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

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

17 **Plaintiff,**

18 **v.**

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

21 **Defendants.**

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

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

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

Date: August 28, 2025

Time: 10:00 a.m.

Dept.: C33

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

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

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

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

26 **II. SFC IS ENTITLED TO SUMMARY ADJUDICATION ON ISSUE NO. 1 THAT VIZIO’S
27 CONTRACTUAL DUTY IS TO PROVIDE SFC WITH THE COMPLETE
28 CORRESPONDING SOURCE CODE FOR ITS SMART TV MODEL NO. D32h-J09
SUBJECT TO THE GPLv2 AND THE LGPLv2.1**

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

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

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

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

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

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

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

9 Second, VIZIO misleadingly contends that the FAC and SFC’s interrogatory responses both state
10 that VIZIO did not provide SFC with a valid written offer. (See Opp. at 5:15-24.) A review of both
11 documents conclusively demonstrates that SFC was merely alleging that VIZIO’s offer was not “valid”
12 under the GPL Agreements because it was too difficult for ordinary users to find and exercise, and not
13 that the offer was somehow invalid and unable to form a contract. Therefore, in its response to Special
14 Interrogatory No. 9, which asked SFC to identify what it believed was deficient in VIZIO’s written offer,
15 SFC explicitly said that it “rejects the notion” that VIZIO’s offer “**is sufficient to comply with the GPLv2
16 or LGPLv2.1.**” (Vakili Supp. Decl., ¶ 6 and Exhibit “17” (Response to Special Interrogatory No. 9) at
17 14:4-7 (emphasis added). VIZIO received this response in November 2022, nearly three years ago. (Id.)
18 Likewise, Paragraph 104 of the FAC, which VIZIO only partially quotes (see Opp. at 5:22-24), actually
19 states that “[t]he purported written offer made via the SmartCast user interface at Extras/About/License
20 List is not a valid written offer, **as required by the GPL Agreements, for any or all of the following
21 reasons:**” (FAC, ¶104.) VIZIO conveniently omits the highlighted part of Paragraph 104 in its
22 Opposition, because it undermines VIZIO’s misleading contention. By contrast, SFC was able to locate
23 and exercise the written offer, thus forming a binding contract with VIZIO. (FAC, ¶¶ 106-107.) For all
24 these reasons, VIZIO’s claim that SFC’s assertion that VIZIO’s offer was sufficient to form a binding
25 contract under California “is flatly contrary to SFC’s own pleaded allegations” (Opp. at 5:25-6:1) is
26 simply incorrect and provides no reason to deny SFC’s Motion.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 **ISSUE NO. 2:**

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

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

20 **ISSUE NO. 3:**

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

- 23 (a) the complete corresponding machine-readable source code (as defined in Section 0
24 of the LGPLv2.1) for any library (as defined in Section 0 of the LGPLv2.1) on its Smart
25 TVs that is licensed under the LGPLv2.1; or
26 (b) otherwise comply with Section 6 of the LGPLv2.1.

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

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

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

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

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

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

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

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

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

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

³ In *LeFrancois v. Goel* (2005) 35 Cal.4th 1094, 1098, a case relied upon by VIZIO (see Opp. at 9:20-25), the California Supreme Court stated that “[t]his conclusion seems logical.”

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

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

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

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

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

- 17 1. that Defendant VIZIO, Inc. (“VIZIO”) has a duty under the GNU General Public
18 License version 2 (“GPLv2”) and GNU Lesser General Public License version 2.1
19 (“LGPLv2.1”) (together, the “GPLs”) to produce to SFC:
 - 20 a. the complete source code (as defined in Section 3 of GPLv2 and in Section 0
21 of LGPLv2.1) for any GPL-licensed software on VIZIO Smart TV Model Nos. V435-
22 J01, D32h-J09, or M50Q7-J01; and
 - 23 b. the complete source code or object code for any software that links to an
24 LGPLv2.1-licensed library on VIZIO Smart TV Model Nos. V435-J01, D32h-J09, or
25 M50Q7-J01 (or otherwise comply with LGPLv2.1 § 6).

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

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

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

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

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

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

17 Accordingly, after reviewing Kooyman’s new testimony, SFC obtained a declaration from
18 Kooyman in which she confirms that: (i) the FSF never intended to restrict, hinder, or limit any means
19 for users to assert their rights and freedoms under the GPLs through methods other than a copyright law
20 claim; and (ii) the FSF believes that third parties requesting complete and corresponding source code
21 under the GPLs are entitled to receive that source code. The Kooyman Declaration also stated that, since
22 the Court’s ruling on the Prior Motion, the FSF had changed the language of its FAQ entry to better
23 reflect the above positions. (Declaration of Zoe Kooyman (ROA#496), ¶¶ 17, 20, 22-26; Appx., Exhibit
24 “12” (updated FAQ entry).) The Kooyman Declaration, especially Paragraphs 17-26, as well as the
25 updated FSF FAQ entry, constitute new facts or evidence sufficient for this Court to consider the Motion
26 under both Section 437c(f)(2) and Section 1008. (*See, e.g., Pender v. Radin* (1994) 23 Cal.App.4th
27 1807, 1812 (new facts revealed through discovery after first motion are sufficient to justify a second
28 motion for summary judgment or summary adjudication under Section 437c(f)(2)).) Therefore, the new
29 facts in Kooyman’s declaration provide a basis for this Court to consider SFC’s Motion as to Issue Nos.
30 2 and 3, even if Section 437c(f)(2) or Section 1008 applies.

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

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

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

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

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

21 **IV. CONCLUSION**

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

25 DATED: August 15, 2025

VAKILI & LEUS, LLP

26 By: 

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

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

1 **SUPPLEMENTAL DECLARATION OF SA'ID VAKILI**

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

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

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

18 3. Attached hereto as **Exhibit "14"** is a true and correct copy of a pleading entitled
19 "Stipulation and [Proposed] Order Granting Leave to Amend and Continuance of Trial," signed by me
20 and by Michael E. Williams, counsel for VIZIO, and filed in this action on June 27, 2023, without the
21 exhibit thereto (ROA#76). As may be seen by a review of **Exhibit "14"**, the Stipulation states, at page
22 1, lines 17-18, that "on May 26, 2023, SFC provided counsel for VIZIO with a draft redline copy of its
23 [PROPOSED] First Amended Complaint ("Proposed FAC")." The Proposed FAC provided to counsel
24 for VIZIO eventually was filed as the First Amended Complaint, the currently operative pleading in this
25 action, on January 10, 2024 (ROA#165).

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

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

4 6. Attached hereto as **Exhibit “17”** are true and correct copies of selected pages from the
5 document entitled “Plaintiff’s Objections and Responses to Defendant VIZIO, Inc.’s First Set of Special
6 Interrogatories, served by SFC in this action on or about November 11, 2022, including SFC’s Response
7 to Special Interrogatory No. 9. As may be seen by a review of **Exhibit “17”**, SFC’s Response to Special
8 Interrogatory No. 9 states, in part, that SFC “rejects the notion that merely placing the words ‘VIZIO
9 offers to provide applicable source code upon request’ with an instruction that the requester somehow
10 ‘contact VIZIO’ is sufficient to comply with the GPLv2 or LGPLv2.1.”

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

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

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

20 
21 _____
22 SA'ID VAKILI, DECLARANT
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Exhibit: “14”

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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 through 50, Inclusive,

Defendant.

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

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

The Hon. Sandy N. Leal
Dept. C33

Action Filed: October 19, 2021

Trial Date: September 25, 2023

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 ////

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25 **IT IS SO STIPULATED.**

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DATED: June 27, 2023

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

By /s/ Michael E. Williams
Michael E. Williams
Attorneys for Defendant, VIZIO, Inc.

DATED: June 27, 2023

VAKILI & LEUS, LLP

By /s/ Sa'id Vakili
Sa'id Vakili
Attorneys for Plaintiff, Software Freedom
Conservancy, Inc.

[PROPOSED] ORDER

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

IT IS SO ORDERED.

DATED: _____

JUDGE OF THE SUPERIOR COURT
Hon. Sandy N. Leal

1 **PROOF OF SERVICE**

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

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

14 Richard G. Sanders, Esq.
15 rick@ricksanderslaw.com
16 **RICHARD G. SANDERS, PLLC**
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Fax: (213) 380-6051

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

23 Executed on June 27, 2023.

24
25 */s/ Arian Koochesfahani* _____

26 Arian Koochesfahani
27
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Exhibit: "15"

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

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

11 VIDEO-RECORDED DEPOSITION UPON ORAL EXAMINATION OF
12 PERSON MOST KNOWLEDGEABLE OF SFC
13 DENVER GINGERICH

15 *** Portions of transcript designated Confidential ***

16 9:21 A.M.
17 THURSDAY, MAY 30, 2024
18 1200 SIXTH AVENUE, SUITE 610
19 SEATTLE, WASHINGTON

20 Confidential Pages 24-25 and 237-238

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

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

2
3 FOR THE PLAINTIFF:

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9 ngray@shadesofgray.law

10
11 FOR THE DEFENDANT:

12 LANCE YANG

13 ARIAN J. KOCHESFAHANI, via Zoom

14 Quinn Emanuel Urquhart & Sullivan, LLP

15 865 South Figueroa Street, 10th Floor

16 Los Angeles, California 90017

17 213.443.3000

18 lanceyang@quinnemanuel.com

19 ariankoochesfahani@quinnemanuel.com

20
21 ALSO PRESENT:

22 RICK SANDERS, SFC General Counsel

23 CHARLES KOOLE, Vizio General Counsel

24 SHREVE VanZANTEN, Videographer

25

EXAMINATION

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BY MR. YANG: 09:23

Q. Good morning. 09:23

Have you had your deposition taken before? 09:23

A. No. 09:23

MS. GRAY: Sorry. Are we not doing the 09:23
housekeeping things we just talked about before going on
the record?

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

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

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

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

MR. YANG: Sure. 09:23

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

MR. YANG: Okay. 09:24

1 MS. GRAY: Thank you. 09:24

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

3 produced; correct?

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

5 of those documents have been previously produced, but

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

7 request that we produce documents that Mr. Gingerich

8 reviewed or relied upon in connection with preparation

9 for the deposition.

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

11 making an email production -- a formal production of

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

13 get?

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

15 them, if you would like me to.

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

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

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

19 your deposition taken before?

20 A. No. 09:25

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

22 rules for a deposition?

23 A. Yes. 09:25

24 MS. GRAY: Objection. 09:25

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

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

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

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

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

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

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

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

17 A. Yes. 17:37

18 Q. Okay. 17:37

19 MR. YANG: I would like to mark as Exhibit 14 17:37

20 a document Bates stamped UPI-SFC-0010510.

21 (Exhibit Number 14 marked for identification.)

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

24 A. Yes. 17:37

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

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

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

9 A. I have it open. 17:37

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

11 A. Yes. 17:38

12 Q. What is this document? 17:38

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

14 that Paul Visscher conducted in order to request source

15 code for Vizio television.

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

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

21 (Exhibit Number 15 marked for identification.)

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

24 A. Yes. 17:39

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

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

2 A. Okay. I'm going to review the context here to 19:38

3 confirm I have the correct context to answer your

4 question.

5 Yes, I believe these statements in Topic 13, 19:39

6 subsection D, are accurate.

7 Q. All right. 19:39

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

9 witness.

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

11 deposition?

12 MR. YANG: Yes. 19:39

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

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

15 THE VIDEOGRAPHER: Madame Reporter, anything 19:39

16 from you?

17 The time is 7:40 p.m. And this concludes the 19:39

18 deposition of Denver Gingerich, and we are going off the

19 record.

20 (Discussion off the record.)

21 MS. GRAY: So it's not just the deposition of 19:40

22 Denver Gingerich, it is also the person most

23 knowledgeable of SFC and that deposition is also closed,

24 and we are off the record in that deposition as well.

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

(Signature was reserved.)

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CORRECTION & SIGNATURE PAGE

RE: SFC vs. VIZIO
ORANGE COUNTY; No. 30-2021-01226723-CU-BC-CJC
DENVER GINGERICH; TAKEN THURSDAY, MAY 30, 2024
Reported by: TAMI LYNN VONDRAN, CRR, RMR, CCR
WA CCR #2157; OR CSR #20-0477; CA CSR #14435

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

PAGE/LINE	CORRECTION	REASON

Signed at _____, Washington,
on this date: _____

DENVER GINGERICH

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REPORTER'S CERTIFICATE

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

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

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



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

1 Naomi Gray

2 ngray@shadesofgray.law

3 June 3, 2024

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

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

6 The above-referenced transcript has been

7 completed by Veritext Legal Solutions and

8 review of the transcript is being handled as follows:

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

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

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

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

Page 303

1 ___ Federal R&S Requested (FRCP 30(e)(1)(B)) – Locked .PDF
2 Transcript - The witness should review the transcript and
3 make any necessary corrections on the errata pages included
4 below, notating the page and line number of the corrections.
5 The witness should then sign and date the errata and penalty
6 of perjury pages and return the completed pages to all
7 appearing counsel within the period of time determined at
8 the deposition or provided by the Federal Rules.
9 ___ Federal R&S Not Requested - Reading & Signature was not
10 requested before the completion of the deposition.

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Exhibit: “17”

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2 rick@ricksanderslaw.com

3 **RICHARD G. SANDERS, PLLC**

4 605 Berry Road, Suite "A"

5 Nashville, Tennessee 37204

6 **615/734-1188** | Fax: 615/250-9807

7 *–and–*

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13 Schu1984@yahoo.com

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17 3701 Wilshire Boulevard, Suite 1135

18 Los Angeles, California 90010-2822

19 **213/380-6010** | Fax: 213/380-6051

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

21 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

23 **SOFTWARE FREEDOM CONSERVANCY**
24 **INC., a New York Non-Profit Corporation,**

25 **Plaintiff,**

26 **v.**

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

Defendants.

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

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

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

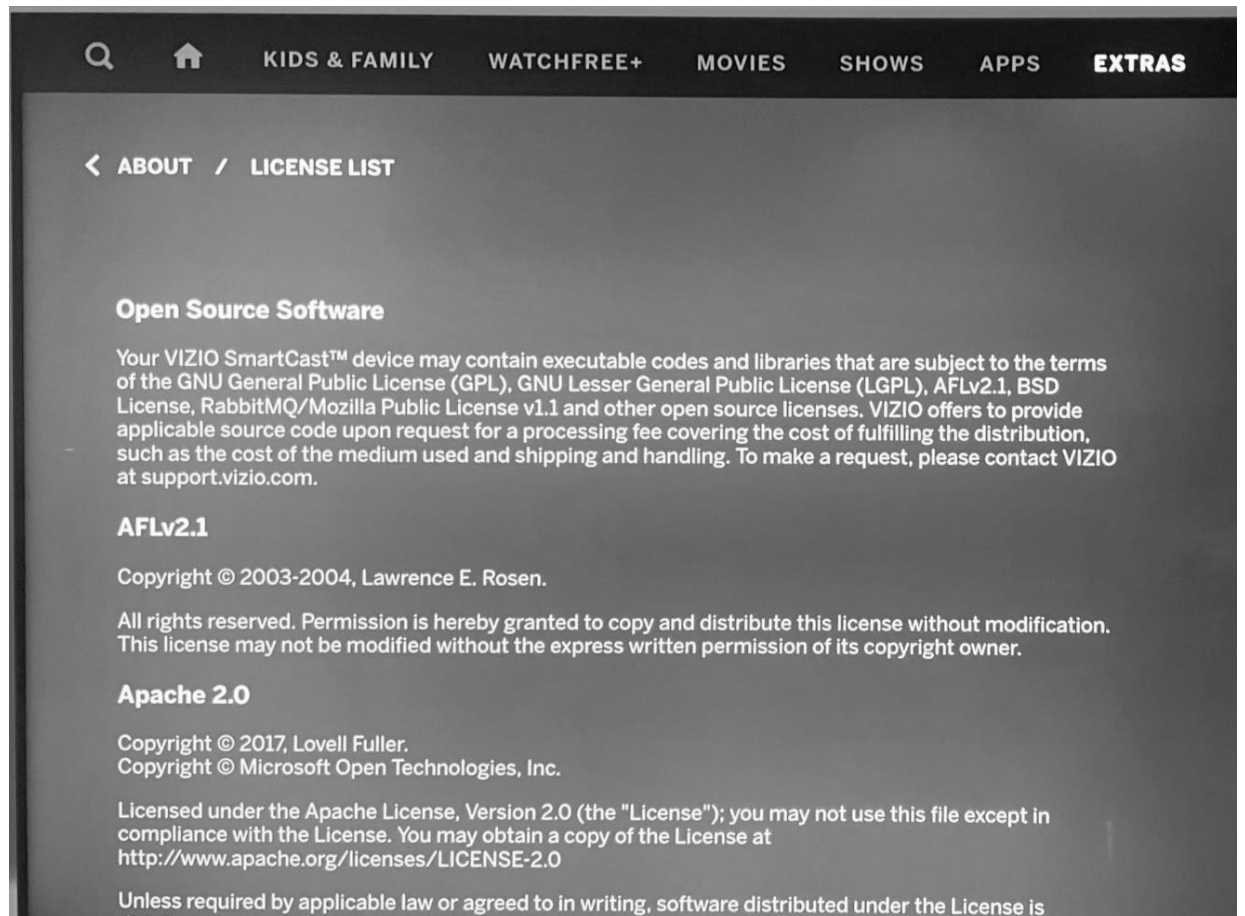
[Code of Civil Procedure §§ 2030.210, et seq.]

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

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

8 **SPECIAL INTERROGATORY NO. 9:**

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



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

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

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

1 human agent who would receive a request via any of these means would have been trained how to
2 provide complete source code, that Propounding Party had any procedure for responding to such request,
3 or that such procedure (if it exists) even worked. A search of the VIZIO support site reveals no
4 information about how to make a request for complete source code. Responding Party rejects the notion
5 that merely placing the words “VIZIO offers to provide applicable source code upon request” with an
6 instruction that the requester somehow “contact VIZIO” is sufficient to comply with the GPLv2 or
7 LGPLv2.1.

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

10 **SPECIAL INTERROGATORY NO. 10:**

11 For each piece of technical material and source code identified in SFC’s response to Special
12 Interrogatory No. 4, state with particularity what SFC contends is missing from VIZIO’s CCS
13 CANDIDATE supplied to SFC on November 7, 2019 and the “make” file supplied to SFC on November
14 13, 2019.

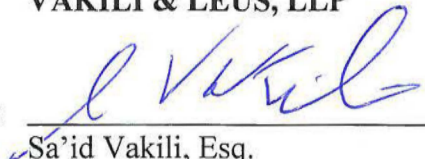
15 **RESPONSE TO SPECIAL INTERROGATORY NO. 10:**

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

1 DATED: November 11, 2022

VAKILI & LEUS, LLP

2
3 By:



Sa'id Vakili, Esq.

Stephen P. Hoffman, Esq.

*Counsel for Plaintiff Software Freedom
Conservancy, Inc.*

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VERIFICATION

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

I, Karen Sandler, declare as follows:

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

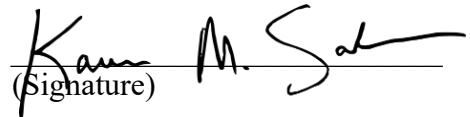
**PLAINTIFF’S OBJECTIONS AND RESPONSES TO DEFENDANT VIZIO, INC.’S
FIRST SET OF SPECIAL INTERROGATORIES**

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

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

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

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


(Signature)

1 **PROOF OF SERVICE**

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

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

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

10 Michael E. Williams, Esq.
11 michaelwilliams@quinnemanuel.com

12 Daniel C. Posner, Esq.
13 danposner@quinnemanuel.com

14 John Yin, Esq.
15 johnyin@quinnemanuel.com

16 **QUINN EMANUEL URQUHART & SULLIVAN, LLP**

17 865 South Figueroa Street, 10th Floor
18 Los Angeles, California 90017-2543

19 **213/443-3000 | 213/443-3100**

20 *Counsel for Defendant VIZIO, Inc.*

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

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

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

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

26 Malou de la Paz
27 (Printed Name)


28 
(Signature)

Exhibit: “18”

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COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Superior Court Department

IN THE MATTER OF THE)	Originating Case No.
ISSUANCE OF A SUBPOENA)	30-2021-01226723-CU-BC-CJC
TO THE FREE SOFTWARE)	
FOUNDATION)	Originating State:
_____)	California
SOFTWARE FREEDOM)	
CONSERVANCY, INC.,)	
Plaintiff,)	Originating Court:
vs.)	Superior Court of the
VIZIO, INC.,)	State of California,
Defendant.)	County of Orange
_____)	

VIDEOTAPED DEPOSITION OF ZOE KOOYMAN,
a witness called on behalf of the Defendant,
before Jeanette N. Maracas, Registered
Professional Reporter and Notary Public in
and for the Commonwealth of Massachusetts,
taken at 111 Huntington Avenue, Boston,
Massachusetts, on Wednesday, May 1, 2024,
commencing at 10:15 a.m.

JOB No. 6654854
PAGES 1 - 373

1 APPEARANCES:

2

3 SHADES OF GRAY LAW GROUP, P.C.

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5 By: Donald Thompson, Esq.

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8 For the Plaintiff.

9 Ngray@shadesofgray.law

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11

12 QUINN EMANUEL URQUHART & SULLIVAN,

13 LLP

14 By: Daniel Posner, Esq.

15 865 South Figuerosa Street

16 Los Angeles, CA 90017

17 For the Defendant.

18 Danposner@quinnemanuel.com

19

20 ALSO PRESENT:

21 Rick Sanders, Esq.

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

23 Arian Koochesfahani, Esq. (via Zoom)

24 Daniel Cayarga, Videographer

25

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

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

1 GPL. 10:41:16

2 Q. So there was text of a draft affidavit that 10:41:17

3 you were working on with Bradley and Karen 10:41:26

4 from SFC, is that correct? 10:41:31

5 MS. GRAY: Objection to form. You 10:41:31

6 can answer. 10:41:33

7 MR. THOMPSON: We join in the 10:41:33

8 objection, misconstrues the witness' prior 10:41:35

9 testimony. 10:41:37

10 MR. POSNER: Thank you. 10:41:37

11 Q. Go ahead. 10:41:38

12 A. No. I worked on it. They asked me to make 10:41:38

13 it. I worked on it. 10:41:41

14 Q. So Karen and Bradley asked you on behalf of 10:41:42

15 FSF if you would prepare an affidavit that 10:41:47

16 they could submit in the lawsuit against 10:41:50

17 Vizio that stated FSF's position regarding 10:41:51

18 issues in the SFC lawsuit regarding who could 10:41:55

19 enforce the GPLs, is that correct? 10:41:59

20 A. Could you repeat the question? 10:42:02

21 Q. Yeah, it's kind of clunky, but Karen and 10:42:04

22 Bradley -- I'm just trying to find out if 10:42:05

23 this is correct. Is it Bradley? 10:42:07

24 A. Yes. 10:42:08

25 Q. Karen and Bradley from SFC asked you on 10:42:09

1 behalf of FSF if you would prepare an 10:42:13
2 affidavit that they could submit in the 10:42:16
3 lawsuit against Vizio that stated FSF's 10:42:18
4 position regarding who could enforce the 10:42:22
5 GPLs, is that correct? 10:42:24
6 MS. GRAY: Objection to form. You 10:42:25
7 can answer. 10:42:27
8 MR. THOMPSON: We join in the 10:42:27
9 objection. 10:42:29
10 A. It's not specifically who could enforce. 10:42:29
11 It's more about whether or not users can 10:42:40
12 enforce. 10:42:43
13 Q. But otherwise, what I said was correct? 10:42:43
14 A. Yes. 10:42:46
15 MS. GRAY: Object to form. You can 10:42:46
16 answer. 10:42:48
17 MR. THOMPSON: We join. 10:42:48
18 Q. So the issue was whether or not users can 10:42:49
19 enforce, and we're talking about the GPLs, 10:42:52
20 the general public licenses, is that correct? 10:42:57
21 MS. GRAY: Objection to form. You 10:43:01
22 can answer. 10:43:02
23 MR. THOMPSON: We join in the 10:43:02
24 objection. 10:43:03
25 Q. When you said "who can enforce," you're 10:43:04

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

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

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

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

1 request under advisement. 11:44:39

2 MR. POSNER: And see what you can 11:44:40

3 do about it today, I'm asking. 11:44:41

4 MS. GRAY: I will take the request 11:44:43

5 under advisement. 11:44:45

6 MR. POSNER: Fantastic. Okay. 11:44:46

7 Q. You mentioned right before the break, Ms. 11:44:47

8 Kooyman, that you had discussions with Mr. 11:44:55

9 Stallman to prepare for your deposition, 11:44:57

10 correct? 11:45:00

11 A. Yes. 11:45:00

12 Q. How many times did you talk with him? 11:45:01

13 A. I spoke with him four times. 11:45:03

14 Q. And how did you conduct those conversations? 11:45:05

15 In person or by some electronic means? 11:45:10

16 A. Via phone. 11:45:12

17 Q. You said you live in -- you just mentioned 11:45:13

18 at a break that you live in Switzerland, is 11:45:16

19 that correct? 11:45:19

20 A. Yes. 11:45:19

21 Q. Did you travel from Switzerland to Boston 11:45:19

22 for this deposition? 11:45:22

23 A. I did. 11:45:23

24 Q. So Switzerland is your full-time residence? 11:45:23

25 A. Yes. 11:45:26

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

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

1 A. Yes, the FSF believes that. 11:48:32

2 Q. And you understand there's a dispute at least 11:48:36

3 between SFC and Vizio as to whether users 11:48:38

4 who do not own the copyrights in the works 11:48:42

5 at issue are also entitled to enforce the 11:48:44

6 GPLs, correct? 11:48:47

7 MS. GRAY: Objection to form. You 11:48:47

8 can answer. 11:48:49

9 MR. THOMPSON: We join. 11:48:49

10 A. Yes. 11:48:50

11 Q. And you asked Mr. Stallman his views on that 11:48:50

12 latter issue, correct? 11:48:54

13 MS. GRAY: Objection to form, 11:48:55

14 misstates the witness' testimony. You can 11:48:58

15 answer. 11:48:59

16 MR. THOMPSON: We join. 11:49:00

17 A. Yes. 11:49:01

18 Q. And what did he say? 11:49:01

19 A. He said it was always the intention of the 11:49:03

20 GPLs for users to be able to obtain the 11:49:07

21 complete and corresponding source code for 11:49:11

22 the GPL. 11:49:13

23 Q. And what about specifically with respect 11:49:14

24 to the question of whether users who do not 11:49:17

25 own the copyrights in the works at issue, 11:49:19

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

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

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

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

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

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

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

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

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

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

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

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

1 is that correct? 07:40:01

2 MR. THOMPSON: Objection to form, 07:40:02

3 misconstrues the witness' prior testimony, 07:40:04

4 asked and answered. 07:40:07

5 MS. GRAY: I'll join. 07:40:08

6 A. Yes, but the FSF is also a small organization 07:40:09

7 with a small staff and we have a lot of 07:40:14

8 resources, and it sometimes takes time for us 07:40:17

9 to update it. 07:40:19

10 Q. Okay. I have nothing further. 07:40:20

11 MR. THOMPSON: I think we're done. 07:40:28

12 MS. GRAY: The deposition is closed. 07:40:31

13 VIDEOGRAPHER: The time is 7:40 p.m. 07:40:33

14 This concludes the deposition and the media 07:40:36

15 will be retained by Veritext. 07:40:38

16 (Whereupon the deposition was 07:40:40

17 concluded at 7:40 p.m.)

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DEPONENT'S ERRATA SHEET
AND SIGNATURE INSTRUCTIONS

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

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

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

Executed on _____, 20____,
at _____, _____.

ZOE KOOYMAN

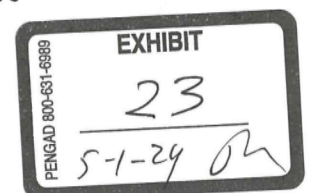
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Exhibit: “19”

Updated: June 19, 2023

I, Zoë Kooyman, declare as follows:

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



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

11. The FSF does not rule out that the SFC's breach of contract claim to enforce copyright license provisions requiring the licensee to respect certain rights for other users of the same work is a valid approach.

12. The FSF will update the FAQ to reflect this position in due course.

1 **PROOF OF SERVICE**

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

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

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

12 **QUINN EMANUEL URQUHART & SULLIVAN, LLP**
13 Michael E. Williams, Esq. (*michaelwilliams@quinnemanuel.com*)
14 Daniel C. Posner, Esq. (*danposner@quinnemanuel.com*)
15 John Z. Yin, Esq. (*johnyin@quinnemanuel.com*)
16 Arian J. Koochesfahani, Esq. (*ariankoochesfahani@quinnemanuel.com*)
17 865 South Figueroa Street, 10th Floor
18 Los Angeles, California 90017
19 **213/443-3000 | Fax: 213/443-3100**
20 *Counsel for Defendant VIZIO, Inc.*

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

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

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

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

24 Daphne Gomez
25 (Printed Name)



(Signature)