Sa'id Vakili, Esq. (SBN: 176322)
vakili@vakili.com
David N. Schultz. Esq. (SBN: 123094)
Schu1984@yahoo.com
Stephen P. Hoffman, Esq. (SBN: 287075)
hoffman@vakili.com
VAKILI & LEUS, LLP
3701 Wilshire Boulevard, Suite 1135
Los Angeles, CA 90010-2822

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

Attorneys for Plaintiff Software Freedom Conservancy, Inc.

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*] **PLAINTIFF SOFTWARE FREEDOM CONSERVANCY, INC.'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR SUMMARY ADJUDICATION OF DEFENDANT VIZIO, INC.; DECLARATIONS OF BRADLEY M. KUHN, DENVER GINGERICH; CHRISTOPHER WAID, BDALE GARBEE, AND SA'ID VAKILI IN SUPPORT THEREOF** [*Response to Separate Statement of Undisputed Material Facts; Evidentiary Objections; Appendix of Exhibits; and Request for Judicial Notice submitted concurrently herewith*] Date: July 24, 2025 Time: 10:00 a.m. Dept.: C33 Complaint Filed: October 19, 2021 Trial Date: October 22, 2025

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

Defendant VIZIO, Inc. ("VIZIO") has filed a Motion for Summary Adjudication (the "Motion") that is both procedurally defective and substantively flawed. The Motion suffers from three distinct procedural flaws, each of which provides a separate ground to deny it: (a) the single issue of contractual duty identified in VIZIO's Notice of Motion is not supported by the interrogatory response from Plaintiff Software Freedom Conservancy, Inc. ("SFC"), on which VIZIO bases its entire Motion; (b) granting the Motion would not completely dispose of the issue identified by SFC in its interrogatory response, as required by Section 437c(f)(1) of the California *Code of Civil Procedure*; and (c) VIZIO's Separate Statement of Undisputed Material Facts (the "Separate Statement") violates at least two mandatory provisions of Rule 3.1350 of the California *Rules of Court.* For these reasons, this Court should deny the Motion without the need to address the merits.

Moreover, VIZIO's Motion also lacks substantive merit. Its assertion that the software license agreements at issue in this action—the GNU General Public License version 2 (the "GPLv2") and the GNU Lesser General Public License version 2.1 (the "LGPLv2.1") (collectively, "the GPLv2s")[1]—do not include what VIZIO refers to as a "reinstallation requirement"[2] is contradicted by the very language of the GPLv2s. Furthermore, VIZIO relies upon statements and conduct that are inadmissible, because they occurred long after the GPLv2s were finalized. Finally, VIZIO fails to controvert, and cannot controvert, that there is, at the very least, a triable issue of material fact as to whether the GPLv2s contain a "reinstallation requirement." For these reasons, as well, this Court should deny VIZIO's Motion.

First, it is well settled under California law that a motion for summary adjudication may only be granted as to the issues or causes of action specified in the moving party's Notice of Motion. Here, VIZIO's Notice of Motion (the "Notice") states that the only issue raised by VIZIO's Motion is

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[1] Copies of the GPLv2 s are attached as Exhibits "A" and "B", respectively, to SFC's First Amended Complaint in this action and as Exhibits "1" and "2", respectively, to SFC's Appendix of Exhibits in opposition to VIZIO's Motion, submitted separately herewith (the "Appendix").

[2] Although VIZIO refers to the contractual duty that is the subject of its Motion as the "reinstallation requirement" (*see* Memorandum of Points and Authorities in support of the Motion ("Memo") at 1:17-19), the term is actually a misnomer. As explained below, the GPLv2 requires distributors of devices containing software licensed under the GPLv2 to provide scripts so that the software, in executable form, may be installed by customers onto the devices. Nevertheless, SFC accepts and uses the phrase "reinstallation requirement" herein for the sake of consistency and so as not to confuse the Court.

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the following issue of contractual duty: whether the open-source software licenses in question [the GPLv2s] require the licensee (here, VIZIO) to provide information necessary to install modified versions of the licensed software back onto the Smart TVs with which the software was originally distributed while ensuring the TVs continue to function properly. (*See* Notice at ii, lines 6:10.)

According to VIZIO, although SFC contends that the GPLv2s impose this duty, "neither license imposes a duty on licensees to provide all information necessary to permit reinstallation of modified software back on the same device such that the device continues to function properly." (*Id.* at ii, lines 12-14.)

VIZIO's Notice completely mischaracterizes the interrogatory response of SFC upon which VIZIO bases its entire Motion. Nowhere in its interrogatory response does SFC state that the GPLv2s impose a duty on VIZIO either to provide information necessary to reinstall modified software back onto VIZIO's Smart TVs or to ensure that VIZIO's Smart TVs continue to function properly. (*Compare* Memo at 6:22-28 (SFC's interrogatory response) *with id.* at 7:2-6 (VIZIO's mistaken description of SFC's contention). This Court thus should deny the Motion without the need to reach the merits because: (a) the specific issue identified by VIZIO in its Notice is not raised by SFC and thus is not now before the Court; and (2) granting the Motion would not completely dispose of the relevant issue of duty, as required by Section 437c(f)(1) of the California *Code of Civil Procedure,* because the GPLv2s could still impose a duty on licensees such as VIZIO to provide information necessary to reinstall software that is not modified and to ensure that the software at issue runs properly [*see* Section IV, below].

VIZIO's Motion is procedurally defective for the additional reason that VIZIO's Separate Statement fails to comply with the requirements of Rule 3.1350 of the California *Rules of Court.* The Separate Statement fails to repeat verbatim the specific issue of duty that is set forth in VIZIO's Notice and quoted above, in violation of Rule 3.1350(b). Instead, VIZIO's Separate Statement lists six other issues, none of which is set forth in VIZIO's Notice. Moreover, VIZIO's Separate Statement fails to identify the issue of duty that is the subject of its Motion, in violation of Rule 3.1350(d)(1). Instead, the Separate Statement lists six issues for which this Court may not properly grant relief, because none of these issues "completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty," as required by Section 437c(f)(1) of the California *Code of Civil Procedure.* VIZIO's failure to submit a compliant Separate Statement provides a separate and independent basis for this Court to deny the Motion, without the need to address the merits [*see* Section V, below].

Even if this Court decides that VIZIO's Motion is procedurally appropriate (and it should not, for all the reasons set forth herein), this Court still may not grant the Motion. First, VIZIO's misplaced contention that the plain language of the GPLv2s does not impose the "reinstallation requirement"

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advanced by SFC in its interrogatory response completely ignores the definition of "source code" found in the GPLv2s, which states that VIZIO must: (a) provide information, including the necessary scripts, to allow the software on its Smart TVs that is licensed under the GPLv2s to be installed on these Smart TVs; and (b) provide the files necessary to ensure that the software licensed under the GPLv2s that is on its Smart TVs functions properly. Accordingly, as explained below, the "plain language" of the GPLv2s provides no basis whatsoever for this Court to grant VIZIO's Motion [*see* Section VI, below.]

Furthermore, VIZIO's attempt to rely upon extrinsic evidence likewise provides no basis to grant its Motion, for at least three reasons. First, VIZIO's assertion that the inclusion of a "reinstallation requirement" in the GNU General Public License version 3 (the "GPLv3"), as well as certain statements regarding the differences between the GPLv3 and the GPLv2, confirms that the GPLv2 does not contain a "reinstallation requirement" provides no basis to grant the Motion, because it relies upon irrelevant and inadmissible evidence. California law is clear that agreements such as the GPLv2s are to be interpreted based on the intent of the parties at the time of contracting, and not based on subsequent statements, documents, or events. Second, even if this Court considers such evidence, it may not grant VIZIO's Motion. On the contrary, the evidence submitted by SFC herein establishes, at very least, a triable issue of material fact as to the correct interpretation of the GPLv2s sufficient to deny the Motion. Third, VIZIO's mistaken assertion that the reasonable expectations of the open-source community confirm that the GPLv2s do not contain a "reinstallation requirement" is directly controverted by SFC's evidence, including statements from three third party members of the open-source community. For each of these reasons as well, VIZIO's Motion lacks merit and should be denied [*see* Section VII, below].

II.   RELEVANT FACTUAL BACKGROUND

A.   The GPLv2s and Free and Open Source Software

The GPLv2s at issue in this action are two of the most vital, widely used, and successful software license agreements. (SFC's Response to Separate Statement of Undisputed Material Facts, submitted separately herewith, Additional Material Fact ("AMF") Nos. 1-2.) The Free Software Foundation (the "FSF") published the GPLv2 in 1991 and the LGPLv2.1 in 1999. (Appendix, Exhibits "1", "2".) Software developed under the GPLv2s helps operate such consumer devices as wireless home routers, and television sets, including the Smart TVs manufactured and sold by VIZIO. (AMF No. 3.)

The GPLv2s play a central role in the development of "free and open source software" ("FOSS"). FOSS is a software development model that encourages and relies on collaboration and the free exchange of knowledge. In this context, "free" refers to "freedom," and not "gratis." (AMF Nos. 4-5.)

As the Preamble to the GPLv2s states, in setting forth the objectives of these agreements, the GPLv2s are "intended to guarantee your freedom to share and change free software—to make sure the software is free for all its users." (Appendix, Exhibit "1" (the GPLv2) at 1.) As one court has similarly explained, FOSS projects "invite computer programmers from around the world to view software code and make changes and improvements to it." (*Jacobsen v. Katzer*, 535 F.3d 1373, 1378 (Fed. Cir. 2008).

FOSS projects are successful because many software developers work on them, adding new features, modifying old features, and fixing bugs, and these new versions are available to other developers to learn from, tweak and improve. Many popular software programs are FOSS, including the Linux kernel, the basis for a popular computer operating system. (AMF Nos. 6, 7.)

Software exists in two general forms: (1) object code or binaries, which are said to be executable; and (2) source code. (AMF Nos.8, 9.) Computers can only understand and run software that is encoded in binary, a long sequence of ones and zeros. Because humans cannot easily understand binary, however, it is impractical for humans to instruct a computer using binary. Instead, humans use specific programming languages to instruct computers, and software written in such languages is called "source code." Unlike executable code encoded in binary, this "source code" is designed for human programmers to review, understand, and modify if they choose. (*See* Declaration of Bradley M. Kuhn, attached hereto ("Kuhn Decl."), ¶¶ 18-20.) In order for a computer to read, run, and execute this source code, the source code must be "compiled" into an executable code, encoded in binary. The executable code must then be installed on the computer in a manner that the computer recognizes. Software engineers and developers write what are known as "scripts" to explain to other software engineers and developers how to compile and install the executable code onto the computer. (*Id.,* ¶¶ 21-22; AMF Nos. 10-12.)

B.   *The Source Code Provision in the GPLv2s*

Software is often distributed in an executable form, including in VIZIO's Smart TVs at issue in this action. (AMF No. 13.) As explained above, however, programmers cannot review, modify, or re-purpose executable software. (AMF Nos. 8, 9; Kuhn Decl., ¶¶ 18-20.) The GPLv2s solve this problem and make FOSS possible by requiring those who distribute software in an executable form to accompany that software either with the complete corresponding source code, or with a written offer to give any third party the complete corresponding source code upon request. (AMF No. 14.) As one court has explained, "[T]he GPL allows for free use and redistribution of [the software], including in other software (i.e., the creation of a derivative work), on the condition the original licensor continues the

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open source trend and makes the source code freely available." (*Versata Software, Inc. v. Ameriprise Fin., Inc.,* 2014 U.S. Dist. LEXIS 30934, at *4; *see also Artifex Software v. Hancom, Inc.,* 2017 U.S. Dist. LEXIS 62815, at *4 ("[T]he GNU GPL required Defendant to distribute its software with the accompanying source code.").

Section 3 of the GPLv2 is the provision of the agreement that makes FOSS possible and ensures that software licensed under the GPLv2 may be reviewed and modified by others, Section 3 of the GPLv2 provides, in pertinent part:

> You may copy and distribute [a GPLv2-licensed] Program (or a work based on it…) in object code or executable form under the terms of Sections 1 and 2 above provided that you also do one of the following:
>
> a)   Accompany it with the complete corresponding machine-readable source code…; or,
>
> b)   Accompany it with a written offer, valid for at least three years, to give any third party … a complete machine-readable copy of the corresponding source code….

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

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

(AMF No. 16 (emphasis added).) The LGPLv2.1 has equivalent language to the language from Section 3 of the GPLv2 quoted above that applies to libraries.[3] (AMF No. 17.) It also has an almost identical definition of "source code," merely substituting "library" for "executable work" and "executable." (AMF Nos. 16, 18.)

Thus, under Section 3 of the GPLv2, VIZIO must provide SFC with the following for any computer program licensed under the GPLv2 that is found on one of VIZIO's Smart TVs purchased by SFC: (a) all the source code for all of the modules of the computer program; (b) the associated interface definition files; and (c) the scripts used to control compilation and installation of the executable on the same device on which the computer program was originally distributed—the VIZIO Smart TV purchased by SFC. In other words, VIZIO must provide the source code, interface definition files, and scripts necessary for the software on its Smart TVs that is licensed under the GPLv2 to be installed on these Smart TVs and to function properly. (AMF No. 20; *see also* Kuhn Decl., ¶¶ 26, 27; Declaration

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[3] The LGPLv2.1 defines a "library" as "a collection of software functions and/or data prepared so as to be conveniently linked with application programs (which use some of those functions and data) to form executables." (AMF No. 19.) Thus, under the LGPLv2.1, libraries also involve executables.

of Denver Gingerich, attached hereto ("Gingerich Decl."), ¶¶ 5, 7). This is the "reinstallation requirement" that VIZIO mistakenly contends is not found in the GPLv2.

Representatives of SFC understand that, if VIZIO distributes a device such as a Smart TV that includes a computer program licensed under the GPLv2 in executable form, the GPLv2 requires VIZIO to provide the scripts used to control the compilation and installation of the executable on the same device on which the computer program was originally distributed. (AMF Nos. 21, 22; Kuhn Decl., ¶¶ 27-30; Gingerich Decl., ¶¶ 5, 7.) Other members of the FOSS community, including the Executive Director of the FSF, likewise understand that the GPLv2 includes what VIZIO refers to as a "reinstallation requirement". (AMF Nos. 23-36; *see* Declaration of Christopher Waid, attached hereto ("Waid Decl."), ¶¶ 5, 9; Declaration of Bdale Garbee, attached hereto ("Garbee Decl."), ¶¶ 13, 15; Appendix, Exhibit "9" (Transcript of Deposition of Zoe Kooyman at 341:8-345:18).

As one member of the FOSS community explains, under the GPLv2, the distributor of a device that includes a computer program licensed under the GPLv2 "must provide scripts that allow a recompiled binary of the source code to be installed back onto the device in question." (AMF No. 31; Garbee Decl., ¶ 13.) As another member of the FOSS community states, it is "my understanding that, under the GPLv2, customers who obtain devices that include software licensed under the GPLv2 must be provided with the scripts necessary for them to be able to compile and install such software onto these devices." (AMF No. 26; Waid Decl., ¶ 9). Even Robert Landley, one of the members of the open-source community upon whom VIZIO's Motion relies, concedes that the GPLv2 allows owners of devices containing software governed by the GPLv2 to install new versions of that software back on their own devices. (Appendix, Exhibit "7" (Transcript of Deposition of Robert Landley) at 146:21-147:2, 147:14-15; Kuhn Decl., ¶¶ 51-55.) Moreover, that the GPLv3 may contain a "reinstallation requirement" does not mean that the GPLv2 does not contain such a requirement. (AMF No. 26; Kuhn Decl., ¶¶ 28-36; Waid Decl., ¶ 9.)

III. LEGAL AUTHORITY APPLICABLE TO VIZIO'S MOTION

Section 437c of the California *Code of Civil Procedure* provides, in pertinent part, that "[a] party may move for summary adjudication as to . . . one or more issues of duty, if the party contends that . . . one or more defendants either owed or did not owe a duty to the plaintiff." (*See* Cal. *Civ. Proc. Code* § 437c(f)(1).) The motion may be granted only" if it "completely disposes . . . of an issue of duty." (*Id.*)

A motion for summary adjudication "shall proceed in all procedural respects as a motion for summary judgment." (Cal. *Civ. Proc. Code* § 437c(f)(2).) Accordingly, VIZIO is entitled to summary

adjudication as to the single issue raised in its Motion only if VIZIO satisfies its burden of establishing, through admissible evidence, that there is no triable issue as to any material fact and that VIZIO is entitled to judgment as a matter of law on that issue. (*See id.,* § 437c(c), (d).)

In deciding VIZIO's Motion, this Court may not weigh the evidence. Instead, this Court must view the evidence in the light most favorable to SFC, the opposing party, and must draw all reasonable inferences in favor of SFC. (*Id.,* § 437c(c); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.) As one court has explained, "declarations of the moving party are strictly construed, those of the opposing party are liberally construed, and all doubts as to whether a summary judgment should be granted must be resolved in favor of the opposing party." (*Trop v. Sony Pictures Entertainment, Inc.* (2005) 129 Cal.App.4th 1133, 1144-45.)

As explained below, VIZIO fails to satisfy the requirements for granting summary adjudication set forth above, for numerous separate reasons. Accordingly, this Court should deny VIZIO's Motion.

IV. THIS COURT MAY NOT PROPERLY GRANT SUMMARY ADJUDICATION IN FAVOR OF VIZIO ON THE SOLE ISSUE THAT IS THE SUBJECT OF ITS MOTION

"If a party desires adjudication of particular issues or subissues, that party must make its intentions clear in the motion." (*Homestead Savings v. Superior Court* (1986) 179 Cal.App.3d 494, 498.) As one court has explained, "Only the grounds specified in the notice of motion may be considered by the trial court. This rule has been held to be especially true in the case of motions for summary adjudication of issues." (*Gonzales v. Superior Court* (1987) 189 Cal.App.3d 1542, 1545 (citations omitted); *see also* Cal. *Rules of Court*, Rule 3.1350(b) ("If summary adjudication is sought, … the specific cause of action, affirmative defense, claims for damages, or issues of duty must be stated specifically in the notice of motion …").) A "motion for summary adjudication tenders only those issues or causes of action specified in the notice of motion, and may only be granted as to the matters thus specified." (*Schmidlin v. City of Palo Alto* (2007) 157 Cal.App.4th 728, 744.) Moreover, a trial court may grant a motion for summary adjudication "only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty." (*See* Cal. *Civ. Proc. Code* § 437c(f)(1).)

Here, VIZIO's Notice specifies only one issue of contractual duty for which its Motion seeks summary adjudication. As explained below, this Court may not properly grant summary adjudication in favor of VIZIO on this issue, for two separate and independent reasons.

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A. ***This Court May Not Grant VIZIO's Motion Because the Sole Issue Specified in its Notice is Not Raised By SFC in the Interrogatory Response that Forms the Entire Basis for the Motion***

First, this Court may not grant the Motion because the only issue which this Court may adjudicate is the single issue of contractual duty set forth in VIZIO's Notice, which states as follows:

> the following issue of contractual duty: whether the open-source software licenses in question [the GPLv2vs] require the licensee (here, VIZIO) to provide information necessary to install modified versions of the licensed software back onto the Smart TVs with which the software was originally distributed while ensuring the TVs continue to function properly. (*See* Notice at ii, lines 6:10.)

Thus, in its Memo in support of the Motion, VIZIO asserts that "SFC contends that VIZIO breached GPLv2 by, among other reasons, failing to provide information that would allow a recipient of source code to modify GPLv2- and LGPLv2.1-licensed software and reinstall it back onto the Smart TVs while ensuring that the TVs continue to function properly." (Memo at 7:21-24). VIZIO similarly asserts that "SFC seeks to obtain the source code for GPLv2- and LGPLv2.1 licensed software installed on the TVs, as well as all other information necessary to reinstall modified software back onto the TVs, while ensuring the TVs continue to function properly." (Memo at 7:2-3).

In support of the above assertions regarding what it contends is SFC's position, VIZIO relies solely upon a single interrogatory response from SFC (the "Interrogatory Response"). SFC's Interrogatory Response, which forms the entire basis for VIZIO's Motion, states, in relevant part:

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

(*See* Memo at 6:24-28, *quoting* SFC's Response to Special Interrogatory No. 4, found at Appendix, Exhibit "3".)[4] VIZIO cites no other source for its description of SFC's purported position.

A comparison of SFC's Interrogatory Response with both the sole issue upon which VIZIO seeks summary adjudication and the language from VIZIO's Memo quoted above conclusively establishes that VIZIO completely mischaracterizes the Interrogatory Response and SFC's position set forth therein.

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[4] The language in italics quoted above is found in SFC's Interrogatory Response but is not included by VIZIO in the quotation found in its Memo, where it is replaced by ellipses. (*Compare* Appendix, Exhibit "3" *with* Memo at 6:24-28.)

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Nowhere in its Interrogatory Response does SFC state that, under the GPLv2, VIZIO needs to provide SFC with information necessary to reinstall modified software back onto VIZIO's Smart TVs. Nor does the response state that VIZIO needs to ensure that its Smart TVs continue to function properly. In fact, the Interrogatory Response says nothing whatsoever about modified software, the need to reinstall modified software, or the need to ensure that VIZIO's Smart TVs continue to function properly. Nevertheless, VIZIO's Notice asks this Court to adjudicate whether the GPLv2s impose duties to: (a) "provide information necessary to install modified versions of the licensed software back onto the Smart TVs"; and (b) ensure that the Smart TVs "continue to function properly"—even though such duties simply are not raised by SFC in its Interrogatory Response.

In short, the alleged duty that is the subject of VIZIO's Motion is not even mentioned in SFC's Interrogatory Response and thus is not before the Court. For this reason alone, the Motion fails.

B. This Court May Not Grant the Motion Because Doing So Will Not Fully Dispose of the Issue of Duty Raised in SFC's Interrogatory Response

Even if this Court determines that the issue of duty set forth in VIZIO's Notice is properly before the Court (and it should not, for all the reasons discussed in Section IV.A, above). Section 437c(f)(1) of the California *Code of Civil Procedure* specifically states that this Court may grant VIZIO's Motion "only if it completely disposes of … an issue of duty." (*See* Cal. *Civ. Proc. Code* § 437c(f)(1).) Furthermore, California case law specifically holds that "on a motion for summary adjudication, the court may rule whether a defendant owes or does not owe a duty to plaintiff without regard for the dispositive effect of such ruling on other issues in the litigation, except that the ruling must completely dispose of the issue of duty." (*Linden Partners v. Wilshire Linden Associates* (1998) 62 Cal.App.4th 508, 522.) This Court quoted this very language from *Linden Partners* in its March 26, 2024, Order denying SFC's previous motion for summary adjudication. (*See* Appendix, Exhibit "8" (Order at 5).)

Here, this Court may not properly grant VIZIO's Motion because any such ruling would not completely dispose of the issue of duty identified in SFC's Interrogatory Response. For example, granting the Motion would not address the question of whether VIZIO owes a duty to SFC under the GPLv2s to provide information necessary to allow SFC to reinstall unmodified software licensed under the GPLv2s; the issue specified by VIZIO in its Notice only addresses "information necessary to install *modified* versions of the licensed software" back onto VIZIO's Smart TVs. (*See* Notice at ii, lines 8-9 (emphasis added).) In addition, granting the Motion would not address the question of whether VIZIO owes a duty to SFC under the GPLv2s to ensure that the software that is licensed under the GPLv2s that is on its Smart TVs functions properly; the issue specified in VIZO's Notice only addresses whether

VIZIO owes a duty to ensure that the Smart TVs themselves "continue to function properly." (*Id.* at ii, line 10.) Accordingly, because granting the Motion would not completely dispose of the relevant issue of duty, as required by Cal. *Civ. Proc. Code* § 437c(f)(1) and the holding in *Linden Partners,* VIZIO's Motion is fatally flawed.

Such a conclusion is compelled by this Court's analysis in its Order denying SFC's earlier summary adjudication motion. There, the Court denied SFC's motion because SFC "narrowed the issue of duty to include only VIZIO's alleged duty to provide the source code to third parties" even though, under the language of the GPLs, VIZIO "could either accompany the product which utilizes the GPL technology with the source code <u>or</u> give a written offer on how to obtain the source code." (Appendix, Exhibit "8" (Order at 5 (emphasis in original).)

Here, VIZIO has narrowed the issue of duty to include only its alleged duty to provide "information necessary to install modified versions of the licensed software back onto the Smart TVs with which the software was originally distributed while ensuring the TVs continue to function properly" (s*ee* Notice at ii, lines 8-9). Under the language of the Interrogatory Response of SFC upon which VIZIO bases its Motion, however, VIZIO's alleged duty could extend to software that is not modified and to ensuring that the software that is licensed under the GPLv2s continues to function properly.

Accordingly, this Court should apply the above analysis set forth in its March 26, 2024 Order, as well as the language of Section 437c(f)(1) and *Linden Partners,* and rule that granting VIZIO's Motion would not completely dispose of the issue of duty set forth in SFC's Interrogatory Response. For this reason as well, this Court should deny the Motion, without the need to address the merits.

V. THIS COURT SHOULD DENY THE MOTION FOR THE ADDITIONAL REASON THAT VIZIO'S SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IS FATALLY DEFICIENT

This Court should deny the Motion for the additional reason that VIZIO's Separate Statement violates the mandatory provisions of Rule 3.1350 of the California *Rules of Court* ("Rule 3.1350") in various different ways. Rule 3.1350(b) states, in relevant part, as follows:

> If summary adjudication is sought, whether separately or as an alternative to the motion for summary judgment, ***the specific*** cause of action, affirmative defense, claims for damages, or ***issues of duty must be stated specifically in the notice of motion and be repeated, verbatim, in the separate statement of undisputed material facts.***

(Cal. *Rules of Court*, Rule 3.1350(b) (emphasis added); *see Schmidlin, supra,* 157 Cal.App.4th at 744 (*citing* Rule 3.1350(b)). Rule 3.1350(d)(1), in turn, states as follows:

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(1) ***The Separate Statement of Undisputed Material Facts*** in support of a motion ***must separately identify:***

    (A) Each cause of action, claim for damages, ***issue of duty***, or affirmative defense ***that is the subject of the motion; and***

    (B) ***Each supporting material fact claimed to be without dispute with respect to the*** cause of action, claim for damages, ***issue of duty,*** or affirmative defense ***that is the subject of the motion.***

(Cal. *Rules of Court*, Rule 3.1350(d)(1) (emphasis added).

A review of VIZIO's moving papers conclusively establishes that VIZIO's Separate Statement violates both of these requirements. First, VIZIO's Separate Statement fails to comply with Rule 3.1350(b), because the language set forth in VIZIO's Notice and quoted in Section IV.A, above (*see* Notice at ii, lines 6:10), is not repeated anywhere in VIZIO's Separate Statement. Instead, the Separate Statement lists the following six different issues, none of which is set forth in VIZIO's Notice:

1) "**ISSUE 1:** The General Public License version 2 ("GPLv2") does not contain the reinstallation requirement SFC seeks to impose." (Separate Statement at 1:5-7.)

2) "**ISSUE 1(a):** The plain text of GPLv2 demonstrates that it does not contain a reinstallation requirement." (*Id.* at 2:1-2.)

3) "**ISSUE 1(b):** Even if the Court considers extrinsic evidence in interpreting GPLv2, this evidence confirms the lack of a reinstallation requirement." (*Id.* at 4:10-11.)

4) "**ISSUE 2:** The Lesser General Public License version 2.1 ("LGPLv2.1") does not contain the reinstallation requirement SFC seeks to impose." (*Id.* at 11:23-24.)

5) "**ISSUE 2(a):** The plain text of LGPLv2.1 demonstrates that it does not contain a reinstallation requirement." (*Id.* at 12:13-14.)

6) "**ISSUE 2(b):** Even if the Court considers extrinsic evidence in interpreting LGPLv2.1, this evidence confirms the lack of a reinstallation requirement." (*Id.* at 13:18-19.)

For this reason alone, VIZIO's Motion is fatally flawed. (*See, e.g., Truconnect Communications, Inc. v. Ground Floor Mktg. LLC* (2024) 2024 Cal. Super. LEXIS 57280, at **4-5 ("Plaintiff's Motion violates the mandatory provisions of *California Rules of Court, rule 3.1350(b)*" because "Plaintiff's notice of motion seeks adjudication of different issues than the separate statement.")

Moreover, VIZIO's Separate Statement also violates Rule 3.1350(d)(1), which provides that a Separate Statement must identify "[e]ach cause of action, claim for damages, issue of duty, or affirmative defense that is the subject of the motion." (Cal. *Rules of Court*, Rule 3.1350(d)(1).) Here, however, the six issues set forth in the Separate Statement and quoted above do not fall into any of the four categories,

which are listed in Section 437c(f)(1) of the California *Code of Civil Procedure* and in Rule 3.1350(d). For this reason as well, the Separate Statement is procedurally defective.

It is well settled under California law that a party's failure to comply with the requirements for a Separate Statement, including those set forth in Rule 3.1350 and quoted above, constitutes grounds for the denial of a motion for summary adjudication, in the court's discretion. (*See* Cal. *Civ. Proc. Code* § 437c(b)(1).) California appellate courts consistently have encouraged trial courts to require strict compliance with the requirements for Separate Statements. (*See, e.g., North Coast Business Park v. Nielsen Construction Co.* (1993) 17 Cal.App.4th 22, 30-32; *United Community Church v.* Garcin (1991) 231 Cal.App.3d 327, 335 (superseded by statute on other grounds).) Furthermore, numerous courts have denied motions for summary adjudication because the moving party's Separate Statement failed to comply with Rule 3.1350. (*See, e.g., Oday v. 118 Wadsworth Avenue Homeowners Ass'n* (2025) 2025 Cal. Super. LEXIS 15187, **3-6; *LL JOHN DOE MB v. Defendant DOE School District* (2024) 2024 Cal. Super. LEXIS 59874, **11-13.) Finally, as the Court of Appeal recently has stated, "[t]rial courts should not hesitate to deny summary judgment motions when the moving party fails to draft a compliant separate statement." (*Beltran v. Hard Rock Hotel Licensing, Inc.* (2023) 97 Cal.App.5th 865, 876.)

VIZIO cannot dispute that its Separate Statement is defective and fails to comply with the mandatory requirements set forth in Rule 3.1350. Accordingly, this Court should apply the above authorities, rule that VIZIO has failed to draft a compliant Separate Statement, and deny VIZIO's Motion on this ground alone, without the need to reach the merits.

VI. VIZIO'S MISTAKEN ASSERTION THAT THE LANGUAGE OF THE GPLv2 DOES NOT INCLUDE A "REINSTALLATION REQUIREMENT" PROVIDES NO BASIS TO GRANT THE MOTION

Even if this Court ignores all of the procedural defects associated with VIZIO's Motion (and it should not, for all the reasons discussed in Sections IV and V, above), this Court still may not grant the Motion. Rather, as explained below, all of VIZIO's substantive assertions are fatally flawed and provide no grounds for this Court to grant summary adjudication in favor of VIZIO.

VIZIO first contends, in Section I.B of its Memo, that "the relevant contractual language at issue confirms that GPLv2 does not impose a reinstallation requirement." (Memo at 8:7-8.) According to VIZIO, the GPLv2 "says nothing about requiring the modified software code to be reinstalled on the same device from which it came" and "makes no mention of requiring installation of the executable 'on the same device on which the computer program was originally distributed'." (*Id.* at 8:12-13; 9:6-7.)

Rather, VIZIO asserts that SFC simply made up the phrase "on the same device on which the computer program was originally distributed" and added it to the Interrogatory Response. (*Id.* at 8:13-16.)

VIZIO's assertion is simply incorrect. As the definition of "source code" found in Section 3 of the GPLv2 and quoted in Section II.B, above, states, "complete source code" includes "the scripts used to control compilation and installation of the executable." As explained in Section II.A, above, such scripts must be written so that source code written by humans may be compiled into an executable code, encoded in binary, that a computer is able to read, run, and execute, and so that the executable code is installed on the computer in a manner that the computer recognizes. Software engineers and developers write these scripts to explain to other software engineers and developers how to compile and install the executable code onto the computer. (*See* Kuhn Decl., ¶¶ 18-22.)

Moreover, as Section 3 of the GPLv2 clearly states, a licensee such as VIZIO may copy and distribute a Program that includes software licensed under the GPLv2 in object code or executable form so long as the Program is accompanied with "the complete corresponding machine-readable source code" or a written offer to provide "a complete machine-readable copy of the corresponding source code." (*See* GPLv2, § 3, found at Appendix, Exhibit "1".) This language from the GPLv2 makes clear that a licensee such as VIZIO must provide "the complete corresponding machine-readable source code" ***for the GPLv2-licensed Program found on the device which the licensee is distributing.*** Because the definition of "source code" in Section 3 of the GPLv2 includes "the scripts used to control compilation and installation of the executable" (*id.*), ***this language necessarily refers to the scripts used to control the compilation and installation of the executable on the device which the licensee is distributing***— here, the VIZIO Smart TVs purchased by SFC. (*See* Kuhn Decl., ¶¶ 26-30; Gingerich Decl., ¶¶ 6-7.)

In short, the language from SFC's Interrogatory Response about which VIZIO complains—that, under the GPLv2, VIZIO "is obligated to provide … the scripts used to control compilation and installation of the executable on the same device on which the computer program was originally distributed (*see* Memo at 6:24-26; Appendix, Exhibit "4")—***is based on the language of the GPLv2 itself.*** (*See, e.g.,* Kuhn Decl., ¶ 27; Gingerich Decl., ¶ 5.) Accordingly, this Court should reject VIZIO's mistaken assertion that the language of the GPLv2 does not include the above obligation of VIZIO set forth in SFC's Interrogatory Response—what VIZIO refers to as the "reinstallation requirement." At the very least, the above discussion of the language of the GPLv2 creates a triable issue of material fact regarding the meaning of Section 3 of the GPLv2 sufficient for this Court to deny the Motion.

VII. VIZIO'S MISGUIDED RELIANCE UPON EXTRINSIC EVIDENCE LIKEWISE PROVIDES NO BASIS FOR THIS COURT TO GRANT THE MOTION

VIZIO next asserts, in Section I.D of the Memo, that consideration of extrinsic evidence likewise confirms that the GPLv2 does not include what VIZIO refers to as the "reinstallation requirement." In support of this assertion, VIZIO attempts to rely upon: (a) language from the GPLv3, which was published by the FSF in 2007, 16 years after the publication of the GPLv2, and which VIZIO asserts includes a limited reinstallation requirement (*see* Memo at 10:22-13:6); (b) statements by representatives of SFC and the FSF purportedly distinguishing between the requirements of the GPLv2 and the GPLv3 (*see id.* at 13:23-15:11); and (c) statements made by people described by VIZIO as members of the open-source community regarding their understanding of the requirements of the GPLv2. (*See id.* at 15:12-16:14.) As explained below, VIZIO's attempt to rely upon such extrinsic evidence is fatally flawed, and provides no grounds to grant the Motion, for three separate and independent reasons.

A. This Court May Not Grant the Motion Because VIZIO Improperly Relies Upon Evidence of Matters Occurring Long After the GPLv2 Agreements Were Finalized

Under California law, "A contract must be so interpreted as to give effect to the mutual intention of the parties *as it existed at the time of contracting*, so far as the same is ascertainable and lawful." (Cal. *Civ. Code* § 1636 (emphasis added).) As the California Supreme Court has explained, "Under statutory rules of contract interpretation, the mutual intention of the parties at the time the contract is formed governs interpretation." (*TRB Investments, Inc. v. Fireman's Fund Ins. Co.* (2006) 40 Cal.4th 14, 27.) "The intent of the parties to a contract is to be ascertained as of the time the contract was made, *not some later date. Subsequent unforeseen events cannot be allowed to control in arriving at that intent*." (*Thomas v. Buttress & McClellan, Inc.* (1956) 141 Cal. App.2d 812, 816 (emphasis added); *see also Houge v. Ford* (1955) 44 Cal.2d 706, 713 ("The object and meaning of the parties' contract must be determined by their intent at the time of its execution, and it cannot be extended beyond its plain import by circumstances which occurred after its execution, and which were not within their contemplation at the time of execution.").)

Applying the above authorities, the Court of Appeal held, in *Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, that events occurring long after parties' divorce "had no relevance to the question of what the parties intended by the language used in their 1969 settlement agreement and judgment, and it is unclear why much of this evidence was admitted in phase 1." (*Id.* at 645-46.) Similarly, in *London Market Insurers v. Superior Court* (2007) 146 Cal.App.4th 648, the Court of Appeal refused to consider certain caselaw that one party argued would have informed the parties' understanding of a key term of

the contract, because the caselaw was all decided after the contract's formation. The caselaw thus "could not have informed the parties' understanding" of that key term and thus was "not material" to the court's determination. (*Id.* at 666.)

Here, however, VIZIO bases its interpretation of the GPLv2, and its assertion that the GPLv2 does not include a "reinstallation requirement", directly upon "subsequent unforeseen events" that have no bearing whatsoever on the intent of the parties at the time the GPLv2 was published in 1991. VIZIO asserts, without more, that "[t]he most compelling extrinsic evidence confirming the lack of a reinstallation requirement in GPLv2 is FSF's issuance of GPLv3 to expressly address the absence of this requirement in GPLv2," even though VIZIO immediately acknowledges that FSF published the GPLv3 in 2007, 16 years after publishing the GPLv2. (*See* Memo at 10:22-24.) VIZIO also seeks to rely upon statements made by SFC and the FSF regarding the GPLv2 and the GPLv3, even though all of these statements were made more than 16 years after the GPLv2 was finalized. (*See* Memo at 13:23-15:11.) As the *Roddenberry* court makes clear, such statements, occurring long after the GPLv2 was published in 1991, have "no relevance" to the question of what was intended by the language used in the GPLv2.

Accordingly, this Court should apply the above authorities and conclude that the evidence of events, statements, and documents occurring after the GPLv2 was finalized relied upon by VIZIO, including the GPLv3, is irrelevant and inadmissible, and thus cannot support the interpretation of the GPLv2 advanced by VIZIO.[5] For this reason alone, this Court should deny VIZIO's Motion.

B. Even if this Court Considers the Extrinsic Evidence Relied Upon By VIZIO, it Still May Not Grant the Motion

Even if this Court considers the extrinsic evidence submitted by VIZIO that is dated after the GPLv2 was finalized in 1991 (and it should not, for all the reasons discussed in Section VII.A, above), this Court still may not grant VIZIO's Motion. As explained below, such evidence does not establish that there is no triable issue of material fact as to whether the GPLv2 includes what VIZIO refers to as the "reinstallation requirement." Rather, the evidence submitted by SFC controverts VIZIO's assertion that the GPLv2 has no such requirement and establishes, at the very least, a triable issue of material fact sufficient to deny the Motion.

VIZIO first asserts that the inclusion of a reinstallation requirement in the GPLv3 confirms that the GPLv2 does not contain such a requirement. (*See* Memo at 10:21-13:6.) This assertion does not necessarily follow, however, and is directly controverted by SFC's evidence. As Bradley Kuhn, an SFC

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[5] SFC's Evidentiary Objections, which address this very point, are submitted separately herewith.

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representative who was involved in the drafting of the GPLv3 states, the publication of the GPLv3 did not change the requirement under the GPLv2 that customers who obtain devices that include software licensed under the GPLv2 must be provided with the scripts necessary for them to be able to compile and install such software onto these devices. (Kuhn Decl., ¶ 36.) According to Kuhn, the GPLv3 did not create a reinstallation right where none previously existed. Rather, the GPLv3 sought to highlight and address a new threat to consumer rights and to the existing installation and modification rights under the GPLv2. (Kuhn Decl., ¶ 35; *see also id.,* ¶¶ 31-36.)

Christopher Waid, the Chief Executive Officer of ThinkPenguin, Inc. and a member of the FOSS community, takes a similar position. Waid states that: (a) it has always been his understanding that customers who obtain devices with software licensed under the GPLv2 have the right to install compiled software licensed under the GPLv2 onto these devices and must be provided with the scripts necessary for them to be able to compile and install such software onto these devices; (b) the publication of the GPLv3 did not change his understanding of the requirements under the GPLv2; and (c) he does not know of any technical user of software licensed under the GPLv2 that is unaware of the existence of a requirement to provide the scripts necessary for such software to be compiled and installed onto the device that includes such software. (*See* Waid Decl., ¶¶ 5, 9-10.)

Finally, Zoë Kooyman, the Executive Director, of the FSF, also holds such a view. Kooyman testified at her deposition that the GPLv2 included what VIZIO refers to as a "reinstallation requirement." (Appendix, Exhibit "9" (Kooyman Deposition Transcript) at 341:8-345:18.) In particular, Kooyman stated that the FSF "intended for users to be able to reinstall modified versions of the software onto whatever appliance it is that they wanted to make changes to" and that the FSF intended for users to be able to request the scripts necessary to compile and install the software and receive such scripts." (*Id.* at 343:14-17; 344:20-345:18.) Finally, Kooyman disputed VIZIO's premise that the existence of a reinstallation requirement in the GPLv3 necessarily meant that no such requirement was found in the GPLv2. Rather, according to Kooyman, the GPLv3 merely intended to clarify certain installation rights that may have been unclear in the GPLv2. (*See, e.g. id.* at 248:2-250:6; 251:10-18.)

In short, the testimony of Kuhn, Waid, and Kooyman controverts VIZIO's contention that the inclusion of a reinstallation requirement in the GPLv3 confirms that the GPLv2 does not contain such a requirement and creates a triable issue of material fact sufficient to deny the Motion.

VIZIO next asserts that the statements and publications of SFC and the FSF make clear that the GPLv2 did not contain a reinstallation requirement. (Memo at 13:23-15:11.) This assertion likewise

fails to satisfy VIZIO's burden of establishing that there is no triable issue of material fact as to whether the GPLv2 fails to include such a requirement. First, the testimony of Bradley Kuhn and Zoë Kooyman discussed above controverts VIZIO's assertion and demonstrates that there are disputed issues of fact as to whether the FSF and SFC believe that the GPLv2 includes a "reinstallation requirement." Second, the testimony of Bradley Kuhn and Denver Gingerich discussed in Section VI, above, that the GPLv2 includes a "reinstallation requirement" likewise controverts VIZIO's assertion. (*See* Kuhn Decl., ¶¶ 26-30, 37-48; Gingerich Decl., ¶¶ 5-7.) Third, the fact that both Kuhn and Gingerich have published blog posts explaining that the GPLv2 includes a "reinstallation requirement" likewise undermine VIZIO's assertion. (*See* Appendix, Exhibits "5", "6".) These blog posts simply express SFC's long-held view that the provision in Section 3 of the GPLv2 defining "source code" to include "the scripts used to control the compilation and installation of the executable" requires the production of files and instructions necessary to install the compiled source code (i.e., executables) onto the same device on which the original software was distributed. (*See* Kuhn Decl., ¶ 50.)

Fourth, VIZIO's assertion lacks merit because it mischaracterizes SFC's statements, cherry-picks language from SFC's publications, and ignores language that contradicts its position. For example, VIZIO seeks to rely on a sentence from Section 4.2.2 of an article entitled *A Practical Guide to GPL Compliance* which Kuhn helped write (the "Practical Guide"), which states as follows: "You must provide all information necessary such that someone generally skilled with computer systems could produce a binary similar to the one provided." (*See* Memo at 14:9-11, quoting Practical Guide, Section 4.2.2, found at VIZIO's Compilation of Exhibits ("Comp.") at 117.) VIZIO takes this sentence out of context, however. This language actually describes what both the GPLv2 and the GPLv3 require. (*See* Kuhn Decl., ¶ 40.)

Moreover, VIZIO ignores other sentences from Section 4.2.2 of the Practical Guide that support SFC's position that the GPLv2 includes a "reinstallation requirement." One sentence that VIZIO fails to quote advises that, to be compliant, those distributing software licensed under the GPL Agreements and embedded on a device should provide enough information to place the newly compiled binary (or executable) back where it belongs on the device. VIZIO also neglects to point out that this section of the Practical Guide advises that "[n]o matter what you offer, you need to give those who receive source [code] a clear path from your sources to binaries similar to the ones you ship" and that "[t]he best way to achieve this is to make available to your users whatever scripts or processes your engineers would use to do the same." (Practical Guide, Section 4.2.2, found at Comp., at 117.) This advice is consistent

with the requirement of the GPLv2 that source code must be accompanied by "the scripts used to control compilation and installation of the executable," because executables are in binary form. (*See* Kuhn Decl., ¶¶ 41-43.) The very section of the Practical Guide upon which VIZIO misleadingly seeks to rely thus includes language that supports SFC's position and creates a triable issue of material fact sufficient to deny the Motion.

VIZIO engages in the same deceptive cherry-picking of statements when it discusses *Copyleft and the GNU General Public License: A Comprehensive Tutorial and Guide* (the "*Copyleft Guide*"), a now-defunct publication for which Kuhn was editor in chief. (*See* Memo at 14:22-15-11.) For example, VIZIO ignores language from Section 1.1.2 of the *Copyleft Guide*, which states: "Access to the source code and related build and installation scripts are an essential part of [software] freedom. Without the source code, and the ability to build and install the binary applications from that source, users cannot effectively exercise this freedom." VIZIO likewise ignores language from Section 5.2.1 of the *Copyleft Guide,* which states that Section 3 of the GPLv2 "requires that the source code include 'meta-material' like scripts, interface definitions, and other material that is used to 'control compilation and installation' of the binaries." (*See* Kuhn Decl., ¶ 48; Appendix, Exhibit "4".)

In short, VIZIO's contention that SFC's publications "made clear that GPLv2 did not contain a reinstallation requirement" (Memo at 14:4-5) is incorrect, controverted, and fails to satisfy VIZIO's burden of establishing that there are no triable issues of material fact and that VIZIO is entitled to judgment as a matter of law on the issue raised by its Motion. For this reason as well, the Motion fails.

C. The Understanding of the GPLv2 By Members of the Open Source Community Upon Which VIZIO Seeks to Rely Provides No Basis to Grant the Motion

VIZIO further asserts that the reasonable expectations of members of the open source community confirm that the GPLv2 does not contain a reinstallation requirement. (Memo at 13:7-8.) In support of this assertion, VIZIO relies, among other things, on the deposition testimony of Robert Landley and statements made by Linus Torvalds of the Linux Foundation. (Memo at 15:12-16:19.)

VIZIO's contention lacks merit, and provides no basis for this Court to grant the Motion, for at least three reasons. First, Landley and Torvalds are only two people, and any statements by them cannot possibly be sufficient to establish the reasonable expectations of the entire open source community.

Second, the third-party declarations of Bdale Garbee and Christopher Waid submitted by SFC herewith support SFC's position that the reasonable expectations of the FOSS community are that the GPLv2 includes what VIZIO refers to as the "reinstallation requirement." At the very least, their

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testimony establishes a triable issue of material fact regarding the reasonable expectations of the open source community, and its understanding of the provisions of the GPLv2, sufficient to deny the Motion.

Bdale Garbee served from 2008 to 2016 as a member of the Board of Directors of the Linux Foundation, which VIZIO describes as "[a]rguably the most prominent member of the GPL open-source community." (*See* Garbee Decl., ¶ 7; Memo at 15:13.) In his declaration, Garbee states as follows:

> In my professional and work experience, the requirement in Section 3 of the GPLv2 for a distributor of a computer program licensed under the GPLv2 to provide "the scripts used to control … installation of the executable" means that, as part of the "complete corresponding machine-readable source code," the distributor must provide scripts that allow a recompiled binary of the source code to be installed back onto the device in question.

(Garbee Decl., ¶ 13.) Garbee further states that, when he worked for HP and Samsung, he regularly advised both HP and Samsung to ensure that their customers had the right to install Linux software and other software licensed under the GPLv2 Agreements back onto their HP and Samsung devices. (*Id.,* ¶ 14.) Finally, Garbee states that he disagrees with VIZIO's assertion that the reasonable expectations of the Open Source community confirm that the GPLv2s do not include what VIZIO refers to as a "reinstallation requirement":

> Based on my dealings with other developers and persons in the Open Source Community, it is my understanding, and it is the understanding of other members of the open source community with whom I have dealt, that the source code provision of the GPLv2 includes a requirement to provide scripts that allow a recompiled binary of the source code to be installed back onto the device in question.

(Garbee Decl., ¶ 15.) In short, Garbee's testimony directly controverts VIZIO's assertion regarding the reasonable expectations of the open source community.

Christopher Waid is another third-party witness, and member of the FOSS community, whose testimony controverts VIZIO's assertion. Waid is the Chief Executive Officer of ThinkPenguin, Inc., a company that was founded to improve support for free software operating systems. (Waid Decl., ¶¶ 1, 3.) Through his work, Waid is very familiar with the GPLv2. (*Id.,* ¶ 4.)

Waid states that, "[d]uring all my years working with the GPLv2, it has always been my understanding that customers who obtain devices with software licensed under the GPLv2 have the right to install compiled software licensed under the GPLv2 onto these devices." He adds that "I do not believe that my understanding of the GPLv2 is an outlier. I do not know of any technical user of software licensed under the GPLv2 that is unaware of the existence of a requirement to provide the scripts necessary for such software to be compiled and installed onto the device that includes such software."

(Waid Decl., ¶¶ 5, 10.) Such testimony likewise demonstrates that the reasonable expectations of the open source community do not necessarily support VIZIO's assertion.

Finally, even Robert Landley, a third-party witness upon whom VIZIO relies, appears to support SFC's position. During his deposition, Landley constructed his own hypothetical regarding World of Warcraft to explain his understanding of the installation requirement under the GPLv2. (Appendix, Exhibit "7" (Landley Deposition Transcript) at 77:18-78:14.) Landley was later asked a follow-up question to the hypothetical: "… if there were a new version of BusyBox … should World of Warcraft be allowed to install new versions on its own servers?" In response, Mr. Landley stated: "Allowed, yes; required, no. Allowed and required are not the same thing." (*Id.* at 146:21-147:2, 147:14-15.)

Thus, according to Landley, the only entity permitted to install executables of BusyBox, or any other Program licensed under the GPLv2, is the entity that owns or controls the physical device on which the Program is installed. Here, as well, SFC is entitled to install executables of any software governed by the GPLv2s that is found on the Smart TVs that SFC purchased from VIZIO, just like the owner of World of Warcraft is allowed to install new versions of BusyBox on its own servers. (*See* Kuhn Decl., ¶¶ 51-55.)

In short, the testimony of Messrs. Garbee, Waid, and even Landley discussed above demonstrates that VIZIO's assertion that the reasonable expectations of members of the open source community confirm that the GPLv2 does not contain a reinstallation requirement is simply wrong. At the very least, such testimony establishes a triable issue of material fact regarding the reasonable expectations of the open source community. Accordingly, this Court should accept such testimony, reject VIZIO's assertion, and deny the Motion.

VIII. CONCLUSION

For all the foregoing reasons, Plaintiff Software Freedom Conservancy, Inc. respectfully requests that this Court deny the Motion for Summary Adjudication of Defendant VIZIO, Inc.

DATED: July 3, 2025

VAKILI & LEUS, LLP

By: _____
Sa'id Vakili, Esq.
David N. Schultz, Esq.
Attorneys for Plaintiff Software Freedom
Conservancy, Inc.

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DECLARATION OF BRADLEY M. KUHN

I, BRADLEY M. KUHN, state and declare as follows:

1.   I am over the age of 18 and the Policy Fellow of Software Freedom Conservancy, Inc. ("SFC"), the Plaintiff 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. I am submitting this declaration in support of SFC's Opposition to Defendant VIZIO, Inc.'s Motion for Summary Adjudication (the "Motion").

FREE AND OPEN SOURCE SOFTWARE AND THE GPLv2 AGREEMENTS

1.   SFC is a 501(c)(3) non-profit charitable corporation founded in New York in 2006. SFC was founded to be composed of projects dedicated to "Free and Open Software," sometimes abbreviated as "FOSS," and to promote software that respects the users' freedoms to copy, share, modify, redistribute, and/or reinstall that software.

2.   "Free and Open Source Software", or "FOSS", is a term used to refer to software for which the end-user of the software has the permission and means to study, copy, share, modify, redistribute and/or install modified versions of the software. In this context, "free" refers to freedom and doesn't mean "gratis."

3.   In addition to referring to a licensing structure, FOSS also refers to the model for developing software under that licensing structure. Specifically, developers exercise the rights and permissions assured by FOSS's terms to collaborate across borders—including borders that are geographic, corporate, or even from their personal backgrounds. Routinely, FOSS projects include volunteer, paid, and hobbyist contributors. Some contributors work for companies; some are independent contractors; some simply contribute altruistically and/or for their own edification in the field of software development.

4.   The FOSS model of software development succeeds because many people with different skills contribute to the projects. An essential aspect of FOSS is that everyone who receives the software can easily study and modify it, and that the terms permit this activity. Many programmers fix bugs, implement new features, find new uses for the software, repurpose third-party software under the same license into new programs, and so forth. These new versions are available to other programmers to learn from tweak and improve. In larger FOSS projects, programmers perform "code review" on each other's work. Often complex problems are discussed publicly among contributors to improve the software. The FOSS model is also conducive for experienced programmers to mentor younger programmers.

DECLARATION OF BRADLEY M. KUHN IN SUPPORT OF PLAINTIFF SOFTWARE FREEDOM CONSERVANCY, INC.'S OPPOSITION TO VIZIO, INC.'S MOTION FOR SUMMARY ADJUDICATION

5.   The FOSS model of software development creates high-quality software of interest to both commercial and non-commercial entities. In addition, the diversity of contribution generates more reliable, robust, and useful software than closed and proprietary models of development.

6.   The GNU General Public License Version 2.0 (the "GPLv2") and the GNU Lesser General Public License Version 2.1 (the "LGPLv2.1") (collectively, the "GPLv2 Agreements"), the agreements involved in this action, are two of the most vital, widely used, and successful software license agreements.

7.   I am very familiar with the GPLv2 Agreements as a result of my work and experience described below, including my work as Policy Fellow at SFC and my previous roles at SFC. True and correct copies of the GPLv2 and the LGPLv2.1 are attached as **Exhibit "1"** and **Exhibit "2"**, respectively, to SFC's Appendix of Exhibits in opposition to VIZIO's Motion, submitted separately herewith (the "Appendix").

8.   FOSS developed and released under the GPLv2 Agreements is commonly found "embedded" in consumer equipment and other off-the-shelf devices, such as wireless routers and smart TVs, including the Smart TVs manufactured and sold by VIZIO, and helps operate such devices. The Linux kernel, the basis for a popular computer operating system, and the GNU C Library (glibc), a core library for that operating system, are just two prominent examples of FOSS developed under the GPLv2 Agreements.

9.   The GPLv2 Agreements have been very successful in fostering the development of FOSS because they guarantee third parties' access to the source code (and related materials) that correspond to any distributed executable encoded in binary. As explained below, because humans cannot understand binary, it is extremely difficult, if not impossible, to study and modify software without obtaining to the corresponding source code.

MY EDUCATIONAL BACKGROUND AND WORK EXPERIENCE

10.   I hold a summa cum laude Bachelor of Science degree in Computer Science from Loyola University in Maryland, and graduated as the top student in Computer Science in 1995. I hold a Master's Degree in Computer Science from University of Cincinnati. My master's thesis related to the compilation of source code into executable code for the FOSS programming language known as Perl.

11.   I worked professionally as a software developer and computer systems administrator from 1991 to 2001, specializing in FOSS systems such as Linux.

12.   In 1999, I was hired by the Free Software Foundation (the "FSF") and quickly began working on enforcement of the GPLv2 Agreements.

13.   In early 2001, I was named as Executive Director of the FSF. A key part of my role as Executive Director was to oversee the GPL Compliance Laboratories (the "Labs") at the FSF. The Labs investigated violations of the GPLv2 Agreements and sought to resolve these violations in a way favorable to the rights of FOSS users.

14.   In March 2005, I left the FSF to work at a law firm known as the Software Freedom Law Center ("SFLC"). My primary role at SFLC was to provide technological expertise, policy analysis, and other support to SFLC's lawyers, who have represented both the FSF and the SFC, among other clients, at different times.

15.   In 2006, I began volunteering for SFC, which had recently been formed. I regularly volunteered to help run SFC's operations from 2006 to 2010, when I became SFC's first employee and only staffer. As such, I initially took care of all aspects of SFC's operations myself. In or about March 2014, SFC hired Karen M. Sandler as its Executive Director, and I was named SFC's first Distinguished Technologist. In or about October 2019, I was named SFC's first Policy Fellow.

16.   Since 1998, I have focused much of my career on the technical aspects of compliance with the GPLv2 Agreements. For 25 years, I have regularly performed and/or supervised analyses of binary files found in products to determine whether software governed by the GPLv2 Agreements is present in those products. I also regularly perform and/or supervise analyses of source code to test whether that source code "corresponds" to the executable and object code found in such products. I have worked on at least hundreds of matters of this type. I continue to carry out work of this nature at least monthly, and often more frequently. I have presented this work regularly at key industry conferences and events. I am well respected and consulted by colleagues throughout the software industry for my knowledge on these issues.

17.   In addition to the above work, I also contribute regularly to the improvement of the FOSS systems that are used at SFC – not only as a FOSS programmer, but in the other forms of contribution essential to FOSS such as system deployment, DevOps, documentation, and packaging.

EXECUTABLE CODE, SOURCE CODE, COMPILATION AND INSTALLATION

18.   Most software is distributed in an obfuscated form, which is sometimes called "binaries" or "object code". Computers process software in this form easily but humans cannot. For this reason, these forms of software are said to be "executable." This obfuscation occurs primarily because of

technical necessity. Computers must be instructed very precisely in "binary", which encodes information in zeroes and ones. A computer can only execute and run software encoded in binary. (A long sequence of zeroes and ones is said to be "in binary.") If such code is stored in a computer file, the file is said to be a "binary file" or just "a binary."

19. Because humans cannot easily understand binary, it is impractical for humans to try to instruct a computer by writing the instructions in binary. Instead, humans use programming languages to instruct computers. These programming languages are usually formally specified and must be written meticulously and precisely. Software written in such languages is also called "source code". Unlike executable code encoded in binary, this "source code" is designed for human programmers to understand. A program written in a programming language is known as "source code" or sometimes simply as "source". In addition, when someone refers to something colloquially as just "code" without further context, it usually means "source code".

20. Anyone who is familiar with the programming language will not only be able to understand the source code but will also be able to make changes to the source code, and by doing so, change the instructions that the computer or other device using the program receives and carries out.

21. The source code must be "compiled" into an executable code (encoded in binary) that the computer is able to read, run, and execute. The executable must then be installed onto the computing device in a manner that the computing device recognizes.

22. Software engineers and developers typically write "scripts" to explain to other software engineers and developers how to compile and install the executable code onto the computing device. Because modern computers are complex, it is quite common for the scripts used to control the compilation and installation of the executable to be thousands of lines long in themselves.

THE SMART TVs MANUFACTURED BY VIZIO AND PURCHASED BY SFC INCLUDE SOFTWARE THAT IS SUBJECT TO THE GPLv2 AGREEMENTS

23. In July 2021, on behalf of SFC, I purchased certain models of VIZIO "Smart TVs," including model numbers V435-J01, D32h-J09, and M50Q7-J01.

24. That same month, I initiated an investigation to determine if these Smart TVs contained any software that was subject to the GPLv2 Agreements. With the help of volunteers, I extracted various binary files from the Smart TVs.

25. I found that these Smart TVs contained many executables encoded in binary and libraries encoded in binary that were versions of software subject to the GPLv2 Agreements. I recognized that

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these software programs were subject to the GPLv2 Agreements based on my extensive experience in the FOSS industry and by using standard, common tools available on a Linux system to examine these binary files. This examination confirmed that the software programs were subject to the GPLv2 Agreements.

THE RELEVANT PROVISIONS OF THE GPLv2 AGREEMENTS

26. As a result of my work and experience described above, I am very familiar with the GPLv2 Agreements, including their contents and their operation. In particular, I am very familiar with the following provisions of the GPLv2 Agreements:

26.1 Section 3 of the GPLv2, which provides, in pertinent part:

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

a) Accompany it with the complete corresponding machine-readable source code…; or,

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

26.2 The definition of "source code" found in Section 3 of the GPLv2, which provides:

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

26.3 Section 4 of the LGPLv2.1, which provides, in pertinent part:

You may copy and distribute the Library (or a portion or derivative of it, under Section 2) in object code or executable form under the terms of Sections 1 and 2 above provided that you accompany it with the complete corresponding machine-readable source code, which must be distributed under the terms of Sections 1 and 2 above on a medium customarily used for software interchange.

26.4 The definition of "source code" in the LGPLv2.1, which states as follows:

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

27. As the provisions from Section 3 of the GPLv2 state, VIZIO is required to provide SFC with the following for any computer program licensed under the GPLv2 that is found on one of VIZIO's Smart TVs purchased by SFC: (a) all the source code for all of the modules of the computer program; (b) the associated interface definition files; and (c) the scripts used to control compilation and installation

of the executable on the same device on which the computer program was originally distributed—the VIZIO Smart TV purchased by SFC. In other words, under the GPLv2, VIZIO must provide SFC with all the source code, together with the interface definition files and scripts that will allow the source code for the software on the Smart TVs purchased by SFC that is licensed under the GPLv2 to be installed and compiled into an executable code that can run on these Smart TVs. The GPLv2 requires VIZIO to provide information that will allow the software on its Smart TVs that is licensed under the GPLv2 to be installed on these Smart TVs. The GPLv2 also requires VIZIO to provide the files necessary to ensure that the software licensed under the GPLv2 that is on its Smart TVs functions properly. These obligations of VIZIO under the GPLv2 are consistent with, and are based on, the definition of "source code" found in Section 3 of the GPLv2 and quoted in Paragraph 26.2, above.

VIZIO'S MISTAKEN ASSERTION REGARDING THE LANGUAGE OF THE GPLv2

28. I have reviewed VIZIO's Memorandum of Points and Authorities in support of its Motion (the "Memo"). Accordingly, I am aware of certain assertions made by VIZIO in the Memo, discussed below.

29. First, I am aware that, in Section I.B of the Memo, found at page 8, line 3 through page 9, line 13 of the Memo, VIZIO asserts that: (a) "the relevant contractual language at issue confirms that GPLv2 does not impose a reinstallation requirement;" (b) the GPLv2 "makes no mention of requiring installation of the executable 'on the same device on which the computer program was originally distributed'" and (c) SFC simply made up this language. (*See* Memo at 8:7-8, 9:6-7, 8:13-16.)

30. VIZIO's assertion is incorrect. The definition of "source code" in Section 3 of the GPLv2 and quoted in Paragraph 26.2, above, states that "complete source code" includes "the scripts used to control compilation and installation of the executable." The need to provide scripts to compile and install an executable is discussed in ¶¶21, 22, 26, and 27, above. Section 3 of the GPLv2 provides, among other things, that a licensee such as VIZIO may copy and distribute a GPLv2-licensed Program in object code or executable form so long as the Program is accompanied with "the complete corresponding machine-readable source code." Therefore, a licensee such as VIZIO must provide "the complete corresponding machine-readable source code" for the GPLv2-licensed Program found on the device which the licensee is distributing. Because the definition of "complete source code" includes "the scripts used to control compilation and installation of the executable," this language necessarily refers to the scripts used to control the compilation and installation of the executable on the device which the licensee is distributing.

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VIZIO'S MISTAKEN ASSERTION REGARDING

THE RELATIONSHIP BETWEEN THE GPLv2 AND THE GPLv3

31. Second, VIZIO asserts in Section I.D.1 of the Memo, found at page 10, line 21 through page 13, line 6 of the Memo, that the inclusion of what VIZIO refers to as a "reinstallation requirement" in the GNU General Public License version 3 (the "GPLv3") confirms that the GPLv2 does not contain a "reinstallation requirement."

32. Once again, VIZIO is mistaken. I participated in the process of the drafting of the GPLv3 in various ways: I oversaw the design, development, and deployment of the GPLv3 draft online comment system for the public, I served on one of the four formal discussion committees for the GPLv3, and I was an ex-officio member of another discussion committee. As a result, I am very familiar with the GPLv3

33. Unlike the GPLv2, which was drafted by Richard Stallman of the FSF, the process of drafting the GPLv3 was a large public process that included individuals who opposed some of the provisions of the GPLv2 and/or held unorthodox views regarding certain provisions of the GPLv2.

34. Until I became involved in the process of the drafting of the GPLv3, I had never heard anyone express the idea that customers who obtained devices that included software licensed under the GPLv2 were not entitled to receive scripts that would allow executables to be compiled and installed back onto the same device that originally held the software. Rather, as explained in Paragraphs 26-30, above, it has always been my understanding that Section 3 of the GPLv2 requires the distributors of such devices to provide source code, or make an offer to provide source code, that includes the scripts used to control the compilation and installation of such executables back onto the same devices that originally held the software.

35. During the process of the drafting of the GPLv3, process participants discussed rumors that future consumer products might use a new mechanism to restrict consumers. Specifically, they discussed the rumors that this mechanism would cause any unrelated software that was not governed by the GPLv2 Agreements to cease to function when consumers themselves modified and/or installed software licensed under the GPLv2 Agreements. It is my understanding that the GPLv3 sought to highlight and address this new threat to consumer rights, and to the existing installation and/or modification rights under the GPLv2 Agreements.

36. The publication of the GPLv3 does not change my understanding of the requirements of the GPLv2 discussed herein, including the requirement customers who obtain devices that include

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software licensed under the GPLv2 must be provided with the scripts necessary for them to be able to compile and install such software onto these devices. I do not believe, and I did not believe at the time that the GPLv3 was drafted and published, that the language of this new license agreement could somehow change the meaning of the GPLv2, the existing license agreement.

<u>**VIZIO'S MISTAKEN ASSERTIONS REGARDING MY PAST PUBLICATIONS**</u>

37.	Third, VIZIO asserts in Section I.D.2 of the Memo, at page 14, line 4 through page 15, line 11, that SFC's leadership, including me, "actively educated the open-source community through their publications, which made clear that GPLv2 did not contain a reinstallation requirement." (*See* Memo at 14:4-5.)

38.	This assertion is also incorrect. As explained below, the publications cited by VIZIO in **no way** "make clear" that the GPLv2 does not contain a "reinstallation requirement."

39.	VIZIO first refers to an article entitled *A Practical Guide to GPL Compliance* (the "Practical Guide"), which I helped to write in 2008 while an employee of the SFLC. My work on the Practical Guide intended to reflect the view of the SFLC, and not my personal views. Moreover, I do not know how widely read or widely followed the Practical Guide has been.

40.	In its Memo, VIZIO seeks to rely upon the following sentence from Section 4.2.2 of the Practical Guide: "You must provide all information necessary such that someone generally skilled with computer systems could produce a binary similar to the one provided." (*See* Memo at 14:9-11, *quoting* Practical Guide, Section 4.2.2, found at VIZIO's Compilation of Exhibits (the "Comp.") at 117.) VIZIO takes this sentence out of context, however. This language actually describes what both the GPLv2 and the GPLv3 require. Moreover, the sentence refers to compilation and not to installation.

41.	Moreover, VIZIO ignores a different sentence from Section 4.2.2, found on the same page of the Practical Guide, which actually refers to installation on devices. That sentence states: "If you ship a firmware (kernel plus filesystem), and the filesystem contains binaries of GPL'd programs, you should provide whatever is necessary to enable a reasonably skilled user to build any GPL'd source program (and modified versions thereof), and replace the given binary in your filesystem." (*See* Comp. at 117.)

42.	In this sentence, "firmware" means (somewhat loosely) software that has been embedded onto a device that contains a computer inside. Thus, the Practical Guide advises that, to be compliant, those distributing software licensed under both the GPLv2 Agreements and GPLv3 on an embedded

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device should provide enough information to place the newly compiled binary (or executable) back where it belongs on the device.

43.   Section 4.2.2 of the Practical Guide also advises, "No matter what you offer, you need to give those who receive source [code] a clear path from your sources to binaries similar to the ones you ship." (*See* Comp. at 117.) It further advises, "The best way to achieve this is to make available to your users whatever scripts or processes your engineers would use to do the same." (*Id.*) This advice is consistent with the requirement of the GPLv2 that source code must be accompanied by "the scripts used to control compilation and installation of the executable," because executables are in binary form.

44.   VIZIO also seeks to rely upon a now-defunct publication entitled *Copyleft and the GNU General Public License: A Comprehensive Tutorial and Guide* (the "*Copyleft Guide*"), of which I was editor-in-chief. The *Copyleft Guide* was a short-lived collaborative endeavor to gather all past writings and information about the GPLv2 Agreements and GPLv3 into one document. Although the project to produce the *Copyleft Guide* started in 2014, the *Copyleft Guide* includes large sections from much earlier dates—as early as 2003.

45.   Although I was "editor-in-chief" of the *Copyleft Guide,* I was not responsible for much of the content. The *Copyleft Guide* was a collaborative project, and my tasks were limited to making sure the contributions were well-written and to integrate them among the other contributions. I did not regularly change the substance of contributions. Given the number of contributors and the lengthy time frame in which the contributions were made, it would not be surprising to find that the *Copyleft Guide* was not self-consistent or up to date.

46.   Eventually, I decided that the *Copyleft Guide* contained too much out-of-date, incorrect, and/or inconsistent information to be reliable to the general public, and I caused the document to be converted into a clearly-marked historical archive – including a warning that the information was likely out-of-date and some parts may be inaccurate.

47.   I have no idea how influential or popular the *Copyleft Guide* was. The *Copyleft Guide* never gained traction to become a true community-oriented project.

48.   In cherry-picking quotes from the *Copyleft Guide*, VIZIO ignores the following two passages: Section 1.1.2 of the *Copyleft Guide*, found at page 4 of the guide, states as follows: "Access to the source code and related build and installation scripts are an essential part of [software] freedom. Without the source code, and the ability to build and install the binary applications from that source, users cannot effectively exercise this freedom." Section 5.2.1 of the *Copyleft Guide,* found at page 28

of the guide, states as follows: "GPLv2 §3 requires that the source code include 'meta-material' like scripts, interface definitions, and other material that is used to 'control compilation and installation' of the binaries." GPLv2 §3 is the "source code provision" found in Section 3 of the GPLv2. True and correct copies of these pages from the *Copyleft Guide* are attached as **Exhibit "4"** to the Appendix.

49. VIZIO also accuses SFC of "publishing self-serving blog posts shortly before this lawsuit was filed arguing that GPLv2 actually contains a reinstallation requirement, ignoring all of its prior statements to the contrary." (Memo at 15 n.7.) VIZIO is likely referring to my blog post, dated July 23, 2021, entitled "Tivoization & Your Right to Install Under Copyleft & GPL," and Denver Gingerich's blog post, dated March 21, 2021, entitled "Understanding Installation Requirements of GPLv2." dated March 21, 2021. True and correct copies of these blog posts are attached as **Exhibit "5"** and **Exhibit "6"**, respectively, to the Appendix.

50. VIZIO's accusation lacks merit. First, these blog posts were written months before the original Complaint in this action was filed. Second, as explained above, VIZIO cannot actually point to any statements made by SFC that are contrary to the blog posts. Finally, as may be seen by a review of Exhibits "5" and "6", these blog posts simply express SFC's long-held view that the provision in Section 3 of the GPLv2 defining "source code" to include "the scripts used to control the compilation and installation of the executable" requires the production of files and instructions necessary to install the compiled source code (i.e., executables) onto the same device on which the original software was distributed.

THE DEPOSITION OF ROBERT LANDLEY

51. I attended the deposition of Robert Landley ("Mr. Landley") that took place in this action on June 24, 2024. I have also reviewed the transcript of Mr. Landley's deposition. True and correct copies of selected pages from the transcript of Mr. Landley's deposition, referred to below, are attached as **Exhibit "7"** to the Appendix.

52. During his deposition, Mr. Landley constructed his own hypothetical to explain his understanding of the installation requirement under the GPLv2; in response to the following question:

> What is another example of the problem with requiring installation back onto the user product?
>
> A. Okay. … suppose I have a World of Warcraft account to play the online game. I pay a monthly fee. I am authorized to access these servers and interact from my computer with those servers for an unlimited amount of time during the subscription period. …

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A.   And suppose the World of Warcraft servers are running BusyBox. If I can demand that, as the maintainer of BusyBox, they upgrade to a new version of BusyBox containing arbitrary code I just added, that is not the purpose of my relationship with their servers. I should not be able to run arbitrary code on their servers and quite possibly hack their game because they chose to run an older version of an open-source software package I published for general use.

(Landley Depostion Transcript at 77:18-78:14, found at Appendix, Exhibit "7".)

53.   At a later portion of the deposition, during questioning by counsel for SFC, Mr. Landley was asked a follow-up question to the above hypothetical: "… if there were a new version of BusyBox … should World of Warcraft be allowed to install new versions on its own servers?" In response, Mr. Landley stated: "Allowed, yes; required, no. Allowed and required are not the same thing." (Landley Deposition Transcript at 146:21-147:2; 147:14-15, found at Appendix, Exhibit "7".)

54.   In his above answer, Mr. Landley thus addressed the issue of installation under the GPLv2. As he explained, the only entity permitted to install executables of BusyBox, or any other Program licensed under the GPLv2 is the entity that owns or controls the physical device on which the Program is installed.

55.   Here, SFC does not seek to install executables on any of VIZIO's remote servers or on VIZIO's website. Under the GPLv2 Agreements, however, SFC is entitled to install executables of any software governed by the GPLv2 Agreements that is found on the Smart TVs that SFC purchased from VIZIO, just like Activision Blizzard and/or its parent company, Microsoft, (owners of World of Warcraft) is allowed to install new versions of BusyBox on their own servers under Mr. Landley's hypothetical.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 3, 2025, in Portland, Oregon.

_____
Bradley M. Kuhn

DECLARATION OF BRADLEY M. KUHN IN SUPPORT OF PLAINTIFF SOFTWARE FREEDOM CONSERVANCY INC.'S MOTION FOR SUMMARY ADJUDICATION OF ISSUES

DECLARATION OF DENVER GINGERICH

I, DENVER GINGERICH, state and declare as follows:

1. I am over the age of 18 and the current Director of Compliance for Software Freedom Conservancy, Inc., the Plaintiff in this action ("SFC"). 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. I am submitting this declaration in support of SFC's Opposition to Defendant VIZIO, Inc.'s Motion for Summary Adjudication (the "Motion").

2. As the Director of Compliance for SFC, one of my responsibilities is to evaluate reports of non-compliance with the obligations that exist under the GNU General Public License agreements to provide complete source code that corresponds with executable software distributed under one of these agreements, including the GNU General Public License Version 2.0 (the "GPLv2") and the GNU Lesser General Public License Version 2.1 (the "LGPLv2.1") (collectively, the "GPLv2 Agreements"), the two agreements involved in this action. As a result of my work and experience, I am very familiar with the GPLv2 Agreements, including their contents and their operation. In particular, I am very familiar with the following provisions of the GPLv2 Agreements:

2.1 Section 3 of the GPLv2, which provides, in pertinent part:

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

a) Accompany it with the complete corresponding machine-readable source code…; or,

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

2.2 The definition of "source code" found in Section 3 of the GPLv2, which provides:

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

2.3 Section 4 of the LGPLv2.1, which provides, in pertinent part:

You may copy and distribute the Library (or a portion or derivative of it, under Section 2) in object code or executable form under the terms of Sections 1 and 2 above provided that you accompany it with the complete corresponding machine-readable source code, which must be distributed under the terms of Sections 1 and 2 above on a medium customarily used for software interchange.

DECLARATION OF DENVER GINGERICH IN SUPPORT OF PLAINTIFF SOFTWARE FREEDOM CONSERVANCY, INC.'S OPPOSITION TO VIZIO'S MOTION FOR SUMMARY ADJUDICATION

2.4   The definition of "source code" in the LGPLv2.1, which states as follows:

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

3.   I have reviewed various pleadings filed by Defendant VIZIO, Inc. ("VIZIO") in support of the Motion, including VIZIO's Memorandum of Points and Authorities (the "Memo") and certain documents included in VIZIO'S Compendium of Exhibits (the "Compendium"). Based on my review of these pleadings, I am aware of the following:

3.1   VIZIO asserts, on page 7, lines 2-3 of its Memo, that "SFC seeks to obtain the source code for GPLv2- and LGPLv2.1 licensed software installed on the TVs, as well as all other information necessary to reinstall modified software back onto the TVs, while ensuring the TVs continue to function properly."

3.2   VIZIO bases the above assertion on an interrogatory response from SFC (the "Interrogatory Response"), which VIZIO quotes at page 6, lines 24-28 of its Memo as follows:

Under GPLv2, [VIZIO] is obligated to provide . . . the scripts used to control compilation and installation of the executable on the same device on which the computer program was originally distributed. At a minimum, [VIZIO] should deliver files such that a person of ordinary skill can compile the source code into a functional executable and install it onto the same device, such that all features of the original program are retained, without undue difficulty.

4.   The language from SFC's Interrogatory Response relied upon by VIZIO in its Memo and quoted in Paragraph 3.2, above is taken from SFC's Response to Special Interrogatory No. 4 in the document entitled "Plaintiff's Supplemental Objections and Responses to VIZIO Inc.'s Supplemental Special Interrogatories" (the "Supplemental Responses"), a document which I verified on June 12, 2024. True and correct copies of selected pages from the Supplemental Responses, including SFC's Response to Special Interrogatory No. 4, are attached as **Exhibit "3"** to the Appendix of Exhibits in opposition to VIZIO's Motion, submitted separately herewith. I verified this document on June 12, 2024.

5.   As set forth in SFC's Interrogatory Response quoted in Paragraph 3.2, above, under the GPLv2, VIZIO is obligated to provide SFC with the following for a computer program licensed under the GPLv2: (a) all the source code for all of the modules of the computer program; (b) the associated interface definition files; and (c) the scripts used to control compilation and installation of the executable on the same device on which the computer program was originally distributed—the VIZIO Smart TV purchased by SFC. In other words, under the GPLv2, VIZIO must provide SFC with all the source code,

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together with the interface definition files and scripts that will allow the source code for the software on the Smart TVs purchased by SFC that is licensed under the GPLv2 to be installed and compiled into an executable code that can run on these Smart TVs. As set forth in SFC's Interrogatory Response, the GPLv2 obligates VIZIO to provide information that will allow the software on its Smart TVs that is licensed under the GPLv2 to be installed on these Smart TVs. As further set forth in SFC's Interrogatory Response, the GPLv2 obligates VIZIO to provide the files necessary to ensure that the software licensed under the GPLv2 that is on its Smart TVs functions properly. The obligations of VIZIO under the GPLv2 set forth in SFC's Interrogatory Response and discussed above are consistent with, and are based on, the definition of "source code" found in Section 3 of the GPLv2 and quoted in Paragraph 2.2, above.

6. I am aware that, in Section I.B of its Memo, found at page 8, line 3 through page 9, line 13 of the Memo, VIZIO contends that the GPLv2 "makes no mention of requiring installation of the executable 'on the same device on which the computer program was originally distributed'" and that SFC merely adds this language in its Interrogatory Response. (*See* Memo at 9:6-7, 8:13-15.)

7. VIZIO's contention is incorrect. The definition of "source code" in Section 3 of the GPLv2 and quoted in Paragraph 2.2, above, states that "complete source code" includes "the scripts used to control compilation and installation of the executable." Section 3 of the GPLv2 provides, among other things, that a licensee such as VIZIO may copy and distribute a GPL-licensed Program in object code or executable form so long as the Program is accompanied with "the complete corresponding machine-readable source code." Therefore, a licensee such as VIZIO must provide "the complete corresponding machine-readable source code" for the GPL-licensed Program found on the device which the licensee is distributing. Because the definition of "complete source code" includes "the scripts used to control compilation and installation of the executable," this language necessarily refers to the scripts used to control the compilation and installation of the executable on the device which the licensee is distributing.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 1, 2025, at Hope, British Columbia, Canada.

_____
Denver Gingerich

DECLARATION OF DENVER GINGERICH IN SUPPORT OF PLAINTIFF SOFTWARE FREEDOM CONSERVANCY, INC.'S OPPOSITION TO VIZIO'S MOTION FOR SUMMARY ADJUDICATION

DECLARATION OF CHRISTOPHER WAID

I, CHRISTOPHER WAID, state and declare as follows:

1. I am over the age of 18 and am the Chief Executive Officer of ThinkPenguin, Inc. ("ThinkPenguin"). 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. I am submitting this declaration in support of the Opposition of Plaintiff Software Freedom Conservancy, Inc. to the Motion for Summary Adjudication (the "Motion") filed in this action by Defendant VIZIO, Inc. ("VIZIO").

2. I have a bachelor's degree in computer science, which I received from Kutztown University of Pennsylvania in 2007. In 2008, I founded ThinkPenguin, an online retailer based in Keene, New Hampshire.

3. ThinkPenguin was founded to improve support for free software operating systems, including GNU/Linux and other operating systems primarily geared around the GNU General Public Licenses. ThinkPenguin supports free software operating systems by providing products, services, documentation, and technical support, among other things, so that users may confidently utilize free software operating systems. "Free Software," also known as "Free and Open Source Software" or "FOSS", is a term used to refer to software for which the end-user of the software has the permission and the means to study, copy, share, modify, redistribute and reinstall modified versions of the software.

4. As a result of my work at ThinkPenguin, I am very familiar with both the GNU General Public License Version 2 (the "GPLv2") and with the free software community and the open-source community. As a result of my work at ThinkPenguin, I am also well-versed in how the free software community has understood and implemented the GPLv2.

5. During all my years working with the GPLv2, it has always been my understanding that customers who obtain devices with software licensed under the GPLv2 have the right to install compiled software licensed under the GPLv2 onto these devices. I am aware, and it is well known in the free software community, that the GPLv2 was intended to help implement the four essential freedoms of free software identified by the Free Software Foundation, including the freedoms to run the program as one wishes and to modify the program. It would make no sense to provide a customer with a device that included software that could be modified if the software could then not be installed onto that device. I am also aware, and it is well known in the free software community, that the right to control one's own hardware was an important goal of the GPLv2. I am aware, and it is well known in the free software

DECLARATION OF CHRISTOPHER WAID IN SUPPORT OF PLAINTIFF SOFTWARE FREEDOM CONSERVANCY, INC.'S OPPOSITION TO VIZIO, INC.'S MOTION FOR SUMMARY ADJUDICATION

community, that Richard Stallman, the author of the GPLv2, decided to write the GPLv2 because of his frustration with the inability to modify software that ran on a printer.

6.   ThinkPenguin sells keyboards, mice, wireless routers, printers, scanners, and other computer peripherals, among other products. Some of these products run software licensed under the GPLv2, including the Linux-libre kernel and the distribution LibreCMC.

7.   When ThinkPenguin sells and delivers a product that runs software licensed under the GPLv2, ThinkPenguin does one of the following:

7.1   ThinkPenguin accompanies that product with: (a) a CD with the complete source code corresponding to that software, including the necessary scripts; and (b) instructions for how to compile the source code and load the executable back onto the product. These instructions are detailed enough for a competently skilled developer to carry out the compilation and installation; or

7.2   ThinkPenguin includes an offer to provide the complete source code corresponding to that software, including the necessary scripts, and the instructions described in Paragraph 7.1, above.

8.   ThinkPenguin provides the complete source code, including the necessary scripts, and these instructions, or an offer to provide the complete source code, because ThinkPenguin understands that it is required to do so under the GPLv2.

9.   I am aware that Version 3 of the GNU General Public License (the "GPLv3") was published by the FSF in 2007. The publication of the GPLv3 does not change my understanding that, under the GPLv2, customers who obtain devices that include software licensed under the GPLv2 must be provided with the scripts necessary for them to be able to compile and install such software onto these devices.

10.   I do not believe that my understanding of the GPLv2 is an outlier. I do not know of any technical user of software licensed under the GPLv2 that is unaware of the existence of a requirement to provide the scripts necessary for such software to be compiled and installed onto the device that includes such software.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 2, 2025, at Keene, New Hampshire.

Christopher Waid 7-1-25
_____
Christopher Waid

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DECLARATION OF BDALE GARBEE

I, BDALE GARBEE, state and declare as follows:

1.   I am over the age of 18. 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. I am submitting this declaration in support of the Opposition of Plaintiff Software Freedom Conservancy, Inc. to the Motion for Summary Adjudication (the "Motion") filed in this action by Defendant VIZIO, Inc. ("VIZIO").

2.   As a result of my background and my professional and work experience, described in detail below, I am very familiar with "Free and Open Software" or "FOSS", a term used to refer to software for which the end-user of the software has the permission and the means to study, copy, share, modify, redistribute and/or reinstall modified versions of the software. I am also very familiar with the Open Source community.

3.   As a result of my background and my professional and work experience, I am also very familiar with the GNU General Public License Version 2 (the "GPLv2") and the GNU Lesser General Public License Version 2.1 (the "LGPLv2.1") (collectively, the "GPLv2 Agreements"), which I understand are the two software license agreements at issue in this action. I am particularly familiar with the "source code" provision found in Section 3 of the GPLv2, which requires software users who wish to distribute computer programs licensed under the GPLv2 to accompany the programs with "the complete corresponding machine-readable source code" or a written offer to provide "a complete machine-readable copy of the corresponding source code." My discussion and understanding of this provision is set forth in Paragraphs 12-15, below.

MY BACKGROUND AND PROFESSIONAL AND WORK EXPERIENCE

4.   From May 2003 through August 2012, when I accepted an offer of early retirement, I was the Open Source and Linux Chief Technologist at Hewlett-Packard ("HP"). In this role, I advised lead technologists and business decision makers across HP on technology and community aspects of Linux and other Open Source software, mentored internal communities on how to productively participate in the Open Source software development process, and encouraged the adoption of Open Source software and principles across the company. During this time, HP was the market leader in sales of servers and storage systems to users of Linux, the market leading computer operating system based on Free and Open Software.

DECLARATION OF BDALE GARBEE IN SUPPORT OF PLAINTIFF SOFTWARE FREEDOM CONSERVANCY, INC.'S OPPOSITION TO VIZIO, INC.'S MOTION FOR SUMMARY ADJUDICATION

5.	From September through December 2013, I served as Senior Open Source Adviser to Samsung Research America. In this role, I advised business executives on how to improve Samsung's relationship with external FOSS development communities.

6.	In September 2014, I returned to HP as an HP Fellow in the Office of the Chief Technical Officer (the "CTO"). On November 2, 2015, HP split into two organizations: HP, Inc. and Hewlett-Packard Enterprise ("HPE"). At that time, I continued on with HPE as an HPE Fellow in the Office of the CTO until September 2016, when I retired from HPE.

7.	From 2008 through 2016, I also served on the Board of Directors of the Linux Foundation, a key non-profit trade association enabling collaboration on FOSS development activities by multiple corporations. During that time, I first represented HP as a platinum level corporate member, and then later was elected to represent individual developers and users of Linux.

8.	I have been continuously involved in the development and creaton of FOSS since 1979, when I made my first contribution of source code. In late 1994, I joined the Debian GNU/Linux project, where I helped build early project infrastructure, and led the effort to bootstrap Debian (a popular Linux-based-software distribution) on five different processor architectures including HP's PARISC and Itanium systems. From 2002 to 2003, I served as the elected Debian Project Leader.

9.	After my retirement from HPE in September 2016, I spent my time working at Altus Metrum, LLC ("Altus Metrum"), a leading supplier of electronics for use in the hobby of model rocketry for which I am Managing Member and principal hardware designer. All of Altus Metrum's products are designed using Open Hardware and all of the related firmware and software used in these products is licensed under the GPLv2 or the the GNU General Public License, version 3.

10.	I am a licensed amateur radio operator (callsign "KB0G"). I have served on the Board of Directors of Amateur Radio Digital Communications ("ARDC") since 2019 and now also serve as ARDC's President. I am also a life member of the Radio Amateur Satellite Corporation ("AMSAT") and the American Radio Relay League (the "AARL"). In association with AMSAT, I have designed and built components of several amateur radio satellites that are now in orbit. I introduced FOSS concepts both to AMSAT development teams and at ARDC. ARDC now requires that all grantees release software they develop under FOSS licensing, with a stated preference for use of one of the GNU General Public Licenses.

11.	In addition to the above activities, I have also served over the years as an officer or as a member of the board of directors of various other non-profit entities that support FOSS activities, such

as the FreedomBox Foundation, Open Media Now, and Linux International. I have also been a member of the board of directors of SFC since in or around October 2018. My affiliation with SFC in no way affects my testimony set forth in this declaration.

<div align="center">

THE SOURCE CODE PROVISIONS AND THE REQUIREMENTS

UNDER THE GPLv2 AGREEMENTS

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12. Because of my background and work experience outlined above, I am very familiar with the provisions and the requirements of the GPLv2 Agreements. In particular, I am very familiar with the "source code" provision in Section 3 of the GPLv2, which provides, in pertinent part, that someone who wishes to copy and distribute a computer program licensed under the GPLv2 must

a) Accompany it with the complete corresponding machine-readable source code…; or,

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

I am also very familiar with the definition of "source code" found in Section 3 of the GPLv2, which provides that for an executable work, "complete source code" must include "the scripts used to control compilation and installation of the executable."

13. In my professional and work experience, the requirement in Section 3 of the GPLv2 for a distributor of a computer program licensed under the GPLv2 to provide "the scripts used to control … installation of the executable" means that, as part of the "complete corresponding machine-readable source code," the distributor must provide scripts that allow a recompiled binary of the source code to be installed back onto the device in question.

14. During the time I worked for HP and Samsung, I regularly advised both HP and Samsung to ensure that their customers had the right to install Linux software and other software licensed under the GPLv2 Agreements back onto their HP and Samsung devices.

15. I am aware that VIZIO asserts in its moving papers that the reasonable expectations of the Open Source community confirm that the GPLv2 Agreements do not include what it refers to as a "reinstallation requirement." For the reasons set forth above, this assertion is incorrect. Based on my dealings with other developers and persons in the Open Source Community, it is my understanding, and it is the understanding of other members of the open source community with whom I have dealt, that the source code provision of the GPLv2 includes a requirement to provide scripts that allow a recompiled binary of the source code to be installed back onto the device in question.

DECLARATION OF BDALE GARBEE IN SUPPORT OF PLAINTIFF SOFTWARE FREEDOM
CONSERVANCY, INC.'S OPPOSITION TO VIZIO INC.'S MOTION FOR SUMMARY ADJUDICATION

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 2, 2025, at Black Forest, Colorado.

Bdale Garbee

Bdale Garbee

DECLARATION OF BDALE GARBEE IN SUPPORT OF PLAINTIFF SOFTWARE FREEDOM CONSERVANCY, INC.'S OPPOSITION TO VIZIO INC.'S MOTION FOR SUMMARY ADJUDICATION

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 declaration in support of SFC's Opposition to the Motion for Summary Adjudication filed in this action by Defendant VIZIO, Inc. (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.   Attached as **Exhibit "8"** to the Appendix of Exhibits in support of the Motion, submitted by SFC separately herewith (the "Appendix of Exhibits"), is a true and correct copy of this Court's Minute Order, dated March 26, 2024, denying SFC's Motion for Summary Adjudication as to Issue No. 1 and granting SFC's Motion for Summary Adjudication as to Issue No. 2.

3.   Attached as **Exhibit "9"** to the Appendix of Exhibits are selected pages from the transcript of the deposition of Zoey Kooyman, taken in this action on May 1, 2024.

4.   Attached as **Exhibit "10"** is a true and correct copy of a printout from the webpage https://www.vizio.com/en/tv/overview, entitled "America's Smart TV."

5.   Attached as **Exhibit "11"** to the Appendix of Exhibits is a true and correct copy of a printout of an article from Wikipedia, entitled "Smart TV," found at https://en.wikipedia.org/wiki/Smart_TV.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 3, 2025, at Los Angeles, California,

_____
SA'ID VAKILI, DECLARANT

DECLARATION OF SA'ID VAKILI IN SUPPORT OF PLAINTIFF SOFTWARE FREEDOM
CONSERVANCY, INC.'S OPPOSITION TO VIZIO, INC.'S MOTION FOR SUMMARY ADJUDICATION

<p style="text-align:center"><u>**PROOF OF SERVICE**</u></p>

<p style="text-align:center">*Software Freedom Conservancy, Inc. v. VIZIO, Inc., et al.*
OCSC Case No.: 30-2021-01226723-CU-BC-CJC</p>

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 July 3, 2025, I served the foregoing document described as **PLAINTIFF SOFTWARE FREEDOM CONSERVANCY, INC.'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR SUMMARY ADJUDICATION OF DEFENDANT VIZIO, INC.; DECLARATIONS OF BRADLEY M. KUHN, DENVER GINGERICH; CHRISTOPHER WAID, BDALE GARBEE, AND SA'ID VAKILI IN SUPPORT THEREOF** on all interested parties in this action at the addresses listed below, as follows:

<p style="text-align:center">**QUINN EMANUEL URQUHART & SULLIVAN, LLP**
Michael E. Williams, Esq. (*michaelwilliams@quinnemanuel.com*)
Daniel C. Posner, Esq. (*danposner@quinnemanuel.com*)
John Z. Yin, Esq. (*johnyin@quinnemanuel.com*)
Arian J. Koochesfahani, Esq. (*ariankoochesfahani@quinnemanuel.com*)
865 South Figueroa Street, 10th Floor
Los Angeles, California 90017-5003</p>

<p style="text-align:center">**213/443-3000** | Fax: 213/443-3100</p>

<p style="text-align:center">*Counsel for Defendant VIZIO, Inc.*</p>

( )   <u>OVERNIGHT DELIVERY (DROP-OFF) (CCP §1013(c))</u>. 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.

(√)   <u>VIA ELECTRONIC TRANSMISSION</u>. I caused to be transmitted a true copy thereof to each of 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.

( )   <u>PERSONAL DELIVERY</u>. 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 July 3, 2025, at Los Angeles, California.

<u>Daphne G. Nunez</u>   _____
(Printed Name)   (Signature)