

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CODY BRENNER, on his own behalf and  
on behalf of other similarly situated persons,

Plaintiff,

v.

VIZIO, INC., a California corporation,

Defendant.

Case No.

**PLAINTIFF’S COMPLAINT FOR  
INJUNCTIVE RELIEF AND DAMAGES  
CLASS ACTION**

JURY TRIAL DEMANDED

Plaintiff Cody Brenner (“Plaintiff”), on his own behalf and on behalf of all other similarly situated persons (“The Class”), by and through their counsel, bring the following complaint against Defendant VIZIO INC. (“Vizio”), to obtain all damages, injunctive relief, attorneys’ fees, costs, and other remedies Plaintiffs are entitled to recover under law and equity.

**I. JURISDICTION AND VENUE**

1. At all times relevant herein, Plaintiff is and was a citizen and resident of Pierce County, Washington

2. Vizio is a for-profit corporation organized under the laws of California.

3. Vizio’s principal place of business is in Irvine, California, where it is headquartered.

4. Vizio manufactures various consumer electronics products including specifically smart televisions (“Smart TVs”).

5. At all relevant times Vizio conducts substantial business in California, Washington State, as well as nationwide, regularly causing its products to be sold in California, Washington and across the United States.



1 began switching to newer HTML5-based API systems. Smart TVs that run on the newer  
2 HTML5 systems still provide access to YouTube.

3 16. Flash-based Smart TVs, including those manufactured by Vizio during this time  
4 frame, no longer have access to the YouTube app. Flash-based Smart TVs manufactured by  
5 Vizio that no longer have access to the YouTube app are hereinafter referred to as "Affected  
6 Smart TVs."

7 17. At the time, Affected Smart TVs had the new and unique capability to, among  
8 other things, access video streaming applications directly from the television. Not since the  
9 advent of color television had consumers' television viewing experience changed so  
10 dramatically. Manufacturers including Defendant took advantage of the dramatic change in  
11 television use – profits and revenues soared.

12 18. Defendant sold Affected Smart TVs to consumers by promoting them as  
13 inherently different from traditional television sets based on their ability to access video  
14 streaming entertainment apps. Defendant promoted Affected Smart TVs as having all the  
15 convenience of smart phones and computers with the ease and convenience of using a familiar  
16 device – the television set – in the comfort of consumers' living rooms. To lure consumers in,  
17 Defendant promoted its most popular Affected Smart TV video streaming entertainment apps,  
18 including Netflix, Hulu, and YouTube. Specifically, Defendant promoted Affected Smart TVs  
19 by placing the YouTube logo on its packaging, in-store displays, and by displaying the YouTube  
20 app in its commercials and in online advertising to inform consumers that Affected Smart TVs  
21 came with YouTube access included upon purchase.

22 19. Defendant promoted, through advertising and marketing that educated and  
23 informed the consuming public, its Affected Smart TVs as a means to access YouTube. At no  
24 time prior to 2013 did Defendant disclaim that continued use of the YouTube app, for the life of  
25 its Affected Smart TVs, could or would end.

26 20. In fact, Vizio's Chief Technology Officer Matt McRae confirmed to Forbes that  
27 Smart TVs was one of the fastest growing markets segments for the company, and that in 2012

1 90% of the Vizio televisions sold over that holiday season were Smart TVs, with “the top two  
2 apps [being] Netflix and YouTube, which is probably expected.”

3 ([https://www.forbes.com/sites/michaelwolf/2012/11/28/vizio-nearly-90-of-connected-tvs-sold-  
4 over-black-friday-already-streaming-content/#2ba36f87f3c8](https://www.forbes.com/sites/michaelwolf/2012/11/28/vizio-nearly-90-of-connected-tvs-sold-over-black-friday-already-streaming-content/#2ba36f87f3c8)).

5 21. Vizio tweeted that “NEWS: YouTube for VIZIO Internet App TVs is now  
6 available. What internet fav will stream on your big screen first?” as a means of informing  
7 consumers that its Smart TVs had YouTube access so as to spur even more Smart TV purchases.

8 <https://twitter.com/VIZIO/status/177486904470679555>.

9 22. Vizio admitted that in becoming “the number one Smart TV platform” it relied  
10 heavily on content streaming apps like YouTube and that it “really pushed [those apps] hard”  
11 during that process. <https://www.youtube.com/watch?v=xjDqZHnebiU>

12 23. Vizio’s Smart TV strategy was critical to its success, and the marketing and  
13 inclusion of YouTube as one of those applications was as necessary component to drive its sales,  
14 and increase its market share.

15 24. Vizio’s website boasted in 2013 that “[c]onsumers are looking for home  
16 entertainment solutions that give them the most options, best picture, and best sound quality  
17 which is why they are gravitating towards large screen and connected TVs.”

18 [https://www.vizio.com/news/vizio-continues-to-lead-as-the-number-one-selling-lcd-hdtv-brand-  
19 and-number-one-in-sound-bar-sales-for-q1](https://www.vizio.com/news/vizio-continues-to-lead-as-the-number-one-selling-lcd-hdtv-brand-and-number-one-in-sound-bar-sales-for-q1).

20 25. On or about June 26, 2017, YouTube permanently stopped functioning as an app  
21 on Defendant’s Affected Smart TVs. In fact Vizio concedes that in spite of its marketing  
22 representations, around the YouTube application “YouTube simply will no longer work on the  
23 TVs listed below.” ([https://support.vizio.com/s/article/Youtube-no-longer-  
24 working?language=en\\_US](https://support.vizio.com/s/article/Youtube-no-longer-working?language=en_US)). Defendant simply identifies all Affected Smart TVs on its website.

25 26. Defendant has offered no remedy to Plaintiff or the millions of similarly situated  
26 consumers that have since lost access to YouTube on Defendant’s Affected Smart TVs.

27 Defendant’s advice to consumer complainants related to loss of YouTube functionality is to

1 either (a) buy a new Smart TV, or (b) buy a separate, exterior streaming device such as a Google  
2 Chromecast, which would then allow consumers to access YouTube content on their “Smart”  
3 TVs. In other words, Defendant is using the loss of YouTube functionality on its Affected Smart  
4 TVs to continue to profit off of consumers who, like Plaintiff, have suffered harm.

5 27. YouTube explained the sudden loss of access to its app on older-model Smart TVs,  
6 including Affected Smart TVs manufactured by Defendant, in the following notice:

7  
8 The YouTube Flash app on older TV device models will no longer be available  
9 starting June 26th 2017. If your TV model is from 2012 or earlier, you likely have  
10 this older version of the YouTube app which looks like this.

11 In 2012, YouTube and our device partners started distributing an HTML5 version  
12 of the YouTube app for TVs. This app has many new features and other  
13 improvements that are not available on the older Flash app. We now think it is  
14 the right time to end-of-life this app because as we continue to roll out new  
15 features to the current YouTube on TV app (topic tabs, improved search, watch  
16 next, recommendations, better transport controls, etc.) the legacy devices using  
17 the Flash app cannot get them.

18 **1. How to continue watching YouTube**

19 If your device is impacted by this launch, you can still continue watching  
20 YouTube using the following methods:

21 **a. Continue using your existing TV**

22 You can attach a streaming stick / box to your TV's HDMI input to  
23 continue watching YouTube on TV using your existing TV screen.  
24 Low cost options for this include: Chromecast and Android TV.

25 **b. Upgrade to a newer Smart TV or Game Console**

26 Most Smart TVs from 2013 and onward have the latest version of the  
27 YouTube app for TV.

YouTube is also available to be installed on PlayStation 3 & 4, Xbox 360  
and Xbox One, and Wii U.

28 28. New Smart TVs can easily exceed \$1,000 in price, while exterior streaming  
29 devices range in price from \$50 to upwards of \$100 per unit.

30 29. During the time period in which Plaintiff and the Class purchased Affected Smart  
31 TVs from Defendant there was no indication from Defendant that YouTube access could or

1 would cease to be provided in Affected Smart TVs. Yet today, Defendant informs the  
2 consuming public about the potential loss in third-party app functionality in its Smart TVs,  
3 stating: “The applications and content pictured herein or described on this page may only be  
4 available in certain countries and languages, may require additional fees or subscription charges,  
5 and may be subject to future updates, modifications, interruption and/or discontinuation of  
6 service without notice. VIZIO has no control over third party applications or content and  
7 assumes no responsibility for the availability or interruption of such applications or content.  
8 Additional third-party terms, conditions and restrictions apply. High-speed/broadband Internet  
9 service and access equipment are required and are not provided by VIZIO.”

10 <https://www.vizio.com/via-apps>.

11 **IV. CLASS ACTION ALLEGATIONS**

12 30. Representative Plaintiff brings this class action on behalf of himself and as a  
13 representative of the following class of persons (the “National Class”) entitled to remedies  
14 including but not limited to, injunctive relief and damages:

15 All persons in the United States of America and its territories who  
16 purchased, new, one of the following model numbers of Affected  
Smart TV manufactured by Defendant:

17  
18 241i-A1\* E241i-A1w\* E291i-A1\* E320i-A0\* E390iA1\*  
E3D320VX\* E3D420VX\* E3D470VX\* E3DB420VX\* E420d-  
19 A0\* E420i-A0\* E420i-A1\* E422VA\* E422VL\*  
E422VLE\* E423VL\* E470i-A0\* E472VL\* E472VLE\* E500d-  
20 A0\* E500i-A0\* E500i-A1\* E550i-A0\*E550i-A0E\*  
E551d-A0\* E551i-A2\* E551VA\* E552VL\* E552VLE\*  
E601i-A3\* E650i-A2\* E701i-A3\* M320KD\*  
21 M320SL\*M320SV\* M370SL\* M370SR\* M370SV\*  
M3D420SR\* M3D421SR\* M3D460SR\* M3D470KD\*  
22 M3D470KDE\* M3D550KD\* M3D550KDE\* M3D550SL\*  
M3D550SR\* M3D650SV\* M3D651SV\* M420KD\*  
23 M420SL\*M420SR\* M420SV\* M470KD\* M470NV  
M470SL\*M470SV\* M472VL\* M550KD\* M550SL\*M550SV\*  
24 VBR121\* VBR122\* VBR133\* VBR135\* VBR140\*  
25 VBR370\*

26 31. Vizio should be on notice that Plaintiff plans to expand this class definition to any  
27 and all other television models identified in discovery that are further impacted by the loss of

1 YouTube functionality, and were sold by Vizio at a time where there was no disclaimer to  
2 consumer that this critical application could be discontinued.

3 32. Plaintiff also brings this class action on behalf of all residents of the following  
4 states and territories that purchased, new and whom still own a Vizio-manufactured Affected  
5 Smart TV that beginning in June 2017, lost its ability to directly access YouTube streaming  
6 video content: Alaska, Arizona, California, Connecticut, Delaware, the District of Columbia,  
7 Florida, Georgia, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota,  
8 Missouri, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Rhode  
9 Island, Texas, Vermont, Washington, and West Virginia.

10 33. Plaintiffs' class claims satisfy all of the requirements for class action certification  
11 pursuant to the Federal Rules of Civil Procedures, Rules 23(a) and 23(b)(1), 23(b)(2), and  
12 23(b)(3).

13 34. Satisfying all requisite numerosity requirements, numerous consumers in  
14 California, Washington State, and numerous consumers throughout the United States are  
15 believed to be members of this class. Joinder of so many class members in to a single action is  
16 impracticable. In fact, given the number of class members, the only way to deliver substantial  
17 justice to all members of the class is by means of a single class action.

18 35. There are questions of fact and law common to the class, which predominate over  
19 any questions affecting only individual members. The questions of law and fact common to the  
20 class arising from Defendant's conduct include, without limitation, the following:

21 a. Whether Defendant negligently, willfully, and/or knowingly caused the  
22 sale of Affected Smart TVs to consumers in California, Washington, and nationwide  
23 without continuing to provide access to key applications such as YouTube.

24 b. Whether Defendant failed to warn consumers that YouTube may be  
25 discontinued, without support on the Affected Smart TVs.

26 c. Whether Defendant failed to adequately design its Affected Smart TVs to  
27 support any and all updates necessary to continue critical applications such as YouTube.

1           d.       To what extent, without access to YouTube, the value of Defendant's  
2 Affected Smart TVs has been diminished due.

3           e.       Whether Defendant failed to exercise reasonable care in engineering  
4 designing, and updating its Affected Smart TVs to ensure the applications it marketed to  
5 consumers could be supported for the life of the Affected Smart TVs.

6           f.       Whether Defendant negligently or intentionally mislead consumers by its  
7 common marketing materials of its Affected Smart TVs.

8           g.       Whether Defendant breached its contract with consumers that purchased  
9 Affected Smart TVs when YouTube functionality was permanently lost on those devices  
10 on June 26, 2017.

11           h.       Whether loss of YouTube functionality on Affected Smart TVs breached  
12 the implied warranty of merchantability.

13           i.       Whether Vizio's advertisements, marketing, packaging, store displays and  
14 Vizio's promotion of Affected Smart TVs violated states' consumer protection laws.

15       36.       The questions set forth above predominate over any questions affecting only  
16 individual persons, and a class action is superior with respect to considerations of consistency,  
17 economy, efficiency, fairness and equity, to other available methods for the fair and efficient  
18 adjudication of Plaintiff's and the Class' claims.

19       37.       Plaintiff's claims are typical of those of the Class in that they, just like the other  
20 members of the class, purchased televisions specifically identified by Defendant itself that no  
21 longer has the advertised support for one of its most critical applications, YouTube.

22       38.       A class action is the appropriate method for the fair and efficient adjudication of  
23 this controversy. Defendant has acted in a general manner to the damage of the class. The  
24 presentation of separate actions by individual class members could create a risk of inconsistent  
25 and varying adjudications, establish incompatible standards of conduct for Defendant, and/or  
26 substantially impair or impede the ability of class members to protect their interests. Moreover,  
27 the individual damages to Plaintiff and the Class are so low that it would be economically



1 impracticable for Plaintiff and putative class members to bring their claims individually.

2 39. A primary factor in Plaintiff bringing this case is for final injunctive relief which  
3 is necessary and appropriate to ensure that Defendant ceases and desists its unlawful and  
4 wrongful conduct, as well as specifically be ordered to provide a remedy for consumers to regain  
5 the supported application that was promised upon purchase.

6 40. A class action is the most efficient means to ensure that Defendant does not  
7 continue to injure the class in the future.

8 41. Plaintiff is an adequate representative of the class because he is a member of the  
9 class and his interests do not conflict with the interests of the members of the class he seeks to  
10 represent. The interests of the putative class members will be fairly and adequately protected by  
11 Plaintiff. Also, Plaintiff is represented by a team of attorneys who together have extensive,  
12 multi-jurisdictional experience representing clients in complex class action litigation.

13 42. Maintenance of this action as a class action is a fair and efficient method for the  
14 adjudication of this controversy. It would be impractical and undesirable for each member of the  
15 class who suffered harm to bring a separate action. In addition, the maintenance of separate  
16 actions would place a substantial and unnecessary burden on the courts and could result in  
17 inconsistent adjudications, while a single class action can determine, with judicial economy, the  
18 rights of all class members.

19 43. If this action is not certified as a class action, then given the number of class  
20 members, the only way that the court system will not be overburdened by a multiplicity of suits  
21 over the subject matter of this complaint is if members of the class cannot or do not pursue an  
22 action against Defendant for reasons altogether unrelated to the merits of their claims, *e.g.*,  
23 challenges in accessing legal counsel, the mundane realities of surviving in a challenging  
24 economy, *et cetera*. Most putative class members can obtain legal representation for their claims  
25 only through a class action. The only practical way to ensure that all members of the class are  
26 afforded an opportunity to obtain substantial justice with regard to the wrongs and injuries  
27 inflicted upon them by Defendant is to resolve the subject matter of this complaint through a

1 class action.

2 **FIRST CAUSE OF ACTION**

3 **BREACH OF CONTRACT**

4 *(Plaintiff and the National Class vs. Defendant)*

5 44. Plaintiff and the Class reassert and re-allege the allegations set forth in the above  
6 paragraphs.

7 45. Beginning in 2010 Defendant launched its new Smart TV product segment  
8 determined to expand its market share and capture a new generation of consumers particularly  
9 focused on the ability to stream video content to their devices.

10 46. Defendant's strategy was very successful, as it saw both sales and profits soar with  
11 the offering of its new Smart TVs.

12 47. One of the critical offerings for Smart TVs was the YouTube app, promising to  
13 consumers that with the purchase of Defendant's Affected Smart TVs the consumer would have  
14 access to one of the world's most popular video streaming apps.

15 48. Defendant highlighted this as an important component of its Affected Smart TVs  
16 in marketing including but not limited to its packaging, advertisements, marketing, its website,  
17 its representation of Affected Smart TVs in various publications, and by statements made  
18 publicly to consumers across the United States regarding the functionality of Affected Smart  
19 TVs.

20 49. Plaintiff and the Class relied upon these representations, agreeing to pay specific  
21 amounts of monies for Affected Smart TVs because of their apparently guaranteed access to  
22 YouTube for the life of the product.

23 50. Upon information and belief, at no point during the time when Defendant  
24 manufactured and sold Affected Smart TVs did Defendant inform Plaintiff or the Class that those  
25 devices could or would lose access to the YouTube app. Instead Vizio boldly proclaimed that  
26 this key feature was simply part of its platform and included with the purchase of Affected Smart  
27 TVs.

1           51.     In other words, Defendant promised that if Plaintiff and the Class paid for its  
2 Affected Smart TVs, then they would get a access to YouTube on their Affected Smart TVs for  
3 the life of the product.

4           52.     Plaintiff and the Class paid consideration for this promise forming mutual assent  
5 and a contract.

6           53.     Defendant intended that Plaintiff and the Class would believe they were buying a  
7 Smart TV with access to YouTube on the device for the life of the product, and in return asked  
8 consumers to pay for that promise.

9           54.     Plaintiff and the Class reasonably believed – based on Defendant’s  
10 representations – that it would support the YouTube application for the life of the Affected Smart  
11 TVs.

12           55.     When YouTube access suddenly and permanently ceased to be available on  
13 Affected Smart TVs on June 26, 2017, with the only solution to consumers being that they could  
14 purchase a new Smart TV or purchase an exterior video streaming device, it breached its  
15 agreement with Plaintiff and the Class.

16           56.     Plaintiff and Class were the intended recipient of Defendant’s promises, in order  
17 to promote the sale of its Smart TVs in order to receive consideration for those promises, and  
18 ultimately to profit from those sales.

19           57.     Defendant breached their agreement—under both state and federal common law.

20           58.     Plaintiff and the Class have suffered damages in an amount to be determined at  
21 trial, including, but not limited to, the amount of diminished value to their televisions as a result  
22 of the lost YouTube functionality, or in the alternative based on a reasonable cure provided by  
23 Defendant.

**SECOND CAUSE OF ACTION**

**UNJUST ENRICHMENT/ QUASI CONTRACT**

*(Plaintiff and the National Class vs. Defendant)*

59. Plaintiff and the Class reassert and re-allege the allegations set forth in the above paragraphs.

60. Plaintiff and the Class conferred a benefit upon Defendant when they paid for the promised Affected Smart TVs and Defendant had knowledge of the benefit.

61. Defendant's advertisements, marketing strategy, representations, and sale of these Affected Smart TVs with YouTube enriched Defendant and increased their revenue, as was Defendant's intention.

62. Defendant sold the Affected Smart TVs for more than it could have if it notified Plaintiff and the Class that YouTube functionality would cease prior to the end life of the products purchased.

63. Defendant's retention of these extra monies from Plaintiff and the Class is unjust. By retaining these extra monies, Defendant has been unjustly enriched under both state and federal common law.

64. As a result, Plaintiff and the Class were and currently remain damaged in an amount to be determined at trial.

**THIRD CAUSE OF ACTION**

**NEGLIGENT MISREPRESENTATION**

*(Plaintiff and the National Class vs. Defendant)*

65. Plaintiff and the Class reassert and re-allege the allegations set forth in the above paragraphs.

66. Defendant made multiple, uniform material misrepresentations to Plaintiff and the Class; specifically, that one of the world's most popular video streaming apps, YouTube, would be available on Affected Smart TVs for the life of the products. YouTube functionality for the life of the product was a material misrepresentation not only due to the popularity of YouTube

1 as a video streaming app, but especially because, unlike other video streaming apps available on  
2 Affected Smart TVs, YouTube app functionality on Affected Smart TVs came without the  
3 additional subscription expenditure required to access similar video streaming apps such as  
4 Netflix and Hulu.

5 67. Plaintiff and the Class reasonably believed that YouTube access would be  
6 available for the life of Affected Smart TVs because Defendant failed to disclaim or otherwise  
7 warn that YouTube functionality could or would cease to be provided on Affected Smart TVs at  
8 any time before the end of life of Affected Smart TVs. In addition, because Defendant took it  
9 upon itself to educate Plaintiff and the Class about what Smart TVs provided, why they should  
10 pay a premium to purchase a Smart TV as opposed to a normal television, and because Smart  
11 TV technology was new technology, it was reasonable for Plaintiff and the Class to believe  
12 Defendant's representations about YouTube app functionality being available for the life of the  
13 product. Without owning YouTube or having a written agreement guaranteeing access to  
14 YouTube for the life of the product on Affected Smart TVs, Defendant had no reason to believe  
15 that YouTube access would be available on Affected Smart TVs for the life of those products.

16 68. Defendant intended that Plaintiff and the Class would rely on its representations  
17 regarding YouTube access being available for the life of the product. Its intent is manifested by  
18 the prominent placement of the YouTube app logo in its advertising, marketing and promotion  
19 of the Affected Smart TVs.

20 69. Plaintiff and the Class were justified in relying on Defendant's representations  
21 regarding YouTube accessibility on Affected Smart TVs because, during the time in question,  
22 Smart TV technology was relatively new and reasonable consumers had no reason to expect that  
23 accessibility could or would cease on their Affected Smart TVs.

24 70. Plaintiff and the Class were and currently remain damaged as a result of  
25 Defendant's misrepresentation by having their Affected Smart TVs lose functionality and value  
26 by no longer having access to the YouTube app.  
27

**FOURTH CAUSE OF ACTION**

**NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL AND WONTON CONDUCT:  
DESIGN AND DEFECT**

*(Plaintiff and the National Class vs. Defendant)*

71. Plaintiff and the Class reassert and re-allege the allegations set forth in the above paragraphs as if the same were alleged herein this count.

72. At all times material Defendant was responsible for manufacturing, assembling, selecting, testing, equipping, marketing, distributing, and selling the Affected Smart TVs.

73. At all times relevant Defendant owed a duty to Plaintiff and the Class of reasonable care to manufacture, select, inspect, test, assemble, equip, market, distribute, and sell the Affected Smart TVs so that key applications, including YouTube, were supported for the life of the product.

74. At all relevant times herein Defendant was negligent, grossly negligent, willful, wanton, reckless and careless in the design, inspection, marketing, and distribution of its Affected Smart TVs and breached its duty of care owed to Plaintiff and the Class by:

- a. failing to adopt and implement adequate testing procedures to ensure the apps it marketed to the Plaintiff and the Class could be supported for the life of the product;
- b. failing to design, manufacture, test, and/or identify Affected Smart TVs so that the apps it marketed to the Plaintiff and the Class could be supported for the life of the product;
- c. failing to exercise reasonable care in the inspection of the Affected Smart TVs to ensure that Plaintiff and the Class would receive YouTube access on the Affected Smart TVs for the life of the product TV;
- d. failing to adopt and implement adequate warnings and disclaimers for its Affected Smart TVs to the consumer regarding the long-term support of apps, such as YouTube, for the life of the product;
- e. and on such other further particulars as the evidence may show.

75. At all times relevant, as a direct and proximate result of Defendant's negligence

1 and breaches complained of herein Plaintiff and the Class suffered harm.

2 76. By reason of the foregoing, Plaintiff and the Class are entitled to recover for all  
3 general and special damages sustained as a direct and proximate result of Defendant's negligent  
4 and grossly negligent acts or omissions.

5 **FIFTH CAUSE OF ACTION**

6 **BREACH OF THE IMPLIED WARRANTY OF MERCHANTABILITY**

7 *(Plaintiff and the National Class vs. Defendant)*

8 77. Plaintiff and the Class reassert and re-allege the allegations set forth in the above  
9 paragraphs as if the same were alleged herein this count.

10 78. When Defendant sells its Affected Smart TVs into the market they come with an  
11 implied warranty of merchantability (*e.g.*, RCW 62A.2-314).

12 79. This warranty at its minimum requires Defendant to accurately label its product,  
13 fulfill the promises made to Plaintiff and the Class, and provide a good fit for the purpose that it  
14 was paid consideration for in the sale of its Affected Smart TVs.

15 80. In the context of Defendant's Affected Smart TVs that includes the support of the  
16 YouTube application for the life of the product, or accurate labeling to ensure the consumer  
17 understood that its promotion of the application did not guarantee the consumer would have  
18 access to this feature for the life of the product.

19 81. By reason of the foregoing, Plaintiff and the Class are entitled to recover for all  
20 general and special damages sustained as a direct and proximate result of Defendant's breach of  
21 its warranties of merchantability.

22 **SIXTH CAUSE OF ACTION**

23 **(Violation of Alaska Unfair Trade Practices and Consumer Protection Act,**

24 **Alaska Stat. § 45.50.471, *et seq.*)**

25 82. Plaintiff and the Alaska Class repeat and reallege each and every allegation above  
26 as if set forth in full herein.

27 83. Defendant represented through advertising, marketing, packaging and by

1 educating the consuming public about the then-emerging Smart TV product segment, that its  
2 Affected Smart TVs would have access to YouTube for the life of the product. That  
3 representation to Plaintiff and the Class represented characteristics, uses and benefits that  
4 Defendant's Affected Smart TVs did not possess in violation of Alaska Stat. 45.50.471(b)(4).

5 84. Defendant intended that consumers would rely on the characteristics, uses and  
6 benefits it represented regarding its Affected Smart TVs.

7 85. Defendant's unfair and deceptive representations occurred in trade or commerce.

8 86. Defendant's representation was unfair and deceptive resulting in an ascertainable  
9 economic injury to Plaintiff and the Class.

10 **SEVENTH CAUSE OF ACTION**

11 **(Violation of Arizona's Consumer Fraud Act, Ariz. Rev. Stat. Ann. §44-1521, et seq.)**

12 87. Plaintiff and the Arizona Class repeat and reallege each and every allegation  
13 above as if set forth in full herein.

14 88. Defendant represented through advertising, marketing, packaging and by  
15 educating the consuming public about the then-emerging Smart TV product segment, that its  
16 Affected Smart TVs would have access to YouTube for the life of the product. That  
17 representation to Plaintiff and the Class represented characteristics, uses and benefits that  
18 Defendant's Affected Smart TVs did not possess in violation of law.

19 89. Defendant intended that consumers would rely on the characteristics, uses and  
20 benefits it represented regarding its Affected Smart TVs.

21 90. Defendant's unfair and deceptive representations occurred in trade or commerce.

22 91. Defendant's representation was unfair and deceptive resulting in an ascertainable  
23 economic injury to Plaintiff and the Class.

24 **EIGHTH CAUSE OF ACTION**

25 **(Violation of California's Consumer Legal Remedies Act,**

26 **Cal. Civ. Code § 1750, et seq.)**

27 92. Plaintiff and the California Class repeat and reallege each and every allegation



1 above as if set forth in full herein.

2 93. Defendant represented through advertising, marketing, packaging and by  
3 educating the consuming public about the then-emerging Smart TV product segment, that its  
4 Affected Smart TVs would have access to YouTube for the life of the product. That material  
5 representation to Plaintiff and the Class represented characteristics, uses and benefits that  
6 Defendant's Affected Smart TVs did not possess in violation of law.

7 94. Defendant intended that consumers would rely on the characteristics, uses and  
8 benefits it represented regarding its Affected Smart TVs.

9 95. Defendant's unfair and deceptive representations occurred in trade or commerce.

10 96. Defendant's representation was unfair and deceptive resulting in an ascertainable  
11 economic injury to Plaintiff and the Class.

12 **NINTH CAUSE OF ACTION**

13 **(Violation of California Business and Professions Code §§ 17200, et seq.)**

14 97. Plaintiff and the California Class repeat and reallege each and every allegation  
15 above as if set forth in full herein.

16 98. Defendant represented through advertising, marketing, packaging and by  
17 educating the consuming public about the then-emerging Smart TV product segment, that its  
18 Affected Smart TVs would have access to YouTube for the life of the product. That material  
19 representation to Plaintiff and the Class represented characteristics, uses and benefits that  
20 Defendant's Affected Smart TVs did not possess which was unfair.

21 99. Defendant intended that consumers would rely on the characteristics, uses and  
22 benefits it represented regarding its Affected Smart TVs.

23 100. Defendant's unfair and deceptive representations occurred in trade or commerce.

24 101. Defendant's representation was unfair and deceptive resulting in an ascertainable  
25 economic injury to Plaintiff and the Class requiring restitution.

**TENTH CAUSE OF ACTION**

**(Violation of Connecticut's Unfair Trade Practices Act,**

**Conn. Gen. Stat. Ann. § 42-110a, *et seq.*)**

102. Plaintiff and the Connecticut Class repeat and reallege each and every allegation above as if set forth in full herein.

103. Defendant represented through advertising, marketing, packaging and by educating the consuming public about the then-emerging Smart TV product segment, that its Affected Smart TVs would have access to YouTube for the life of the product. That representation to Plaintiff and the Class represented characteristics, uses and benefits that Defendant's Affected Smart TVs did not possess in violation of law.

104. Defendant intended that consumers would rely on the characteristics, uses and benefits it represented regarding its Affected Smart TVs.

105. Defendant's unfair and deceptive representations occurred in trade or commerce.

106. Defendant's representation was unfair and deceptive resulting in an ascertainable economic injury to Plaintiff and the Class.

**ELEVENTH CAUSE OF ACTION**

**(Violation of Delaware's Consumer Fraud Act, Del. Code Ann. Tit. 6, § 2511, *et seq.*)**

107. Plaintiff and the Delaware Class repeat and reallege each and every allegation above as if set forth in full herein.

108. Defendant represented through advertising, marketing, packaging and by educating the consuming public about the then-emerging Smart TV product segment, that its Affected Smart TVs would have access to YouTube for the life of the product. That representation to Plaintiff and the Class represented characteristics, uses and benefits that Defendant's Affected Smart TVs did not possess in violation of law.

109. Defendant intended that consumers would rely on the characteristics, uses and benefits it represented regarding its Affected Smart TVs.

110. Defendant's unfair and deceptive representations occurred in trade or commerce.

1 111. Defendant's representation was unfair and deceptive resulting in an ascertainable  
2 economic injury to Plaintiff and the Class.

3 **TWELFTH CAUSE OF ACTION**

4 **(Violation of District of Columbia's Consumer Protection Procedures Act,**  
5 **D.C. Code § 28-3901, et seq.)**

6 112. Plaintiff and the District of Columbia Class repeat and reallege each and every  
7 allegation above as if set forth in full herein.

8 113. Defendant represented through advertising, marketing, packaging and by  
9 educating the consuming public about the then-emerging Smart TV product segment, that its  
10 Affected Smart TVs would have access to YouTube for the life of the product. That  
11 representation to Plaintiff and the Class represented characteristics, uses and benefits that  
12 Defendant's Affected Smart TVs did not possess in violation of law.

13 114. Defendant intended that consumers would rely on the characteristics, uses and  
14 benefits it represented regarding its Affected Smart TVs.

15 115. Defendant's unfair and deceptive representations occurred in trade or commerce.

16 116. Defendant's representation was unfair and deceptive resulting in an ascertainable  
17 economic injury to Plaintiff and the Class.

18 **THIRTEENTH CAUSE OF ACTION**

19 **(Violation of Florida's Deceptive and Unfair Trade Practices Act,**  
20 **Fla. Stat. Ann. § 501.201, et seq.)**

21 117. Plaintiff and the Florida Class repeat and reallege each and every allegation above  
22 as if set forth in full herein.

23 118. Defendant represented through advertising, marketing, packaging and by  
24 educating the consuming public about the then-emerging Smart TV product segment, that its  
25 Affected Smart TVs would have access to YouTube for the life of the product. That  
26 representation to Plaintiff and the Class represented characteristics, uses and benefits that  
27 Defendant's Affected Smart TVs did not possess in violation of law.

**THE BLANKENSHIP LAW FIRM, P.S.**

1000 Second Avenue, Suite 3250  
Seattle, Washington 98104  
(206) 343-2700

1 119. Defendant intended that consumers would rely on the characteristics, uses and  
2 benefits it represented regarding its Affected Smart TVs.

3 120. Defendant's unfair and deceptive representations occurred in trade or commerce.

4 121. Defendant's representation was unfair and deceptive resulting in an ascertainable  
5 economic injury to Plaintiff and the Class.

6 **FOURTEENTH CAUSE OF ACTION**

7 **(Violation of Georgia's Uniform Deceptive Trade Practices Act,**

8 **Ga. Code Ann. § 10-1-370, et seq.)**

9 122. Plaintiff and the Georgia Class repeat and reallege each and every allegation  
10 above as if set forth in full herein.

11 123. Defendant represented through advertising, marketing, packaging and by  
12 educating the consuming public about the then-emerging Smart TV product segment, that its  
13 Affected Smart TVs would have access to YouTube for the life of the product. That  
14 representation to Plaintiff and the Class represented characteristics, uses and benefits that  
15 Defendant's Affected Smart TVs did not possess in violation of law.

16 124. Defendant intended that consumers would rely on the characteristics, uses and  
17 benefits it represented regarding its Affected Smart TVs.

18 125. Defendant's unfair and deceptive representations occurred in trade or commerce.

19 126. Defendant's representation was unfair and deceptive resulting in an ascertainable  
20 economic injury to Plaintiff and the Class.

21 **FIFTEENTH CAUSE OF ACTION**

22 **(Violation of Hawaii's Unfair Practices Act, Haw. Rev. Stat. § 480-1, et seq.)**

23 127. Plaintiff and the Hawaii Class repeat and reallege each and every allegation above  
24 as if set forth in full herein.

25 128. Defendant represented through advertising, marketing, packaging and by  
26 educating the consuming public about the then-emerging Smart TV product segment, that its  
27 Affected Smart TVs would have access to YouTube for the life of the product. That

1 representation to Plaintiff and the Class represented characteristics, uses and benefits that  
2 Defendant's Affected Smart TVs did not possess in violation of law.

3 129. Defendant intended that consumers would rely on the characteristics, uses and  
4 benefits it represented regarding its Affected Smart TVs.

5 130. Defendant's unfair and deceptive representations occurred in trade or commerce.

6 131. Defendant's representation was unfair and deceptive resulting in an ascertainable  
7 economic injury to Plaintiff and the Class.

8 **SIXTEENTH CAUSE OF ACTION**

9 **(Violation of Illinois Consumer Fraud and Deceptive Business Practices Act,**

10 **Ill. Comp. Stat. 505/1, et seq.)**

11 132. Plaintiff and the Illinois Class repeat and reallege each and every allegation above  
12 as if set forth in full herein.

13 133. Defendant represented through advertising, marketing, packaging and by  
14 educating the consuming public about the then-emerging Smart TV product segment, that its  
15 Affected Smart TVs would have access to YouTube for the life of the product. That material  
16 representation to Plaintiff and the Class represented characteristics, uses and benefits that  
17 Defendant's Affected Smart TVs did not possess in violation of law.

18 134. Defendant intended that consumers would rely on the characteristics, uses and  
19 benefits it represented regarding its Affected Smart TVs.

20 135. Defendant's unfair and deceptive representations occurred in trade or commerce.

21 136. Defendant's representation was unfair and deceptive resulting in an ascertainable  
22 economic injury to Plaintiff and the Class.

23 **SEVENTEENTH CAUSE OF ACTION**

24 **(Violation of Maine Unfair Trade Practices Act,**

25 **Me. Rev. Stat. Ann. Tit. 5, § 205-A et seq.)**

26 137. Plaintiff and the Maine Class repeat and reallege each and every allegation above  
27 as if set forth in full herein.

1           138. Defendant represented through advertising, marketing, packaging and by  
2 educating the consuming public about the then-emerging Smart TV product segment, that its  
3 Affected Smart TVs would have access to YouTube for the life of the product. That material  
4 representation to Plaintiff and the Class represented characteristics, uses and benefits that  
5 Defendant's Affected Smart TVs did not possess in violation of law.

6           139. Defendant intended that consumers would rely on the characteristics, uses and  
7 benefits it represented regarding its Affected Smart TVs.

8           140. Defendant's unfair and deceptive representations occurred in trade or commerce.

9           141. Defendant's representation was unfair and deceptive resulting in an ascertainable  
10 economic injury to Plaintiff and the Class.

11                               **EIGHTEENTH CAUSE OF ACTION**

12                               **(Violation of Maryland Consumer Protection Act,**

13                               **Md. Code Ann., Com. Law § 13-101, et seq.)**

14           142. Plaintiff and the Maryland Class repeat and reallege each and every allegation  
15 above as if set forth in full herein.

16           143. Defendant represented through advertising, marketing, packaging and by  
17 educating the consuming public about the then-emerging Smart TV product segment, that its  
18 Affected Smart TVs would have access to YouTube for the life of the product. That material  
19 representation to Plaintiff and the Class represented characteristics, uses and benefits that  
20 Defendant's Affected Smart TVs did not possess in violation of law.

21           144. Defendant intended that consumers would rely on the characteristics, uses and  
22 benefits it represented regarding its Affected Smart TVs.

23           145. Defendant's unfair and deceptive representations occurred in trade or commerce.

24           146. Defendant's representation was unfair and deceptive resulting in an ascertainable  
25 economic injury to Plaintiff and the Class.

1 **NINETEENTH CAUSE OF ACTION**

2 **(Violation of Massachusetts' Consumer Protection Act,**  
3 **Mass. Gen. Laws ch. 93A, § 1, et seq.)**

4 147. Plaintiff and the Massachusetts Class repeat and reallege each and every  
5 allegation above as if set forth in full herein.

6 148. Defendant represented through advertising, marketing, packaging and by  
7 educating the consuming public about the then-emerging Smart TV product segment, that its  
8 Affected Smart TVs would have access to YouTube for the life of the product. That material  
9 representation to Plaintiff and the Class represented characteristics, uses and benefits that  
10 Defendant's Affected Smart TVs did not possess in violation of law.

11 149. Defendant intended that consumers would rely on the characteristics, uses and  
12 benefits it represented regarding its Affected Smart TVs.

13 150. Defendant's unfair and deceptive representations occurred in trade or commerce.

14 151. Defendant's representation was unfair and deceptive resulting in an ascertainable  
15 economic injury to Plaintiff and the Class.

16 **TWENTIETH CAUSE OF ACTION**

17 **(Violation of Michigan's Consumer Protection Act,**  
18 **Mich. Comp. Laws Ann. § 445.901, et seq.)**

19 152. Plaintiff and the Michigan Class repeat and reallege each and every allegation  
20 above as if set forth in full herein.

21 153. Defendant represented through advertising, marketing, packaging and by  
22 educating the consuming public about the then-emerging Smart TV product segment, that its  
23 Affected Smart TVs would have access to YouTube for the life of the product. That material  
24 representation to Plaintiff and the Class represented characteristics, uses and benefits that  
25 Defendant's Affected Smart TVs did not possess in violation of law.

26 154. Defendant intended that consumers would rely on the characteristics, uses and  
27 benefits it represented regarding its Affected Smart TVs.

**THE BLANKENSHIP LAW FIRM, P.S.**

1000 Second Avenue, Suite 3250  
Seattle, Washington 98104  
(206) 343-2700

1 155. Defendant's unfair and deceptive representations occurred in trade or commerce.

2 156. Defendant's representation was unfair and deceptive resulting in an ascertainable  
3 economic injury to Plaintiff and the Class.

4 **TWENTY-FIRST CAUSE OF ACTION**

5 **(Violation of Minnesota's Prevention of Consumer Fraud Act,**

6 **Minn. Stat. §§ 325F67, et seq.)**

7 157. Plaintiff and the Minnesota Class repeat and reallege each and every allegation  
8 above as if set forth in full herein.

9 158. Defendant represented through advertising, marketing, packaging and by  
10 educating the consuming public about the then-emerging Smart TV product segment, that its  
11 Affected Smart TVs would have access to YouTube for the life of the product. That material  
12 representation to Plaintiff and the Class represented characteristics, uses and benefits that  
13 Defendant's Affected Smart TVs did not possess in violation of law.

14 159. Defendant intended that consumers would rely on the characteristics, uses and  
15 benefits it represented regarding its Affected Smart TVs.

16 160. Defendant's unfair and deceptive representations occurred in trade or commerce.

17 161. Defendant's representation was unfair and deceptive resulting in an ascertainable  
18 economic injury to Plaintiff and the Class.

19 **TWENTY-SECOND CAUSE OF ACTION**

20 **(Violation of Missouri's Merchandising Practices Act,**

21 **Mo. Ann. Stat. § 407.010, et seq.)**

22 162. Plaintiff and the Missouri Class repeat and reallege each and every allegation  
23 above as if set forth in full herein.

24 163. Defendant represented through advertising, marketing, packaging and by  
25 educating the consuming public about the then-emerging Smart TV product segment, that its  
26 Affected Smart TVs would have access to YouTube for the life of the product. That material  
27 representation to Plaintiff and the Class represented characteristics, uses and benefits that



1 Defendant's Affected Smart TVs did not possess in violation of law.

2 164. Defendant intended that consumers would rely on the characteristics, uses and  
3 benefits it represented regarding its Affected Smart TVs.

4 165. Defendant's unfair and deceptive representations occurred in trade or commerce.

5 166. Defendant's representation was unfair and deceptive resulting in an ascertainable  
6 economic injury to Plaintiff and the Class.

7 **TWENTY-THIRD CAUSE OF ACTION**

8 **(Violation of New Hampshire's N.H. Consumer Protection Act,**

9 **N.H. Rev. Stat. Ann. § 358-A:1, et seq.)**

10 167. Plaintiff and the New Hampshire Class repeat and reallege each and every  
11 allegation above as if set forth in full herein.

12 168. Defendant represented through advertising, marketing, packaging and by  
13 educating the consuming public about the then-emerging Smart TV product segment, that its  
14 Affected Smart TVs would have access to YouTube for the life of the product. That material  
15 representation to Plaintiff and the Class represented characteristics, uses and benefits that  
16 Defendant's Affected Smart TVs did not possess in violation of law.

17 169. Defendant intended that consumers would rely on the characteristics, uses and  
18 benefits it represented regarding its Affected Smart TVs.

19 170. Defendant's unfair and deceptive representations occurred in trade or commerce.

20 171. Defendant's representation was unfair and deceptive resulting in an ascertainable  
21 economic injury to Plaintiff and the Class.

22 **TWENTY-FOURTH CAUSE OF ACTION**

23 **(Violation of New Jersey's Unfair Trade Practices Act,**

24 **N.J. Stat. Ann. § 56:8-19, et seq.)**

25 172. Plaintiff and the New Jersey Class repeat and reallege each and every allegation  
26 above as if set forth in full herein.

27 173. Defendant represented through advertising, marketing, packaging and by

**THE BLANKENSHIP LAW FIRM, P.S.**

1000 Second Avenue, Suite 3250  
Seattle, Washington 98104  
(206) 343-2700

1 educating the consuming public about the then-emerging Smart TV product segment, that its  
2 Affected Smart TVs would have access to YouTube for the life of the product. That material  
3 representation to Plaintiff and the Class represented characteristics, uses and benefits that  
4 Defendant's Affected Smart TVs did not possess in violation of law.

5 174. Defendant intended that consumers would rely on the characteristics, uses and  
6 benefits it represented regarding its Affected Smart TVs.

7 175. Defendant's unfair and deceptive representations occurred in trade or commerce.

8 176. Defendant's representation was unfair and deceptive resulting in an ascertainable  
9 economic injury to Plaintiff and the Class.

10 **TWENTY-FIFTH CAUSE OF ACTION**

11 **(Violation of New York's Consumer Protection from Deceptive Acts and Practices**  
12 **Act, N.Y. Gen. Bus. Law §§ 349-350-f-1)**

13 177. Plaintiff and the New York Class repeat and reallege each and every allegation  
14 above as if set forth in full herein.

15 178. Defendant represented through advertising, marketing, packaging and by  
16 educating the consuming public about the then-emerging Smart TV product segment, that its  
17 Affected Smart TVs would have access to YouTube for the life of the product. That material  
18 representation to Plaintiff and the Class represented characteristics, uses and benefits that  
19 Defendant's Affected Smart TVs did not possess in violation of law.

20 179. Defendant intended that consumers would rely on the characteristics, uses and  
21 benefits it represented regarding its Affected Smart TVs.

22 180. Defendant's unfair and deceptive representations occurred in trade or commerce.

23 181. Defendant's representation was unfair and deceptive resulting in an ascertainable  
24 economic injury to Plaintiff and the Class.

**TWENTY-SIXTH CAUSE OF ACTION**

**(Violation of North Carolina’s Monopolies, Trusts and Consumer Protection Act,  
N.C. Gen. Stat. § 75-1, et seq.)**

182. Plaintiff and the North Carolina Class repeat and reallege each and every allegation above as if set forth in full herein.

183. Defendant represented through advertising, marketing, packaging and by educating the consuming public about the then-emerging Smart TV product segment, that its Affected Smart TVs would have access to YouTube for the life of the product. That material representation to Plaintiff and the Class represented characteristics, uses and benefits that Defendant’s Affected Smart TVs did not possess in violation of law.

184. Defendant intended that consumers would rely on the characteristics, uses and benefits it represented regarding its Affected Smart TVs.

185. Defendant’s unfair and deceptive representations occurred in trade or commerce.

186. Defendant’s representation was unfair and deceptive resulting in an ascertainable economic injury to Plaintiff and the Class.

**TWENTY-SEVENTH CAUSE OF ACTION**

**(Violation of North Dakota’s Consumer Fraud statute,  
N.D. Cent. Code § 51-15-01, et seq.)**

187. Plaintiff and the North Dakota Class repeat and reallege each and every allegation above as if set forth in full herein.

188. Defendant represented through advertising, marketing, packaging and by educating the consuming public about the then-emerging Smart TV product segment, that its Affected Smart TVs would have access to YouTube for the life of the product. That material representation to Plaintiff and the Class represented characteristics, uses and benefits that Defendant’s Affected Smart TVs did not possess in violation of law.

189. Defendant intended that consumers would rely on the characteristics, uses and benefits it represented regarding its Affected Smart TVs.

**THE BLANKENSHIP LAW FIRM, P.S.**

1000 Second Avenue, Suite 3250  
Seattle, Washington 98104  
(206) 343-2700

1 190. Defendant's unfair and deceptive representations occurred in trade or commerce.

2 191. Defendant's representation was unfair and deceptive resulting in an ascertainable  
3 economic injury to Plaintiff and the Class.

4 **TWENTY-EIGHTH CAUSE OF ACTION**

5 **(Violation of Ohio's Consumer Sales Protection Act,**

6 **Ohio Rev. Code Ann. § 1345.01, et seq.)**

7 192. Plaintiff and the Ohio Class repeat and reallege each and every allegation above  
8 as if set forth in full herein.

9 193. Defendant represented through advertising, marketing, packaging and by  
10 educating the consuming public about the then-emerging Smart TV product segment, that its  
11 Affected Smart TVs would have access to YouTube for the life of the product. That material  
12 representation to Plaintiff and the Class represented characteristics, uses and benefits that  
13 Defendant's Affected Smart TVs did not possess in violation of law.

14 194. Defendant intended that consumers would rely on the characteristics, uses and  
15 benefits it represented regarding its Affected Smart TVs.

16 195. Defendant's unfair and deceptive representations occurred in trade or commerce.

17 196. Defendant's representation was unfair and deceptive resulting in an ascertainable  
18 economic injury to Plaintiff and the Class.

19 **TWENTY-NINTH CAUSE OF ACTION**

20 **(Violation of Rhode Island's Unfair Trade Practices & Consumer Protection Act,**

21 **Ri. Gen. Laws § 6-13.1-1, et seq.)**

22 197. Plaintiff and the Rhode Island Class repeat and reallege each and every allegation  
23 above as if set forth in full herein.

24 198. Defendant represented through advertising, marketing, packaging and by  
25 educating the consuming public about the then-emerging Smart TV product segment, that its  
26 Affected Smart TVs would have access to YouTube for the life of the product. That material  
27 representation to Plaintiff and the Class represented characteristics, uses and benefits that

1 Defendant's Affected Smart TVs did not possess in violation of law.

2 199. Defendant intended that consumers would rely on the characteristics, uses and  
3 benefits it represented regarding its Affected Smart TVs.

4 200. Defendant's unfair and deceptive representations occurred in trade or commerce.

5 201. Defendant's representation was unfair and deceptive resulting in an ascertainable  
6 economic injury to Plaintiff and the Class.

7 **THIRTIETH CAUSE OF ACTION**

8 **(Violation of Texas' Deceptive Trade Practices Act,**

9 **Tex. Bus. & Com. Code § 17.41, *et seq.*)**

10 202. Plaintiff and the Texas Class repeat and reallege each and every allegation above  
11 as if set forth in full herein.

12 203. Defendant represented through advertising, marketing, packaging and by  
13 educating the consuming public about the then-emerging Smart TV product segment, that its  
14 Affected Smart TVs would have access to YouTube for the life of the product. That material  
15 representation to Plaintiff and the Class represented characteristics, uses and benefits that  
16 Defendant's Affected Smart TVs did not possess in violation of law.

17 204. Defendant intended that consumers would rely on the characteristics, uses and  
18 benefits it represented regarding its Affected Smart TVs.

19 205. Defendant's unfair and deceptive representations occurred in trade or commerce.

20 206. Defendant's representation was unfair and deceptive resulting in an ascertainable  
21 economic injury to Plaintiff and the Class.

22 **THIRTY-FIRST CAUSE OF ACTION**

23 **(Violation of Vermont's Consumer Fraud Law, 9 Vt. Stat. Ann., § 2451 *et seq.*)**

24 207. Plaintiff and the Vermont Class repeat and reallege each and every allegation  
25 above as if set forth in full herein.

26 208. Defendant represented through advertising, marketing, packaging and by  
27 educating the consuming public about the then-emerging Smart TV product segment, that its

**THE BLANKENSHIP LAW FIRM, P.S.**

1000 Second Avenue, Suite 3250  
Seattle, Washington 98104  
(206) 343-2700

1 Affected Smart TVs would have access to YouTube for the life of the product. That material  
2 representation to Plaintiff and the Class represented characteristics, uses and benefits that  
3 Defendant's Affected Smart TVs did not possess in violation of law.

4 209. Defendant intended that consumers would rely on the characteristics, uses and  
5 benefits it represented regarding its Affected Smart TVs.

6 210. Defendant's unfair and deceptive representations occurred in trade or commerce.

7 211. Defendant's representation was unfair and deceptive resulting in an ascertainable  
8 economic injury to Plaintiff and the Class.

9 **THIRTY-SECOND CAUSE OF ACTION**

10 **(Violation of Washington's Unfair Business Practices – Consumer Protection Act,**  
11 **Wash. Rev. Code Ann. § 19.86.010, et seq.)**

12 212. Plaintiff and the Washington Class repeat and reallege each and every allegation  
13 above as if set forth in full herein.

14 213. Defendant represented through advertising, marketing, packaging and by  
15 educating the consuming public about the then-emerging Smart TV product segment, that its  
16 Affected Smart TVs would have access to YouTube for the life of the product. That material  
17 representation to Plaintiff and the Class represented characteristics, uses and benefits that  
18 Defendant's Affected Smart TVs did not possess in violation of law.

19 214. Defendant intended that consumers would rely on the characteristics, uses and  
20 benefits it represented regarding its Affected Smart TVs.

21 215. Defendant's unfair and deceptive representations occurred in trade or commerce.

22 216. Defendant's representation was unfair and deceptive resulting in an ascertainable  
23 economic injury to Plaintiff and the Class.

24 217. Further, Plaintiff and the Class are entitled to all attorney fees, damages, and  
25 treble damages as allowed under Washington's Consumer Protection Act.

**THIRTY-THIRD CAUSE OF ACTION**

**(Violation of West Virginia’s Consumer Credit and Protection Act,  
W.Va. Code Ann. § 46A-1-101, et seq.)**

218. Plaintiff and the West Virginia Class repeat and reallege each and every allegation above as if set forth in full herein.

219. Defendant represented through advertising, marketing, packaging and by educating the consuming public about the then-emerging Smart TV product segment, that its Affected Smart TVs would have access to YouTube for the life of the product. That material representation to Plaintiff and the Class represented characteristics, uses and benefits that Defendant’s Affected Smart TVs did not possess in violation of law.

220. Defendant intended that consumers would rely on the characteristics, uses and benefits it represented regarding its Affected Smart TVs.

221. Defendant’s unfair and deceptive representations occurred in trade or commerce.

222. Defendant’s representation was unfair and deceptive resulting in an ascertainable economic injury to Plaintiff and the Class.

**V. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff and Class pray for relief as follows:

1. Certification of Plaintiff’s class action claims pursuant to Federal Rule of Civil Procedure 23;

2. Designation of Plaintiff as an adequate class representative for Class Members;

3. Designation of Plaintiff’s counsel as Class Counsel;

4. An award of actual, statutory, and/or punitive damages for to the extent recoverable by law;

5. An award of costs incurred herein, including reasonable attorneys’ fees to the extent allowable by law;

6. Equitable relief by way of specific performance sufficient to reinstate Affected Smart TVs’ access to YouTube;

7. Pre-judgment and post-judgment interest, as provided by law;

8. Payment of a reasonable incentive award to Plaintiff in recognition of the services he has and will render in furtherance of all Class members’ interests including the risks he is taking litigating this case; and

9. Such other and further legal and equitable relief as this Court deems necessary, just and proper.

**VI. JURY DEMAND**

Representative Plaintiff demands a jury trial on all issues so triable.

DATED this 31<sup>st</sup> day of October, 2017.

THE BLANKENSHIP LAW FIRM, P.S.

By: s/ Scott C. G. Blankenship  
Scott C. G. Blankenship, WSBA No. 21431  
The Blankenship Law Firm, P.S.  
1000 Second Avenue, Suite 3250  
Seattle, WA 98104  
Telephone: (206) 343-2700  
Facsimile: (206) 343-2704  
Email: sblankenship@blankenshiplawfirm.com  
Attorneys for Plaintiff



AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Washington

CODY BRENNER, on his own behalf and
on behalf of other similarly situated persons,

Plaintiff(s)

v.

VIZIO, INC., a California corporation,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) VIZIO, INC.
c/o Registered Agent Solutions, Inc.
1220 S Street, Suite 150
Sacramento, CA 95811

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Scott C. G. Blankenship, WSBA No. 21431
The Blankenship Law Firm, P.S.
1000 Second Ave., Suite 3250
Seattle, WA 98104

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Print**

**Save As...**

**Reset**

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

CODY BRENNER, on his own behalf and on behalf of other similarly situated persons,

(b) County of Residence of First Listed Plaintiff Pierce County (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) The Blankenship Law Firm, P.S. 1000 Second Ave., Suite 3250 Seattle, WA 98104

DEFENDANTS

VIZIO, INC., a California corporation,

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Each category contains a list of legal codes with checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause: Class action for breach of contract, negligent misrepresentation, and other claims

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 10/31/2017 SIGNATURE OF ATTORNEY OF RECORD s/ Scott C. G. Blankenship, WSBA No. 21431

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Print

Save As...

Reset

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.