be the only copy we

13 get?

14 MS. GRAY: I can -- I would be happy to email 09:24

15 them, if you would like me to.

16 MR. YANG: Yeah, please do. 09:24

17 MS. GRAY: I will do that. 09:24

18 Q. (BY MR. YANG) Mr. Gingerich, have you had 09:25

19 your deposition taken before?

20 A. No. 09:25

21 Q. Has your counsel gone over the rules, general 09:25

22 rules for a deposition?

23 A. Yes. 09:25

24 MS. GRAY: Objection. 09:25

25 Yeah, just to the extent it seeks 09:25

1 to redistribute the work. And copyleft is a way of  
2 constructing an agreement such that the work can be  
3 copied and redistributed.

4 Q. And SFC's third-party beneficiary theory stems 17:36  
5 from this difference between copyleft and copyright;  
6 correct?

7 MS. GRAY: Objection. Calls for a legal 17:36  
8 conclusion.

9 A. I'm not sure how it would rely on that 17:36  
10 difference specifically, but it does rely on properties  
11 of copyleft agreements.

12 Q. (BY MR. YANG) Fair enough. 17:36

13 Let me clean that up because I think we're on 17:36  
14 the same page; I just probably asked the wrong question.

15 SFC's third-party enforcement theory stems 17:36  
16 from properties of copyleft agreements; correct?

17 A. Yes. 17:37

18 Q. Okay. 17:37

19 MR. YANG: I would like to mark as Exhibit 14 17:37  
20 a document Bates stamped UPI-SFC-0010510.

21 (Exhibit Number 14 marked for identification.)

22 Q. (BY MR. YANG) And I believe you have a soft 17:37  
23 copy of that on your laptop.

24 A. Yes. 17:37

25 MS. GRAY: And, for the record, we're 17:37

1 referring to -- or the witness is going to be referring  
2 to the copies that I handed over on the flash drive at  
3 the start of the deposition. We will provide copies --  
4 soft copies of those to the court reporter at the end of  
5 the day, who will then mark them and include them with  
6 the rest of the exhibits.

7 Q. (BY MR. YANG) Let me know when you have the 17:37  
8 document open.

9 A. I have it open. 17:37

10 Q. Do you recognize this document? 17:38

11 A. Yes. 17:38

12 Q. What is this document? 17:38

13 A. This is a screenshot of the start of a chat 17:38

14 that Paul Visscher conducted in order to request source  
15 code for Vizio television.

16 Q. Sorry. I'm going to remark that exhibit -- 17:38  
17 I'm just going to go to Exhibit 15 because I misread the  
18 file path.

19 MR. YANG: I'm going to mark as Exhibit 15 the 17:38  
20 document Bates stamped UPI-SFC-0010526.

21 (Exhibit Number 15 marked for identification.)

22 Q. (BY MR. YANG) That should be a document 17:39  
23 titled "Kallithea Conservancy." Kallithea?

24 A. Yes. 17:39

25 Q. Okay. Do you recognize Exhibit 15? 17:39

1 Q. (BY MR. YANG) That's why I said "statements." 19:38

2 A. Okay. I'm going to review the context here to 19:38  
3 confirm I have the correct context to answer your  
4 question.

5 Yes, I believe these statements in Topic 13, 19:39  
6 subsection D, are accurate.

7 Q. All right. 19:39

8 MR. YANG: I have no more questions for the 19:39  
9 witness.

10 MS. GRAY: Excellent. Are we closing the 19:39  
11 deposition?

12 MR. YANG: Yes. 19:39

13 MS. GRAY: All right, then. 19:39

14 I'm ready to go off the record. 19:39

15 THE VIDEOGRAPHER: Madame Reporter, anything 19:39  
16 from you?

17 The time is 7:40 p.m. And this concludes the 19:39  
18 deposition of Denver Gingerich, and we are going off the  
19 record.

20 (Discussion off the record.)

21 MS. GRAY: So it's not just the deposition of 19:40  
22 Denver Gingerich, it is also the person most  
23 knowledgeable of SFC and that deposition is also closed,  
24 and we are off the record in that deposition as well.

25 (Deposition concluded at 7:40 p.m.)

(Signature was reserved.)

1 CORRECTION & SIGNATURE PAGE

2 RE: SFC vs. VIZIO

3 ORANGE COUNTY; No. 30-2021-01226723-CU-BC-CJC

4 DENVER GINGERICH; TAKEN THURSDAY, MAY 30, 2024

5 Reported by: TAMI LYNN VONDTRAN, CRR, RMR, CCR

6 WA CCR #2157; OR CSR #20-0477; CA CSR #14435

7 I, DENVER GINGERICH, have read the within  
8 transcript taken THURSDAY, MAY 30, 2024, and the same is  
true and accurate except for any changes and/or  
corrections, if any, as follows:

9 PAGE/LINE	10 CORRECTION	11 REASON
12	13	14
15	16	17
18	19	20

21 Signed at \_\_\_\_\_, Washington,  
22 on this date: \_\_\_\_\_

23 \_\_\_\_\_  
24 DENVER GINGERICH

**REPORTER'S CERTIFICATE**

I, TAMI LYNN VONDTRAN, CCR, CSR, RMR, CRR, the undersigned Certified Court Reporter authorized to administer oaths and affirmations in and for the states of Washington (2157), Oregon (20-0477), and California (14435) do hereby certify:

That the sworn testimony and/or proceedings, a transcript of which is attached, was given before me at the time and place stated therein; that any and/or all witness(es) were duly sworn to testify to the truth; that the sworn testimony and/or proceedings were by me stenographically recorded and transcribed under my supervision. That the foregoing transcript contains a full, true, and accurate record of all the sworn testimony and/or proceedings given and occurring at the time and place stated in the transcript; that a review of which was requested; that I am in no way related to any party to the matter, nor to any counsel, nor do I have any financial interest in the event of the cause.

WITNESS MY HAND AND DIGITAL SIGNATURE this 3rd day  
of June, 2024.

TAMI LYNN VONDTRAN, CRR, RMR  
Washington CCR #2157, Expires 10/6/2024  
Oregon CSR #20-0477, Expires 9/30/2024  
California CSR #14435, Expires 10/31/2024

1 Naomi Gray

2 ngray@shadesofgray.law

3 June 3, 2024

4 RE: Software Freedom Conservancy v. Vizio, Inc., et al.

5 5/30/2024, PMK SFC Denver Gingerich, (#6722735).

6 The above-referenced transcript has been

7 completed by Veritext Legal Solutions and

8 review of the transcript is being handled as follows:

9        Per CA State Code (CCP 2025.520 (a)-(e)) – Contact Veritext  
10 to schedule a time to review the original transcript at  
11 a Veritext office.

12 \_X\_ Per CA State Code (CCP 2025.520 (a)-(e)) – Locked .PDF  
13 Transcript – The witness should review the transcript and  
14 make any necessary corrections on the errata pages included  
15 below, notating the page and line number of the corrections.  
16 The witness should then sign and date the errata and penalty  
17 of perjury pages and return the completed pages to all  
18 appearing counsel within the period of time determined at  
19 the deposition or provided by the Code of Civil Procedure.  
20 Contact Veritext when the sealed original is required.

21        Waiving the CA Code of Civil Procedure per Stipulation of  
22 Counsel – Original transcript to be released for signature  
23 as determined at the deposition.

24        Signature Waived – Reading & Signature was waived at the  
25 time of the deposition.

1              Federal R&S Requested (FRCP 30(e)(1)(B)) – Locked .PDF

2        Transcript – The witness should review the transcript and

3        make any necessary corrections on the errata pages included

4        below, notating the page and line number of the corrections.

5        The witness should then sign and date the errata and penalty

6        of perjury pages and return the completed pages to all

7        appearing counsel within the period of time determined at

8        the deposition or provided by the Federal Rules.

9              Federal R&S Not Requested – Reading & Signature was not

10             requested before the completion of the deposition.

11  
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# Exhibit: "17"

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6 *-and-*

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13 Los Angeles, California 90010-2822

14 **213/380-6010** | Fax: 213/380-6051

15 *Counsel for Plaintiff Software Freedom Conservancy, Inc.*

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **COUNTY OF ORANGE – CENTRAL JUSTICE CENTER**

18 **SOFTWARE FREEDOM CONSERVANCY**  
19 **INC., a New York Non-Profit Corporation,**

CASE NO.: 30-2021-01226723-CU-BC-CJC

[*Hon. James L. Crandall / Dept. C33*]

20 **Plaintiff,**  
21 **v.**  
22 **PLAINTIFF'S OBJECTIONS AND RESPONSES**  
23 **TO DEFENDANT VIZIO, INC.'S FIRST SET**  
24 **OF SPECIAL INTERROGATORIES**

25 *[Code of Civil Procedure §§ 2030.210, et seq.]*

26 **VIZIO, INC., a California Corporation; and**  
27 **DOES 1-50, inclusive,**

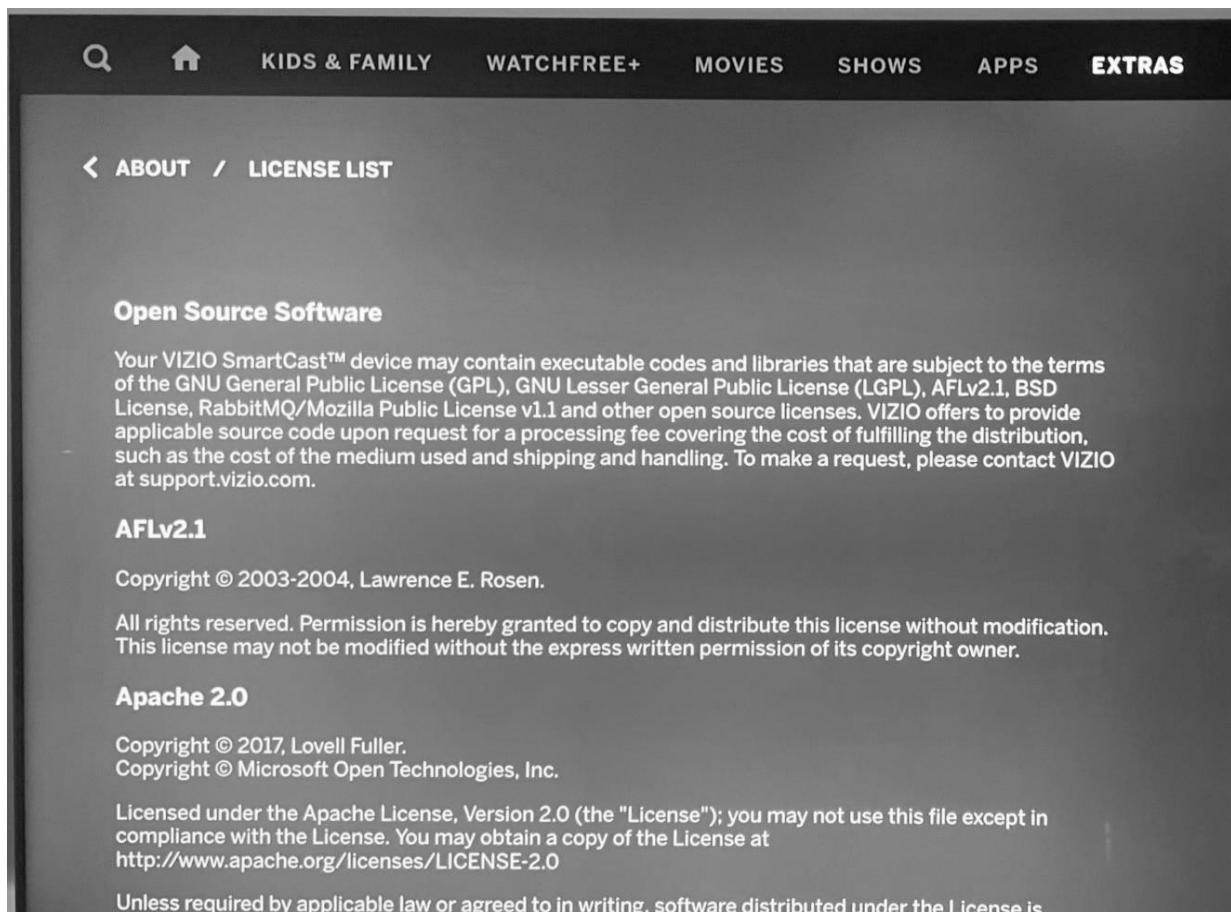
28 **Defendants.**

1 because of these issues, this interrogatory does not comply with the California Civil Discovery Act,  
2 including, but not limited to, subsections (d) and (e) of California *Code of Civil Procedure* §§ 2030.060.  
3 Subject to and without waiving any objections, Responding Party responds as follows: Bradley M.  
4 Kuhn, Denver Gingerich, and Karen M. Sandler. Each of these persons may be contacted through  
undersigned counsel.

5 Discovery and investigation are ongoing and Responding Party reserves the right to supplement,  
6 amend, or otherwise modify the response to this interrogatory at a subsequent time.

7 **SPECIAL INTERROGATORY NO. 9:**

8 With reference to the written offer to supply source code upon demand, located at the user  
9 interface of VIZIO's SmartCast program under Extras/About/License List, a screenshot of which is  
10 reproduced below, state with particularity what SFC contends is deficient in the written offer as alleged  
11 in Paragraph 51 of the COMPLAINT.



1 **RESPONSE TO SPECIAL INTERROGATORY NO. 9:**

2 Responding Party objects to the phrase “with particularity” on the grounds that it is vague and  
3 ambiguous inasmuch as it is not clear how much detail satisfies this “particularity” standard.  
4 Responding Party also objects to this interrogatory on grounds that it forces the Responding Party to  
5 assume that the screen depicted in the image was present in any VIZIO SmartTV device, and particularly  
6 the specific Smart TV models at issue in this litigation, as of the date the Complaint was filed. This fact  
7 is not only not in evidence, but, based on the responses to Special Interrogatory Nos. 6 and 7 above, it  
8 is not even likely to be true. Indeed, this interrogatory requires Responding Party to assume the image  
9 is even authentic. The image appears to be a cropped version of a photograph attached to the Declaration  
10 of Michael Williams, filed in *Software Freedom Conservancy, Inc. v. VIZIO, Inc.*, which was pending  
11 in the U.S. District Court for the Central District of California, Case No. 8:21-cv-1943. However, Mr.  
12 Williams did not testify as to when the photograph was taken, what model VIZIO Smart TV was  
13 involved, what version of firmware was installed on the VIZIO Smart TV, among other facts that might  
14 tend to prove the authenticity of the image. In short, there is no reason for Responding Party to assume  
15 that the image accurately reflects the information provided to users of the VIZIO Smart TVs that  
16 Responding Party has examined—or to users of any VIZIO Smart TV as of the date of the Complaint  
17 was filed. For all Responding Party can tell, this image depicts a version of firmware not available until  
18 after the Complaint was filed and reflects Propounding Party’s reaction to the lawsuit. Responding Party  
19 further objects to this special interrogatory on grounds that, in order to fully respond to this interrogatory,  
20 Responding Party requires but lacks information that it believes is currently in Propounding Party’s  
21 possession. Responding Party also objects to this interrogatory to the extent that it may seek discovery  
22 of documents or information subject to the attorney-client privilege or which constitute confidential  
23 attorney work-product. Responding Party also objects to this interrogatory on the basis that it is not full  
24 and complete in and of itself, includes an unapproved preface or instruction, and uses specially defined  
25 terms with all letters capitalized but fails to provide a definition of such terms in this interrogatory and,  
because of these issues, this interrogatory does not comply with the California Civil Discovery Act,  
including, but not limited to, subsections (d) and (e) of California *Code of Civil Procedure* §§ 2030.060.  
Subject to and without waiving any objections, Responding Party responds as follows:

26 There is currently no evidence that support.vizio.com, at the time the Complaint was filed, was,  
27 in fact, capable of handling a request for complete source code. Currently, support.vizio.com appears  
28 capable only of receiving communications via text, chat, and phone. There is no evidence that any

1 human agent who would receive a request via any of these means would have been trained how to  
2 provide complete source code, that Propounding Party had any procedure for responding to such request,  
3 or that such procedure (if it exists) even worked. A search of the VIZIO support site reveals no  
4 information about how to make a request for complete source code. Responding Party rejects the notion  
5 that merely placing the words “VIZIO offers to provide applicable source code upon request” with an  
6 instruction that the requester somehow “contact VIZIO” is sufficient to comply with the GPLv2 or  
LG GPLv2.1.

7 Discovery and investigation are ongoing and Responding Party reserves the right to supplement,  
8 amend, or otherwise modify the response to this interrogatory at a subsequent time.

9 **SPECIAL INTERROGATORY NO. 10:**

10 For each piece of technical material and source code identified in SFC’s response to Special  
11 Interrogatory No. 4, state with particularity what SFC contends is missing from VIZIO’s CCS  
12 CANDIDATE supplied to SFC on November 7, 2019 and the “make” file supplied to SFC on November  
13, 2019.

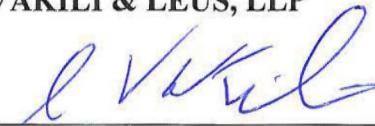
14 **RESPONSE TO SPECIAL INTERROGATORY NO. 10:**

15 Responding Party objects to this interrogatory on the grounds that it is compound and  
16 conjunctive. Responding Party also objects to this interrogatory on the grounds that it is burdensome  
17 and oppressive. Responding Party further objects to the phrase “state with particularity” as vague and  
18 ambiguous. Responding Party will interpret this phrase to mean to provide the name of every computer  
19 file. Responding Party further objects to the phrase “For each piece … No. 4” on the grounds that it is  
20 vague and ambiguous and unintelligible because it makes no sense in the context of the rest of the  
21 interrogatory and would render the interrogatory unanswerable; therefore, Responding Party will ignore  
22 this phrase. Responding Party also objects to the phrase “what SFC contends is missing” as vague and  
23 ambiguous. Responding Party will interpret this phrase to mean to provide information regarding  
24 Responding Party’s repeated inability—after diligent efforts and despite using the CCS CANDIDATE  
25 supplied to SFC on November 7, 2019 and the “make” file supplied to SFC on November 13, 2019—to  
26 compile, build, and install a fully functional version of the Smart TV firmware identical to that pre-  
27 installed on the Smart TV models at issue. Responding Party also objects to this interrogatory to the  
28 extent that it may seek discovery of documents or information subject to the attorney-client privilege or  
which constitute confidential attorney work-product. Responding Party also objects to this interrogatory  
on the basis that it is not full and complete in and of itself, includes an unapproved preface or instruction,

1 DATED: November 11, 2022

VAKILI & LEUS, LLP

2 By:

3   
Sa'id Vakili, Esq.

4 Stephen P. Hoffman, Esq.

5 *Counsel for Plaintiff Software Freedom  
Conservancy, Inc.*

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**VERIFICATION**

*Software Freedom Conservancy, Inc. v. VIZIO, Inc., et al.*  
OCSC Case No.: 30-2021-01226723-CU-BC-CJC

---

I, Karen Sandler, declare as follows:

I am the Executive Director of Software Freedom Conservancy, Inc., the plaintiff in the above-captioned matter. I am familiar with the contents of the following:

**PLAINTIFF'S OBJECTIONS AND RESPONSES TO DEFENDANT VIZIO, INC.'S  
FIRST SET OF SPECIAL INTERROGATORIES**

The information supplied therein is based on my own personal knowledge and/or has been supplied by my attorneys or other agents and is therefore provided as required by law. The information contained in the foregoing document is true, except as to the matters which were provided by my attorneys or other agents, and, as to those matters, I am informed and believe that they are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 11, 2022, at Brooklyn, New York.

Karen Sandler  
Executive Director, Software Freedom Conservancy, Inc.  
(Printed Name)

  
(Signature)

## PROOF OF SERVICE

*Software Freedom Conservancy, Inc. v. Vizio, Inc.*  
OCSC Case No.: 30-2021-01226723-CU-BC-CJC

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 3701 Wilshire Boulevard, Suite 1135, Los Angeles, California 90010.

On November 11, 2022, I served the foregoing document described as **PLAINTIFF'S OBJECTIONS AND RESPONSES TO DEFENDANT VIZIO, INC.'S FIRST SET OF SPECIAL INTERROGATORIES** on all interested parties in this action at the addresses listed below, as follows:

Michael E. Williams, Esq.

[michaelwilliams@quinnmanuel.com](mailto:michaelwilliams@quinnmanuel.com)

Daniel C. Posner, Esq.

[danposner@quinnemanuel.com](mailto:danposner@quinnemanuel.com)

John Yin, Esq.

johnyin@quinnemanuel.com

# QUINN EMANUEL URQUHART & SULLIVAN, LLP

865 South Figueroa Street, 10th Floor

Los Angeles, California 90017-2543

213/443-3000 | 213/443-3100

*Counsel for Defendant VIZIO, Inc.*

( ) FOR COLLECTION. By placing a true copy (copies) thereof enclosed in a sealed envelope(s), addressed as above, and by placing said sealed envelope(s) for collection and mailing on that date following ordinary business practices. I am "readily familiar" with the business' practice for collection and processing of correspondence for mailing the U.S. Postal Service. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business.

( ) OVERNIGHT DELIVERY (DROP-OFF) (CCP §1013(c)). By placing a true copy(ies) thereof enclosed in a sealed envelope(s) or package(s) as designated by [Overnight Express] or [Federal Express], addressed as above, and depositing said envelope(s) or package(s), with delivery fees provided for, in a box regularly maintained by [Overnight Express], [GSO] or [Federal Express] at 3701 Wilshire Boulevard, Los Angeles, California 90010.

( ) VIA ELECTRONIC TRANSMISSION. I caused to be transmitted a true copy thereof to each of the designated counsel listed on the attached Service List to his respective e-mail address, pursuant to California *Code of Civil Procedure* § 1010.6. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty under the laws of the State of California that the above is true and correct.  
Executed on November 11, 2022, at Los Angeles, California.

Malou de la Paz  
(Printed Name)

(Signature)

# Exhibit: “18”

1 COMMONWEALTH OF MASSACHUSETTS  
2 Suffolk, ss. Superior Court Department  
3  
4 IN THE MATTER OF THE ) Originating Case No.  
5 ISSUANCE OF A SUBPOENA ) 30-2021-01226723-CU-BC-CJC  
6 TO THE FREE SOFTWARE )  
7 FOUNDATION ) Originating State:  
8 \_\_\_\_\_ ) California  
9 SOFTWARE FREEDOM )  
10 CONSERVANCY, INC., )  
11 Plaintiff, ) Originating Court:  
12 vs. ) Superior Court of the  
13 VIZIO, INC., ) State of California,  
14 Defendant. ) County of Orange  
15 \_\_\_\_\_ )  
16 VIDEOTAPED DEPOSITION OF ZOE KOOYMAN,  
17 a witness called on behalf of the Defendant,  
18 before Jeanette N. Maracas, Registered  
19 Professional Reporter and Notary Public in  
20 and for the Commonwealth of Massachusetts,  
21 taken at 111 Huntington Avenue, Boston,  
22 Massachusetts, on Wednesday, May 1, 2024,  
23 commencing at 10:15 a.m.  
24  
25 JOB No. 6654854  
PAGES 1 - 373

1 APPEARANCES:

3 SHADES OF GRAY LAW GROUP, P.C.

4 By: Naomi Jane Gray, Esq.

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13 LLP

14 By: Daniel Posner, Esq.

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17 For the Defendant.

18 Danposner@quinnmanuel.com

20 ALSO PRESENT:

21 Rick Sanders, Esq.

22 Sa'id Vakili, Esq. (via Zoom)

23 Arian Koochesfahani, Esq. (via Zoom)

24 Daniel Cayarga, Videographer

1	MS. GRAY: Objection to form. You	10:39:02
2	can answer.	10:39:03
3	A. I think I spoke with them about four times.	10:39:08
4	Q. What did you talk about with them about the	10:39:09
5	SFC versus Vizio lawsuit?	10:39:12
6	A. I talked about the fact that this case was	10:39:15
7	happening, what it was about, and we also	10:39:19
8	spoke about whether or not FSF would be	10:39:25
9	willing to say something about our position	10:39:30
10	on the case.	10:39:32
11	Q. Did SFC ask FSF to say something about its	10:39:34
12	position on the case?	10:39:38
13	MR. THOMPSON: Objection, vague.	10:39:41
14	MS. GRAY: Join in the objection.	10:39:43
15	Q. The answer is yes?	10:39:44
16	A. Yes.	10:39:45
17	Q. And did FSF ever do that?	10:39:46
18	A. We never ended up publishing anything, but	10:39:51
19	yes.	10:39:57
20	Q. Well, okay. What are you referring to, then,	10:39:57
21	other than publishing?	10:40:01
22	A. We made an affidavit for them.	10:40:02
23	Q. An affidavit, do you recall what the purpose	10:40:09
24	of that affidavit was?	10:40:14
25	A. The purpose of the affidavit was for it to	10:40:15

1	potentially be used in the case.	10:40:19
2	Q. Do you know if it was used in the case?	10:40:21
3	A. To my knowledge, it was not.	10:40:23
4	Q. Who signed that -- did somebody sign that	10:40:24
5	affidavit from FSF?	10:40:32
6	A. No.	10:40:33
7	Q. It was an unsigned affidavit?	10:40:34
8	A. In the end it's really unsigned, yes.	10:40:36
9	Q. You were working on a draft of the affidavit,	10:40:38
10	basically?	10:40:40
11	A. I think we had pretty much finished our	10:40:41
12	draft.	10:40:44
13	Q. And with whom were you working on that? Who	10:40:44
14	was working on that on behalf of FSF?	10:40:46
15	A. Me.	10:40:49
16	Q. Who was working on that on behalf of SFC?	10:40:50
17	MR. THOMPSON: Objection, assumes	10:40:53
18	facts.	10:40:54
19	MS. GRAY: I join in the objection.	10:40:56
20	Q. Who were you discussing it with on behalf	10:40:57
21	of SFC?	10:41:00
22	A. With Karen and Bradley.	10:41:01
23	Q. What was the topic of that affidavit?	10:41:03
24	A. It was about our position on whether or not	10:41:09
25	users should have the right to enforce the	10:41:14

1	GPL.	10:41:16
2	Q. So there was text of a draft affidavit that	10:41:17
3	you were working on with Bradley and Karen	10:41:26
4	from SFC, is that correct?	10:41:31
5	MS. GRAY: Objection to form. You	10:41:31
6	can answer.	10:41:33
7	MR. THOMPSON: We join in the	10:41:33
8	objection, misconstrues the witness' prior	10:41:35
9	testimony.	10:41:37
10	MR. POSNER: Thank you.	10:41:37
11	Q. Go ahead.	10:41:38
12	A. No. I worked on it. They asked me to make	10:41:38
13	it. I worked on it.	10:41:41
14	Q. So Karen and Bradley asked you on behalf of	10:41:42
15	FSF if you would prepare an affidavit that	10:41:47
16	they could submit in the lawsuit against	10:41:50
17	Vizio that stated FSF's position regarding	10:41:51
18	issues in the SFC lawsuit regarding who could	10:41:55
19	enforce the GPLs, is that correct?	10:41:59
20	A. Could you repeat the question?	10:42:02
21	Q. Yeah, it's kind of clunky, but Karen and	10:42:04
22	Bradley -- I'm just trying to find out if	10:42:05
23	this is correct. Is it Bradley?	10:42:07
24	A. Yes.	10:42:08
25	Q. Karen and Bradley from SFC asked you on	10:42:09

1 behalf of FSF if you would prepare an 10:42:13  
2 affidavit that they could submit in the 10:42:16  
3 lawsuit against Vizio that stated FSF's 10:42:18  
4 position regarding who could enforce the 10:42:22  
5 GPLs, is that correct? 10:42:24

6 MS. GRAY: Objection to form. You 10:42:25  
7 can answer. 10:42:27

8 MR. THOMPSON: We join in the 10:42:27  
9 objection. 10:42:29

10 A. It's not specifically who could enforce. 10:42:29  
11 It's more about whether or not users can 10:42:40  
12 enforce. 10:42:43

13 Q. But otherwise, what I said was correct? 10:42:43

14 A. Yes. 10:42:46

15 MS. GRAY: Object to form. You can 10:42:46  
16 answer. 10:42:48

17 MR. THOMPSON: We join. 10:42:48

18 Q. So the issue was whether or not users can 10:42:49  
19 enforce, and we're talking about the GPLs, 10:42:52  
20 the general public licenses, is that correct? 10:42:57

21 MS. GRAY: Objection to form. You 10:43:01  
22 can answer. 10:43:02

23 MR. THOMPSON: We join in the 10:43:02  
24 objection. 10:43:03

25 Q. When you said "who can enforce," you're 10:43:04

1	can answer.	10:46:07
2	MR. THOMPSON: We join the	10:46:08
3	objection.	10:46:08
4	A. Yes.	10:46:09
5	Q. Was that your personal position at the time?	10:46:09
6	A. It was both the personal position as well	10:46:17
7	as the FSF's position.	10:46:19
8	Q. Do you know one way or the other whether	10:46:22
9	the position you just articulated was	10:46:24
10	consistent with public statements that FSF	10:46:28
11	had made over time about that issue?	10:46:31
12	A. Can you repeat the question?	10:46:34
13	Q. Sure. You said your position was that	10:46:35
14	FSF's position apparently as well was that	10:46:38
15	users should be able to enforce the GPLs	10:46:41
16	even if they're not the copyright holders	10:46:44
17	of the works at issue, correct?	10:46:48
18	MS. GRAY: Objection. You can	10:46:49
19	answer.	10:46:50
20	MR. THOMPSON: We join the	10:46:51
21	objection.	10:46:51
22	A. Yes.	10:46:52
23	Q. And you said that that was your position	10:46:52
24	and FSF's position as of May and June 2023,	10:46:55
25	correct?	10:46:58

1	MS. GRAY: Objection to form. You	10:46:58
2	can answer.	10:47:00
3	MR. THOMPSON: We join the	10:47:01
4	objection.	10:47:02
5	<b>A. Yes.</b>	10:47:02
6	Q. And my question is, do you know or recall	10:47:03
7	whether at the time the position that you	10:47:06
8	just articulated was consistent with	10:47:08
9	positions that FSF had taken publicly prior	10:47:11
10	to that?	10:47:15
11	A. Can you repeat that one more time?	10:47:16
12	Q. Is the position that you just articulated	10:47:18
13	about users being able to enforce the GPLs	10:47:26
14	even if they're not the copyright holders,	10:47:29
15	did that represent a change in FSF's position	10:47:31
16	as of the time you were discussing this in	10:47:36
17	May and June 2023?	10:47:37
18	A. Not exactly, no. The FSF has always wanted	10:47:39
19	users to be able to enforce the GPL.	10:47:44
20	Q. Even if they don't hold the copyright in	10:47:47
21	the works at issue?	10:47:49
22	MS. GRAY: Objection to form. You	10:47:50
23	can answer.	10:47:51
24	MR. THOMPSON: We join.	10:47:52
25	<b>A. Yes.</b>	10:47:54

1	(Break taken)	11:20:30
2	VIDEOGRAPHER: The time is	11:22:02
3	11:42 a.m. We're back on the record.	11:42:46
4	BY MR. POSNER:	11:42:48
5	Q. Can you tell me --	11:42:49
6	MS. GRAY: I'm sorry to stop you,	11:42:50
7	but the witness wanted to clarify something.	11:42:51
8	A. I did want to clarify about when we created	11:42:55
9	the affidavit, Rick Sanders was also part of	11:42:59
10	some of the conversation. I don't know	11:43:03
11	exactly which, what, when, but he was part of	11:43:04
12	some of the communications.	11:43:11
13	Q. So you mentioned on behalf of SFC you had	11:43:14
14	spoken with Karen, Bradley and now you're	11:43:24
15	saying Rick Sanders?	11:43:27
16	A. Yes.	11:43:28
17	Q. If I were to ask you to print that affidavit	11:43:32
18	on a break, would you be able to do that so	11:43:36
19	I could look at it and ask you questions	11:43:38
20	about it?	11:43:39
21	MS. GRAY: Objection, it's beyond	11:43:40
22	the scope. It's definitely not within the	11:43:45
23	four corners of the subpoena which didn't	11:43:50
24	call for any document production.	11:43:52
25	MR. POSNER: Do you know whether	11:43:55

1	SFC produced those draft affidavits in	11:43:56
2	discovery in the case?	11:43:59
3	MS. GRAY: Objection to the extent	11:44:00
4	it calls for attorney-client communications.	11:44:01
5	If you have any information regarding --	11:44:05
6	MR. POSNER: I'm asking you as	11:44:09
7	counsel, if you know whether those affidavits	11:44:10
8	have been produced.	11:44:12
9	MR. THOMPSON: They've not been	11:44:13
10	produced.	11:44:14
11	MR. POSNER: Are you able to do that	11:44:16
12	today?	11:44:17
13	MS. GRAY: I will take that request	11:44:18
14	under advisement.	11:44:19
15	MR. POSNER: Better to do it	11:44:20
16	today because we're here for the deposition.	11:44:22
17	If it's something that should have been	11:44:24
18	produced, and I have to check with my team	11:44:25
19	on the whole record on that, but I would	11:44:26
20	imagine it's relevant and maybe today's the	11:44:27
21	best day to ask questions about it so we	11:44:30
22	don't have to come back. So think about it.	11:44:32
23	MS. GRAY: Well, it's not something	11:44:35
24	that was required to have been produced	11:44:36
25	previously, but as I said, we'll take your	11:44:37

1	request under advisement.	11:44:39
2	MR. POSNER: And see what you can	11:44:40
3	do about it today, I'm asking.	11:44:41
4	MS. GRAY: I will take the request	11:44:43
5	under advisement.	11:44:45
6	MR. POSNER: Fantastic. Okay.	11:44:46
7	Q. You mentioned right before the break, Ms.	11:44:47
8	Kooymann, that you had discussions with Mr.	11:44:55
9	Stallman to prepare for your deposition,	11:44:57
10	correct?	11:45:00
11	A. Yes.	11:45:00
12	Q. How many times did you talk with him?	11:45:01
13	A. I spoke with him four times.	11:45:03
14	Q. And how did you conduct those conversations?	11:45:05
15	In person or by some electronic means?	11:45:10
16	A. Via phone.	11:45:12
17	Q. You said you live in -- you just mentioned	11:45:13
18	at a break that you live in Switzerland, is	11:45:16
19	that correct?	11:45:19
20	A. Yes.	11:45:19
21	Q. Did you travel from Switzerland to Boston	11:45:19
22	for this deposition?	11:45:22
23	A. I did.	11:45:23
24	Q. So Switzerland is your full-time residence?	11:45:23
25	A. Yes.	11:45:26

1	can answer.	11:46:30
2	A. I would say generally the intention when	11:46:30
3	I'm not pregnant or having a baby or not	11:46:33
4	allowed to fly because I'm pregnant with	11:46:35
5	some complications, then the aim is to be	11:46:38
6	in the office about quarterly.	11:46:41
7	Q. So you conduct most of your work for the	11:46:43
8	Free Software Foundation remotely?	11:46:48
9	A. Yes.	11:46:50
10	Q. So you spoke with Mr. Stallman a few times	11:46:50
11	about the deposition, correct?	11:46:53
12	A. Yes.	11:46:55
13	Q. What did you discuss?	11:46:55
14	A. We went through all the topics. I asked	11:46:56
15	him all the questions that I could come up	11:47:01
16	with referring to being able to answer any	11:47:03
17	of those topics.	11:47:08
18	Q. You said earlier that FSF and you personally	11:47:09
19	consider Mr. Stallman an authority on the	11:47:15
20	intention of the GPLs. Did you ask him	11:47:17
21	questions about the intention of the GPLs?	11:47:20
22	A. Yes.	11:47:22
23	MR. THOMPSON: Objection,	11:47:23
24	misconstrues the witness' prior testimony.	11:47:24
25	MS. GRAY: Join in the objection.	11:47:26

1	Q. What did he say? What did you ask him on	11:47:27
2	that?	11:47:31
3	MS. GRAY: Objection to form.	11:47:31
4	MR. THOMPSON: We join.	11:47:32
5	A. I can't recall the exact questions that	11:47:36
6	I had, but we spoke about whether or not	11:47:44
7	we felt users should be able to enforce	11:47:47
8	the GPL.	11:47:52
9	Q. And, again, are we talking about users who	11:47:53
10	do not own the copyrights in the works at	11:47:58
11	issue?	11:48:01
12	MS. GRAY: Objection to form. You	11:48:02
13	can answer.	11:48:03
14	MR. THOMPSON: We join.	11:48:04
15	A. We would be talking about users that do own	11:48:06
16	the copyright as well, but yes.	11:48:11
17	Q. Well, you agree I don't think there's much	11:48:12
18	dispute -- well, FSF agrees that users who	11:48:14
19	own the copyrights in the source code at	11:48:18
20	issue or the works at issue can enforce the	11:48:21
21	GPLs, correct?	11:48:24
22	MS. GRAY: Objection to form and	11:48:25
23	calls for a legal conclusion. You can	11:48:27
24	answer.	11:48:30
25	MR. THOMPSON: We join.	11:48:30

1	A. Yes, the FSF believes that.	11:48:32
2	Q. And you understand there's a dispute at least	11:48:36
3	between SFC and Vizio as to whether users	11:48:38
4	who do not own the copyrights in the works	11:48:42
5	at issue are also entitled to enforce the	11:48:44
6	GPLs, correct?	11:48:47
7	MS. GRAY: Objection to form. You	11:48:47
8	can answer.	11:48:49
9	MR. THOMPSON: We join.	11:48:49
10	A. Yes.	11:48:50
11	Q. And you asked Mr. Stallman his views on that	11:48:50
12	latter issue, correct?	11:48:54
13	MS. GRAY: Objection to form,	11:48:55
14	misstates the witness' testimony. You can	11:48:58
15	answer.	11:48:59
16	MR. THOMPSON: We join.	11:49:00
17	A. Yes.	11:49:01
18	Q. And what did he say?	11:49:01
19	A. He said it was always the intention of the	11:49:03
20	GPLs for users to be able to obtain the	11:49:07
21	complete and corresponding source code for	11:49:11
22	the GPL.	11:49:13
23	Q. And what about specifically with respect	11:49:14
24	to the question of whether users who do not	11:49:17
25	own the copyrights in the works at issue,	11:49:19

1	whether those users are entitled to enforce	11:49:22
2	the GPLs, did you discuss that with him?	11:49:24
3	MS. GRAY: Objection to form. You	11:49:28
4	can answer.	11:49:29
5	MR. THOMPSON: We join.	11:49:30
6	A. Yes.	11:49:31
7	Q. And what did he say about that?	11:49:31
8	A. He said --	11:49:33
9	MS. GRAY: Go ahead.	11:49:35
10	A. He said he believed it was right and in	11:49:36
11	line with the intention for the GPLs for	11:49:39
12	users to be able to enforce.	11:49:42
13	Q. Did you discuss -- and, again, I'm sorry.	11:49:44
14	I'm doing this not to be annoying, but really	11:49:46
15	just for the record. I want to make clear	11:49:49
16	that in the answer you just gave, again, you	11:49:51
17	were talking about users who do not own the	11:49:53
18	copyrights in the works at issue, correct?	11:49:56
19	MS. GRAY: Objection to form.	11:49:58
20	MR. THOMPSON: We join.	11:49:59
21	A. Yes.	11:50:00
22	Q. You're welcome to say that, if you want.	11:50:01
23	Otherwise, I'll keep trying to clarify it,	11:50:03
24	but it's fine.	11:50:03
25	And he said -- I think you said	11:50:07

1	AFTERNOON SESSION	01:25:11
2	VIDEOGRAPHER: The time is 2:12 p.m.	02:11:54
3	We're back on the record.	02:12:38
4	MR. THOMPSON: Mr. Posner, on	02:12:39
5	behalf of SFC, I'm handing you a copy of	02:12:41
6	the affidavit you requested before the lunch	02:12:46
7	break. This is the only copy we found in	02:12:49
8	our records.	02:12:51
9	MR. POSNER: Thank you.	02:12:52
10	BY MR. POSNER:	02:13:01
11	Q. I hope you had a good lunch. Why does the	02:13:01
12	FSF, the Free Software Foundation, have two	02:13:14
13	websites, FSF.ORG and GNU.ORG?	02:13:16
14	A. We have more websites, but why those two?	02:13:22
15	Q. Why do you have those two?	02:13:24
16	A. The GNU project came first. The FSF was,	02:13:26
17	resulted out of what is the GNU project as	02:13:35
18	an organization that the GNU project found	02:13:38
19	that they needed an organization to hold	02:13:43
20	onto the assets and to govern them and that's	02:13:49
21	why the FSF was born.	02:13:52
22	Q. FSF considers them both to be websites that	02:13:54
23	it owns and controls, GNU.ORG and FSF.ORG?	02:13:59
24	A. Yes.	02:14:05
25	Q. And all the content on those websites is	02:14:06

1	MS. GRAY: Objection to form. You	02:34:15
2	can answer.	02:34:17
3	MR. THOMPSON: Same objection, calls	02:34:17
4	for a legal conclusion.	02:34:19
5	MS. GRAY: I join in that.	02:34:20
6	A. Again, the FSF can't really say anything	02:34:20
7	about that, but it does refer to	02:34:23
8	incorporating the software afterwards and	02:34:27
9	that's why I think it's related to that	02:34:29
10	consideration.	02:34:31
11	Q. Why can't the Free Software Foundation say	02:34:31
12	anything about that? You said that a couple	02:34:35
13	of times. What do you mean by that?	02:34:38
14	A. We're not a legal organization. We can't	02:34:39
15	make any legal statements.	02:34:41
16	Q. But the Free Software Foundation wrote and	02:34:43
17	published the GNU public license, correct?	02:34:45
18	A. Yes, so I can speak to its interpretation --	02:34:48
19	or its intention, not its interpretation.	02:34:51
20	Q. You can speak to the intention of the Free	02:34:54
21	Software Foundation in writing and publishing	02:34:57
22	the GNU public license, correct?	02:34:59
23	A. Yes.	02:35:00
24	Q. So this sentence says, "we protect your	02:35:01
25	rights with two steps. One, copyright the	02:35:09

1	MS. GRAY: Objection to form,	05:35:44
2	misstates the witness' testimony and the	05:35:47
3	document speaks for itself.	05:35:50
4	MR. THOMPSON: We join.	05:35:51
5	A. I think it speaks more to the intent of	05:35:52
6	Version 3.	05:35:55
7	Q. So is it fair to say that the FSF is	05:35:55
8	acknowledging here that GPL Version 2	05:36:00
9	requires a subset of the information that,	05:36:05
10	a subset of the installation information	05:36:10
11	that GPL Version 3 requires?	05:36:12
12	MS. GRAY: Objection to form, the	05:36:14
13	document speaks for itself and calls for a	05:36:16
14	legal conclusion.	05:36:17
15	MR. THOMPSON: We join.	05:36:18
16	A. I think it says that GPL V3 uses a term	05:36:20
17	that GPL V2 doesn't use, yes.	05:36:25
18	MR. POSNER: I'm going to mark as	05:37:24
19	Exhibit 23 -- you gave me one copy of the	05:37:26
20	affidavit, right?	05:37:28
21	MR. THOMPSON: Yes.	05:37:30
22	MR. POSNER: Is it possible for	05:37:31
23	you to send it to us digitally as well so I	05:37:33
24	can mark it as a deposition exhibit, send us	05:37:36
25	an electronic copy of it?	05:37:39

1	MR. THOMPSON: Not at this very	05:37:41
2	moment.	05:37:42
3	MR. POSNER: Not at this moment,	05:37:43
4	but I'm just going to mark this as a depo	05:37:44
5	exhibit.	05:37:48
6	MS. GRAY: When we are back in the	05:37:48
7	office, yeah.	05:37:50
8	MR. POSNER: No problem. So I'm	05:37:50
9	just going to mark this as Exhibit 23.	05:37:51
10	(Exhibit 23 marked for	05:37:51
11	identification.)	05:37:51
12	Q. I want to give you my copy.	05:38:00
13	A. I'll give it back.	05:38:02
14	Q. My question about that is, Exhibit 23 was	05:38:03
15	the document that your counsel handed to me,	05:38:05
16	I believe, after the lunch break which they	05:38:07
17	represented was a copy of the affidavit	05:38:10
18	that you testified earlier you prepared in	05:38:14
19	consultation with SFC sometimes in 2023 upon	05:38:18
20	SFC's request but that you never signed, is	05:38:24
21	that correct?	05:38:28
22	MS. GRAY: Objection to form,	05:38:28
23	mischaracterizes her testimony as to "in	05:38:30
24	consultation with SFC."	05:38:33
25	MR. THOMPSON: We join.	05:38:36

1	A. That's what I was going to say.	05:38:37
2	Q. Well, you were discussing the affidavit with	05:38:39
3	SFC, correct?	05:38:40
4	A. Yes.	05:38:42
5	Q. But you're saying you wrote it?	05:38:42
6	A. Yes.	05:38:44
7	Q. Okay. You sent them a draft, and then I	05:38:44
8	believe you said at some point you sent	05:38:50
9	them a second draft, correct?	05:38:51
10	A. I did say that, yes.	05:38:53
11	Q. And is the document that we marked as	05:38:54
12	Exhibit 23, is that likely the second draft?	05:38:56
13	A. Yes, but I have to say that I'm not	05:38:59
14	100 percent sure that I actually sent them	05:39:01
15	the first draft, but this is the second	05:39:03
16	draft, yes.	05:39:05
17	Q. And you recall sending them that draft,	05:39:05
18	knowing that they didn't ask you to sign it	05:39:09
19	and it ended there?	05:39:13
20	MS. GRAY: Objection to form and	05:39:15
21	mischaracterizes her testimony, her prior	05:39:16
22	testimony.	05:39:19
23	MR. THOMPSON: We join.	05:39:19
24	A. At that moment it still needed to be	05:39:21
25	formatted, yes, so this was the text that	05:39:26

1	I intended for it to be in the final	05:39:30
2	affidavit.	05:39:32
3	Q. Had they asked you to sign that, you would	05:39:32
4	have done it?	05:39:35
5	A. Yes.	05:39:35
6	Q. So you believe the statements on there are	05:39:36
7	true and correct?	05:39:39
8	A. Yes.	05:39:41
9	Q. Okay. I'm going to move on to -- so on	05:39:41
10	Monday -- so you never signed that affidavit,	05:39:59
11	but the affidavit refers to, I believe -- and	05:40:03
12	I don't have it in front of me right now --	05:40:06
13	what you've described as the evolving belief	05:40:10
14	of the Free Software Foundation about who	05:40:13
15	can enforce the GPLs, correct?	05:40:15
16	A. Yes.	05:40:18
17	Q. You never signed the affidavit at that time	05:40:18
18	and you never made any, FSF never made any	05:40:23
19	public statements about its evolving belief	05:40:26
20	at the time, correct?	05:40:28
21	A. That's correct.	05:40:30
22	Q. So to the extent the affidavit from 2023,	05:40:30
23	the draft, identified or reflected the FSF's	05:40:34
24	evolving belief, the public would have had	05:40:39
25	no way to know about that at the time,	05:40:42

1	correct?	05:40:44
2	A. Yeah, that's right, unfortunately.	05:40:44
3	Q. And the first time that the Free Software	05:40:45
4	Foundation ever published or made any public	05:40:51
5	statement about its evolving belief about	05:40:54
6	who can enforce the GPLs was on Monday of	05:40:58
7	this week, correct?	05:41:01
8	A. I think so, yes.	05:41:04
9	Q. And my question is whether FSF accomplished	05:41:05
10	that by posting the blog entry that I'm going	05:41:10
11	to hand you and that I just identified as	05:41:16
12	Exhibit 24.	05:41:19
13	(Exhibit 24 marked for	05:41:19
14	identification.)	05:41:24
15	Q. Is this a blog entry?	05:41:24
16	A. This would be a news entry.	05:41:29
17	Q. A news entry on FSF.ORG, correct?	05:41:31
18	A. Yes.	05:41:34
19	Q. And this was posted on Monday?	05:41:35
20	A. Yes.	05:41:37
21	Q. And who -- this is two pages. Well, it's	05:41:37
22	actually, it's a one page of text followed	05:41:41
23	by another one page. It's a two-page	05:41:46
24	document that I assembled. If you look at	05:41:48
25	the -- well, we'll get there in a second, but	05:41:52

1 well, I'll read it. "When we speak of free 06:49:12  
2 software, we're referring to freedom of use, 06:49:16  
3 not price. Our general public licenses 06:49:18  
4 are designed to make sure that you have 06:49:20  
5 the freedom to distribute copies of free 06:49:22  
6 software and charge for the service if you 06:49:24  
7 wish, that you receive source code or can 06:49:28  
8 get it if you want it, that you can change 06:49:31  
9 the software and use pieces of it in new 06:49:33  
10 free programs and that you are informed you 06:49:36  
11 can do these things." Do you see that? 06:49:40  
12 A. Yes. 06:49:42  
13 Q. In the statement that "you receive source 06:49:42  
14 code or can get it if you want it," who is 06:49:48  
15 "you" in that clause? 06:49:52  
16 MR. POSNER: Object to the form. 06:49:55  
17 A. The FSF believes that is the user. 06:50:02  
18 Q. Did FSF intend for "you" in that clause to 06:50:04  
19 confer rights on the user? 06:50:11  
20 A. Yes. 06:50:14  
21 Q. And would the same be true of the equivalent 06:50:15  
22 paragraph in GPL Version 2? 06:50:18  
23 MR. POSNER: Object to the form. 06:50:22  
24 A. Yes. 06:50:26  
25 Q. Is it consistent with FSF's objectives for 06:50:26

1	users of licensed software to have a right	06:50:42
2	to the source code?	06:50:44
3	MR. POSNER: Object to the form.	06:50:46
4	A. Yes.	06:50:47
5	Q. Did FSF intend to confer a right to source	06:50:48
6	code on users of licensed software?	06:50:53
7	A. Yes.	06:50:56
8	Q. Is it consistent with FSF's intentions for	06:50:56
9	the GPLs to allow users of licensed software	06:51:01
10	to compel licensees to share source code	06:51:05
11	that they distribute?	06:51:09
12	A. Can you repeat the question?	06:51:13
13	Q. Is it consistent with FSF's intentions for	06:51:14
14	the GPLs to allow users of licensed software	06:51:18
15	to compel licensees to share source code?	06:51:22
16	A. Yes.	06:51:27
17	Q. Does the FSF think that is reasonable?	06:51:27
18	A. Yes.	06:51:31
19	Q. Why?	06:51:31
20	A. Because it allows users to obtain -- if	06:51:34
21	users get the source code, that is the only	06:51:42
22	way that they will be able to make the	06:51:45
23	changes to the program that they wish, to	06:51:47
24	run the program as they wish and to then	06:51:49
25	redistribute those changes to help the	06:51:55

1	community.	06:51:57
2	Q. To effectuate the four freedoms?	06:51:58
3	A. Yes, that effectuates the four freedoms.	06:52:01
4	Q. Is it consistent with FSF's intentions for	06:52:04
5	the GPLs to allow courts to compel licensees	06:52:08
6	to share source code when demanded by	06:52:11
7	software users?	06:52:15
8	A. Yes.	06:52:16
9	MR. POSNER: Object to the form,	06:52:17
10	calls for a legal conclusion.	06:52:19
11	Q. Is it consistent with FSF's intentions for	06:52:20
12	the GPLs to allow courts to compel licensees	06:52:27
13	to share source code for licensed software	06:52:30
14	when that source code is refused by the	06:52:34
15	licensees?	06:52:37
16	MR. POSNER: Object to the form.	06:52:38
17	A. Yes.	06:52:40
18	Q. Does FSF think that is reasonable?	06:52:40
19	A. Yes.	06:52:44
20	Q. Why?	06:52:45
21	A. Because we believe that users should obtain	06:52:47
22	the complete and corresponding source code	06:52:51
23	to the licensed programs, and if they cannot	06:52:53
24	get that because they are refused it, then	06:52:56
25	it would be a good thing if a court compels	06:52:59

1	them to do that.	06:53:01
2	Q. And compels whom?	06:53:02
3	A. Compels the -- sorry.	06:53:05
4	Q. Who would the court compel? Who would the	06:53:16
5	court require to share source code?	06:53:19
6	MR. POSNER: Object to the form.	06:53:20
7	A. The makers of the program or whoever is	06:53:22
8	refusing the source code, the --	06:53:25
9	Q. The distributor?	06:53:29
10	A. The distributor, yeah.	06:53:30
11	MR. POSNER: I want to interpose	06:53:34
12	a leading objection to that.	06:53:44
13	Q. I refer you back to GPL Version 2, marked	06:53:46
14	as Exhibit 5. Do you have that document in	06:53:52
15	front of you?	06:53:55
16	A. Yes.	06:53:56
17	Q. I refer you in particular to Section 3, the	06:53:56
18	first full paragraph after Subsection C.	06:54:03
19	I believe we looked at this earlier today,	06:54:07
20	is that correct?	06:54:11
21	A. Yes.	06:54:11
22	Q. I refer you in particular to the first two	06:54:11
23	sentences of this paragraph which read, "the	06:54:18
24	source code for a work means the preferred	06:54:20
25	form of the work for making modifications to	06:54:24

1	is that correct?	07:40:01
2	MR. THOMPSON: Objection to form,	07:40:02
3	misconstrues the witness' prior testimony,	07:40:04
4	asked and answered.	07:40:07
5	MS. GRAY: I'll join.	07:40:08
6	A. Yes, but the FSF is also a small organization	07:40:09
7	with a small staff and we have a lot of	07:40:14
8	resources, and it sometimes takes time for us	07:40:17
9	to update it.	07:40:19
10	Q. Okay. I have nothing further.	07:40:20
11	MR. THOMPSON: I think we're done.	07:40:28
12	MS. GRAY: The deposition is closed.	07:40:31
13	VIDEOGRAPHER: The time is 7:40 p.m.	07:40:33
14	This concludes the deposition and the media	07:40:36
15	will be retained by Veritext.	07:40:38
16	(Whereupon the deposition was	07:40:40
17	concluded at 7:40 p.m.)	
18		
19		
20		
21		
22		
23		
24		
25		

1 DEPONENT'S ERRATA SHEET  
2  
3 AND SIGNATURE INSTRUCTIONS

4 The original of the Errata Sheet has  
5 been delivered to Naomi Jane Gray, Esq.

6 When the Errata Sheet has been  
7 completed by the deponent and signed, a copy  
8 thereof should be delivered to each party of  
9 record and the ORIGINAL delivered to Daniel  
10 Posner, Esq., to whom the original deposition  
11 was delivered.

12  
13 INSTRUCTIONS TO DEPONENT

14 After reading this volume of your  
15 deposition, indicate any corrections or  
16 changes to your testimony and reason therefor  
17 on the Errata Sheet supplied to you and sign  
18 it. DO NOT make marks or notations on the  
19 transcript volume itself.

20  
21 REPLACE THIS PAGE OF THE TRANSCRIPT  
22 WITH THE COMPLETED AND SIGNED ERRATA  
23 SHEET WHEN RECEIVED.

I declare under penalty of perjury under the laws that the foregoing is true and correct.

Executed on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_.

ZOE KOOYMAN

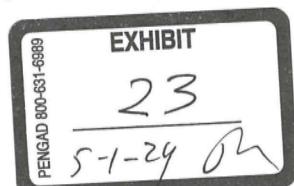
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# Exhibit: "19"

Updated: June 19, 2023

I, Zoë Kooyman, declare as follows:

1. I am over the age of 18 and if called upon to do so could testify competently about the facts set forth in this declaration. The facts stated herein are made on my personal knowledge.
2. I am currently the executive director at the Free Software Foundation (FSF). I have held the executive director position since March 2022.
3. The FSF publishes the GNU General Public License (GNU GPL).
4. In my position as executive director, I work closely with the FSF board of directors to determine the FSF's position regarding free software licenses and interpretation of the GNU General Public License (GNU GPL). I have spoken to them on this matter, and speak for the FSF's position in this document.
5. In my position as executive director I work closely with Richard Stallman, the original author of the GNU GPL, and I have consulted him on this matter as well and have also discussed this document with him.
6. The FSF maintains a Frequently Asked Questions (FAQ) regarding copyleft licensing (<https://www.gnu.org/licenses/gpl-faq.html>) and the GNU GPL and has published numerous articles on copyleft, and on GNU GPL enforcement.
7. The FAQ is a non-exhaustive collection of answers to questions about the GNU family of licenses and copyleft as we have collected these over the years. The answers are based on our experiences, common practice, or on what we have been advised through legal counsel over the years since the beginning of the free software movement in the 1980's. It is therefore subject to change.
8. The FSF's mission is to promote computer user freedom globally. The FSF believes that GNU GPL enforcement can help push this mission forward. For this reason, the FSF is generally supportive of any legal framework that supports GNU GPL enforcement.
9. The FSF is aware of the position the Software Freedom Conservancy (SFC) has taken on third party enforcement by a breach of contract theory, and believes a conclusion in favor of SFC would be consistent with the FSF's mission to defend the rights of users to run, copy, distribute, study, change and improve the software.
10. The FSF advocates enforcement based on the principles of community led GPL enforcement (<https://www.fsf.org/licensing/enforcement-principles>),



but believes a breach of contract claim to enforce the GNU GPL would be a valid and good strategy as well.

11. The FSF does not rule out that the SFC's breach of contract claim to enforce copyright license provisions requiring the licensee to respect certain rights for other users of the same work is a valid approach.
12. The FSF will update the FAQ to reflect this position in due course.

**PROOF OF SERVICE**

*Software Freedom Conservancy, Inc. v. VIZIO, Inc.; et al.*  
OCSC Case No.: 30-2021-01226723-CU-BC-CJC

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 3701 Wilshire Boulevard, Suite 1135, Los Angeles, California 90010.

On August 15, 2025, I served the foregoing document described as **REPLY MEMORANDUM OF POINTS AND AUTHORITIES OF PLAINTIFF SOFTWARE FREEDOM CONSERVANCY, INC. IN SUPPORT OF MOTION FOR SUMMARY ADJUDICATION OF ISSUES; SUPPLEMENTAL DECLARATION OF SA'ID VAKILI IN SUPPORT THEREOF** on all interested parties in this action at the addresses listed below, as follows:

## QUINN EMANUEL URQUHART & SULLIVAN, LLP

Michael E. Williams, Esq. ([michaelwilliams@quinnemanuel.com](mailto:michaelwilliams@quinnemanuel.com))

Daniel C. Posner, Esq. ([danposner@quinnemanuel.com](mailto:danposner@quinnemanuel.com))

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865 South Figueroa Street, 10<sup>th</sup> Floor

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**213/443-3000** | Fax: 213/443-3100

*Counsel for Defendant VIZIO, Inc.*

( ) OVERNIGHT DELIVERY (DROP-OFF) (CCP §1013(c)). By placing a true copy thereof enclosed in a sealed envelope or package as designated by an overnight mail courier, addressed as above, and depositing said envelope or package, with delivery fees provided for, in a box regularly maintained by the overnight mail courier at 3701 Wilshire Boulevard, Los Angeles, California 90010.

(v) VIA ELECTRONIC TRANSMISSION. I caused to be transmitted a true copy thereof to the designated counsel listed above to his respective e-mail address, pursuant to California *Code of Civil Procedure* § 1010.6. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

( ) PERSONAL DELIVERY. I caused to be served by messenger for personal delivery that same day the foregoing documents in a sealed envelope to the above persons at the address(es) listed in the attached Service List.

I declare under penalty under the laws of the State of California that the above is true and correct.  
Executed on August 15, 2025, at Los Angeles, California.

Daphne Gomez  
(Printed Name)