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VIZIO INC. and VIZIO HOLDING CORP.
8

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11

12 AMIR KAVEHRAD, on behalf of
himself and all others similarly situated,

13 Plaintiff,

14 vs.

15 VIZIO INC. and VIZIO HOLDING
16 CORP.,

17 Defendants.
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Case No. _____

NOTICE OF REMOVAL OF ACTION

(Orange County Superior Court Case
No. 30-2021-01225836-CU-NP-CXC)

1 Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendants Vizio Inc. and Vizio
2 Holding Corp. (together, “Vizio”) jointly file this Notice of Removal of the above-
3 captioned matter from the Superior Court of California, County of Orange on the
4 grounds that jurisdiction exists under the Class Action Fairness Act (“CAFA”), 28
5 U.S.C. § 1332(d). In support of its Notice, Vizio alleges as follows:

6 **Procedural Allegations.**

7 1. On October 12, 2021, Plaintiff Amir Kavehrad (“Plaintiff”) initiated
8 this action by filing a complaint (“Complaint”) in the Superior Court of California,
9 County of Orange, captioned *Amir Kavehrad v. Vizio Inc., et al.*, Case No. 30-2021-
10 01225836-CU-NP-CXC. All state-court process, pleadings, and orders are attached
11 to this Notice as exhibits and incorporated by reference. *See* 28 U.S.C. § 1446(a).
12 As of the filing of this Notice of Removal, Vizio has not filed an answer to the
13 Complaint or otherwise appeared in this action.

14 2. Plaintiff’s proofs of service state that the Summons and Complaint
15 were personally served on Vizio Inc. on October 14, 2021, and on Vizio Holding
16 Corp. on October 15, 2021. This Notice of Removal is timely pursuant to 28 U.S.C.
17 § 1446(b) because it is filed within 30 days, assuming that the Complaint discloses
18 sufficient facts to support removal.¹ *See* 28 U.S.C. § 1446(b) (removal proper
19 within 30 days of service); *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526
20 U.S. 344, 347–48 (1999) (a party must first be subject to a court’s authority, i.e., be
21 properly served with summons, before receipt of a complaint can trigger the
22 removal statute’s thirty-day filing period).

23 3. Pursuant to 28 U.S.C. § 1441(a), this Court is in the district and
24 division “embracing the place where [the state court] action is pending,” as the
25 Superior Court of California, County of Orange is located in the Central District of
26

27 ¹ Should the Court conclude that the amount in controversy or any other fact
28 relevant to establishing federal jurisdiction is not sufficiently certain at this time,
Vizio requests leave to seek removal again after Plaintiff provides appropriate
clarification.

1 California, Southern Division. 28 U.S.C. § 84(c)(3).

2 **The Grounds for CAFA Removal.**

3 4. This Court has original subject matter jurisdiction over this action
4 pursuant to 28 U.S.C. § 1332, which provides, in pertinent part, that “[t]he district
5 courts shall have original jurisdiction of any civil action in which the matter in
6 controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs,
7 and is a class action in which . . . any member of a class of plaintiffs is a citizen of a
8 State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A).

9 5. This action is a class action as defined in 28 U.S.C. § 1332(d)(1)(B),
10 and is not subject to the exception of 28 U.S.C. § 1332(d)(5)(B), because it was filed
11 on behalf of a putative class of “[t]housands of [c]lass members” who allegedly
12 have been “subjected to [Vizio’s] conduct.” (Complaint ¶ 60.) Further, as
13 explained below, (1) at least one member of Plaintiff’s proposed class is a citizen of
14 a different state than Vizio, and (2) the amount in controversy based on the
15 aggregation of the proposed class members’ alleged claims exceeds \$5,000,000,
16 exclusive of interest and costs. *See* 28 U.S.C. § 1332(d)(6).

17 **Minimal Diversity.**

18 6. For purposes of CAFA jurisdiction, a corporation is a citizen of both
19 the state of its incorporation and its principal place of business. 28 U.S.C.
20 § 1332(c)(1). At the time that this action was filed and at the time of removal,
21 Defendant Vizio Inc. was, and is, a corporation incorporated pursuant to the laws of
22 the California with its principal place of business located in Irvine, California.
23 Defendant Vizio Holding Corp. was, and is, a corporation incorporated pursuant to
24 the laws of the Delaware with its principal place of business located in Irvine,
25 California.

26 7. A corporation’s “principal place of business” refers to the place where
27 the corporation’s high-level officers direct the corporation’s activities. *Hertz Corp.*
28 *v. Friend*, 559 U.S. 77, 80 (2010). This “nerve center” is typically a corporation's

1 headquarters. *Id.* at 81. Vizio’s corporate headquarters are located in Irvine,
2 California. The majority of Vizio’s senior management is located in this Irvine
3 office. Vizio’s legal department, financial personnel, and accounting operations are
4 located in California.

5 8. Plaintiff agrees that Vizio’s principal place of business is California.
6 (Complaint ¶¶ 8, 9.) Defendant Vizio Inc. is therefore a citizen of California for
7 purposes of CAFA jurisdiction. Defendant Vizio Holding Corp. is a citizen of
8 Delaware (its place of incorporation) and California (its principal place of business)
9 for purposes of CAFA jurisdiction.

10 9. To establish citizenship for diversity purposes, a natural person must be
11 both a citizen of the United States and a domiciliary of one particular state.
12 *Newman-Green, Inc. v. Alfonso-Larrain*, 490 U.S. 826, 828 (1989). A person’s
13 domicile is the place where he or she resides with the intention to remain. *Miss.*
14 *Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 48 (1989).

15 10. Plaintiff alleges that he is a resident of Pottstown, Pennsylvania.
16 (Complaint ¶ 7.) Plaintiff is also a citizen of Pennsylvania.

17 11. Plaintiff is suing on behalf of a proposed class defined as “[a]ll
18 consumers in the United States who purchased one or more of the Class
19 Televisions.” (*Id.* ¶ 58.) Plaintiff alleges that there are “[t]housands” of class
20 members.” (*Id.* ¶ 60.)

21 12. Vizio distributes products in all 50 states. Applying the legal standards
22 for “citizenship” to these factual allegations, when this case was filed and at the time
23 of removal, both the named Plaintiff and many of the proposed unnamed class
24 members were, and are, citizens of a state other than California, the place of Vizio
25 Inc.’s citizenship. Plaintiff, for example, alleges that he is a resident of
26 Pennsylvania (*id.* ¶ 7), and he is also a citizen of that state.

27 13. Accordingly, there is diversity of citizenship for this putative class
28 action because at least one member of Plaintiff’s proposed plaintiff class is a citizen

1 of a different state than a Defendant (*i.e.*, a citizen of Pennsylvania, rather than
2 California). 28 U.S.C. § 1332(d)(2)(A).

3 **The Amount in Controversy.**

4 14. The “claims of the individual class members shall be aggregated to
5 determine whether the matter in controversy exceeds the sum or value of
6 \$5,000,000, exclusive of interest and costs.” 28 U.S.C. § 1332(d)(6). Plaintiff does
7 not specifically allege the total amount of damages that he seeks for himself or on
8 behalf of the proposed class. Defendants have no obligation to venture beyond the
9 pleadings to attempt to calculate the amount in controversy. *Kuxhausen v. BMW*
10 *Fin. Servs. NA LLC*, 707 F.3d 1136, 1140 (9th Cir. 2013).

11 15. “In determining the amount in controversy, courts first look to the
12 complaint.” *Ibarra v. Manheim Invs., Inc.*, 775 F.3d 1193, 1197 (9th Cir. 2015)
13 (*Ibarra*). “For CAFA jurisdiction purposes, the amount in controversy ‘is
14 determined by [the] universe of what the plaintiff puts at-issue in [that document].”
15 *Feao v. UFP Riverside, LLC*, No. 17-cv-3080-PSG-JPRx, 2017 WL 2836207, at *2
16 (C.D. Cal. June 29, 2017) (citing *Schiller v. David’s Bridal, Inc.*, No. 10-cv-0616-
17 AWI SKOx, 2010 WL 2793650, at *6 (E.D. Cal. July 14, 2010); *Ibarra*, 775 F.3d at
18 1198; *Lim v. Helio, LLC*, No. 11-cv-9183-PSG-PLAx, 2012 WL 359304, at *2
19 (C.D. Cal. Feb. 2, 2012) (*Lim*) (“The ultimate inquiry is . . . what amount is put ‘in
20 controversy’ by the plaintiff’s complaint or other papers, not what the defendant will
21 actually owe for the actual number of violations that occurred, if any.”)).

22 16. In his Complaint, Plaintiff contends that he purchased a Vizio
23 television “for approximately \$1,499.99.” (Complaint ¶ 14.) Plaintiff further
24 purports to assert claims on behalf of all consumers in the United States who
25 purchased “one or more” of the “Class Televisions,” which Plaintiff defines as “the
26 following flat-screen models of VIZIO OLED and LED 4K UHD televisions:
27 OLED65-H1; OLED55-H1; P65Q9-H1; P65Q9-J01; P75Q9-J01; and P75Q9-H1.”
28 (*Id.* ¶¶ 1, 58.) Plaintiff alleges these products range “in price from \$1,199 to

1 \$1,999” per unit. (Complaint ¶ 3.) Thus, according to the Complaint, putative class
2 members paid at minimum \$1,199 per Class Television. These allegations are
3 consistent with publicly available pricing information on the Vizio website.

4 17. Plaintiff alleges that “the Class Televisions will power off repeatedly or
5 fail to power back on after being left off for some time.” (*Id.* ¶ 2.) He alleges that,
6 had he known of this alleged defect, “prior to purchasing his VIZIO television, he
7 would not have purchased it or would have paid significantly less for the Class
8 Television than he did.” (*Id.* ¶ 18.) Plaintiff likewise alleges that “proposed Class
9 members suffered injury in fact and lost money or property, because they purchased
10 and paid for a product that they otherwise would not have (or would have paid less
11 for).” (*Id.* ¶ 85.)

12 18. Based on these allegations, Plaintiff requests, on behalf of himself and
13 a putative class, (1) “compensatory damages—including for overpayment at the
14 point of sale, out of pocket expenses to address the defect, and for lost time
15 addressing the defect,” (2) “[e]quitable relief in the form of buyback of the devices,”
16 (3) “[c]osts, restitution, damages, including punitive damages, treble damages
17 penalties, and disgorgement in an amount to be determined at trial,” (4) interest,
18 (5) attorneys’ fees, and (6) “such other or further relief as the Court may deem just
19 and proper.” (*Id.*, Prayer for Relief.)

20 19. Vizio denies that any of Plaintiff’s claims are accurate or valid.
21 Nonetheless, accepting the Complaint solely for purposes of determining the
22 jurisdictional amount in controversy, Plaintiff’s allegations that Plaintiff and the
23 putative class “would not have” purchased the Class Television had they known of
24 the existence of the alleged defect puts at controversy the entire amount of the
25 television purchase prices. (*Id.* ¶¶ 18, 83, 85.) Plaintiff’s demand for compensatory
26 damages and for an equitable “buyback of the devices” confirms the Complaint puts
27 at issue the full purchase prices of the televisions. (*Id.*, Prayer for Relief.)

28 ///

1 20. Plaintiff alleges that his claims are typical. (Complaint ¶ 62.) As to
2 class size, Plaintiff purports to bring his lawsuit “[a]ll consumers in the United
3 States who purchased one or more of the Class Televisions.” (*Id.* ¶ 58.) Plaintiff
4 claims that his putative class consists of “thousands” of persons. (*Id.* ¶ 60 (“The
5 Class is so numerous that joinder of all members is impracticable. Thousands of
6 Class members have been subjected to VIZIO’s conduct described herein.”); *id.* ¶ 4
7 (“The Power Defect is substantially certain to manifest—thousands of consumers
8 have reported issues related to power failures with their Class Televisions.”).)

9 21. By using the term “thousands,” Plaintiff implies the proposed class is at
10 least 2,000 persons. Vizio denies that this case is suitable for class treatment or that
11 Plaintiff is a typical representative. It does not dispute, however, that it has sold
12 Class Televisions to at least 2,000 persons over the last four years.

13 22. If Plaintiff is able to (1) certify a class of at least 2,000 persons, and
14 (2) pursue recovery of \$1,199 for each, the amount in controversy based on the
15 purchase price of the Class Televisions along would equal \$2,398,000 (i.e., 2,000
16 times the minimum purchase price of \$1,199). As noted above, Plaintiff alleges that
17 many Class Televisions—including his own—cost significantly more than \$1,199,
18 such that this estimate significantly understates the actual amount in controversy.

19 23. Further, Plaintiff seeks treble damages pursuant to the Pennsylvania
20 Unfair Trade Practices and Consumer Protection Law, 73 Pennsylvania Statutes
21 § 201-1, *et seq.* (“UTPCPL”). (*Id.* ¶ 76.) The UTPCPL provides that “[t]he court
22 may, in its discretion, award up to three times the actual damages sustained.” 73 Pa.
23 Stat. § 201-9.2. Given that, as described above, Plaintiff seeks actual damages of at
24 least \$2,398,000, an award of treble damages increases the amount at controversy to
25 at least \$7,194,000 (i.e., \$2,398,000 times three). *See Del. Real v. HealthSouth*
26 *Corp.*, 171 F.Supp.2d 1041, 1042 (D. Ariz. 2001) (finding that a \$75,000 amount in
27 controversy requirement had been met where plaintiff sought treble damages). That
28 figure exceeds CAFA’s \$5,000,000 jurisdictional minimum.

1 24. Based on these calculations alone, the Complaint’s allegations satisfy
 2 CAFA’s amount in controversy standards. Plaintiff also seeks recovery of attorneys’
 3 fees. (Complaint ¶ 77; *id.*, Prayer for Relief (seeking “[r]easonable attorneys’
 4 fees”).) “[A]ttorneys’ fees can be taken into account in determining the amount in
 5 controversy if a statute authorizes fees to a successful litigant.” *Galt G/S v. JSS*
 6 *Scandinavia*, 142 F.3d 1150, 1155 (9th Cir. 1998) (citation omitted). The UTPCPL
 7 permits prevailing plaintiffs to recover attorneys’ fees. 73 Pa. Stat. § 201-9.2. The
 8 Court may use 25% of the potential recovery as a guideline. *Lim*, 2012 WL 359304,
 9 at *3 (citations omitted); *see Staton v. Boeing Co.*, 327 F.3d 938, 968 (9th Cir. 2003)
 10 (“This circuit has established 25% of the common fund as a benchmark award for
 11 attorney fees.”). In this case, if a 25% attorneys’ fees award is applied to
 12 \$7,194,000, the total amount in controversy would be \$8,992,500.²

13 25. Therefore, while Vizio denies liability and that Plaintiff or any member
 14 of the proposed class are entitled to any monetary or other relief, the amount in
 15 controversy based on Plaintiff’s allegations exceeds \$5,000,000, exclusive of
 16 interest and costs, for purposes of CAFA jurisdiction. “[A] defendant’s notice of
 17 removal need include only a plausible allegation that [it] exceeds the jurisdictional
 18 threshold.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81 ,89
 19 (2014) (*Dart*). “[N]o antiremoval presumption attends cases invoking CAFA.”

20 _____
 21 ² Separately, Plaintiff seeks punitive damages. (Complaint, Prayer for Relief.)
 22 Where punitive damages are at issue, the Court must consider such damages in
 23 determining the amount in controversy. *Bell v. Preferred Life Assurance Soc’y*, 320
 24 U.S. 238, 240 (1943). None of the Complaint’s five counts, however, support a
 25 punitive damages award. *See Fenner v. Gen. Motors, LLC (In re Duramax Diesel*
 26 *Litig.)*, No. 17-cv-11661, 2018 WL 3647047, at *14 (E.D. Mich. Aug. 1, 2018) (“In
 27 recent years, however, Pennsylvania state courts (and federal district courts) have
 28 firmly held that punitive damages are not available under the UTPCPL.”);
Roper v. Big Heart Pet Brands, 510 F. Supp. 3d 903, 926 (E.D. Cal. 2020)
 (“Punitive damages are generally not available under the UCL”); *id.*
 (“Moreover, punitive damages are not available under California law for breach of
 express or implied warranty.”); *Goel v. Coal. Am. Holding Co.*, No. 11-cv-2349
 GAF-Ex, 2011 WL 13128300, at *9 (C.D. Cal. July 5, 2011) (“As a matter of law,
 Plaintiff cannot recover punitive damages for his breach of contract, unjust
 enrichment, or accounting and disgorgement causes of action.”); *see also* Cal. Civ.
 Code § 3294 (allowing exemplary damages only in actions “for the breach of an
 obligation not arising from contract”).

1 *Jordan v. Nationstar Mortg. LLC*, 781 F.3d 1178, 1183 (9th Cir. 2015) (citing *Dart*,
2 135 S. Ct. at 554).

3 **Conclusion.**

4 26. Because there is diversity of citizenship in this putative class action and
5 the amount in controversy exceeds \$5,000,000, exclusive of interest and costs, the
6 requirements of subject matter jurisdiction are satisfied.

7 27. Pursuant to 28 U.S.C. § 1446(d), upon the filing of this Notice of
8 Removal, Vizio will serve written notice thereof on Plaintiff as described in the
9 Certificate of Service.

10 28. Pursuant to 28 U.S.C. § 1446(d), upon the filing of this Notice of
11 Removal, Vizio will promptly notify and file with the Clerk of Courts for the
12 Superior Court of California, County of Orange a notice of the filing of this Notice
13 of Removal.

14 Dated: November 12, 2021

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MICHAEL D. ADAMS
LUCAS K. HORI
SARAH GILMARTIN

17 By: /s/ Michael D. Adams
18 Michael D. Adams
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CX-105

7 [additional counsel on signature page]

8 *Counsel for Plaintiff and the Putative Class*

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF ORANGE COUNTY**

12 AMIR KAVEHRAD, on behalf of himself and
13 all others similarly situated,
14
15 Plaintiff,
16 v.
17 VIZIO INC. and VIZIO HOLDING CORP.,
18
19 Defendants.
20
21

Case No.
CLASS ACTION COMPLAINT
JURY TRIAL DEMANDED

1 Plaintiff Amir Kavehrad (“Plaintiff”), individually and on behalf of all others similarly situated,
2 files this Class Action Complaint against Defendants VIZIO Inc. and VIZIO Holding Corp. (“VIZIO”
3 or “Defendant”), and alleges the following based on personal knowledge as to his own conduct, and
4 upon information and belief as to all other matters.

5 **SUMMARY OF THE ACTION**

6 1. This is a consumer protection class action on behalf of individuals who purchased the
7 following flat-screen models of VIZIO OLED and LED 4K UHD televisions: OLED65-H1; OLED55-
8 H1; P65Q9-H1; P65Q9-J01; P75Q9-J01; and P75Q9-H1 (collectively, “Class Televisions”).

9 2. While VIZIO markets the Class Televisions as top of the line televisions with “sensational
10 picture quality”¹ and offering “best-in-class picture processing,”² the Class Televisions are defective.
11 The Class Televisions suffer from repeated and unexpected power-related failures which prevent them
12 from working reliably. In particular, the Class Televisions will power off repeatedly or fail to power
13 back on after being left off for some time (collectively, the “Power Defect”). When the Power Defect
14 manifests, it can also result in the loss of video connectivity for HDMI-connected devices, including
15 Apple TV and gaming consoles. In these instances, though the Class Television is powered on, the screen
16 goes completely black on the connected devices.

17 3. VIZIO controlled the design, manufacture, marketing, and sale the Class Televisions
18 (directly and indirectly through third parties), which are marketed as premium products ranging in price
19 from \$1,199 to \$1,999. VIZIO knew the Class Televisions were defective at or before the time of release
20 through pre-release testing and complaints from consumers shortly after launch. Despite knowing that
21 the Class Televisions were prone to failure, VIZIO failed to disclose to consumers that the Class
22 Televisions are defective. Although the Class Televisions came with a one-year written warranty
23 covering defects in materials and workmanship, VIZIO routinely refuses to honor its warranty
24 obligations. Instead of fixing the reported problems, VIZIO has punted any warranty repairs, instead
25 promising a “forthcoming firmware update” that has yet to materialize and is not certain to remedy the
26 Power Defect.

27 _____
28 ¹ See <https://www.VIZIO.com/en/tv/p-series>.

² See <https://www.VIZIO.com/en/tv/oled>.

JURISDICTION AND VENUE

1
2 10. This action is brought as a class action to remedy violations of law by VIZIO. This Court
3 has subject matter jurisdiction over this action pursuant to the California Code of Civil Procedure.

4 11. The Court has personal jurisdiction over VIZIO because its principal place of business is
5 located in Orange County, California, and it has sufficient minimum contacts in California to render the
6 exercise of jurisdiction by this Court appropriate.

7 12. Venue is proper pursuant to the California Code of Civil Procedure because, *inter alia*,
8 VIZIO’S principal place of business is located in and a substantial part of the events or omissions giving
9 rise to the claims occurred in Orange County, California.

10 13. California law applies to the claims of the Plaintiff and class members because the
11 practices at issue here were conceived, reviewed, approved, and otherwise controlled from VIZIO’S
12 headquarters in California. Employees at VIZIO’S headquarters designed and engineered the Class
13 Televisions’ hardware and software. Promotional activities, product packaging, and literature were
14 developed and coordinated at, and emanated from, VIZIO’S California headquarters. VIZIO made
15 critical decisions concerning the development, marketing, and advertising of the Class Televisions in
16 California. Misrepresentations and omissions alleged herein were made by VIZIO employees based in
17 California and were contained on VIZIO’S website, which is maintained by VIZIO employees based in
18 California. VIZIO also developed its express warranty, warranty policies, and customer service protocols
19 in California.

20 **PLAINTIFF-SPECIFIC ALLEGATIONS**

21 14. On June 22, 2021, Plaintiff Kavehrad purchased a VIZIO OLED television (model no.
22 OLED65-H1) for approximately \$1,499.99 from Best Buy.

23 15. Within the first week of owning the television, it began powering-off repeatedly and
24 devices connected via HDMI input would suddenly go out without warning. When the TV would
25 unexpectedly power-off, it would fail to power-on after being powered-off for some time.

26 16. On July 7, 2021, Plaintiff Kavehrad sent an opt-out letter to VIZIO pursuant to the
27 provisions of its arbitration opt-out procedure outlined in its terms and conditions. His correspondence
28 advised Vizio that he was electing to opted-out of pursuing his claims through arbitration.

1 17. At the time he purchased his Class Television, Plaintiff was not aware of, and VIZIO did
2 not disclose anywhere on its product packaging or elsewhere, that the Class Televisions are plagued with
3 the Power Defect.

4 18. Had Plaintiff Kavehrad been made aware of the Power Defect prior to purchasing his
5 VIZIO television, he would not have purchased it or would have paid significantly less for the Class
6 Television than he did. Plaintiff and Class Members relied on VIZIO’s representations that the Class
7 Televisions functioned as they were intended to, with a properly working power feature.

8 **COMMON FACTUAL ALLEGATIONS**

9 **Television Ownership in the United States**

10 19. The two prominent types of displays that can be found across monitors, televisions,
11 mobile phones, cameras and other devices with screens are LED (light-emitting diode) and OLED
12 (organic light-emitting diode). LED is the most common type of display on the market. OLED is a newer
13 “luxury option” used in flagship phones and high-end televisions models.³

14 20. LED screens use a backlight to illuminate their pixels, while OLED’s pixels actually
15 produce their own light. A pixel is a small element on a screen that can be accessed by a device such as
16 a touch screen or monitor. This area can change color and also show movement by combining a group
17 of pixels and having the motion move from one pixel to another. LED screens are generally brighter than
18 OLED, whereas contrast on an OLED display is far higher.⁴

19 21. The vast majority of Americans own a television of some kind. According to estimates,
20 there are 121 million televisions in homes in the United States for the 2020-2021 television season.⁵

21 22. The COVID-19 pandemic also has reportedly boosted television viewing. According to
22 VIZIO, viewing on VIZIO smart televisions surged to 1.1 trillion minutes in 2020, up more than 20%
23 from 2019 due to the coronavirus pandemic. VIZIO is the number two maker of smart televisions sold
24
25

26 ³ See Monney, Kob, *OLED vs LED LCD: the best display tech for you*, Trusted Reviews (July 6, 2021),
27 available: <https://www.trustedreviews.com/opinion/oled-vs-led-lcd-2924602>.

28 ⁴ See *id.*

⁵ See <https://www.statista.com/statistics/243789/number-of-tv-households-in-the-us/>.

1 in the United States, with about 20% of the market over the past five years.⁶ It identifies itself as “the #1
2 American-based TV brand.”⁷

3 23. VIZIO sells over 7 million televisions a year and generates close to \$2 billion in
4 revenue from those devices. It reportedly earns well over 90% of its revenue from television sales.⁸

5 **VIZIO Markets and Launches its LED and OLED Television**
6 **Touting Their Superior Display Capabilities**

7 24. VIZIO was founded in Los Angeles nineteen years ago. It first introduced its line of LED
8 Backlit LCD televisions in 2010.

9 25. VIZIO released its P-Series televisions—its first consumer-grade 4K television—in 2014.
10 It released its P-Series Quantum 4K LED televisions in 2020.

11 26. VIZIO launched its first OLED televisions in late 2020. Its first OLED TV models were
12 available in 55- and 65-inch sizes and offer 4K gaming with variable refresh rates up to 120Hz, which
13 is an attractive feature to shoppers who want to use the television for gaming purposes. Its first 4K OLED
14 televisions were on sale starting at \$1,200. Today, the price for a VIZIO 55-inch OLED television is
15 \$1,299.99 and the price for a 65-inch OLED model is \$1,799.99.

16 27. VIZIO controls the design, development, marketing, sales, and support for the Class
17 Televisions. VIZIO directed virtually every aspect of the development and manufacture of the Class
18 Televisions.

19 28. VIZIO sells the Class Televisions directly to consumers as well as through authorized
20 retailers, such as Amazon, Costco, Target, Sam’s Club, Walmart and Best Buy.⁹

21
22 ⁶ See Hayes, Dade, *Viewing Leaps 20% to 1.1 Trillion Minutes in @020, Smart TV Maker VIZIO Says;*
23 *Sports, News, Familiar Shows Dominate*, Deadline (Jan. 4, 2021), available:
<https://deadline.com/2021/01/tv-viewing-leaps-1-trillion-minutes-2020-covid-19-VIZIO-chicago-pd-1234664670/>.

24 ⁷ *VIZIO Debuts Unprecedented Home Theater Experience with Masterful OLED Tv Collection and*
25 *Elevate Sound Bar with Dolby Atmos and DTS:X*, PR Newswire (June 30, 2020), available:
26 <https://www.prnewswire.com/news-releases/vizio-debuts-unprecedented-home-theater-experience-with-masterful-oled-tv-collection-and-elevate-sound-bar-with-dolby-atmos-and-dtsx-301085271.html>.

27 ⁸ See Levy, Ari, *VIZIO is best known for bargain TVs, but wants IPO investors to focus on its high-growth*
28 *ads business instead*, CNBC (Mar. 20, 2021), available: <https://www.cnbc.com/2021/03/20/VIZIO-ipo-tv-company-focusing-on-ads-over-devices.html>.

⁹ <https://www.vizio.com/en/official-retailers>.

1 29. VIZIO provides a limited warranty for all “Smart Products” including all “internet-
2 connected ‘smart’ VIZIO products, including related software, hardware/equipment, documents and
3 content.”¹⁰ Under the express terms of its limited warranty, “VIZIO warrants the product against defects
4 in materials and workmanship when the product is used normally in accordance with VIZIO’S user
5 guides and manuals.”¹¹ VIZIO warrants products on these terms for one year from the date of original
6 purchase.¹²

7 30. VIZIO markets its P-Series LED televisions as its “biggest and best LED” with “out of
8 this world picture quality” and a “lightning-fast IQ Ultra processor [that] delivers superior 4K image
9 quality for a powerfully transportive viewing experience.”¹³

10 31. VIZIO advertises its OLED televisions as having “the perfect picture” and “refined
11 attention to every detail.” It touts the OLED as having “unparalleled power” with its “IQ Ultra processor”
12 which “delivers the fastest, smartest, best-in-class picture processing with a powerful 4K upscaling
13 engine, and HDMI 2.1 connectivity for unrivaled responsiveness.”¹⁴

14 32. In its June 2020 press release announcing the release of its OLED televisions, VIZIO said
15 the OLEDs were “[b]uilt for the consumer who demands nothing less than the best.” Bill Baxter, Chief
16 Technology Office of VIZIO further stated that, “[a]t VIZIO, we constantly strive to raise the bar for
17 picture and sound quality, delivering complete entertainment as no other manufacturer can.” The debut
18 of the first OLED television and “its leading-edge picture processing,” said Baxter, “mak[es] good on
19 that commitment to consumers.”¹⁵

20 33. After purchasing his Class Television, Plaintiff undertook VIZIO’s standard setup
21 process on his television in accordance with the user manual. The user manual also explains the

22 _____
¹⁰ See <https://www.vizio.com/en/terms/terms-of-service>.

23 ¹¹ See http://cdn.vizio.com/misc/KBIImages/models/OLED2020/2021_OLED55-H1_OLED65-H1-UM-ENG.pdf;
24 [http://cdn.vizio.com/user-manual/PDF/2020/TV/P9-Series_P65Q9-H1_P65Q9-H61_P75Q9-
25 H1_P75Q9-H61-UM-ENG.pdf](http://cdn.vizio.com/user-manual/PDF/2020/TV/P9-Series_P65Q9-H1_P65Q9-H61_P75Q9-H1_P75Q9-H61-UM-ENG.pdf).

¹² See *id.*

¹³ See <https://www.vizio.com/en/tv/p-series>.

¹⁴ See <https://www.vizio.com/en/tv/oled>.

26 ¹⁵ *VIZIO Debuts Unprecedented Home Theater Experience with Masterful OLED Tv Collection and*
27 *Elevate Sound Bar with Dolby Atmos and DTS:X*, PR Newswire (June 30, 2020), available at
28 [https://www.prnewswire.com/news-releases/vizio-debuts-unprecedented-home-theater-experience-with-
masterful-oled-tv-collection-and-elevate-sound-bar-with-dolby-atmos-and-dtsx-301085271.html](https://www.prnewswire.com/news-releases/vizio-debuts-unprecedented-home-theater-experience-with-masterful-oled-tv-collection-and-elevate-sound-bar-with-dolby-atmos-and-dtsx-301085271.html).

1 seemingly basic function of pressing the power button to turn the television on, and pressing and holding
2 the power button to turn the television off. The manual further provided that a user’s television “should
3 be installed and the power cord should be connected to an electrical outlet” before beginning the first-
4 time setup. The on-screen instructions that appeared once the television was power-on and connected to
5 the internet walked the user step-by-step through customizing the television by (1) choosing a language,
6 (2) choosing a preferred use, (3) choosing a country, (4) choosing a Wi-Fi network and entering the
7 password; (5) naming the TV; (6) scanning for channels; (7) accepting VIZIO’s Terms & Conditions,
8 and (8) viewing and accepting VIZIO’s Viewing Data Policy. At no place in the Unser Manual or during
9 this on-screen set-up process did VIZIO disclose any defect associated with the television repeatedly
10 powering off without user input and/or failing to power back on.¹⁶

11 34. Prior to using his Class Television, Plaintiff encountered VIZIO’s external packaging of
12 the Class Television. At no time did the external packaging disclose any defect associated with the power
13 features of the Class Television.

14 35. Plaintiff was exposed to specific representations by VIZIO prior to and immediately after
15 purchase. VIZIO marketed and promoted the Class Televisions as superior products that excelled at
16 providing “unparalleled power” and picture quality. At no time did VIZIO disclose the Power Defect to
17 Plaintiff by including in its marketing or advertising materials that the Class Televisions are prone to
18 power failures. VIZIO failed to disclose the Power Defect to Plaintiff despite being aware of the Power
19 Defect through pre-release testing and pre-market quality control and internal validation.

20 **The Power Defect Manifests in the Class Televisions Soon After Launch**

21 36. The Class Televisions suffer from a latent defect—though they appear to function
22 normally out of the box, the Class Televisions’ power feature is defective, causing the televisions to
23 prematurely shut down and fail to power on when they have been left off.

24 37. Televisions that suffer from premature power failures—or are not able to be powered on
25 at all—are thus not suitable for their normal and intended purposes. Such power failures render a
26 television essentially unusable when the television shuts off suddenly, and without warning, even when

27 _____
28 ¹⁶http://cdn.vizio.com/user-manual/PDF/2020/TV/P9-Series_P65Q9-H1_P65Q9-H61_P75Q9-H1_P75Q9-H61-UM-ENG.pdf.

1 plugged in and without user input. Some users have to resort to unplugging the Class Television and
 2 then plugging them back in to get them to power back on, but even that does not work in every instance
 3 to restore power to the Class Televisions.

4 38. Within months of the Class Televisions launching, consumers began posting about the
 5 Power Defects on social media, internet message boards, and product pages on retailer websites.¹⁷

6 39. Many consumers also complained directly to VIZIO through VIZIO's own support
 7 page—either via text message or through a live agent chat feature.¹⁸

8 40. Scores of customer complaints demonstrate that this is not an isolated issue. Many
 9 consumers have recently taken to the internet to gripe about the Power Defect and their failed experiences
 10 in receiving any sort of assistance from VIZIO in addressing or otherwise fixing the Power Defect.

11 41. Publicly available complaints and consumer reviews demonstrate that the Power Defect
 12 manifests the same way across VIZIO's customer base, interfering with customers' use of the Class
 13 Televisions. Below are some examples of consumer complaints concerning manifestation of the Power
 14 Defect in their Class Televisions. Upon information and belief, VIZIO monitors online forums and social
 15 media posts regarding its products and consumers.

16 a. Posted 8 months ago¹⁹

- 17 i. "I've had a great experience with Vizio in the past, and the ordering and
 18 delivery from Best Buy was smooth and quick. The tv looked great when it
 19 worked. But after only two days it will no longer turn on. **I noticed the tv**
 20 **randomly turning on and off during installation, but I assumed I was**
 21 **bumping the power button in the back. Happened again later after being**
 22 **mounted where the tv seemed to briefly turn off and then back on again,**
 23 **but I thought it had something to do with setting up CEC. On day 2**
 24 **however, after working fine in the afternoon, it wouldn't turn back on in**
 25 **the evening. Tried different things, disconnect all input devices, but still**
 26 **nothing. Vizio tech support tried to help, but they couldn't figure it out. So**
 27 **I will be returning the TV.** One thing I noticed after packing the tv up again
 28 is that the power cord that came with the unit doesn't match the shape on the

17 *See, e.g.,*

18 https://www.reddit.com/r/VIZIO_Official/comments/junr2w/oled_wont_turn_back_on_need_to_unplug_and_replug/; <https://twitter.com/EChuck86/status/1330524233190043662> (last visited Oct. 11, 202).

19 *See* https://support.vizio.com/s/contact-us?language=en_US.

20 <https://www.bestbuy.com/site/reviews/vizio-55-class-oled-4k-uhd-smartcast-tv/6416810?rating=1> (last
 21 visited Oct. 8, 2021) (emphasis added).

1 back of the tv (non polarized vs polarized, respectively). Brought this up with
 2 Vizio tech support and they stated that this should be the cause. But I'm not
 3 sure about that. I've added pictures to show what I'm talking about. On another
 4 note, CEC commands seemed to be hit or miss on this unit when connected to
 5 an Apple TV and SONOS Amp. My previous TV (SONY) worked just fine
 6 with CEC, so I'm not sure what the issue was with the Vizio. But this is
 something that I expect they'll fix with a firmware update. Its a shame, the
 Vizio OLED looked really good.”

7 b. Posted 3 months ago²⁰

- 8 i. “I normally never right reviews but had to because of how horrible this has
 9 been. I purchased this tv after owning a Vizio LED TV. It had some issues but
 10 overall I loved it and was ready to upgrade to OLED. After reading some
 11 promising tech blog reviews and seeing this on sale I took the plunge. I have
 12 had this TV for 5 months now and here is my review: Setup: Audio – Sonos
 13 Arc, Streaming – Apple TV 4K, Gaming Consoles- Xbox Series X + Nintendo
 14 Switch. All HDMI cables are 2.1 certified cables. The TV has incredible picture
 15 that is really a huge step up from an LCD and even LED. The unit itself is
 16 gorgeous and looks great on a stand. **Cons: This TV constantly fails to power**
 17 **on.** Since I use Apple TV to watch most of my content, I use the Apple TV
 18 remote to power the TV on and off. 4/10 times the TV will power on as it
 19 should. 3/10 times **I have to dig up the Vizio remote or walk over to the TV**
 20 **to turn it on because it does not power up with the Apple TV. 1/10 times**
 21 **the TV says “no signal” on power up and I have to unplug the Apple TV**
 22 **HDMI and reconnect. 1/10 times I have to fully unplug the TV from power**
 23 **and reconnect it (sometimes several times) to have the TV power on**
 24 **because it will not respond to the remote or the built in power button. I**
 25 **have reset this TV back to factory settings over 20 times and reconfigured**
 26 **it and it still wont fix this.** Many times when the TV powers on, it forgets the
 27 soundbar and an annoying pop up stays on screen saying a new audio device
 has been configured. The TV has 2 power modes, eco and quick-start. In order
 to use Alexa or HomeKit the TV needs to be in quick-start. For some reason
 the TV always reverts to eco which essentially disables Alexa and HomeKit
 when the TV is powered off. **Vizio has claimed that they are aware of these**
issues but in the 5 months I have owned it, they have only released 1 update
that fixed some issues (ie 120hz refresh rate for new consoles) but clearly
do not seem concerned to fix something that should never have been
broken in the first place. My unit also did not come with a stand in the box
 (box was sealed, it was a factory error). I had a \$200 Insignia Roku LCD TV
 with a similar setup and features that I never had to touch the TV remote nor

28 ²⁰ *Id.* (last visited Oct. 8, 2021) (emphasis added).

once had an issue with at all.If you are deciding between this and a similar model from LG or Sony I would encourage you to spend the extra money on a TV that looks good and also powers on. This will be my last Vizio purchase.”

c. Posted 10 months ago²¹:

i. Just bought 2 of these to use as computer monitors. Great image quality, WHEN I can get it to work. Some issues that are making me really think about returning it though:

1) **If left turned off for awhile I have to unplug it then re-plug to be able to turn it back on again. (Other people have complained about same issue on other sites)**

2) Its advertised to support VRR but its not active or on. (included picture). Professional reviewers at Rtings.com also say VRR not on.

3)When using Netflix or Prime Video on computer or laptop, the screen goes black and flickers between HDR10 and HLG modes. The sound plays through computer speakers so I know its running, but the display goes crazy and doesn't show. The Netflix and Prime on the TV work fine though. If Vizio would fix this issues in a firmware soon, then this will be an amazing buy at this price.

d. Posted 10 months ago²²:

i. Picture is nice but the TV don't turn on unless I unplug it and plug it in. I called best buy customer service and they hung up on me. All I wanted was an exchange for a working TV, mobility issues make it hard to unplug and replace the TV from the outlet and defeats the purpose of the remote control.

e. Posted 5 months ago²³:

i. Like may others have mentioned in their reviews, the picture is great. But everything else is awful, this TV is full of bugs that have not been addressed in the almost year since this tv has been release. Some of the most basic features of the TV do not work.

- Sometimes the TV just doesn't power on

- The settings are not retained between power cycles (particularly the luminance settings.

- Casting and Homekit work intermittently. For a platform called "Smartcast"

²¹<https://www.bestbuy.com/site/reviews/vizio-55-class-oled-4k-uhd-smartcast-tv/6416810?rating=1> (last visited Oct. 8, 2021) (emphasis added).

²² *Id.*

²³ *Id.* (emphasis added).

1 **Do you like a TV that powers on and remembers its settings? This TV is**
2 **not for you. This doesn't seem to be a problem related to my particular**
3 **unit, you can look at other reviews that seem to have the same problems**
4 **where they have gotten replacements and it hasn't solved the issue.** It's
5 embarrassing and probably criminal that Vizio that they would sell a TV in
6 this state. Worst of all neither Best Buy nor Vizio will take responsibility for
7 selling a broken product. I simply want a refund but they hide behind it being
8 outside of the return window. Which shouldn't apply to selling a defective
9 product and advertising features that don't work.

10 f. Posted 3 months ago:²⁴

11 i. how to I make this 0 stars? Do a little bit of research before dropping this
12 kind of cash. There are a ton of issues with this TV and mine suffers from all
13 of them. **The biggest issue is 80% of the time the screen wont display any**
14 **image unless you unplug from the wall and disconnect any hdmi cables.**
15 **then turn it on and cross your fingers. You will probably have to do this**
16 **a couple times before you plug the hdmi back in. After a full day at work**
17 **I have to spend anywhere between 5-30 mins to get the TV to turn on and**
18 **actually use it.** Absolute garbage product.

19 g. Posted 11 months ago:²⁵

20 i. Is there a way to rate this no stars?! I have had two of these sets. The first set
21 in the summer of 2020 was not sharp, lacked clarity, did not upscale content,
22 had a blotchy backlight, and effectively did not appear to be high definition.
23 Vizio replaced it with a second set. The second set, too, is not as clear as the
24 2018 Vizio P Series that it replaced and exhibits the same issues as the first
25 P65Q9-H1 set. Vizio sent out a tech to replace something in this second
26 P65Q9-H1 set. After that repair, this second set sporadically loses sound, will
27 not connect to the smart apps, gives a green screen at other times when it does
28 connect to the apps, **and at times will not power on. The solution most**
 times is to attempt one or more hard restarts that involve unplugging the
 TV and holding the power button for thirty seconds or more, then
 plugging everything back in. I have contacted Vizio about this second set,
 but they have not been receptive to correcting the current issues. Look at
 the photos and tell me if this is what you'd expect from a set that cost a grand.
 All I want is a TV that works in my family room. Instead I have a tv that
 provides nothing but problems followed by hours (yes hours) of online chats

²⁴<https://www.bestbuy.com/site/vizio-65-class-oled-4k-uhd-smartcast-tv/6416848.p?skuId=6416848>
(emphasis added).

²⁵<https://www.bestbuy.com/site/vizio-65-class-p-series-quantum-series-led-4k-uhd-smartcast-tv/6416449.p?skuId=6416449> (last visited Oct. 8, 2021) (emphasis added).

1 or phone calls that do not result in a resolution. As such, I have a tv that my
 2 children avoid. I finally had to move my smaller kitchen Samsung into the
 3 family room in order to bring the family back to that room. At this point, I
 4 will shell out money for a new family TV, and I guess that I have to eat this
 5 one. Yes, this has been a nightmare. The only other recourse I have is to let
 6 fellow consumers know that you are really rolling the dice when you
 7 purchase a Vizio.

8 h. Posted one week ago:

9 i. Ok, so im on my 2nd one cause the first one developed a brown spot near the
 10 power cable input. I just chalk that up to a bad unit. This tv, inspite of itself,
 11 can produce a 4k image at 120hz. How well and often it does it is depending
 12 on what device, cable, and input you select. Xbox series X The audio will
 13 glitch out and the aspect ratio will be off sometimes when selecting the input.
 14 Happens on inputs 3 and 4, which are the hdmi 2.1 ports. This is by far the
 15 best functioning device hooked up to the tv. And by best functioning i mean
 16 the only device i was able to take out of the box, plug it in, and it just worked.
 17 Playstation 5 Assuming that you managed to slay the kraken in order to
 18 obtain one, you'll be happy to know it just flat out doesnt work with hdmi 2.1.
 19 At all. You will be met with a screen of glitched out rainbow pixels. It barely
 20 works on hdmi 2.0. I have it running through the PSVR breakout box in order
 21 to get a signal in 4k at 60hz. DO NOT BUY THIS TV FOR PS5 ONLY. PC
 22 (Zotac Twinedge 3060 ti output) You can get 4k 120hz on pc ...with the right
 23 hdmi 2.1 cable. I tried using the cable that came with the series x, the ps5, and
 24 another rando cable i had. I tried the cables on ports 3 and 4. None of them
 25 would allow me to run above 4k 60hz. I bought an amazon basics hdmi 2.1
 26 cable and that seem to fix the problem. The audio over 2.1 is glitchy. It
 27 literally goes from clear audio to chiptune sound waves back to clear audio in
 28 2 minute intervals. **In General This tv crashes an unreasonable amount, to
 the point where you have to physically unplug the tv to reboot it.** Your
 not guaranteed an image or sound when switching between inputs. Horrible
 brown halo on white text against black backgrounds. Loads of apps ive never
 heard of or going to use. Cats sleeping dogs. ...this tv is just annoying. It
 works in very specific ways ...sometimes ...very annoyingly.²⁶

VIZIO Fails to Adequately Address or Disclose the Power Defect

42. VIZIO's registration statements confirm that each product undergoes testing at the testing
 facilities of VIZIO's third-party manufacturers under VIZIO's control. Further, VIZIO confirms its LCD

²⁶ *Id.* (emphasis added).

1 panels “go through a proprietary test method in manufacturing”²⁷ Based on pre-production testing,
 2 pre-production design or failure mode analysis, and post-production testing, research, and product failure
 3 analysis, VIZIO was aware of the Power Defect in its Class Televisions but did not correct the defect
 4 prior to sale in order to achieve higher profits in selling the Class Televisions, which they falsely
 5 marketed as defect-free. This information was not available to Plaintiff and members of the Class at the
 6 time of their purchases.

7 43. VIZIO was aware of the consumer complaints soon after release of the Class Televisions.
 8 Not only did many consumers contact VIZIO directly, but VIZIO’s public responses to complaints from
 9 Class Television customers about purported “firmware fixes” demonstrates VIZIO’s knowledge of the
 10 Power Defects Class Television owners were experiencing.²⁸

11 44. VIZIO even posted a dedicated page on its customer support site for consumers whose
 12 televisions “won’t power on/will not turn on/no power.” The article was “intended to help TV’s that will
 13 not turn on, or are turning themselves off.”²⁹ The article, however, only provides consumers with time
 14 consuming troubleshooting tips—including unplugging the television and plugging it back in—and does
 15 not indicate that there is any actual fix or repair to remedy the Power Defect.

16 45. In addition to the complaints, online publications were also beginning to emerge about
 17 the Power Defect, trying to provide consumers with workarounds since VIZIO was not taking any steps
 18 to resolve the issue itself.³⁰

19 46. *The New York Times* even removed the VIZIO OLED TV from its compilation article of
 20 recommended gaming televisions due to reported issues from owners about power-related failures. *The*
 21 *New York Times* reported that while it “originally had Vizio’s OLED TVs listed in Other good gaming
 22

23 ²⁷ See, e.g., VIZIO Holding Corp. SEC Form S-1 Registration Statement (Mar. 1, 2021).

24 ²⁸ See, e.g. <https://www.bestbuy.com/site/reviews/vizio-55-class-oled-4k-uhd-smartcast-tv/6416810?rating=1>.

25 ²⁹ See VIZIO Support, “My device won’t power on/will not turn on/no power,” available:
 26 https://support.vizio.com/s/article/My-device-won-t-power-on-will-not-turn-on-no-power?language=en_US.

27 ³⁰ See, e.g. *Vizio TV Keeps Restarting (During Setup/After Update/Won’t Restart)*, available:
 28 <https://readytodiy.com/vizio-tv-keeps-restarting-during-setup-after-update-wont-restart-0051/>; *Vizio TV Keeps Turning Off or Won’t Turn Off*, available: <https://readytodiy.com/vizio-tv-keeps-turning-off-or-wont-turn-off-0051/>;

1 TVs ...we've seen reports of users experiencing power issues and other software bugs when feeding the
2 OLED TVs a 4K/120 Hz signal from gaming consoles.”³¹

3 47. Despite being aware of the Power Defect, VIZIO has yet to acknowledge the problem or
4 offer a suitable remedy. VIZIO instead tries to downplay the significance of the Power Defect, claiming
5 that the issue is “not common.”³² The scores of customers complaints experiencing the exact same issues
6 tell a different story. VIZIO’s customer service support for the Class Televisions is reportedly unhelpful,
7 and consumers generally report that VIZIO technical support cannot “figure out” or cure the power
8 related failures. Some users have even complained that VIZIO has acknowledged that it is aware of the
9 Power Defect, yet it does “not seemed concerned to fix something that should never have been broken
10 in the first place.”³³

11 48. There is no known fix for the Power Defect aside from a hardware replacement. But
12 instead of offering refunds or non-defective replacements, VIZIO’s uniform response is to provide
13 owners that report either issue to go through a series of troubleshooting steps to diagnose the problem
14 or—when the troubleshooting steps inevitably fail—promise consumers that an elusive “forthcoming
15 firmware fix” will be available at some unspecified point in the future to fix the problems. Other
16 consumers complain that VIZIO promises to return phone calls or send a service technician, but never
17 follows through on its promises. Several users summarize their experiences in contacting VIZIO about
18 the Power Defect on the Better Business Bureau complaints forum:

19 a. Posted 9/19/2021³⁴

- 20 i. “There is a common issue with the Vizio Oled TV I purchased where it will
21 sometimes fail to power on, and sometimes fail to show a screen, when connected to
22 a PS5. I have had the TV for 11 months, with Vizio promising a firmware solution
23 that has yet to release. Vizio support would not honor a warranty request for a refund,

24 ³¹ See Heinonen, *The Best TV for Video Games*, New York Times (May 10, 2021), available:
25 <https://www.nytimes.com/wirecutter/reviews/best-tv-for-video-games/>.

26 ³² See, e.g., <https://www.bestbuy.com/site/reviews/vizio-55-class-oled-4k-uhd-smartcast-tv/6416810?rating=1> (last visited Oct. 8, 2021).

27 ³³ <https://www.bestbuy.com/site/reviews/vizio-55-class-oled-4k-uhd-smartcast-tv/6416810?rating=1>
28 (last visited Oct. 8, 2021).

³⁴ <https://www.bbb.org/us/ca/irvine/profile/audio-visual-equipment/vizio-1126-13209958/complaints>
(last visited October 6, 2021).

1 or a replacement model that did not have these issues. I am still under warranty. Vizio
2 case number 22530904.”

3 b. Posted 9/6/21³⁵

4 i. “In late July I called Vizio about my 55 inch tv not powering on. After troubleshooting
5 with an agent they determined the tv needing repair and would need a tech to fix it. It
6 was a month before someone got a hold of me and they the scheduled an appointment
7 and never showed up. So I have been waiting 2 months for my tv to be fixed with
8 absolutely no communication from vizio. I did call to voice my concern and the agent
9 promised me someone would show up the next day. No one showed up. If I do not
have a replacement tv I will be seeking legal advice do to the fact my tv should be
replaced. Completely inexcusable that a company treat a customer like this.”

10 c. Posted 8/31/2021³⁶

11 i. “I bought a Vizio TV last December. In January it would not turn on. I chatted with
12 Vizio and they had me reset it. This happened a few more times and I reset it on my
13 own. It again happened a few weeks ago. I chatted again and they had me reset it. I
14 explained I have already done this several times. It should not happen to a new TV.
15 They said it was under warranty and if it happened again to call them . I saved the
16 January chat and the one a few weeks ago for proof. This is a faulty TV and they will
not replace it. I asked for a manager. They gave me a number for **** who my wife
and I have called probably ten times and left several messages. She has never called
us back. I think this company is not honoring its warranty and is purposely not calling
us.”

17 d. From Elisha K, on 9/29/21³⁷

18 i. “DON'T BUY VIZIO. vizio *****. I have a 65 inch vizio it freezes sometimes. I have
19 a 55 vizio sometimes I have to to unplug it and plug it back it for it to come on.”

20 49. VIZIO has long known that the Class Televisions are fatally flawed. Standard product
21 testing should have alerted VIZIO to the Power Defect even prior to launching the devices.

22 50. Despite the growing number of complaints, and VIZIO’s knowledge of the Power Defect,
23 VIZIO has declined to provide its customers with adequate warranty service in accordance with their
24 reasonable expectations.

25
26 _____
27 ³⁵ *Id.* (last visited October 7, 2021).

28 ³⁶ *Id.* (last visited October 7, 2021).

³⁷<https://www.bbb.org/us/ca/irvine/profile/audio-visual-equipment/vizio-1126-13209958/customer-reviews> (last visited Oct. 7, 2021).

1 51. The VIZIO warranty provides that, if there is a defect, “VIZIO will (at its option) repair
2 or replace it, or refund the purchase price to you.”³⁸ Plaintiff and members of the Class lacked the ability
3 to negotiate or even review the terms of the warranty prior to purchase. The warranties are offered on a
4 “take-it-or-leave-it” basis.

5 52. Instead of providing refunds or replacing Class Televisions with non-defective
6 televisions, VIZIO exercises its discretion under the warranty to refuse to repair or replace the defective
7 televisions and continue to deny customers access to an adequate fix that will remedy the Power Defect.

8 53. In response to warranty claims, VIZIO wasted its customers’ time with futile
9 troubleshooting sessions, or provided ineffective repairs or “quick fixes”, often resulting in repeat failure.
10 VIZIO thereby precluded its customers from realizing warranty benefits.

11 54. Despite knowing of the Class Televisions’ defective nature before it placed the Class
12 Televisions on the market and before Plaintiff purchased his Class Television, VIZIO failed to disclose
13 the Power Defect and its associated problems to Plaintiff and other consumers prior to purchase and
14 failed to provide Class Television owners with an adequate remedy when the Power Defect manifested.
15 Instead, VIZIO downplayed the severity and scope of the problem, and tried to sweep the Power Defect
16 under the rug with ineffective warranty service. Meanwhile, VIZIO continued to promote its Class
17 Televisions as top-of-the-line and as offering one of the best televisions on the market.

18 55. VIZIO has made hollow promises for a firmware fix that has yet to materialize. VIZIO
19 still has not remedied the Power Defect, recalled the Class Televisions, provided restitution, extended
20 its warranty, or disclosed the existence of the Power Defect.

21 56. Because of VIZIO’s actions, Class Television owners have suffered damages in the form
22 of loss of use, failure of the Class Television’s core functionality, loss of the benefit of their bargain,
23 diminution of value of and overpayment for their Class Televisions, and lost time and expense involved
24 in contacting VIZIO and retailers about the problem and waiting for replacements and/or repairs.
25
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27

28 ³⁸ <https://www.vizio.com/en/terms/warranty-and-returns> (last visited Oct. 8, 2021).

CLASS ACTION ALLEGATIONS

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2 57. Plaintiff brings this lawsuit on behalf of themselves and all others similarly situated, as a
3 class action.

4 58. Plaintiff seeks certification of a class defined as follows:

5 All consumers in the United States who purchased one or more of the Class
6 Televisions.

7 59. Excluded from the Class is VIZIO, its affiliates, subsidiaries, parents, successors,
8 predecessors, any entity in which VIZIO or its parents have a controlling interest; VIZIO's current and
9 former employees, officers and directors; the Judge(s) and/or Magistrate(s) assigned to this case and
10 their staffs and immediate family members; any person who properly obtains exclusion from the Class;
11 any person whose claims have been finally adjudicated on the merits or otherwise released; and the
12 parties' counsel in this litigation. Plaintiff reserves the right to modify, change, or expand the Class
13 definitions based upon discovery and further investigation.

14 60. **Numerosity.** The Class is so numerous that joinder of all members is impracticable.
15 Thousands of Class members have been subjected to VIZIO's conduct described herein. The Class is
16 objectively defined and presently ascertainable by reference to records in the possession of VIZIO or
17 third parties.

18 61. **Existence and Predominance of Common Questions of Fact and Law.** Common
19 questions of law and fact exist as to all members of the Class. These questions predominate over the
20 questions affecting individual Class members. These common legal and factual questions include:

21 a. Whether the Class Televisions were defective at the time of sale in that they were
22 prone to failing prematurely due to the camera and battery defects;

23 b. Whether VIZIO unlawfully, falsely, deceptively, or misleadingly represented that
24 the Class Televisions had qualities that they did not have;

25 c. Whether VIZIO knew of the defect but continued to sell the Class Televisions and
26 failed to disclose the problems and their adverse consequences to consumers;

27 d. Whether a reasonable consumer would consider the defect and its consequences
28 to be material;

1 e. Whether VIZIO's conduct violates consumer protection laws and other laws as
2 asserted herein;

3 f. Whether Plaintiff and Class members overpaid for their Class Televisions as a
4 result of the defect alleged herein;

5 g. Whether VIZIO's conduct was deceitful; and

6 h. Whether Plaintiff and Class members are entitled to equitable relief, including
7 restitution or injunctive relief.

8 62. **Typicality.** Plaintiff's claims are typical of the claims of the Class in that Plaintiff and all
9 Class members purchased or own defective Class Televisions and sustained economic injury in the same
10 manner by reason of Defendant's uniform course of conduct described herein. Plaintiff and all Class
11 members have the same claims against VIZIO relating to the conduct alleged herein, and the events and
12 conduct giving rise to Plaintiff's claims for relief are identical to those giving rise to the claims of all
13 Class members.

14 63. **Adequacy.** Plaintiff is an adequate representative for the Class because his interests do
15 not conflict with the interests of the Class that he seeks to represent. Plaintiff has retained counsel
16 competent and highly experienced in complex class action litigation, including consumer protection and
17 product defect class actions, and counsel intends to prosecute this action vigorously. The interests of the
18 Class will be fairly and adequately protected by Plaintiff and his counsel.

19 64. **Superiority.** A class action is superior to all other available methods for the fair and
20 efficient adjudication of this controversy. Because the amount of each individual Class member's claim
21 is small relative to the complexity of the litigation, and because of VIZIO's financial resources, no Class
22 member is likely to pursue legal redress individually for the violations detailed herein. Individualized
23 litigation would significantly increase the delay and expense to all parties and to the Court and would
24 create the potential for inconsistent and contradictory rulings. By contrast, a class action presents fewer
25 management difficulties, allows claims to be heard which would otherwise go unheard because of the
26 expense of bringing individual lawsuits, and provides the benefits of adjudication, economies of scale,
27 and comprehensive supervision by a single court without the unnecessary duplication of effort and
28 expense that numerous individual actions would engender.

1 65. Plaintiff is unaware of any difficulties that are likely to be encountered in the management
2 of this action that would preclude its maintenance as a class action.

3 **PUBLIC INJUNCTIVE RELIEF**

4 66. Plaintiff seeks an injunction on behalf of himself, the putative class of similarly situated
5 California residents, and the general public, prohibiting VIZIO from making material omissions and
6 misrepresentations to the public as to the nature of its Class Televisions. Plaintiff also seeks a public
7 injunction requiring VIZIO to notify all Class Televisions owners, and the public at large, about the
8 Power Defect, setting forth a description of the Power Defect in the Class Televisions and that the Class
9 Televisions do not perform as marketed. Under the circumstances, this injunctive relief should also
10 include an order requiring VIZIO to provide restitution and to extend the warranty on the Class
11 Televisions.

12 67. The injunctive relief sought is essential to stopping VIZIO’s continuing deceptive
13 scheme. In the absence of an injunction, VIZIO will remain free to continue to mislead members of the
14 public regarding the Power Defect, causing consumers to believe VIZIO’s material misrepresentations
15 and omissions concerning the function and reliability of the Class Televisions’ power feature.

16 68. VIZIO lures consumers into purchasing the Class Televisions by touting the Class
17 Televisions as being the “art of perfection” with “refined attention to every detail” and possessing
18 “unparalleled power.”³⁹ It also touts the Class Televisions as “best in class” and possessing “epic
19 power.”⁴⁰ VIZIO does not disclose to consumers that Class Televisions are defective, causing the
20 televisions to prematurely power down and fail to power on, a basic function that consumers would
21 expect from any television, not to mention one that they are paying a premium price for. Members of the
22 general public have the right to know the latent defects with this crucial feature.

23 69. The injunctive relief sought by Plaintiff will protect the public from VIZIO’s deceitful
24 marketing practices which misrepresent and omit material facts. Plaintiff seeks to enjoin VIZIO from
25 misrepresenting the power features of its Class Televisions to the public.

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³⁹ See <https://www.vizio.com/en/tv/oled> (last visited Oct. 8, 2021).

⁴⁰ See <https://www.vizio.com/en/tv/p-series> (last visited Oct. 8, 2021).

CAUSES OF ACTION

COUNT I

**Violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law,
Pa. Stat. Ann. § 201-1, et seq.**

70. Plaintiff repeats and realleges the allegations contained above as if fully set forth herein.

71. By failing to disclose and actively concealing the Power Defect, VIZIO engaged in deceptive business practices prohibited by the Pennsylvania Unfair Trade Practices and Consumer Protection Law, Pa. Stat. Ann. § 201-1, et seq. (“UTPCPL”), including (i) representing that the Class Televisions have characteristics, uses, benefits, and qualities which they do not have, (ii) representing that the Class Televisions are of a particular standard, quality, and grade when they are not, (iii) advertising Class Televisions with the intent not to sell them as advertised, and (iv) engaging in acts or practices which are otherwise unfair, misleading, false, or deceptive to the consumer.

72. VIZIO knew that its Class Televisions were defectively designed or manufactured, would fail without warning, and were not suitable for their intended use. VIZIO nevertheless failed to warn Plaintiff and the Class members about these defects despite having a duty to do so.

73. VIZIO owed Plaintiff and Class members a duty to disclose the Power Defect, because VIZIO:

(a) Possessed exclusive knowledge of the defect rendering Class Televisions more unreliable than similar Televisions and prone to failure;

(b) Made incomplete representations about the characteristics and performance of Class Televisions generally, while purposefully withholding material facts from Plaintiff and the Class members that contradicted these representations. Plaintiff and the Class members relied on the representations about the characteristics and performance of Class Televisions in believing that their Class Televisions’ power feature would function as intended. Plaintiff and the Class members relied on the fact that VIZIO made no mention of the Power Defect on the packaging, in advertising materials, or elsewhere as an indication that the Class Televisions would function as they were intended, with now power-related issues.

1 74. VIZIO's unfair or deceptive acts or practices were likely to and did in fact deceive
2 reasonable consumers, including Plaintiff and the Class members, about the true performance and
3 characteristics of the Class Televisions.

4 75. As a result of its violations of the UTPCPL detailed above, VIZIO caused actual damage
5 to Plaintiff and the Class members. VIZIO continues to harm Plaintiff and Class members since it has
6 yet to fix the Power Defect.

7 76. Plaintiff and the Class members sustained damages as a result of VIZIO's unlawful acts
8 and are, therefore, entitled to damages and other relief as provided under the UTPCPL, including treble
9 damages.

10 77. Plaintiff and the Class members also seeks court costs and attorneys' fees as a result of
11 VIZIO's violation of the UTPCPL as provided in Pa. Stat. Ann. § 201-9.2.

12 **COUNT II**
13 **Violation of the California Unfair Competition Law**
14 **Cal. Bus. & Prof. Code §§ 17200, *et seq.* ("UCL")**

15 78. Plaintiff re-alleges and incorporates by reference the preceding paragraphs.

16 79. VIZIO has violated and continues to violate California's UCL, which prohibits unlawful,
17 unfair, and fraudulent business acts or practices.

18 80. VIZIO is headquartered in California and directed the design, manufacture, marketing,
19 and sale of Class Televisions from California.

20 81. VIZIO's acts and practices, as alleged in this complaint, constitute unlawful, unfair, and
21 fraudulent business practices in violation of the UCL. In particular, VIZIO marketed, distributed,
22 advertised, and sold Class Televisions even though Class Televisions are not durable and are not capable
23 of functioning reliably. Instead, Class Televisions are prone to the Power Defect and failure, preventing
24 Class Televisions from operating reliably and sometimes at all. Despite VIZIO touting Class Televisions
25 as premium products, the Power Defect can render them unusable and unsuitable for their primary
26 purpose. VIZIO failed to disclose material facts concerning Class Televisions performance and
27 reliability at the point of sale and otherwise, despite touting and advertising Class Televisions as a high-
28 quality, durable product.

1 82. VIZIO’s business acts and practices are unlawful in that they violate the Pennsylvania
2 Unfair Trade Practices and Consumer Protection Law, Pa. Stat. Ann. § 201-1, et seq. and other states’
3 consumer protection laws for the reasons set forth in this complaint.

4 83. VIZIO’s acts and practices also constitute fraudulent practices in that they are likely to
5 deceive a reasonable consumer. As described above, VIZIO knowingly misrepresents(ed) and
6 conceals(ed) material facts related to Class Televisions reliability and performance. Had VIZIO not
7 misrepresented and concealed these facts, Plaintiff, class members, and reasonable consumers would not
8 have purchased a Class Television or would have paid significantly less for it.

9 84. VIZIO’s conduct also constitutes unfair business practices for at least the following
10 reasons:

- 11 a. The gravity of harm to Plaintiff and the proposed Class from VIZIO’s acts and
12 practices far outweighs any legitimate utility of that conduct;
- 13 b. VIZIO’s conduct is immoral, unethical, oppressive, unscrupulous, or substantially
14 injurious to Plaintiff and the members of the proposed Class; and
- 15 c. VIZIO’s conduct undermines and violates the stated policies underlying the
16 UTPCPL and other states’ consumer protection laws—to protect consumers
17 against unfair and sharp business practices and to promote a basic level of honesty
18 and reliability in the marketplace.

19 85. As a direct and proximate result of VIZIO’s business practices, Plaintiff and proposed
20 Class members suffered injury in fact and lost money or property, because they purchased and paid for
21 a product that they otherwise would not have (or would have paid less for).

22 86. VIZIO’s wrongful acts will continue unless restrained and enjoined by order of this Court.
23 Plaintiff and the proposed Class are entitled to an injunction and other equitable relief, including
24 restitutionary disgorgement of all profits accruing to VIZIO, because of VIZIO’s ongoing unfair and
25 deceptive practices, and such other orders as may be necessary to prevent VIZIO’s future violations of
26 the UCL. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiff is entitled to (i) an order on behalf of the
27 general public of the State of California enjoining VIZIO from committing violations of the UCL; (ii)
28 requiring VIZIO to immediately cease the sale of Class Televisions with the Power Defect; (iii) requiring

1 VIZIO to give individualized notice to all consumers who purchased Class Televisions in the State of
2 California during the applicable limitations periods and the public at large of the existence of the Defect;
3 (iv) requiring VIZIO to give individualized notice to all consumers who purchased Class Televisions in
4 the State of California within the applicable limitations periods of their rights under the UCL and
5 applicable California law; (v) requiring VIZIO to repair or replace Class members' Class Televisions
6 with non-defective Televisions; and (vi) establishing an effective monitoring mechanism to ensure
7 VIZIO's continued compliance with the terms of the injunction. To the extent any of these remedies are
8 equitable, Plaintiff seek them in the alternative to any adequate remedy at law they may have.

9 **COUNT III**
10 **Breach of Express Warranty**

11 87. Plaintiff incorporates by reference each preceding and succeeding paragraph as though
12 fully set forth at length herein.

13 88. VIZIO is a "merchant" as defined under the Uniform Commercial Code ("UCC").

14 89. The Class Televisions are "goods" as defined under the UCC.

15 90. VIZIO expressly warranted that the Class Televisions were of high quality and, at a
16 minimum, would actually work properly. VIZIO specifically warranted attributes and general
17 functionality of the Class Televisions.

18 91. VIZIO also expressly warranted that it would repair and/or replace defects in material
19 and/or workmanship free of charge that occurred during the applicable warranty periods.

20 92. VIZIO breached its warranties by selling to Plaintiff and the Class members the Class
21 Televisions with a known defect, and which are not of high quality, and are predisposed to fail
22 prematurely and/or fail to function properly. VIZIO also breached its warranty by failing to provide an
23 adequate repair when contacted by Plaintiff and the Class members following manifestation of the defect.

24 93. These warranties formed the basis of the bargain that was reached when Plaintiff and
25 other Class members purchased Class Televisions.

26 94. As a result of VIZIO's actions, Plaintiff and Class members have suffered economic and
27 other related damages.
28

1 95. Plaintiff and the Class members have complied with all obligations under the warranty,
2 or otherwise have been excused from performance of said obligations as a result of VIZIO's conduct
3 described herein.

4 **COUNT IV**
5 **Breach of the Implied Warranty of Merchantability**

6 96. Plaintiff incorporates by reference each preceding and succeeding paragraph as though
7 fully set forth at length herein.

8 97. VIZIO is a "merchant" as defined under the UCC.

9 98. The Class Televisions are "goods" as defined under the UCC.

10 99. A warranty that Class Televisions were in merchantable quality and condition is implied
11 by law in transactions for the purchase of Class Televisions. VIZIO impliedly warranted that Class
12 Televisions were of good and merchantable condition and quality, fit for their ordinary intended use,
13 including with respect to reliability, operability, and substantial freedom from defects.

14 100. The Class Televisions, when sold, and at all times thereafter, were not in merchantable
15 condition and are not fit for the ordinary purpose for which they are used. The Power Defect renders the
16 televisions unmerchantable, as they are unreliable, partially or fully inoperable, and not substantially
17 free from defects.

18 101. VIZIO was provided with notice of the issues complained of herein by numerous
19 complaints against them both online and to VIZIO customer service and including the instant lawsuit,
20 within a reasonable amount of time.

21 102. Plaintiff and the other Class members have had sufficient direct dealings with either
22 VIZIO or its agents to establish privity of contract between VIZIO on one hand, and Plaintiff and each
23 of the Class members on the other hand. Nonetheless, privity is not required here because Plaintiff and
24 each of the Class members are intended third-party beneficiaries of contracts between VIZIO and its
25 third-party retailers, and specifically, of VIZIO's implied warranties. The dealers were not intended to
26 be the ultimate consumers of the devices and have no rights under the warranty agreements; the warranty
27 agreements were designed for and intended to benefit the consumers only.

1 103. As a direct and proximate result of the breach of said warranties, Plaintiff and Class
2 members were injured, and are entitled to damages.

3 **COUNT V**
4 **Unjust Enrichment (Pleading in the Alternative)**

5 104. Plaintiff incorporates by reference each preceding and succeeding paragraph as though
6 fully set forth at length herein.

7 105. This claim is pleaded in the alternative to the other warranty-based claims set forth herein.

8 106. As the intended and expected result of its conscious wrongdoing, VIZIO has profited and
9 benefited from the purchase of Class Televisions with the defect.

10 107. VIZIO has voluntarily accepted and retained these profits and benefits, with full
11 knowledge and awareness that, as a result of VIZIO's misconduct alleged herein, Plaintiff and the Class
12 were not receiving devices of the quality, nature, fitness, or value that had been represented by VIZIO,
13 and that a reasonable consumer would expect. Specifically, Plaintiff and the Class members expected
14 that when they purchased their devices, they would not suffer from the Power Defect.

15 108. VIZIO has been unjustly enriched by its fraudulent, deceptive, unlawful, and unfair
16 conduct, and its withholding of benefits and unearned monies from Plaintiff and the Class, at the expense
17 of these parties.

18 109. Equity and good conscience militate against permitting VIZIO to retain these profits and
19 benefits.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff, individually and on behalf of members of the Class, respectfully
22 requests that the Court certify the proposed Class, designate Plaintiff as Class representative, appoint the
23 undersigned as Class Counsel, and enter judgment through an Order:

24 A. Temporarily and permanently enjoining VIZIO from continuing the unlawful,
25 deceptive, fraudulent, and unfair business practices alleged in this Complaint;

26 B. Public injunctive relief in the form of a recall or free replacement program and
27 notice of the existence of the Power Defect to all class members;

1 C. Awarding compensatory damages—including for overpayment at the point of
2 sale, out of pocket expenses to address the defect, and for lost time addressing the defect—to Plaintiff
3 and members of the Class in an amount to be proven at trial;

4 D. Equitable relief in the form of buyback of the devices;

5 E. Costs, restitution, damages, including punitive damages, treble damages
6 penalties, and disgorgement in an amount to be determined at trial;

7 F. An Order requiring VIZIO to pay both pre- and post-judgment interest on any
8 amounts awarded.

9 G. Awarding reasonable attorneys' fees and costs as permitted by law;

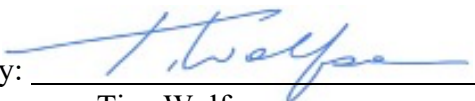
10 H. Entering such other or further relief as the Court may deem just and proper.

11 **JURY TRIAL DEMANDED**

12 Plaintiff hereby demands a trial by jury for all claims so triable.

13
14 Dated: October 12, 2021

Respectfully submitted,

15
16 By: 
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