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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION**

11 ROGER LARSEN, individually and on
12 behalf of all others similarly situated,

13 PLAINTIFF,

14 v.

15 VIZIO INC.,

16 DEFENDANT.
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CASE NO. _____

CLASS ACTION COMPLAINT
FOR:

Violation of CAL. BUS. & PROF. CODE §
17200, *et seq.*;
Violation of CAL. BUS. & PROF. CODE §
17500, *et seq.*;
Violation of the Consumers Legal
Remedies Act, CAL. CIV. CODE § 1750,
et seq.;
Violation of the Maine Unfair Trade
Practices Act, 5 ME. REV. STAT. ANN.
tit. 5, § 205, *et seq.*;
Breach of the Covenant of Good Faith
and Fair Dealing;
Common Law Fraud;
Negligent Misrepresentation;
Common Counts/Assumpsit; and
Breach of Express Warranty.

JURY TRIAL DEMANDED

26 **PLAINTIFF’S CLASS ACTION COMPLAINT**

27 Plaintiff Roger Larsen (“Plaintiff” or “Larsen”) hereby files this class action
28 complaint on behalf of himself and all others similarly situated, by and through the

undersigned attorneys, against Defendant Vizio, Inc. (“Vizio” or “Defendant”) and alleges as follows upon personal knowledge as to himself and his own acts and experiences and, as to all other matters, upon information and belief based upon, *inter alia*, investigation conducted by his attorneys.

NATURE OF THE CASE

1. What consumers perceive as motion on a television screen is actually the display of multiple still images in rapid succession. Refresh rate refers to the number of times per second a unique image is displayed on a television screen. Refresh rate is expressed in Hertz, which is defined by the International System of Units as cycles per second. In other words, a television with a refresh rate of 60 Hz displays 60 unique images per second on the screen. The advertised refresh rates of modern televisions are an important differentiator among competing televisions and are, likewise, a key component of pricing, just like resolution and screen size.

2. For the last several years Vizio has systematically misrepresented the refresh rate of certain of its LCD televisions (the “Televisions”¹) by overstating, falsifying and obfuscating their actual refresh rates to improve sales.

3. This misleading advertising technique has been very successful by any measure. Vizio, which was started just 12 years ago, has become the leading seller of LCD televisions in the United States with revenue of \$3.1 billion in 2014.

4. Plaintiff, individually and on behalf of the Class defined below, seeks to obtain relief from Defendant, including, *inter alia*, damages and declaratory relief.

5. Specifically, this class action is brought to remedy violations of law in connection with Defendant’s fraudulent and deceptive marketing and pricing scheme

¹ As used herein, the phrase “Televisions” refers to Vizio models [E420i-A1](#), E550i-A0, E400i-B2, E400i-B0, E500i-B1, E600i-B3, E700i-B3, M401i-A3, E550VA, [P502ui-B1](#), P702ui-B3, P602ui-B3, and P552ui-B2, and XVT3D474SV. Plaintiff reserves the right to amend this list as further facts are revealed during discovery.

1 relating to the Televisions. Vizio represents, through advertising to potential customers,
2 that the Televisions have double the refresh rates that they actually possess, and that by
3 purchasing the Televisions with such higher refresh rates, they will be able to see more
4 images per second than they actually do.

5 6. Defendant's marketing techniques are false and misleading in that the
6 refresh rates in the Televisions are actually half the amount of what is represented to
7 consumers through advertisements.

8 7. Defendant also inflates its LCD prices to reflect the higher quality refresh
9 rate misrepresentations. As a consequence of this scheme, consumers across the nation
10 are paying more than they would otherwise pay if the true facts were disclosed by
11 Defendant, and consumers are receiving a lower quality product than is represented in
12 Defendant's advertising.

13 **JURISDICTION AND VENUE**

14 8. This Court has subject matter jurisdiction of this action pursuant to 28
15 U.S.C. § 1332 of the Class Action Fairness Act of 2005 because: (i) there are 100 or
16 more class members, (ii) there is an aggregate amount in controversy exceeding
17 \$5,000,000, exclusive of interest and costs, and (iii) there is minimal diversity because
18 at least one plaintiff and defendant are citizens of different states. This Court also has
19 supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

20 9. Venue is proper in this judicial district and division pursuant to 28 U.S.C.
21 § 1391 because Defendant is headquartered in this district and division, is subject to
22 personal jurisdiction in this district and division, and therefore is deemed to be a citizen
23 of this district and division. Additionally, Defendant has advertised in this district and
24 division and received substantial revenues and profits from their sales of Televisions in
25 this district and division; therefore, a substantial part of the events and/or omissions
26 giving rise to the claims occurred within this district and division. Throughout the
27 class period, Defendant has directed its national false advertising campaign from the
28 district and division such that Defendant's improper conduct emanates from this district

1 and division.

2 10. This Court has personal jurisdiction over Defendant because it conducts
3 substantial business in this judicial district and division, and intentionally and
4 purposefully directed Televisions into the stream of commerce within the districts of
5 California and throughout the United States from its corporate headquarters in this
6 district and division.

7 **PARTIES**

8 **The Plaintiff**

9 11. Plaintiff Roger Larsen is a resident of Mount Vernon, Maine.

10 12. On or about October 27, 2014, Plaintiff bought a 50 inch Vizio E500i-B1
11 television through Amazon.com.

12 13. Prior to purchasing his Television, Mr. Larsen reviewed advertisements
13 and technical specifications created and disseminated by Defendant which represented
14 that his Television had a refresh rate of 120Hz.

15 14. In truth, Plaintiff's television has an actual refresh rate of 60Hz. Plaintiff
16 relied upon and was misled by Defendant's false advertising.

17 15. Plaintiff Larsen has suffered an ascertainable loss as a result of Defendant's
18 conduct described herein in that he paid more than he otherwise would have paid for his
19 Television (if he had chosen to purchase his Television at all), but for Defendant's
20 misrepresentations.

21 **The Defendant**

22 16. Defendant Vizio, Inc. is a corporation duly organized and existing under
23 the laws of the State of California with its headquarters and principal place of business
24 located at 39 Tesla, Irvine, California 92618.

25 17. Forbes listed Vizio as the 157th largest privately held company in the
26 United States in 2013. Started in 2002 with 3 employees and \$600,000, Vizio's rise to
27 lead the LCD television market in the United States has been meteoric. By 2006,
28

1 Vizio's annual revenue was approximately \$700 million. By 2007, it was said to exceed
2 \$2 billion.

3 18. Most recently, Forbes reported that Vizio had sales of \$3.1 billion as of
4 October 2014.² Vizio employs approximately 400 individuals, but subcontracts out all
5 manufacturing and much of its engineering and design.

6 19. Vizio is, in essence, principally a sales and marketing company whose goal
7 is to sell as many Vizio-branded products as possible.

8 20. Unfortunately, in Defendant's zeal to sell televisions, it has misled millions
9 of consumers and misrepresented its products to the detriment of Plaintiff and the Class.
10

11 **FACTUAL ALLEGATIONS**

12 21. As explained above, the videos we watch on television are merely a series
13 of still photographs displayed in such rapid succession that we perceive movement.
14 Refresh rate refers to the number of unique images we see, as expressed in Hertz, or
15 cycles per second. At this time video is not recorded at any more than 60 images per
16 second, with movies typically being filmed at 24 images per second. This is because our
17 electricity runs at the same rate.³

18 22. If too few images are displayed per second, viewers can see what is
19 referred to as motion blur. Motion blur refers to the apparent streaking of rapidly
20 moving objects. Motion blur can be evident in fast moving sports such as basketball or
21 football.

22 23. The Televisions at issue here are all LCD televisions. The term LCD refers
23 to Liquid Crystal Display. In basic terms, this technology filters a white light to create
24 black and colored images. Historically, response time, or the amount of time it takes for
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26 ² See <http://www.forbes.com/companies/vizio/> (last visited Nov. 20, 2014).

27 ³ Geoffrey Morriston, *What is a Refresh Rate*, CNET (October 8, 2012),

28 <http://www.cnet.com/news/what-is-refresh-rate/>.

1 the LCD to change color has hindered the ability to fight motion blur. But as LCD
2 technology has developed and evolved, LCD technology surrounding response time has
3 improved. Initial LCD televisions had a refresh rate of 60Hz (or 60 unique images per
4 second). But a few years ago, LCDs hit the market with higher refresh rates. These
5 started at 120Hz, though now, they are available in 240Hz and beyond.

6 24. The increased refresh rate (120Hz and higher) was introduced by
7 manufacturers as a means of reducing the motion blur problem traditionally suffered by
8 LCDs.

9 25. The logical question arises when one is aware that the fastest rate of
10 recording of images for television occurs at 60 unique images per second: how can a
11 television produce *more* than the original number of unique images per second found in
12 the original? The answer is a technology called Motion Interpolation.

13 26. Motion Interpolation refers to a process by which a television receives
14 successive images and creates a unique image (or images) to insert between them:

16 ORIGINAL IMAGE SEQUENCE



19 MOTION INTERPOLATED SEQUENCE



23 27. The foregoing illustration demonstrates the manner in which technology
24 permits the creation of *unique* images. If original image sequence above was at 60Hz,
25 the motion interpolated sequence would be at 120Hz. In other words, the processor of
26 the television is creating a new *unique* image for every image originally broadcast.

27 28. Using Plaintiff's Vizio E500i-B1 as an example, Defendant states that the
28 television has "A super-fast 120Hz refresh rate..." This statement, like Defendant's

1 statements concerning all the Televisions is incorrect. Plaintiff's television actually
2 only displays 60 *unique* images per second, not 120.

3 29. Rather than paying to integrate motion interpolation technology and
4 provide accurate representations of the actual Hertz of its Televisions, Vizio uses an
5 inferior, less expensive, backend technology to create more *non-unique* images, or
6 simply misstates the refresh rate altogether.

7 30. One inferior technology Vizio utilizes to overstate the actual Hertz of the
8 televisions is scanning backlight.

9 31. Scanning backlight is a simple technology that displays the *same* image
10 twice in rapid succession with an unperceivable instant of black between the identical
11 images.

12 32. In this way, Vizio is claiming to provide a 120Hz display, but is really
13 providing nothing more than a 60Hz display displayed twice. The reality is, as Vizio
14 well knows, a television (falsely) marketed as possessing 120Hz is worth more in the
15 marketplace than one that is honestly advertised as 60Hz. Vizio has deliberately taken a
16 dishonest route to increase sales and pad the technical specifications of its Televisions.

17 33. While many average consumers may not have the technical aptitude to look
18 beyond a basic comparison of a television's advertised statistics, the same cannot be
19 said of technology writers, who have begun to bring to light the dishonest tactics
20 challenged here. For example, the respected technology review resource CNET has
21 published articles detailing this fabrication, such as "Fake refresh rates: Is your TV
22 really 120Hz? In an effort to keep prices down and sales up, TV companies are pushing
23 TVs with 'fake' refresh rates. Know your terms and tech to make sure you're really
24 getting what you think you're paying for." In an article entitled "Beware Of Phony
25 LCD HDTV Refresh Rates" the well-known technology website HDGuru, described the
26 issue as follows: "Buyers beware: top TV makers are quietly substituting industry
27 standardized refresh rate specification with their own artificial rate numbers, deceiving
28

1 prospective buyers into purchasing an HDTV over a possibly better performing (but
2 more honestly labeled) competing model.”

3 34. In short, by engaging in the aforementioned misleading and dishonest
4 conduct, Defendant is precluding consumers from making an apples to apples
5 comparison when comparing Vizio’s Televisions to competing brands. Defendant Vizio
6 engages in this confusing and manipulative marketing scheme to trick consumers into
7 purchasing LCD televisions with the belief that they are receiving higher refresh rates
8 than they actually are.

9 35. Average consumers, relying on Vizio’s advertisement can and did
10 reasonably believe they were purchasing products with the actual and true refresh rates
11 that were advertised for the Televisions, when they were, in fact, being willfully and
12 deliberately misled by Defendant.

13 **CLASS ACTION ALLEGATIONS**

14 36. Plaintiff brings this action on his own behalf, and on behalf of the
15 following Classes pursuant to FED. R. CIV. P. 23(a), 23(b)(2), and/or 23(b)(3).
16 Specifically, the Classes consist of each of the following:

17 **National Class:**

18 All persons or entities in the United States who purchased one or more
19 Televisions from November 1, 2010 until the present.

20 Or, in the alternative,

21 **Maine Class:**

22 All persons or entities in Maine who purchased one or more Televisions from
23 November 1, 2010 until the present.

24 37. Together, the National and Maine Classes shall be collectively referred to
25 herein as the “Class.” Excluded from the Class are Defendant, its affiliates, employees,
26 officers and directors, persons or entities that purchased the Class Vehicles for
27 purposes of resale, and the Judge(s) assigned to this case. Plaintiff reserves the right to
28 modify, change or expand the Class definition after conducting discovery.

1 38. Numerosity: The Class is so numerous that joinder of all members is
2 impracticable. While the exact number and identities of individual members of the
3 Class are unknown at this time, such information being in the possession of Defendant
4 and obtainable by Plaintiff only through the discovery process, Plaintiff believes that
5 the Class consists of hundreds of thousands, if not millions, of persons and entities that
6 were deceived by Defendant's conduct.

7 39. Existence and Predominance of Common Questions of Fact and Law:
8 Common questions of law and fact exist as to all members of the Class. These
9 questions predominate over the questions affecting individual Class members. These
10 common legal and factual questions include, but are not limited to:

- 11 a. whether Defendant misrepresented the refresh rate in the Televisions;
- 12 b. whether Defendant's conduct violated the Maine Unfair Trade Practices
13 Act;
- 14 c. whether Defendant's conduct violated the California Unfair Competition
15 Law;
- 16 d. whether Defendant's conduct violated the California False Advertising
17 Law;
- 18 e. whether Defendant's conduct violated the California Consumers Legal
19 Remedies Act;
- 20 f. whether Plaintiff and Class members are entitled to monetary damages
21 and/or other remedies and, if so, the nature of any such relief; and
- 22 g. whether the Court may apply the law of the State of California to the
23 entire Class because Defendant's conduct emanated from California.

24 40. Typicality: All of Plaintiff's claims are typical of the claims of the Class
25 since each Television was advertised with the same type of false and/or misleading
26 statements, regardless of model or production year. Plaintiff and all members of the
27 Class sustained monetary and economic injuries including, but not limited to,
28 ascertainable losses arising out of Defendant's wrongful conduct. Plaintiff is

1 advancing the same claims and legal theories on behalf of himself and all absent Class
2 members.

3 41. Adequacy: Plaintiff is an adequate representative because his interests do
4 not materially or irreconcilably conflict with the interests of the Class that he seeks to
5 represent, he has retained counsel competent and highly experienced in complex class
6 action litigation, and he intends to prosecute this action vigorously. The interests of the
7 Class will be fairly and adequately protected by Plaintiff and his counsel.

8 42. Superiority: A class action is superior to all other available means of fair
9 and efficient adjudication of the claims of Plaintiff and members of the Class. The
10 injury suffered by each individual Class member is relatively small in comparison to
11 the burden and expense of individual prosecution of the complex and extensive
12 litigation necessitated by Defendant's conduct. It would be virtually impossible for
13 members of the Class individually to effectively redress the wrongs done to them.
14 Even if the members of the Class could afford such individual litigation, the court
15 system could not. Individualized litigation presents a potential for inconsistent or
16 contradictory judgments. Individualized litigation increases the delay and expense to
17 all parties and to the court system presented by the complex legal and factual issues of
18 the case. By contrast, the class action device presents far fewer management
19 difficulties, and provides the benefits of single adjudication, economy of scale, and
20 comprehensive supervision by a single court. Members of the Class can be readily
21 identified and notified based on, *inter alia*, Defendant's records and databases.

22 43. Defendant has acted, and refused to act, on grounds generally applicable to
23 the Class, thereby making appropriate final injunctive and equitable relief with respect
24 to the Class as a whole.

25 44. California's substantive laws may be constitutionally applied to the claims
26 of Plaintiff and the National Class under the Due Process Clause, 14th Amend., § 1,
27 and the Full Faith and Credit Clause, art. IV., § 1, of the U.S. Constitution. California
28 has significant contact, or significant aggregation of contacts, to the claims asserted by

1 Plaintiff and all Class members, thereby creating state interests that ensure that the
2 choice of California state law is not arbitrary or unfair. Specifically, Defendant's
3 headquarters and principal place of business are located in California, and upon
4 information and belief, the conduct that gave rise to Plaintiff's claims emanated from
5 California.

6 **VIOLATIONS ALLEGED**

7 **COUNT I**

8 **VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW,**
9 **BUSINESS AND PROFESSIONS CODE § 17200, *et seq.***
10 **(On Behalf of the National Class)**

11 45. Plaintiff re-alleges and incorporates by reference the allegations contained
12 in all preceding paragraphs of this Class Action Complaint as though set forth fully
13 herein.

14 46. California Business & Professions Code § 17200, *et seq.* prohibits acts of
15 "unfair competition", which is defined by Business & Professions Code § 17200 as
16 including any "any unlawful, unfair or fraudulent business act or practice"

17 47. Defendant has engaged in unfair competition and unfair, unlawful or
18 fraudulent business practices by the conduct, statements, and omissions described
19 above, and by concealing and misleading Plaintiff and Class members concerning the
20 actual refresh rates of the Televisions.

21 48. These acts and practices have also deceived Plaintiff and are likely to
22 deceive persons targeted by such statements and omissions. In failing to disclose
23 material facts concerning the refresh rates of the Televisions, Defendant breached its
24 duties to disclose these facts, violated the UCL, and caused injuries to Plaintiff and
25 Class members. The omissions and acts of concealment by Defendant pertained to
26 information material to Plaintiff and Class members in that statements concerning the
27 refresh rates would have been likely to deceive them based on a reasonable consumers'
28 expectations and assumptions.

49. The injuries suffered by Plaintiff and Class members are also greatly

1 outweighed by any potential countervailing benefit to consumers or to competition.
2 Nor are they injuries that Plaintiff and Class members should or could have reasonably
3 avoided.

4 50. Plaintiff seeks to enjoin further unlawful, unfair and/or fraudulent acts or
5 practices by Defendant, to obtain restitutionary disgorgement of all monies and
6 revenues generated as a result of such practices, and all other relief allowed under CAL.
7 BUS. & PROF. CODE § 17200.

8 **COUNT II**
9 **VIOLATION OF THE CALIFORNIA FALSE ADVERTISING LAW, BUSINESS**
10 **AND PROFESSIONS CODE § 17500, *et seq.***
11 **(On Behalf of the National Class)**

12 51. Plaintiff re-alleges and incorporates by reference the allegations contained
13 in all preceding paragraphs of this Class Action Complaint as though set forth fully
14 herein.

15 52. In violation of California Business & Professions Code § 17500, *et seq.*,
16 Defendant has disseminated or caused to be disseminated deceptive advertising
17 misrepresentations, omissions and practices as described herein. These statements are
18 actionable violations of § 17500 in that Defendant expressly states that the Televisions
19 have attributes which they do not possess.

20 53. Defendant's advertising misrepresentations, omissions, and practices made
21 in connection with the sale of the Televisions are unfair, deceptive and/or misleading
22 within the meaning of California Business & Professions Code § 17500, *et seq.* These
23 representations are likely to, and did, deceive reasonable consumers such as Plaintiff
24 Larsen.

25 54. In making and disseminating the statements alleged herein, Defendant
26 knew or should have known that the statements were and are misleading or likely to
27 mislead for the reasons set forth above.

28 55. As detailed above, Plaintiff suffered injury in fact and a loss of money or
property as a result of Defendant's acts and practices, which violate § 17500, *et seq.*

56. Pursuant to California Business & Professions Code § 17535, Plaintiff and members of the Class seek, and are entitled to:

- a. an order enjoining Defendant from continuing to make false and misleading statements concerning the Televisions;
- b. restitution and disgorgement of any and all excessive amounts paid to Defendant or its agents;
- c. equitable relief pursuant to CAL. CIV. PROC. CODE § 384;
- d. pre- and post-judgment interest at the highest rate allowable by law; and
- e. payment of attorney's fees and costs pursuant to, *inter alia*, CAL. CIV. PROC. CODE § 1021.5, the common fund and private attorney general doctrines.

57. As a result of Defendant's violations of the false advertising statute, Plaintiff and Class members are entitled to equitable relief as the Court deems appropriate.

COUNT III
VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT
CALIFORNIA CIVIL CODE § 1750 *et seq.*
(On Behalf of the National Class)

58. Plaintiff re-alleges and incorporates by reference the allegations contained in all preceding paragraphs of this Class Action Complaint as though set forth fully herein.

59. This cause of action is brought pursuant to the California Consumers Legal Remedies Act (“CLRA”), Civil Code section 1750 *et seq.* Plaintiff brings this action on his own behalf and on behalf of the Class members, all of whom are similarly situated consumers within the meaning of CAL. CIV. CODE. § 1781.

60. The acts and practices described in this Complaint were intended to result in the sale of goods, specifically televisions, in consumer transactions. Defendant has violated, and continues to violate, the CLRA, CAL. CIV. CODE § 1770, including but not limited to subdivisions (a)(5), (a)(7), and (a)(16) by:

1 a. Representing that the Televisions have characteristics, as described herein,
2 which they do not have.

3 b. Representing that the Televisions are of a particular standard or quality,
4 when they are of another.

5 c. Representing that the Televisions were supplied in accordance with
6 previous representations, when they were not.

7 61. Plaintiff and the Class members have suffered damage as a result of these
8 violations.

9 62. Defendant, directing such conduct from its headquarters in this judicial
10 district, misled consumers and concealed material facts concerning the Televisions even
11 though Defendant was well aware of the true facts when Plaintiff purchased his
12 Television.

13 63. Defendant's misrepresentations and omissions described in the preceding
14 paragraphs were at a minimum made without the use of reasonable procedures adopted
15 to avoid such errors.

16 64. Defendant, directly or indirectly, has engaged in substantially similar
17 conduct with respect to Plaintiff and each member of the Class.

18 65. Unless Defendant is enjoined from engaging in such wrongful actions and
19 conduct in the future, members of the consuming public will be further damaged by
20 Defendant's conduct.

21 66. At this time, Plaintiff only seeks injunctive relief. Contemporaneous with
22 the filing of this Class Action Complaint, Plaintiff has sent a demand letter to Defendant
23 pursuant to CAL. CIV. CODE § 1782. If Defendant refuses to provide the relief
24 demanded by Plaintiff on behalf of himself and the Class, Plaintiff will amend his
25 complaint to seek all available relief under the CLRA.

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COUNT IV
VIOLATION OF THE MAINE UNFAIR TRADE PRACTICES ACT
(On Behalf of the Maine Class)

67. Plaintiff re-alleges and incorporates by reference the allegations contained in all preceding paragraphs of this Class Action Complaint as though set forth fully herein.

68. Plaintiff asserts this cause of action on behalf of himself and the other members of the Class.

69. This cause of action is brought pursuant to the Maine Unfair Trade Practices Act, ME. REV. STAT. ANN. tit. 5, § 205 *et seq.*

70. The Maine Unfair Trade Practices Act declares unlawful all “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce...”

71. Under the Maine Unfair Trade Practices Act, Defendant’s misleading representations regarding their refresh rates are unfair, deceptive and unconscionable.

72. In the course of misrepresenting the refresh rates of the Televisions to consumers and inflating prices to reflect these misrepresentations, Defendant has engaged in unfair and deceptive acts and practices in trade or commerce in violation of ME. REV. STAT. ANN. tit. 5, § 207.

73. Defendant violated the § 207 by inflating the prices of the Televisions under the guise of higher quality refresh rate televisions.

74. Defendant violated the § 207 by failing to disclose to consumers the true refresh rates of the Televisions.

75. Defendant violated § 207 by failing to charge consumers the fair market value for the Televisions because of the inflated prices justified by misrepresentations of the refresh rates.

76. Defendant’s acts and practices as alleged in the foregoing paragraphs were false, misleading, deceptive, and unfair to consumers, in violation of the Maine Unfair Trade Practices Act.

1 77. Plaintiff and Class members relied on Defendant's misrepresentations. Had
2 Defendant disclosed the true refresh rates of the Televisions, Plaintiff and Class
3 members would not have purchased them, or would have paid significantly less for
4 them.

5 78. As a direct and proximate result of Defendant's deceptive, fraudulent, and
6 unfair practices, Plaintiff and Class members have suffered injury in fact and/or actual
7 damages in an amount to be determined at trial.

8 79. Plaintiff, on behalf of himself and all others similarly situated, demands
9 judgment against Defendant. At this time Plaintiff seeks only injunctive relief pursuant
10 to the Maine Unfair Trade Practices Act. Contemporaneous with the filing of this
11 complaint, Plaintiff has served a demand letter pursuant to ME. REV. STAT. ANN. tit. 5, §
12 213.1-A. If Defendant does not provide appropriate relief to Plaintiff and the Class,
13 Plaintiff will amend this Class Action Complaint to seek all available remedies under
14 the Maine Unfair Trade Practices Act.

15
16 **COUNT V**
BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING
17 **(On Behalf of the National Class)**

18 80. Plaintiff re-alleges and incorporates by reference the allegations contained
19 in all preceding paragraphs of this Class Action Complaint as though set forth fully
20 herein.

21 81. Defendant has a duty of good faith and fair dealing with respect to their
22 dealings with consumers, including Plaintiff and the Class members.

23 82. There is an implied duty of good faith and fair dealing in every contract,
24 and Defendant had an implied duty to ensure that their marketing materials and other
25 representations regarding the quality of its refresh rates were not false and misleading.

26 83. Defendant knows that the refresh rate is a primary motivating factor in
27 consumers' purchase decisions.

28 ///

84. Defendant breached the covenant of good faith and fair dealing by engaging in deceptive and misleading representations of the quality of its refresh rates, and inflating the prices due to the higher claimed refresh rates.

85. Defendant acted recklessly, maliciously, in bad faith, and without good cause, thereby preventing Plaintiff and the Class from receiving their reasonably expected benefits of their purchases.

86. Plaintiff and Class members relied to their detriment upon misleading assertions and conduct of Defendant and such reliance may be presumed based on the Defendant's unlawful conduct.

87. As a direct and proximate result of Defendant's deceptive, fraudulent, and unfair practices, Plaintiff and Class members have suffered injury in fact and/or actual damages in an amount to be determined at trial.

88. Plaintiff, on behalf of himself and all others similarly situated, demands judgment against Defendant for damages and declaratory relief.

COUNT VI
COMMON LAW FRAUD
(On Behalf of the National Class)

89. Plaintiff re-alleges and incorporates by reference the allegations contained in all preceding paragraphs of this Class Action Complaint as though set forth fully herein.

90. Defendant made material misstatements of fact to Plaintiff and Class members regarding the refresh rates of the Televisions. As a result, Plaintiff and the Class were fraudulently induced to purchase the Televisions with false and inflated refresh rates.

91. These misstatements made by Defendant were made with knowledge of their falsity, and with the intent that Plaintiff and members of the Class would rely upon them.

1 92. As described herein, Defendant fraudulently created artificial reflections of
2 refresh rates for the Televisions that effectively prevented purchasers from making
3 appropriate comparisons.

4 93. To further its scheme, Defendant fraudulently inflated the prices of the
5 Televisions to reflect its misrepresentations of the refresh rates in the Televisions.

6 94. At the time Defendant made these misrepresentations and concealments,
7 and at the time Plaintiff and Class members purchased the LCD televisions, Plaintiff
8 and the Class were unaware of the falsity of these misrepresentations, and reasonably
9 believed them to be true.

10 95. In making these representations, Defendant knew they were false and
11 intended that the Plaintiff and Class members would rely upon such misrepresentations.

12 96. Plaintiff and Class members did in fact rely upon Defendant's
13 misrepresentations concerning the refresh rate of the Televisions.

14 97. As a direct and proximate result of Defendant's deceptive, fraudulent, and
15 unfair practices, Plaintiff and Class members have suffered injury in fact and/or actual
16 damages in an amount to be determined at trial.

17 98. Plaintiff, on behalf of himself and all others similarly situated, demands
18 judgment against Defendant for damages and declaratory relief.

19
20 **COUNT VII**
21 **NEGLIGENT MISREPRESENTATION**
 (On Behalf of the National Class)

22 99. Plaintiff re-alleges and incorporates by reference the allegations contained
23 in all preceding paragraphs of this Class Action Complaint as though set forth fully
24 herein.

25 100. Under the circumstances alleged, Defendant owed a duty to Plaintiff and
26 Class to provide them with accurate information regarding the true refresh rates of the
27 Televisions.

28 ///

1 101. Defendant represented to Plaintiff and Class members that by purchasing
2 the Televisions, they would be enjoying higher refresh rates than they actually received.

3 102. Defendant's representations, as described herein, were false, negligent and
4 material.

5 103. Defendant negligently made these misrepresentations with the
6 understanding that Plaintiff and Class members would rely upon them.

7 104. Plaintiff and Class members did in fact reasonably rely upon these
8 misrepresentations and concealments made by Defendant.

9 105. As a direct and proximate result of Defendant's negligent actions, Plaintiff
10 and Class members have suffered injury in fact and/or actual damages in an amount to
11 be determined at trial.

12 106. Plaintiff, on behalf of himself and all others similarly situated, demands
13 judgment against Defendant for damages and declaratory relief.

14
15 **COUNT VIII**
16 **COMMON COUNTS/ASSUMPSIT**
17 **(On Behalf of the National Class)**

18 107. Plaintiff re-alleges and incorporates by reference the allegations contained
19 in all preceding paragraphs of this Class Action Complaint as though set forth fully
20 herein.

21 108. As Plaintiff and the Class show just grounds for recovering money to pay
22 for benefits Defendant received from them, they have a right to restitution at law
23 through an action derived from the common-law writ of assumpsit by implying a
24 contract at law, or a quasi-contract as an alternative to a claim for breach of contract.

25 109. Plaintiff and members of the Class conferred a benefit upon Defendant by
26 purchasing Televisions from Defendant.

27 110. Defendant had knowledge that this benefit was conferred upon it.

28 111. Defendant, having received such benefits, is required to make restitution

1 as the circumstances here are such that, as between the two, it is unjust for Defendant to
2 retain such monies based on the illegal conduct described above. Such money or
3 property belongs in good conscience to Plaintiff and the Class members and can be
4 traced to funds or property in Defendant's possession. Plaintiff and Class members
5 have unjustly enriched Defendant through payments and the resulting profits enjoyed
6 by Defendant as a direct result of such payments. Plaintiff's and Class members'
7 detriment and Defendant's enrichment were related to and flowed from the conduct
8 challenged in this Complaint.

9 112. An entity that has been unjustly enriched at the expense of another is
10 required to make restitution to the other. Under common law principles recognized in
11 claims of common counts, assumpsit, and quasi-contract, as well as principles of unjust
12 enrichment, under the circumstances alleged herein it would be inequitable for
13 Defendant to retain such benefits without paying restitution or damages therefor.
14 Defendant should not be permitted to retain the benefits conferred via payments to be
15 received from and/or paid by Plaintiff and Class members as a result of such
16 transactions, and other remedies and claims may not permit them to obtain such relief,
17 leaving them without an adequate remedy at law.

18
19 **COUNT IX**
20 **BREACH OF EXPRESS WARRANTY**
(On Behalf of the National Class or, Alternatively the Maine Class)

21 113. Plaintiff re-alleges and incorporates by reference the allegations contained
22 in all preceding paragraphs of this Class Action Complaint as though set forth fully
23 herein.

24 114. Vizio expressly warranted that its Televisions had certain, specific refresh
25 rates.

26 115. Vizio breached these express warranties by selling Televisions that did not
27 have these specified refresh rates, thereby injuring Plaintiff and similarly situated Class
28 members.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and members of the Class, respectfully requests that this Court:

- A. Determine that the claims alleged herein may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and issue an order certifying one or more Classes as defined above;
- B. Appoint Plaintiff as the representative of the Class and his counsel as Class counsel;
- C. Award all actual, general, special, incidental, statutory, and consequential damages to which Plaintiff and Class members are entitled;
- D. Award pre-judgment and post-judgment interest on such monetary relief;
- E. Grant appropriate injunctive and/or declaratory relief;
- F. Award reasonable attorneys' fees and costs; and
- G. Grant such further relief that this Court deems appropriate.

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Dated: November 24, 2014

By: /s/ John P. Fiske

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