

SECOND AMENDED CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement (“Agreement”) is made by and between plaintiff Jeffrey Koenig (“Class Representative”) and the members of the certified Class which he represents (collectively with the Class Representative, “Plaintiffs”), on the one hand, and defendant VIZIO, Inc. (“Defendant”), on the other, in the action entitled *Jeffrey Koenig, et al. v. VIZIO, Inc.*, Case No. BC 70266 (the “Action”), pending in the Superior Court of California, County of Los Angeles (the “Court”).

1. RECITALS

A. On April 30, 2018, the Class Representative filed the Action alleging that Defendant’s representations that its LCD televisions had a “120Hz Effective Refresh Rate” or “240Hz Effective Refresh Rate” violated (i) the Unfair Competition Law (“UCL”), Business and Professions Code, § 17200 *et seq.*, (ii), the False Advertising Law (“FAL”), Business and Professions Code, § 17500 *et seq.*, and (iii) the Consumer Legal Remedies Act (“CLRA”), Civil Code, § 1770.

B. On August 24, 2020, the Court issued its ruling granting class certification of the Class Representative’s claims against Defendant.

C. Plaintiff and Defendant prepared for and engaged in a formal, full-day mediation on December 7, 2020, with an experienced mediator, Barbara Reeves, Esq. This mediation was preceded by a full day, in person mediation with the Honorable George H. King on October 3, 2019.

D. The Parties have conducted substantial formal discovery and investigation in connection with the claims asserted in the Action. The Parties have propounded substantial written discovery, made substantial productions of documents, and researched and briefed the relevant legal and factual issues arising from all the claims that are alleged in the Action. Approximately seventeen depositions have been taken in this Action not counting depositions of people deposed more than once in this case. Settlement Class Counsel also conducted third-party interviews. The Parties’ discovery efforts and prior mediations enabled the Parties to evaluate class wide exposure

and their probability of prevailing at trial. Since the mediations, the parties have exchanged additional information that allowed them to further negotiate important terms of the relief herein.

E. The Court set the Action for trial starting March 29, 2023.

F. It is the intention of the Parties to settle and dispose of, fully and completely, all claims set forth in the Action, subject to the Court granting preliminary and final approval. Defendant denies that it has engaged in any unlawful activity or has any liability to anyone under the claims asserted in the Action, or that the claims raised in the Action are appropriate for certification. Nothing in this Agreement is intended or shall be construed as an admission by Defendant of any liability or wrongdoing. The Parties have entered into this Agreement with the intention of avoiding further disputes and litigation with the attendant inconvenience, expenses, and risks.

2. DEFINITIONS

As used in this Agreement and all related documents, the following terms have the following meanings:

A. “**Class Counsel**” means Crueger Dickinson LLC, Milberg Coleman Bryson Phillips Grossman PLLC, Hudock Law Group S.C, and Nelson & Fraenkel LLP.

B. “**Class Period**” means April 30, 2014, through final judgment.

C. “**Claim(s)**” or “**Claim Form(s)**” means the claim form submitted by a Settlement Class Member, in the form attached hereto as “**Exhibit C**”, to receive a Settlement Award pursuant to Section III. Each Settlement Class Member must attest under penalty of perjury that they qualify as a member of the Settlement Class, that they purchased a VIZIO Television during the Class Period, and the information supplied in the Claim Form is true and correct to the best of the Settlement Class Member’s knowledge. For a Claim to be considered valid, each Settlement Class Member must enter the following information into the Claim Form: (1) Television model number(s), (2) approximate date(s) of purchase, and (3) the place(s) of purchase (selling retailer name and state of purchase). For online purchases, the place of purchase is the Settlement Class Member’s state of residence at the time of the purchase. Additionally, for a Claim to be considered

valid, each Settlement Class Member must provide “proof of purchase” concurrently with the Claim Form by submitting one (1) of the following:

1. A copy of the receipt(s) of the Television purchase (must identify Television model number, date of purchase, and selling retailer, and if an online purchase, your state of residence); or
2. The serial number of the Television(s); or
3. A picture of the Television(s) serial number(s); or
4. A statement under penalty of perjury that the Settlement Class Member sold, donated, gave away, or recycled the Television(s), with a statement including the TV model number, approximate date and location of purchase, and approximate date of disposal or sale.

D. “**Claim Deadline**” means the date by which Claims must be submitted to be determined valid, which shall be seventy-five (75) days after the Notice Deadline.

E. “**Claim Period**” means the period in which Settlement Class Members may submit a Claim Form. The Claim Period begins on the Notice Deadline and expires on the Claim Deadline.

F. “**Claims Process**” means the process for Settlement Class Members’ submission of Claims, as described in Section III.

G. “**Class Notice**” means all types of notice that will be provided to the Settlement Class, as described in Section IV of the Agreement, and includes the Internet Media Publication Notice, Email Notice, as well as any additional notice that might be ordered by the Court.

H. “**Effective Date**” means the date on which the following have occurred: (1) the Court has entered the Final Approval Order and Judgment; and (2) the Court’s Judgment approving this Agreement becomes Final. Final shall mean the deadline for taking an appeal has passed, or, if there is an appeal of the Court’s Order Granting Final Approval and/or of any Order awarding or denying attorneys’ fees, costs, or service awards, the day after all appeals are fully and finally resolved in favor of final approval of the Agreement.

I. **“Email Notice”** means notice of the proposed Settlement to be provided to Settlement Class Members substantially in the form attached hereto as **“Exhibit A”**.

J. **“Fairness Hearing”** or **“Final Approval Hearing”** means the hearing scheduled by the Court to consider: (a) whether to finally approve this Agreement; (b) Settlement Class Counsel’s application for Attorneys’ Fees, Expenses, and Class Representative Service Awards; and (c) the issuance of such other rulings as are contemplated by this Agreement or as modified by any subsequent mutual agreement of the Parties in writing and approved by the Court. The Parties will request that the Court schedule the Final Approval Hearing at least forty-five (45) days after the Claims Deadline.

K. **“Final Approval”** means the date the Court finally approves the Settlement of this Action, including but not limited to, the terms and conditions of this Agreement.

L. **“Final Approval Order”** means the order and judgment that the Court enters upon finally approving the Settlement in connection with the Fairness Hearing, the proposed forms of which are attached hereto as **“Exhibit E”** and **“Exhibit F.”**

M. **“Internet Media Publication Notice”** means notice of the proposed Settlement to be provided to Settlement Class Members under Section IV.C. of the Agreement. The proposed Internet Media Publication Notice is attached hereto as **“Exhibit G.”** If the Parties are unable to agree to the method of publicizing said Notice, subject to the provisions of Section 7.C, the Parties shall submit the areas of disagreement to the Court.

N. **“Long Form Notice”** means notice of the proposed Settlement to be provided to Settlement Class Members substantially in the form attached hereto as **“Exhibit B”**.

O. **“Notice Deadline”** or **“Notice Date”** means the date on which the notice described in Section 7 of the Agreement is first issued, which shall be no later than twenty-one (21) calendar days following entry of Preliminary Approval.

P. **“Exclusion Deadline”** means the date forty-five (45) calendar days after the Notice Deadline.

Q. **“Parties”** or **“Party”** means the Plaintiffs and Defendant.

R. **“Preliminary Approval”** means the date the Court preliminarily approves the Settlement of the Action, including but not limited to, the terms and conditions of this Agreement.

S. **“Preliminary Approval Order”** means the order to be submitted to the Court in connection with the preliminary approval hearing on the Settlement, the proposed form of which is attached hereto as **“Exhibit D”**.

T. **“Released Claims”** means all claims to be released pursuant to Section III.C of this Agreement.

U. **“Settlement Administrator”** means the third-party agent or administrator agreed to by the Parties and appointed by the Court. The Parties agree that, subject to the Court’s approval, AB Data, Ltd. shall be retained to implement the Class Notice and Claims administration requirements of this Agreement.

V. **“Settlement Award”** means a payment to an eligible Settlement Class Member pursuant to Section IV.C of this Agreement. The Settlement Awards will be set at Seventeen Dollars (\$17 USD) per valid Claim and subject to *pro rata* increase or decrease, depending on the number of all approved Claims submitted, as described in Section IV.C.

W. **“Settlement Class”** means all individuals who purchased a VIZIO television in California in the Class Period that was advertised as having a “120Hz Effective Refresh Rate” or “240Hz Effective Refresh Rate.” Excluded from the Settlement Class are all persons who: (i) validly opted out pursuant to the Court-approved notice parties provided following certification; (ii) validly opt out of the Settlement in a timely manner as provided in this Agreement; (iii) governmental entities; (iv) counsel of record (and their respective law firms) for the Parties; (v) Defendant and any of its parents, affiliates, subsidiaries, and all its respective employees, officers, and directors; (vi) the presiding judge in the Action or judicial officer presiding over the matter, and all of their immediate families and judicial staff; and (vii) any natural person or entity that entered into a release with Defendant prior to the Effective Date concerning the Televisions.

X. **“Settlement Class Member(s)”** means any member of the Settlement Class.

Y. “**Settlement Website**” means the website to be established by the Settlement Administrator for purpose of providing notice, Claim Forms, and other information regarding this Agreement, as described in Section IV.B.

Z. “**Television(s)**” means a VIZIO-branded television falling within the Settlement Class definition; a model list is set forth in “**Exhibit I.**”

AA. “**Website Notice**” means the notice made available on the Settlement Website pursuant to Section 7 of this Agreement, including the Long Form Notice.

3. Certification of Settlement Class

For Settlement purposes only, the Parties consent to and agree to the conditional, amended certification of the class previously certified by the Court on August 24, 2020 to be certified as the Settlement Class, pursuant to Code of Civil Procedure section 382. Defendant supports certification of the Settlement Class for settlement purposes only. In the event the Court does not approve all terms of the Agreement, or if the Agreement is voluntarily or involuntarily terminated for any reason, then the Parties agree that certification of the Settlement Class, amending the class certified by the Court on August 24, 2020, shall be void and all Parties hereto shall be restored to their respective positions as of the date of this Agreement, and Defendant has not and shall not be deemed to have waived any opposition or defenses it has to any aspect of the claims asserted herein, including whether those claims are amenable to class-based treatment.

In the event the Settlement is not preliminarily approved, the Parties agree to resume settlement discussions in good faith for at least 14 days. If after 14 days, or a longer period requested by the Parties and approved by the Court, the Parties have not agreed to amended settlement terms, then the Parties agree to provide the Court with a proposed trial date and all pre-trial deadlines shall be reset by the Court.

4. Relief to the Settlement Class.

In consideration of the mutual covenants and promises set forth herein, and subject to Court approval, the Parties agree as follows:

A. Injunctive Relief. Defendant agrees to the following injunctive relief: for new VIZIO-branded television models sold after the date the Court enters the Final Approval Order, Defendant shall refrain from advertising or representing such televisions as having an “effective refresh rate” measured in hertz (Hz), including “120Hz Effective Refresh Rate” or “240Hz Effective Refresh Rate.” VIZIO shall not be obligated to recall or modify labeling for any VIZIO-branded television model that has already been sold or distributed to a third party. This stipulated injunction shall remain in effect in perpetuity, or until such time as VIZIO seeks relief from the Court based on good cause shown.

B. Enhanced Service and Limited Warranty Package for Settlement Class Members. Defendant agrees to establish and provide Settlement Class Members who have not timely excluded themselves access to a service and limited warranty package conservatively valued at \$25.00 per Settlement Class Member , described in “Exhibit H.”

C. Claim Process. Defendant agrees to establish a non-reversionary Settlement Fund of Three Million Dollars (\$3,000,000) cash against which all Settlement Class Members who do not timely exclude themselves may submit a claim for \$17 for each Television subject to potential *pro rata* increase or decrease as described below. Notwithstanding anything to the contrary herein, in no event will Defendant be obligated to pay more than the Settlement Fund to any Settlement Class Member who submits a timely claim.

1. Settlement Class Members must make a Claim for a Settlement Award by submitting a valid Claim Form to the Settlement Administrator via a web form on the Settlement Website during the Claim Period. Settlement Class Members may, at their option, mail or fax a paper Claim Form, which will be accepted upon receipt as valid by the Settlement Claims Administrator if the claim is otherwise valid. Claims may be made for up to seven televisions per residential address. Additionally, no more than seven televisions may be claimed by a Settlement Class Member.

2. Defendant shall have the option and the opportunity, but not the obligation, to verify Television serial numbers or model numbers for any Claim submitted or to be determined

valid. The Settlement Administrator will use adequate and customary procedures and standards to prevent the payment of fraudulent claims. This may include measures such as using a class member identifier to access and file claims and/or validating claims against Defendant's records. The Settlement Administrator shall have the right to audit claims, and the Settlement Administrator may request additional information from Settlement Class Members submitting claims. If any fraud is detected or reasonably suspected, the Settlement Administrator may request further information from the Settlement Class Member or deny claims, subject to the ultimate oversight by the Court. The Settlement Administrator shall have sole authority to approve or deny all claims, and the Settlement Administrator's decision shall be final and not be subject to appeal.

3. If the total amount of valid claims would exceed the Settlement Fund, the Settlement Awards will be reduced *pro rata* so that the total payment in the aggregate for all Settlement Awards does not exceed \$3 million. If the total amount of Settlement Awards would not exhaust the Settlement Fund, then (1) Settlement Awards will be increased *pro rata* up to \$50 per Settlement Award, and (2) any remaining funds in the Settlement Fund after all Settlement Awards are issued, less any funds necessary for any remaining Settlement Costs, will be awarded *cy pres* to Public Counsel, subject to court approval, so that the total payment in the aggregate for Settlement Awards equals \$3 million. For the avoidance of doubt, in no event will Defendant be obligated to pay out more than the Settlement Fund.

4. The Settlement Administrator shall provide weekly reports to counsel for Defendant and Plaintiffs stating the number of claims received, the number of claims preliminarily denied, and the number of claims preliminarily approved. Within **twenty-one (21) calendar** days after the close of the Claim Period, the Settlement Administrator shall provide the Parties with the total number of valid and timely Claims received and approved. The Settlement Administrator shall maintain records of all Claim Forms until ninety (90) days after all valid Claims have been finally resolved and the Settlement Administrator has issued payment to those Settlement Class Members who submitted valid Claims, and such records will be made available upon request to Defendant's counsel at the end of the ninety (90) day period. The Settlement Administrator also

shall provide such reports, declarations, and such other information to the Court as the Court may require or as Class Counsel or Defendant requests.

5. Within **fourteen (14) calendar days** of Final Approval, Defendant shall cause the \$3 million Settlement Fund to be paid by wire transfer into an escrow account established and administered by the Settlement Administrator, and which will be treated as a Qualified Settlement Fund within the meaning of 26 C.F.R. § 1.468B-1 (“Escrow Account”). If the Settlement does not reach the Effective Date, then the amount paid by Defendant into the Escrow Account (other than Court-approved settlement administration costs incurred by that date, pursuant to Section 5 below) shall within thirty (30) calendar days be returned to Defendant from the Escrow Account by the Settlement Administrator, along with any interest accrued thereon. For the sake of clarity, the parties agree that this means Defendants shall pay costs incurred by the Settlement Administrator even if the Court does not grant final approval.

6. Settlement Awards to Settlement Class Members who submit a valid Claim will be paid fourteen (14) calendar days after the Effective Date, or within seven (7) days of the completion of the deficiency review process, whichever is later. The Settlement Administrator will employ all due commercially reasonable speed to distribute claimed cash payments as set forth herein.

7. Settlement Class Members whose claims are not approved remain Settlement Class Members and are bound by all of the terms of the Final Approval Order to be entered in the Action and the releases provided for in this Agreement.

5. Reimbursement of Settlement Administration Expenses.

A. The Settlement Administrator has estimated that the cost of administering the Settlement, including providing notice and processing claims, will not exceed \$250,000, and Defendant agrees to reimburse the Settlement Administrator up to \$250,000 for its costs incurred in administering the Settlement. In no event will Defendant be obligated to pay more than the agreed cap of \$250,000 in costs incurred by the Settlement Administrator to administrator the Settlement.

B. Within **fourteen (14) calendar days** of Preliminary Approval, Defendant shall cause \$125,000 to be paid to the Settlement Administrator by wire transfer into the Escrow Account. Within fourteen (14) calendar days of Final Approval, Defendant shall cause the remaining costs of administration—not to exceed \$125,000—to be paid to the Settlement Administrator by wire transfer into said Escrow Account.

C. If this Agreement does not receive final Court approval or the Settlement does not reach the Effective Date, then the amount paid by Defendant into the Escrow Account for the administrative costs shall within thirty (30) calendar days be returned to Defendant from the Escrow Account by the Settlement Administrator, along with any interest accrued thereon, except for Court-approved settlement administrative costs incurred by that date. For the sake of clarity, the parties agree that this means Defendant shall pay Court-approved costs incurred by the Settlement Administrator even if the Court does not grant Final Approval.

6. Attorneys' Fees/Costs and Class Representative Enhancement.

A. Defendant understands that Settlement Class Counsel will file an application for an award of attorneys' fees and cost reimbursement in an amount not to exceed \$9,975,000 million. Defendant agrees not to object to such application up to such amount, and Settlement Class Counsel agrees to not file an application seeking more than such amount. For purposes of this Settlement only, Defendant agrees not to object to Plaintiff seeking attorneys' fees and cost reimbursement under the CLRA, Civil Code, § 1780(e) and Code of Civil Procedure, § 1021.5. Settlement Class Counsel shall file their fee and cost reimbursement application at least thirty (30) calendar days before the Final Approval Hearing. In the event that this Settlement does not receive Final Approval from the Court (or if a final approval order is reversed on appeal), no Party shall use this provision or the award of attorneys' fees, costs, and expenses for any purpose whatsoever in the Action or in any other action or proceeding.

B. Settlement Class Counsel will file an application for approval of payment of a Service Award to the Class Representative in an amount not to exceed Twenty-Five Thousand

Dollars (\$25,000.00). Settlement Class Counsel shall file the petition for a service award at least thirty (30) calendar days before the Final Approval Hearing.

C. Within **fourteen (14) calendar days** of Final Approval, Defendant shall cause an amount equal to the Court approved attorneys' fees, cost reimbursements, and service award to be paid by wire transfer into the Escrow Account. Any Court approved attorneys' fees, cost reimbursements, and service award shall be paid within **twenty-one (21) calendar days** of the Effective Date. Plaintiff and Class Counsel agree to provide Defendant all identification information necessary to effectuate the payment of the fees and costs including, but not limited to, Taxpayer Identification Number(s), and completed Internal Revenue Service Form(s) W-9.

7. NOTICE TO THE SETTLEMENT CLASS

The Settlement Administrator shall provide Class Notice in the forms approved by the Court, as detailed below, no later than the Notice Deadline.

A. Email Notice. The Settlement Administrator shall provide for Email Notice by sending an email substantially in the form of **Exhibit A** to the email addresses for Settlement Class Members identified by Defendant. Defendant is in possession of approximately 800,000 such email addresses. This contact information will be shared with the Settlement Administrator but not Class Counsel or any other party or individual.

B. Website Notice. The Settlement Administrator will establish and maintain the Settlement Website. The Settlement Website will be dedicated to the Settlement. On the Settlement Website will be posted the Long Form Notice, the Claim Form, a copy of this Agreement, the Preliminary Approval Order, and any other materials the Parties agree to include. The Settlement Website shall also provide for the straightforward and user-friendly online submission of Claim Forms, and instructions as to how to access the case docket or in person at any of the Court's locations. The Settlement Website shall also state the date of the Fairness Hearing, that the date may change without further notice, and that Settlement Class Members should be advised to check the Settlement Website or the Court's website to confirm that the date has not been changed. These documents and information shall be available on the Settlement

Website no later than the Notice Deadline and remain until 30 days after distribution of all Settlement Awards. The Parties agree the website and URL used will be the same as what was used in the prior notice program in this Action.

C. Internet Media Publication Notice. The Settlement Administrator shall implement an internet media effort of digital media advertising through Google Ads or a similar medium, to be distributed over desktop and mobile devices including tablets and smartphones, over a period of 30 days, targeting likely Settlement Class Members in California. To avoid excessively targeting certain potential Settlement Class Members, the Settlement Administrator will cap the frequency of digital ad views per unique user and exclude users who visit the case website from receiving subsequent digital ads. To the extent feasible, all banner and newsfeed ads will include embedded and trackable links to the case-specific website using Google Analytics tracking codes, providing a way to optimize ads based on traffic and conversions. The notice shall be substantially in the form of **Exhibit G**. To the extent not covered in this Agreement, the Parties will make all reasonable efforts to reach agreement concerning methods of publication for Internet Media Publication Notice, and the methods of publication used will be the same or similar as what was used in the prior notice program in this Action, subject to the above provision.

D. Toll-Free Number. The Settlement Administrator shall establish and host an automated case-specific toll-free number to allow Class Members to learn more and to request further information about the Action.

8. PROCEDURE FOR OBJECTING TO THE SETTLEMENT

Only Settlement Class Members may object to the Settlement. The Notice shall provide that Settlement Class Members who wish to object to the settlement, or any portion thereof, may do so either: (1) in writing; and (2) verbally at the Final Approval Hearing. A written objection should be sent to the Settlement Administrator (via U.S. mail, email or fax) no later than sixty (60) calendar days after the Notice Deadline. The Settlement Administrator will provide all written objections to Class Counsel and Defendants' counsel, who will then file them with the Court. The Court may at its discretion refuse to consider untimely written objections. Settlement Class

Members who wish to verbally object to the Settlement may do so by appearing (or having his or her attorney appear) at the Final Approval Hearing, either in person or remotely. No notice of appearance is required. Settlement Class Members who do not object, either in writing before the Final Approval Hearing or verbally at the Final Approval Hearing, shall be forever foreclosed from making any objection (whether by appeal or otherwise) to the Settlement, or any aspect of the Settlement, including, without limitation, the fairness, reasonableness or adequacy of the proposed Settlement.

9. PROCEDURE FOR REQUESTING EXCLUSION

Settlement Class Members who wish to exclude themselves from the Settlement must submit a Request for Exclusion (via U.S. mail, email, or fax) pursuant to the instructions in the Notice and such a request must be sent, or postmarked if sent by U.S. mail, no later than the Exclusion Deadline. A written Request for Exclusion must be signed by the potential Settlement Class Member (if by U.S. mail or fax) and include his or her name, address, and telephone number, and expressly state the desire to be excluded. A Request for Exclusion shall not be invalid for failure to provide all the requested information so long as the Settlement Administrator can ascertain the individual's status as a Settlement Class Member and the individual's desire to exclude himself or herself from the Settlement Class.

Any Settlement Class Member who does not provide the Settlement Administrator with a timely, written Request for Exclusion waives the right to do so in the future and shall be bound by all the terms and conditions of this Agreement, including the release of identified claims set forth hereinafter. In the event a potential Settlement Class Member submits a timely written Request for Exclusion but thereafter submits a timely and valid Claim Form, he or she will be deemed not to have excluded himself or herself from the settlement. In the event a potential Settlement Class Member submits a timely and valid Claim Form but thereafter submits a timely written Request for Exclusion, he or she will be deemed to have excluded himself or herself from the Settlement.

10. TERMINATION RIGHT.

In its sole discretion and at its sole option, Defendant has the unconditional right, but not the obligation, to terminate this Agreement if the total number of opt-outs exceeds 1,000 persons in the Settlement Class.

11. NO SOLICITATION OF SETTLEMENT OBJECTIONS OR EXCLUSIONS.

The Parties agree to use their best efforts to carry out the terms of this Settlement. At no time will any of the Parties or their counsel seek to solicit or otherwise encourage any Settlement Class Members to object to the Settlement or request exclusion from participating as a Settlement Class Member or encourage any Settlement Class Member to appeal from the final judgment.

12. PRELIMINARY APPROVAL OF SETTLEMENT

Following full execution of this Agreement, Plaintiffs shall seek preliminary approval of this settlement by the Court for entry of a Preliminary Approval Order. As part of the preliminary approval process, the Court shall be asked to approve, among other matters, the terms of the settlement, the method of providing notice, the Notice Package, the procedure for the calculation of settlement distributions, and scheduling of a hearing on final approval of the settlement and on Settlement Class Counsel's application for payment of attorneys' fees, costs, and expenses, and service award, as set forth herein.

13. FINAL APPROVAL OF SETTLEMENT

The Notice shall contain a date, time, and location for a "Final Approval Hearing." The Final Approval Hearing shall be held on a date approved by the Court no earlier than Forty-Five (45) calendar days after the Claim Deadline. The exact date, time, and location of the Final Approval Hearing shall be set forth in the Notice. At the Final Approval Hearing, Settlement Class Counsel shall request the Court to grant approval of the applications for attorneys' fees, costs reimbursement, service award, and the payment of the cost of administering the Settlement referred to in this Agreement.

14. RELEASE

A. Released Parties. “Released Parties” means the Defendant, each of its subsidiaries, and each of their present and former predecessors, successors, assigns, parent companies, divisions, executives, officers, directors, representatives, employees, stockholders, attorneys, and agents.

B. Released Claims. “Released Claims” means all claims, obligations, demands, actions, and causes of action of any kind or nature whatsoever, whether at law or equity, arising under federal, state, or local law, that Plaintiffs or Settlement Class Members ever had, now have, or may have against the Released Parties, that reasonably arise out of or reasonably relate to the facts and/or claims set forth in the Action during the Class Period, including the relief provided for in this Agreement, subject to any rights to enforce the Court’s Final Approval Order.

C. Release. In exchange for the consideration set forth in this Settlement Agreement, and upon the Effective Date of this Settlement Agreement, all Settlement Class Members who did not timely exclude themselves from this Settlement Agreement by filing a timely and valid Request for Exclusion, and each of their respective executors, administrators, representatives, agents, heirs, successors, assigns, trustees, guardians, corporations, and all those who claim through them or assert claims on their behalf, shall be deemed to have fully and forever released the Released Parties from all Released Claims. The Parties intend for the Released Parties that are not parties to this Agreement to be third-party beneficiaries of the release provided for by this paragraph. THIS RELEASE IS A GENERAL RELEASE, AND THE PARTIES INTEND AND AGREE THAT IT SHALL BE INTERPRETED, CONSTRUED AND ENFORCED AS SUCH. By granting preliminary and final approval of the settlement, the Court will have reviewed this Agreement and concluded that the Settlement is fair, reasonable and adequate.

D. California Civil Code Section 1542 Waiver. With respect to the Released Claims, the Parties stipulate and agree that, upon the Effective Date, Class Representative Jeffrey Koenig shall be deemed to have, and by operation of the Final Judgment shall have, expressly waived and relinquished as to the Released Claims, to the fullest extent permitted by law, the provisions, rights

and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law that purports to limit the scope of a general release. Section 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The Parties stipulate and agree that the California Civil Code Section 1542 waiver does not apply to any other Settlement Class Member.

15. COMMUNICATIONS ABOUT THE SETTLEMENT

The Parties and their counsel agree not to contact any media organization about the settlement and further agree that if they are contacted by a media organization, then they will only state that this matter has settled, and they may direct the organization to the Settlement Website and court filings for further information. Nothing herein shall prevent Settlement Class Counsel from communicating with the Settlement Class regarding the settlement, settlement claims, or matters related to the settlement or claims process as described herein.

16. UNCASHED SETTLEMENT AWARDS

To the extent Settlement Awards are provided by check instead of electronically (if any), the expiration date for settlement checks will be 180 calendar days from the date the settlement checks are issued, unless otherwise extended by agreement of the Parties. Un-cashed settlement checks may be reissued where appropriate, including where the Settlement Class member states that he or she never received the check, in which case the Settlement Administrator will stop payment on the uncashed check and re-issue the check. Any funds remaining because of un-cashed checks shall escheat to the State of California as unclaimed funds pursuant to California Code of Civil Procedure § 1510, *et seq.*

17. MUTUAL FULL COOPERATION

The Parties agree to cooperate fully with each other to accomplish the terms of this Agreement, including but not limited to, execution of such documents and the taking of such other action as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Agreement. As soon as practicable after execution of this Agreement, Class Counsel, with the assistance and cooperation of Defendant and its counsel, shall take all necessary steps to secure the Court's final approval of this Agreement. Defendant agrees that Defendant will not attempt to discourage Settlement Class Members from filing claims.

18. NO ADMISSION

This Agreement is not to be construed or deemed as an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant. Defendant denies all liability for claims asserted in the Action and denies the claims are appropriate for class treatment. Each of the Parties has entered into this Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses. This Agreement is a settlement document and shall be inadmissible in evidence in any proceeding, action, arbitration, or hearing, including without limitation any litigation or regulatory proceeding or action, to establish liability. The preceding sentence shall not apply to an action or proceeding to approve or enforce this Agreement.

19. NOTICES

Unless otherwise specifically provided, all notices, demands or other communications in connection with this Agreement shall be in writing and shall be deemed served on the date of mailing by United States registered or certified mail, return receipt requested, or email with read-receipt requested addressed as follows:

<u>For The Class</u>	<u>For Defendant</u>
Adam Edwards 800 South Gay St. Ste 1100 Knoxville, TN 37929 aedwards@milberg.com	Hyongsoon Kim 4 Park Plaza Ste 1900 Irvine, CA 92614 kimh@akingump.com

20. NULLIFICATION OF AGREEMENT

In the event: (a) the Court does not enter the Preliminary Approval Order; (b) the Court does not finally approve the settlement as provided herein which becomes final and not subject to any appeals; (c) the settlement does not become final for any other reason, this Agreement shall be null and void and any order or judgment entered by the Court in furtherance of this settlement shall be treated as void ab initio. In such event, the Parties hereto and any funds to be awarded under this settlement shall be returned to their respective statuses as of the date and time immediately prior to the execution of this Agreement, and the Parties shall proceed in all respects as if this Agreement had not been executed. The Court's approval of attorneys' fees and costs, or their amount and payment to Class Representative is not a condition of the Settlement, and its rulings on those terms will not give rise to a right to terminate.

21. RETURN OF DOCUMENTS AND INFORMATION

The Parties agree that none of the documents and information provided to them by the opposing Party and marked as confidential under the protective order shall be used for any purpose other than prosecution of the Action. No later than ten (10) calendar days after the Effective Date, the Parties shall destroy or return to the opposing Party the original and all copies of any documents that opposing Party produced or provided and marked as confidential under the protective order. Should a Party elect to destroy those documents, the Party shall certify under penalty of perjury that such documents have been destroyed.

Nothing in the previous paragraph shall be interpreted to require the destruction of, or bar outside counsel for either party from retaining in their files, (i) one copy of all deposition

transcripts, including exhibits, in this matter, consistent with the Protective Order, and (ii) a copy of all documents filed with the court, including any exhibits.

22. REPRESENTATIONS AND WARRANTIES

Each party to this Agreement represents and warrants that they have not heretofore assigned or transferred, or purported to, or will assign or transfer, any of the claims released pursuant to this Agreement to any other person and that they are fully entitled to compromise and settle same.

23. CALIFORNIA LAW

All questions with respect to the construction of this Agreement and the rights and liabilities of the Parties hereto shall be governed by the laws of the State of California applicable to agreements to be wholly performed within the State of California.

24. OWN COUNSEL

Each party hereto acknowledges that they have been represented by counsel of their own choice throughout all of the negotiations which preceded the execution of this Agreement and in connection with the preparation and execution of this Agreement.

25. FURTHER ACTS AND DOCUMENTS

The Parties and counsel for the Parties hereto agree to do such acts and execute all such documents necessary to effectuate the intent of this Agreement.

26. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument and will be effective upon execution by all Parties. Facsimile signatures shall be deemed original signatures for all purposes.

27. HEADINGS

The headings contained in this Agreement are for reference only and are not to be construed in any way as a part of the Agreement.

28. ENTIRE AGREEMENT

This Agreement represents the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral and written agreements and discussions. Each of the Parties covenants that they have not entered into this Agreement as a result of any representation, agreement, inducement, or coercion, except to the extent specifically provided herein. Each party further covenants that the consideration recited herein is the only consideration for entering into this Agreement and that no promises or representations of another or further consideration have been made by any person. This Agreement may be amended only by an agreement in writing duly executed by all Parties hereto and, if amended after Preliminary Approval is granted, approved by the Court.

29. BINDING EFFECT

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and to their respective heirs, assigns and successors-in-interest.

30. DRAFTING

Each party hereto has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any party as drafter of this Agreement.

31. SEVERABILITY

In the event any covenant or other provision herein is held to be invalid, void or illegal, the same shall be deemed severed from the remainder of this Agreement and shall in no way affect, impair or invalidate any other covenant, condition or other provision herein. If any covenant, condition or other provision herein is held to be invalid due to its scope or breadth, such covenant, condition or other provision shall be deemed valid to the extent of the scope or breadth permitted by law.

32. INCORPORATION OF EXHIBITS

All exhibits attached to this Agreement are hereby incorporated by reference as though set forth fully herein and are a material part of this Agreement.

33. AUTHORITY

Each party hereto warrants and represents that each of the persons or entities executing this Agreement is duly empowered and authorized to do so.

34. ADMINISTRATION OF SETTLEMENT AND COMPLIANCE

The Court shall have continuing jurisdiction to resolve any dispute which may arise with regard to the terms and conditions of this Agreement as set forth herein.

35. TAX CONSEQUENCES

No opinion concerning the tax consequences of this Settlement to any Settlement Class Member is given or will be given by Defendant, Defendant's counsel, or Class Counsel, nor is any Party or their counsel providing any representation or guarantee respecting the tax consequences of the Settlement as to any Settlement Class Member. The Class Notice will direct Settlement Class Members to consult their own tax advisors regarding the tax consequences of the Settlement and any tax reporting obligations with respect thereto. Each Settlement Class Member is responsible for their taxes or tax reporting and other obligations respecting the Settlement, if any.

36. SETTLEMENT TIMELINE

For the Court's and the Parties' convenience, the pertinent deadlines contained in this Agreement are listed below.


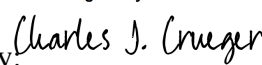
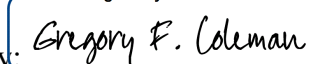
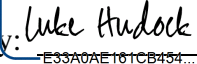
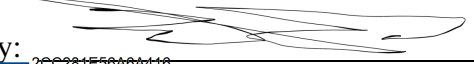
<u>Event</u>	<u>Deadline</u>
Notice Deadline	No later than 21 days after Preliminary Approval
Deadline for Exclusion or Objection	60 days after Notice Deadline
Claim Deadline	75 days after Notice Deadline
Motion for Final Approval	30 days prior to date of Fairness Hearing
Written Responses to Motion for Final Approval	15 days prior to date of Fairness Hearing

Plaintiff's and Defendant's Responses to Objections	5 days prior to date of Fairness Hearing
Fairness Hearing	At least 45 days after Claim Deadline (or such other date set by the Court)

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the dates indicated below:

[Signatures on following pages.]

CLASS REPRESENTATIVES AND CLASS COUNSEL:

<p>Dated: November ____, 2023 11/9/2023</p>	<p>DocuSigned by:  By: <u>9542D69B53114DA...</u> Jeffrey Koenig Class Representative</p>
<p>Dated: November ____, 2023 11/9/2023</p>	<p>CRUEGER DICKINSON LLC</p> <p>DocuSigned by:  By: <u>D278E97E23D1407...</u> Charles J. Crueger Attorneys for Plaintiffs</p>
<p>Dated: November ____, 2023 11/9/2023</p>	<p>MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN PLLC</p> <p>DocuSigned by:  By: <u>A4A82C927EF6421...</u> Gregory F. Coleman Attorneys for Plaintiffs</p>
<p>Dated: November ____, 2023 11/9/2023</p>	<p>HUDOCK LAW GROUP S.C</p> <p>DocuSigned by:  By: <u>E33A0AE101CB434...</u> Luke Hudock Attorneys for Plaintiffs</p>
<p>Dated: November ____, 2023 11/9/2023</p>	<p>NELSON & FRAENKEL LLP</p> <p>DocuSigned by:  By: <u>2CC281E50A0A410...</u> Gretchen M. Nelson Attorneys for Plaintiffs</p>

DEFENDANT AND COUNSEL FOR DEFENDANT:

Dated: November ____, 2023

VIZIO, INC.

By: _____

Dated: November ____, 2023

AKIN GUMP STRAUSS HAUER & FELD LLP

By: _____

Hyongsoon Kim
Attorneys for Defendant

EXHIBIT A

**TO ALL PERSONS WHO PURCHASED VIZIO TELEVISIONS IN THE STATE OF CALIFORNIA AFTER
APRIL 30, 2014**

Read This Notice Carefully. You Could Receive Benefits From This Class Action Settlement.

This Court-Authorized Notice describes your rights and gives information about the proposed settlement. This notice is only a summary. Details of the settlement are available at [WEBSITE] or by writing to or calling the Settlement Administrator at the address or toll-free number below.

What Is This Case About? The case is entitled *Jeffrey Koenig, et al. v. VIZIO, Inc.*, Case No. BC 70266 and is pending in the Superior Court of California, County of Los Angeles. The plaintiff alleges that VIZIO, Inc.'s advertisement of its televisions as having a "120Hz Effective Refresh Rate," or "240Hz Effective Refresh Rate" was false and deceptive. VIZIO denies that it misled consumers, disputes that it has done anything wrong, and believes its advertising was truthful and accurate. The two sides disagree on whether Plaintiff and the Settlement Class could have prevailed at trial. By entering into the Settlement, VIZIO has not conceded the truth or validity of any of the claims against it.

The lawsuit seeks money damages, as well as attorneys' fees and costs and a court order requiring VIZIO to stop the advertising practices. The Court has not ruled on the merits.

Who Is A Settlement Class Member? The Settlement defines the Settlement Class as all individuals who purchased a VIZIO television in California in the Class Period that was advertised as having a "120Hz Effective Refresh Rate" or "240Hz Effective Refresh Rate." The Class Period extends from April 30, 2014 through final judgment, [date].

What Are The Terms Of The Settlement? VIZIO has agreed to (i) stop the advertising practices; (ii) provide enhanced services and a limited one-year warranty to all Settlement Class Members; and (iii) pay \$3,000,000 ("Settlement Awards") in full and complete settlement and release of all claims, as described in the Settlement Agreement. The Settlement Awards will be up to \$50 per valid Claim and subject to *pro rata* decrease, depending on the number of all approved Claims submitted. If Settlement Award funds remain, those funds will be donated to a court approved *cy pres* recipient. The enhanced services and limited warranty, valued at no less than \$25 per television, will be available to all Settlement Class Members regardless of whether they make a claim for a Settlement Award. Class Counsel will ask the Court to approve an award of up to \$9,975,000 for attorneys' fees and costs, \$250,000 for notice and settlement administration costs, and \$25,000 to the Class Representative, all to be paid separately and apart from the relief provided to Settlement Class Members.

How Do You Make A Claim? You do not have to make a Claim to the Settlement Administrator to obtain the enhanced service or limited warranty; the terms and conditions for obtaining those services are available at [website]. To receive a cash Settlement Award, you must submit a signed and completed Claim Form online to the Class Action Settlement Administrator by **no later than** [redacted]. Claim Forms may also be submitted to the Class Action Settlement Administrator by mail if postmarked **no later than** [redacted]. The Claim Form is available at [website]. Claims may be made for up to five televisions per residential address. Additionally, no more than five televisions may be claimed by a Settlement Class Member.

What Are My Other Options? If you do not want to be bound by the Settlement, you may opt out of the Settlement by sending a request for exclusion to the Class Action Settlement Administrator **no later than** [redacted]. If you exclude yourself from the Settlement, you will not receive any money or other benefits from the Settlement. If you stay in the Settlement (i.e., do not exclude yourself from the Settlement), you may object to the Settlement by writing to the Court explaining why you do not like the Settlement by **no later than** [redacted]. You will be bound by the Settlement if your objection is rejected. If you do nothing (i.e., submit no Claim Form or request for exclusion), you remain eligible to receive enhanced service or limited warranty benefits from the Settlement, and you will be bound by any judgment approving the Settlement and will give up any right to sue VIZIO or related parties for any claims relating to VIZIO's marketing at issue in this case.

Final Approval Hearing. The Court will hold a hearing in this case to consider whether to approve the Settlement on [redacted], at [redacted] a.m., in Department 014 at the Superior Court of California for the County of Los Angeles, located at 312 N. Spring St., Los Angeles, 90012. The date of the Final Approval Hearing may change without further notice to the class. Class members should be advised to check the settlement website to confirm that the date has not been changed and whether the hearing may be held virtually.

THIS NOTICE IS ONLY A SUMMARY. MORE INFORMATION ABOUT THE LAWSUIT AND THE PRECISE TERMS AND CONDITIONS OF THE SETTLEMENT IS AVAILABLE AT [website], OR WRITE OR CALL THE CLASS ACTION SETTLEMENT ADMINISTRATOR AT [redacted] OR () - (TOLL-FREE), OR CLASS COUNSEL WHOSE CONTACT INFORMATION CAN BE FOUND AT <https://milberg.com/>, or <https://cruegerdickinson.com/>

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

EXHIBIT B

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Jeffrey Koenig, et al. v. VIZIO, Inc., Case No. BC 70266, in the Superior Court of California, County of Los Angeles

If you bought a new VIZIO television in the State of California after April 30, 2014, you may be entitled to payment from a class action settlement.

The Superior Court for the State of California authorized this notice.

It is not junk mail, spam, an advertisement, or a solicitation from a lawyer.

You are not being sued. Please read this notice carefully because it explains your rights.

- The Settlement resolves a lawsuit alleging that VIZIO’s advertisement of its Televisions as having a “120Hz Effective Refresh Rate” or “240Hz Effective Refresh Rate” was false and misleading. VIZIO denies all of Plaintiff’s allegations and contends that it properly labeled each television with the correct “Hz” specification.
- The Settlement defines the Settlement Class as all individuals who purchased a VIZIO television in California in the Class Period that was advertised as having a “120Hz Effective Refresh Rate” or “240Hz Effective Refresh Rate.” The Class Period extends from April 30, 2014 through Final Judgment, [date].
- The two sides disagree on whether Plaintiff and the Settlement Class could have prevailed at trial. By entering into the Settlement, VIZIO has not conceded the truth or validity of any of the claims against it.
- To resolve the lawsuit, Plaintiff and VIZIO, Inc. (“VIZIO”) have agreed to the following relief for the Settlement Class. VIZIO has agreed to (i) stop the advertising practices; (ii) provide enhanced services and a limited one-year warranty to all Settlement Class Members; and (iii) pay \$3,000,000 (“Settlement Awards”) in full and complete settlement and release of all claims.
- An attorneys’ fee award to be determined by the Court, notice and administration costs, and any incentive award to the Class Representatives to be determined by the Court will be paid separately and apart from the Settlement Awards.
- The Settlement Awards will be paid at up to \$50 per valid Claim and subject to *pro rata* decrease, depending on the number of all approved Claims submitted.
- Your legal rights may be affected whether you act, or don’t act. Read this Notice carefully.

Your Legal Rights and Options In This Settlement:

SUBMIT A CLAIM FORM	If you submit a valid Claim Form by [Claim Deadline], you will receive a payment, and will give up certain rights to sue VIZIO.
EXCLUDE YOURSELF FROM THE CASE	This is the only option that allows you to sue VIZIO on your own regarding the legal claims in this case, but you will not receive compensation or other benefits under the Settlement. The deadline

QUESTIONS? CALL [number] TOLL-FREE OR VISIT [WEBSITE]

	for excluding yourself is [Objection/Exclusion Deadline].
OBJECT TO THE SETTLEMENT	Write to the Court about why you do not like the Settlement. The deadline for objecting is [Objection/Exclusion Deadline].
DO NOTHING	If you do nothing, you will receive no money from the Settlement, but you may still be eligible to obtain the enhanced service or warranty. You will still give up certain rights to sue VIZIO.

- These rights and options—and the deadlines to exercise them—are explained in this Notice.
- The Court in charge of this case has still to decide whether to approve the Settlement. Compensation will be paid if the Court approves the Settlement and after appeals are resolved, if any.

BASIC INFORMATION

1. Why was this notice issued?

This notice was issued because a Court has certified the Settlement Class for settlement purposes only and your rights may be affected. If you bought a new VIZIO television after April 30, 2014 in California, you may have legal rights and options in this case. This Notice explains these issues. Judge Kenneth R. Freeman of the Superior Court of California, County of Los Angeles is overseeing this class action. The case is known as *Jeffrey Koenig, et al. v. VIZIO, Inc.*, Case No. BC 70266 (the “Action”). The person who sued is called the Plaintiff. The company he sued, VIZIO, Inc., is called the Defendant or VIZIO.

2. Why is this a class action?

In a class action, one or more people, called “Class Representatives” (in this case, Jeffrey Koenig), sue on behalf of all people who have similar claims. Together, these people are called a Class or Class Members. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class. Here, the Court has certified the Settlement Class for settlement purposes. More information about why this is a class action can be found in the Court’s Class Certification Order, which is available at [WEBSITE].

3. Why is there a settlement?

The Court did not decide in favor of Plaintiff or VIZIO. Plaintiff thinks he would have prevailed at trial. VIZIO thinks the Plaintiff would not have won anything from a trial. But there was no trial. Instead, both sides agreed to this Settlement. That way, both sides avoid the risk and cost of a trial, and the Class Members will receive compensation. The Class Representative and his attorneys think the Settlement is best for all Class Members.

THE CLAIMS IN THE LAWSUIT

4. What is the lawsuit about?

The lawsuit claims that VIZIO violated the California Consumers Legal Remedies Act, California’s False Advertising Law, and California’s Unfair Competition Law when it advertised certain of its Televisions as

having a “120Hz Effective Refresh Rate” or “240Hz Effective Refresh Rate.” VIZIO denies these claims. More information can be found in the Class Action Complaint, available at [WEBSITE].

MEMBERS OF THE SETTLEMENT CLASS

5. How do I know if I am a part of the Settlement Class?

The Court has certified the “Settlement Class” for settlement purposes. The Settlement Class is defined as:

All individuals who purchased a VIZIO television in California during the Class Period that was advertised as having a “120Hz Effective Refresh Rate” or “240Hz Effective Refresh Rate.”

The Class Period is April 30, 2014, through Final Judgment, [Date]. Excluded from the Settlement Class are all persons who: validly opt out of the Settlement in a timely manner; governmental entities; counsel of record (and their respective law firms) for the Parties; Defendant and any of its parents, affiliates, subsidiaries, and all its respective employees, officers, and directors; the presiding judge in the Action or judicial officer presiding over the matter, and all of their immediate families and judicial staff; and any natural person or entity that entered into a release with Defendant prior to the Effective Date concerning the Televisions.

If you are not sure whether you are a Settlement Class Member, or if have any other questions about the Settlement, visit the Settlement Website at [www.\[redacted\].com](http://www.[redacted].com), or call the toll free number for the Settlement Administrator, 1-800-000-0000. You may also write to the Settlement Administrator with questions addressed to *Koenig v VIZIO Settlement*, c/o A.B. Data, Ltd., P.O. Box 0000, Milwaukee, WI 53217.

THE SETTLEMENT BENEFITS

6. What does the Settlement provide?

The Settlement provides the following benefits to Settlement Class Members who have not timely excluded themselves:

A. Claim Process. VIZIO agrees to establish a non-reversionary Settlement Fund of Three Million Dollars (\$3,000,000) cash against which all Settlement Class Members who do not timely exclude themselves may submit a claim for up to \$50 for each Television subject to potential *pro rata* decrease depending on the number of all approved Claims submitted.

B. Enhanced Service and Warranty Package for Settlement Class Members. VIZIO agrees to establish and provide Settlement Class Members who have not timely excluded themselves access to a service and warranty package conservatively valued at \$25:

- 1) Phone service line, dedicated to providing picture quality settings optimization services for Settlement Class Members; and
- 2) Limited one-year warranty (regardless of current warranty status) for Settlement Class Members on picture quality issues experienced during display of content, as defined in the terms and conditions, with repair or replacement provided at VIZIO's option if issue is due to an identifiable defect in materials or workmanship when the product is used normally in accordance with VIZIO's user guides and manuals. The terms and conditions for the services and limited warranty are available at [website].

C. Injunctive Relief. Defendant agrees to the following injunctive relief: for new VIZIO-branded television models sold after the date the Court enters the Final Approval Order, Defendant shall refrain from labeling such televisions as having an "effective refresh rate" measured in hertz (Hz), including "120Hz Effective Refresh Rate" or "240Hz Effective Refresh Rate." VIZIO shall not be obligated to recall or modify labeling for any VIZIO-branded television model that has already been sold or distributed. This stipulated injunction shall remain in effect in perpetuity, or until such time as VIZIO seeks relief from the Court based on good cause shown.

7. How much will my payment be?

Your Settlement Award will depend on the number of valid Claims that Settlement Class Members submit. Settlement Awards are up to \$50 per valid Claim and may be subject to *pro rata* decrease, depending on the number of all approved Claims submitted. The \$3,000,000 Settlement Fund represents the maximum combined value of all Settlement Awards.

8. What am I giving up to stay in the Settlement Class?

In exchange for the monetary and other benefits provided in the Settlement, Settlement Class Members will fully and finally release the "Released Parties" (defined below) from the "Released Claims" (defined below). This means that if you are a Settlement Class Member and you do not timely request exclusion from the Settlement, you will no longer be able to sue the Defendant regarding any of the claims described in the Settlement Agreement. The Released Claims become effective only if the Settlement becomes Final and Defendant fully funds the maximum Settlement Amount in accordance with the Settlement.

"Released Claims" means all claims, obligations, demands, actions, and causes of action of any kind or nature whatsoever, whether at law or equity, arising under federal, state, or local law, that Plaintiff or Settlement Class Members ever had, now have, or may have against the Released Parties that reasonably arise out of or reasonably relate to the facts and/or claims set forth in the Action during the Class Period, including the relief provided for in the Settlement Agreement, subject to any rights to enforce the Court's Final Approval Order.

“Released Parties” means the Defendant, each of its subsidiaries, and each of their present and former predecessors, successors, assigns, parent companies, divisions, executives, officers, directors, representatives, employees, stockholders, attorneys, and agents.

The Settlement Agreement is available for review at the Settlement Website [www.\[redacted\].com](http://www.[redacted].com). The Settlement Agreement describes the Released Claims and the Released Parties with specific descriptions in necessary, accurate legal terminology, so read it carefully. The Settlement Website also contains the Complaint referenced in the Released Claims.

THE LAWYERS REPRESENTING YOU

9. Do I have a lawyer in this case?

Yes. The Court has appointed Milberg Coleman Bryson Phillips Grossman PLLC, Crueger Dickinson LLC, Hudock Law Group S.C, and Nelson & Fraenkel LLP, as Class Counsel to represent you and the Class in this case. These lawyers have experience handling similar cases. More information about these lawyers and their law firms is available at <https://milberg.com>, <https://cruegerdickinson.com> and <https://nflawfirm.com>

10. Should I get my own lawyer?

You do not need to hire your own lawyer because Class Counsel is representing you and all the other members of the Settlement Class. If you want someone other than Class Counsel to speak for you, you may hire your own lawyer at your own expense.

11. How will the cost of the lawsuit and Settlement be paid?

The Court has awarded, subject to final approval, \$9,975,000 in attorneys’ fees and costs, and up to \$250,000 in notice and administration costs, to be paid separately and apart from the Settlement Fund. The requested fees pay Class Counsel for investigating the facts, litigating the case, and negotiating the Settlement. The Court has awarded, also subject to final approval, payment of \$25,000 to Jeffrey Koenig for his services as Class Representative, to be paid separately and apart from the Settlement Fund. You are not personally responsible for any payments, and none of these payments will reduce the benefits available and paid to Settlement Class Members.

HOW TO APPLY FOR COMPENSATION

12. How can I get compensation under the Settlement?

You do NOT have to submit a Claim Form to be eligible for the enhanced service or warranty benefits.

You DO have to submit a Claim Form to obtain compensation of up to \$50 for each Television subject to potential *pro rata* decrease depending on the number of all approved Claims submitted. A Claim Form is available on the internet at [\[website\]](#). Read the instructions carefully, fill out the form, sign it, and submit it online no later than [\[Objection/Exclusion Deadline\]](#). You may also submit a Claim Form by mail if postmarked by no later than [\[Objection/Exclusion Deadline\]](#). Claims may be made for up to seven televisions per residential address. Additionally, no more than seven televisions may be claimed by a Settlement Class Member.

To receive a Settlement Award, Settlement Class Member must attest under penalty of perjury that they qualify as a member of the Settlement Class, that they purchased a VIZIO Television during the Class Period, and the information supplied in the Claim Form is true and correct to the best of the Settlement Class Member's knowledge. For a Claim to be considered valid, each Settlement Class Member must enter the following information into the Claim Form: (1) Television model number(s), (2) approximate date(s) of purchase, and (3) the place(s) of purchase (selling retailer name and state of purchase). For online purchases, the place of purchase is your state of residence at the time of the purchase.

Additionally, for a Claim to be valid, each Settlement Class Member must provide "proof of purchase" concurrently with the Claim Form by submitting one (1) of the following:

- A copy of the receipt(s) of the Television purchase (must identify Television model number, date of purchase, and selling retailer, and if an online purchase, your state of residence); or
- The serial number of the Television(s); or
- A picture of the identifying information of the Television(s); or
- A statement under penalty of perjury that the Settlement Class Member sold, donated, gave away, or recycled the Television(s), with a statement including the TV model number, approximate date and location of purchase, and approximate date of disposal or sale.

A list of VIZIO TV models in the Settlement Class is here: [\[insert\]](#).

13. When would I receive compensation?

The Court will hold a hearing on [\[Fairness Hearing Date\]](#) to decide whether to approve the Settlement. If the Court approves the Settlement, after that, there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. Everyone who sends in a Claim Form will be informed of the progress of the Settlement through information posted at [\[website\]](#). Please be patient.

EXCLUDING YOURSELF FROM THE SETTLEMENT

14. How do I get out of the Settlement?

If you do not want a Settlement Award under this Settlement, and you want to keep the right to sue VIZIO regarding its marketing that is the subject of the Action, then you must take steps to get out of the Settlement Class. This is called excluding yourself from, or opting out of, the Settlement Class.

To exclude yourself from the Settlement, you must send a request to the Class Action Settlement Administrator that (a) states your name, address, and phone number; (b) is personally signed by you (if by U.S. mail or fax); and (c) expressly state your desire to be excluded. A Request for Exclusion shall not be invalid for failure to provide all the requested information so long as the Settlement Administrator can ascertain your status as a Class Member and your desire to exclude himself or herself from the Settlement Class.

You must send your exclusion request no later than [\[Objection/Exclusion Deadline\]](#) to the Class Action Settlement Administrator at one of the following: [\[U.S. mail, email, and fax addresses\]](#)

15. If I do not exclude myself, can I sue Defendant for the same thing later?

No. If you do not exclude yourself, you give up any right to sue VIZIO for the claims that this Settlement resolves.

16. If I exclude myself, can I get compensation under this Settlement?

No. If you ask to be excluded, you will not get any compensation under the Settlement, and you cannot object to the Settlement.

OBJECTING TO THE SETTLEMENT

17. How do I tell the Court that I do not agree with the Settlement?

Any Settlement Class member may object to the proposed Settlement, or any aspect of it, including the amount attorneys' fees and expenses to be paid to Class Counsel or the amount of the Service Award to be paid to the Class Representative, either: (1) in writing; and (2) verbally at the final approval hearing. A written objection should be sent to the Settlement Administrator (via U.S. mail, email or fax) no later than **[insert 30 days before final approval hearing]** to the following address:

Koenig v VIZIO Settlement
c/o A.B. Data, Ltd., P.O. Box 0000 Milwaukee, WI 53217
[insert email address]
[insert fax number]

A written objection should contain: (1) the case name and case number of this Action (*Jeffrey Koenig, et al. v. VIZIO, Inc.*, Case No. BC 70266); (2) your full name, current address, and phone number; (3) facts indicating that you are a Settlement Class Member; (4) why you do not like the Settlement or any portion thereof; (5) the identity of any counsel who represent you, if any; and (5) your signature. While a failure to include any of this information will not invalidate your objection, including the information will assist the Court in understanding the basis for your objections.

Settlement Class Members who wish to verbally object to the Settlement may do so by appearing (or having his or her attorney appear) at the Final Approval Hearing, either in person or remotely. No notice of appearance is required.

Any Settlement Class Member who files or verbally raises an objection remains eligible to receive benefits from the Settlement, unless the Settlement Class Member submits a timely and valid request for exclusion. If the Court overrules any objections and grants final approval of the Settlement, any Settlement Class Member who submitted an objection but did not submit a timely and valid request for exclusion will be bound by the Settlement as approved by the Court, including the Released Claims. (See Section **[insert]** above.)

18. What is the difference between objections and excluding myself from the Settlement?

Objecting means telling the Court that you do not like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself from the Settlement means that you do not want to be part of the Settlement Class. If you exclude yourself, then you have no basis to object to the Settlement.

IF YOU DO NOTHING

19. What happens if I do nothing at all?

If you do nothing, you will remain a member of the Settlement Class and you will give up your rights to sue VIZIO; while you remain eligible to receive the enhanced service and warranty benefits, you will not receive any compensation because you must submit a valid Claim Form in order to receive compensation under this Settlement.

THE COURT'S FINAL APPROVAL HEARING

20. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing to decide whether to approve the Settlement. You may attend, and you may ask to speak at, the Final Approval Hearing. **If you intend to appear at the Final Approval Hearing it is important to visit the Los Angeles County Superior Court website at www.lacourt.org to determine whether there are any social distancing or Covid-19 related guidelines for in-person court appearances. If you have questions about the Settlement, you do not have to wait until the Final Approval Hearing to ask them. If you wish, you may contact the Settlement Administrator at 1-800-000-0000, visit the Settlement Website at [www.\[\] .com](http://www.[] .com), or contact Class Counsel as provided in Section [] above.**

The Court will hold a "Final Approval Hearing" on [date], at [] a.m./p.m., in Department 014 at the Superior Court of California for the County of Los Angeles, located at 312 N. Spring St., Los Angeles, 90012. The hearing may be moved to a different date, time and/or location without additional notice, but any change of date, time or location will be posted on the Settlement Website at [www.\[\] .com](http://www.[] .com). At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will also decide how much to pay Class Counsel for their fees and reimbursement of their expenses, Class Representative for his Service Award, the Settlement Administrator for the costs of administering the Settlement, and consider any objections to the amounts requested.

21. Do I have to come to the hearing?

No. Class Counsel will appear on behalf of the Settlement Class. But, you are welcome to come, or have your own lawyer appear, at your own expense.

22. May I speak at the hearing?

You, or any lawyer you retain, may ask the Court for permission to speak at the Final Approval Hearing. You cannot speak at the hearing if you excluded yourself from the Settlement.

GETTING MORE INFORMATION

23. Is this the entire Settlement?

No. This notice is only a summary of the proposed Settlement. More information about the lawsuit and the precise terms and conditions of the Settlement is available at [WEBSITE], or by calling toll-free [phone number], or by writing to VIZIO Class Action Administrator at [address], or by contacting Class Counsel at the information listed immediately below.

Milberg Coleman Bryson Phillips Grossman PLLC

Gregory Coleman
800 S. Gay Street, Suite 1100
Knoxville, Tennessee 37929
866.252.0878
gcoleman@milberg.com

Crueger Dickinson LLC

Benjamin Kaplan
4532 N. Oakland Ave.
Whitefish Bay, Wisconsin 53211
(414) 210-3868
bak@cruegerdickinson.com

Hudock Law Group S.C.

Luke Hudock
P.O. Box 83
Muskego, Wisconsin 53150
(414) 526-4906
lphudock@law-hlg.com

Please do not telephone the Court or the Court Clerk's Office to inquire about this Settlement or the Claims Process.

EXHIBIT C

VIZIO TV SETTLEMENT

CLAIM FORM

INSTRUCTIONS

This class action alleges that VIZIO's advertisement of its Televisions as having a "120Hz Effective Refresh Rate" or "240Hz Effective Refresh Rate" was false and misleading. VIZIO denies all of Plaintiff's allegations and contends that it properly labeled each television with the correct "Hz" specification.

You are a Settlement Class Member if you:

- During the Class Period (April 30, 2014, through Final Judgment, [date]), purchased a VIZIO television in California that was advertised as having a "120Hz Effective Refresh Rate" or "240Hz Effective Refresh Rate."

To be eligible for payment you must submit a valid Claim no later than [redacted], 202[redacted].

Settlement payments will be digitally sent to you via email. Please ensure you provide a current, valid email address and mobile phone number with your Claim submission. If the email address or mobile phone number you include with your submission becomes invalid for any reason, it is your responsibility to provide accurate contact information to the Settlement Administrator to receive a payment. When you receive the email and/or mobile phone text notifying you of your Settlement payment, you will be provided with a number of digital payment options, such as PayPal, Amazon, or a virtual debit card, to immediately receive your Settlement payment. You will also at that time have the option to request a paper check.

The information provided on this Claim Form will be used solely by the Court-approved Settlement Administrator for the purposes of administering the Settlement and will not be provided to any third party or sold for marketing purposes.

CLAIM FORM

NAME*

FIRST NAME LAST NAME

STREET ADDRESS

APT

CITY

STATE

ZIP*

MOBILE PHONE NUMBER*

XXX-XXX-XXXX

EMAIL ADDRESS*

VERIFY EMAIL ADDRESS*

Please ensure you provide a current, valid email address and mobile phone number with your Claim submission. If the email address or mobile phone number you include with your submission becomes invalid for any reason, it is your responsibility to provide the Settlement Administrator with a current, valid email address and mobile phone number for payment.

*Denotes required field

VIZIO TV INFORMATION

PURCHASE DATE

**TELEVISION MODEL
NUMBER**

**RETAILER TV
PURCHASED FROM**

**STATE OF
PURCHASE**

DOCUMENTATION

For a Claim to be considered valid, you must provide proof of purchase by submitting at least 1 of the following:

1. A copy of the receipt(s) of the Television purchase (must identify the Settlement Class Member's name, Television model number, date of purchase, and selling retailer, and if an online purchase, your state of residence); or
2. The serial number of the Television(s); or
3. A picture of the identifying information of the Television(s); or

4. A statement under penalty of perjury that the Settlement Class Member sold, donated, recycled, or gave away the Television(s), with a statement including the TV model number, approximate date and location of purchase, and approximate date of disposal or sale.

CERTIFICATION

By signing this Claim submission, I certify, under penalty of perjury, that the information included with this Claim submission is accurate and complete to the best of my knowledge, information, and belief. If I am submitting this Claim submission on behalf of a Claimant, I certify that I am authorized to submit this Claim submission on the individual's behalf. I am, or the individual on whose behalf I am submitting this Claim submission is, a member of the Settlement Class, and have not submitted a request to exclude myself, or "opt out of," the Settlement. I agree and consent to be communicated with electronically via email and/or mobile phone text (message & data rates may apply). I agree to furnish additional information regarding this Claim submission if so requested to do so by the Settlement Administrator.

SIGNATURE

DATE

	<i>mm/dd/yyyy</i>
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EXHIBIT D

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

JEFFREY KOENIG on Behalf of himself
and All Others Similarly Situated,

Plaintiffs,
v.
VIZIO, Inc.,

Defendant.

Case No.: BC702266
Hon., Kenneth R. Freeman, Dept. 14

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

DATE: INSERT, 2023
TIME: .insert
DEPT: SS 014

This matter came before the Court for hearing on Plaintiff’s unopposed Motion for Preliminary Approval of Class Action Settlement. The Court, having considered the papers submitted in support of the Motion, HEREBY ORDERS THE FOLLOWING:

1. The Court grants preliminary approval of the Settlement based upon the terms set forth in the Class Action Settlement Agreement (“Settlement Agreement”). Capitalized terms not otherwise defined in this Order shall have the definitions set forth in the Settlement Agreement.
2. The Court grants provisional certification of the Settlement Class pursuant to Code of Civil Procedure § 382 and California Rules of Court, Rule 3.769. On August 4, 2020, the Court issued its ruling granting class certification of the Class Representative’s claims against Defendant. (See Court’s Ruling and Order Re: Plaintiff’s Motion for Class Certification and

1 Applications to Seal (August 4, 2020) [hereinafter “Certification Order”].) For settlement
2 purposes only, the Court provisionally certifies the following Settlement Class:

3 all individuals who purchased a VIZIO television in California in the Class Period
4 that was advertised as having a “120Hz Effective Refresh Rate” or “240Hz
5 Effective Refresh Rate.

6 This definition of the Settlement Class is comprised of the same individuals in the class
7 the Court previously certified, and this definition does not change or undermine the
8 Court’s analysis and conclusions in the Certification Order. The Class Period is from
9 April 30, 2014, through Final Judgment. Excluded from the Settlement Class are all
10 persons who: (i) validly opted out pursuant to the Court-approved notice parties provided
11 following the Court’s Certification Order; (ii) validly opt out of the Settlement in a timely
12 manner as provided in the Settlement Agreement; (iii) governmental entities; (iv) counsel
13 of record (and their respective law firms) for the Parties; (v) Defendant and any of its
14 parents, affiliates, subsidiaries, and all its respective employees, officers, and directors;
15 (vi) the presiding judge in the Action or judicial officer presiding over the matter, and all
16 of their immediate families and judicial staff; and (vii) any natural person or entity that
17 entered into a release with Defendant prior to the Effective Date concerning the
18 Televisions.

19 3. The Court finds that the requirements for provisional certification of the
20 Settlement Class are met for the same reasons that the Court already set forth when granting
21 certification. Specifically, (a) joinder of all two million plus Settlement Class Members in a single
22 proceedings would be impracticable, if not impossible, because of their numbers and dispersion;
23 (b) the Settlement Class is defined by objective characteristics and common transactions and is
24 therefore ascertainable; (c) the claims being settled are the same as those the Court already
25 certified and, thus, they raise questions of law and fact common to the Settlement Class; (d) the
26 claims asserted by Plaintiff are typical of the claims of the Settlement Class that they seek to
27 represent for settlement purposes; (e) Plaintiff has fairly and adequately represented the interests
28 of the Settlement Class and will continue to do so; (f) Plaintiff and the Settlement Class are

1 represented by qualified, reputable counsel who are experienced in prosecuting class actions,
2 including those involving the practices alleged in this action; and (g) final relief is appropriate to
3 the Settlement Class as a whole. (Certification Order at pp. 37-64.)

4 4. The Court appoints Plaintiff Jeffrey Koenig as Class Representative and Milberg
5 Coleman Bryson Phillips Grossman, PLLC, Crueger Dickinson LLC, Hudock Law Group S.C,
6 and Nelson & Fraenkel LLP as Settlement Class Counsel.

7 5. The Court finds on a preliminary basis that the Settlement Agreement, which is
8 hereby incorporated in full by reference as part of this Order is within the range of reasonableness
9 of a settlement that could ultimately be given final approval. A trial court’s preliminary approval
10 of a class action settlement requires “[a determination] that ‘there is, in effect, ‘probable cause’ to
11 submit the proposal to members of the class and to hold a full-scale hearing on its fairness.’”
12 (*State of California v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 485 [quoting Manual for
13 Complex Litigation (Second), § 1.46].) The Court need only “scrutinize the proposed settlement
14 agreement to the extent necessary to reach a reasoned judgment that the agreement is not the
15 product of fraud or overreaching by, or collusion between, the negotiating parties, and that the
16 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” (*Wershba v.*
17 *Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245 [internal quotation marks omitted].)
18 Further, a “‘presumption of fairness exists where: (1) the settlement is reached through arm’s-
19 length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to
20 act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of
21 objectors is small.’ [Citation]” (*Ibid.* [quoting *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th
22 1794, 1802].)

23 6. The presumption of fairness applies here. The first three elements are clearly
24 satisfied. The parties reached the settlement only after trying to resolve the case with the
25 assistance of two different highly experienced mediators skilled in resolving complex class action
26 litigation and only after nearly five years of intensive discovery, investigation, and motion
27 practice. No evidence of collusion exists. Moreover, counsel for both Plaintiff and Defendant are
28 experienced in class action litigation and claims involving false advertising at issue here. The fact

1 that the case settled on the eve of trial and at such an advanced stage of the litigation, when the
2 parties had a clear view of the merits and potential risks, further weighs in favor of preliminary
3 approval. (*Chun-Hoon v. McKee Foods Corp.* (N.D. Cal. 2010) 716 F. Supp. 2d 848, 851–852
4 [“The parties have engaged in several years of litigation, including depositions, substantial
5 research, an interlocutory appeal and several motions. By the time the settlement was reached,
6 therefore, the litigation had proceeded to a point at which both plaintiffs and defendants ha[d] a
7 clear view of the strengths and weaknesses of their cases.”] [citations omitted].) The fourth
8 element—the percentage of objections—cannot be evaluated until final approval after Settlement
9 Class Members receive notice.

10 7. The Court finds that the Settlement Agreement is fair, adequate, and reasonable
11 and justifies authorizing notice to Settlement Class Members and setting a final approval hearing.
12 (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 93-94; *Kullar v. Foot Locker Retail, Inc.*
13 (2008) 168 Cal.App.4th 116, 133; *Dunk, supra*, 48 Cal.App.4th at p. 1807). Preliminary approval
14 of the class action settlement is also appropriate because the Court finds on a preliminary basis
15 that the relief outlined in the Settlement Agreement—injunctive relief regarding the advertising at
16 issue; enhanced service and a limited warranty for all Settlement Class Members; and the
17 opportunity for Settlement Class Members to obtain additional monetary relief in line with what
18 they could have obtained at trial—is fair, adequate, and well within the range of reasonableness.

19 8. The Court finds that the form and content of the proposed Class Notice and Claim
20 Form, as well as the distribution method provided for in the Settlement Agreement, are
21 reasonable and designed to fully satisfy due process and the requirements of the California Rules
22 of Court. The Settlement Agreement’s proposed notice plan is designed to reach as many
23 Settlement Class Members as possible and mirrors the notice plan used after class certification.
24 The Court accordingly authorizes and approves the proposed form, method, and timing of giving
25 notice to the Settlement Class of this action and the proposed Settlement as set forth in the
26 Settlement Agreement.

1 9. The proposed deadlines are also reasonable. Class members will have 60 days to
2 object or opt-out from the Settlement and will have 75 days after the date of entry of the Court
3 order granting Final Approval to submit his or her Claim Form to the Settlement Administrator.

4 10. The Court approves Plaintiffs' attorneys' fees and costs award of \$9,975,000
5 subject to final approval of the settlement.

6 11. The Court approves the Plaintiff enhancement fee of \$25,000 subject to final
7 approval of the settlement.

8 12. The Court appoints A.B. Data Ltd. as the Settlement Administrator.

9 13. The Court sets the Final Approval Hearing for _____, and orders the
10 implementation of the following schedule for further proceedings:

<u>Event</u>	<u>Deadline</u>
Notice Deadline	No later than 21 days after Preliminary Approval
Exclusion Deadline	60 days after Notice Deadline
Written Objections	60 days after Notice Deadline
Claim Deadline	75 days after Notice Deadline
Motion for Final Approval	30 days prior to date of Final Approval Hearing
Plaintiff's and Defendant's Responses to Objections	5 days prior to date of Final Approval Hearing

19
20 The Final Approval Hearing and related prior deadlines set forth above may, from time to
21 time, and without further notice to the Settlement Class Members (except those who have filed
22 timely and valid objections) be continued or adjourned by order of the Court.

23
24 **IT IS SO ORDERED.**

25 Dated: _____, 2023

26 _____
27 Honorable Kenneth R. Freeman
28 Judge of the Superior Court

EXHIBIT E

1 Charles J. Crueger, Esq. (Admitted PHV)
2 Erin K. Dickinson, Esq. (Admitted PHV)
3 Benjamin A. Kaplan (Admitted PHV)
4 **CRUEGER DICKINSON LLC**
5 4532 North Oakland Avenue
6 Whitefish Bay, WI 53211
7 Tel.: (414) 210-3886
8 Email: *cjc@cruegerdickinson.com*
9 *ekd@cruegerdickinson.com*
10 *bak@cruegerdickinson.com*

11 *Attorneys for Plaintiff and the Class*

12 SUPERIOR COURT OF CALIFORNIA

13 COUNTY OF LOS ANGELES

14 JEFFREY KOENIG on Behalf of himself
15 and All Others Similarly Situated,

16 Plaintiffs,

17 v.

18 VIZIO, Inc.,

19 Defendant.

Case No.: BC702266

Hon., Kenneth R. Freeman, Dept. 14

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

DATE: **INSERT**, 202**█**

TIME: **.insert**

DEPT: SS 014

20 This Motion for Final Approval of Class Action Settlement came on for hearing before
21 this Court, the Honorable Kenneth R. Freeman, presiding, on _____. The Court having
22 considered all submissions and arguments with respect to the Motion, the Court HEREBY
23 ORDERS THE FOLLOWING:

24 1. The Court has jurisdiction over the subject matter of this action, the Settlement
25 Class Representatives, the Settlement Class as defined in the Class Action Settlement Agreement
26 filed on November 13, 2023 (the "Settlement Agreement" or "Settlement"), and the Defendant.
27 Capitalized terms not otherwise defined in this Order shall have the definitions set forth in the
28 Settlement Agreement.

1 2. Pursuant to the Order Granting Preliminary Approval of Class Action
2 Settlement, the notice was provided to Settlement Class Members by electronic means. The
3 Class Notice informed Settlement Class members, including those who requested exclusion,
4 of: the material terms of the Settlement; their right to receive the benefits of the Settlement;
5 their right to object to the Settlement or to exclude themselves from the Settlement; and their
6 right to appear in person or by counsel at the Fairness Hearing and be heard regarding approval
7 of the Settlement. Adequate periods of time were provided by each of these procedures. There
8 were [no objections] or [there were _____ objections] to the Settlement from [any] or
9 _____] Settlement Class Member(s). The Court finds and determines that this notice procedure
10 afforded adequate protections to all members of the Settlement Class, including those who
11 requested exclusion, and provides the basis for the Court to make an informed decision regarding
12 approval of the Settlement. The Court finds and determines that the notice provided in this case
13 was the best notice practicable, which satisfied the requirements of law and due process.
14

15 3. _____ individuals have submitted valid and timely requests for exclusion and
16 those who have requested exclusion are identified on Exhibit __ to the declaration of the
17 Settlement Administrator. Those individuals are not bound by the terms of the Settlement.
18

19 4. The Court rules by separate Order on the request by the Settlement Class
20 Representatives and Settlement Class Counsel for service awards to the Settlement Class
21 Representatives and the request by Settlement Class Counsel for an award of fees and expenses,
22 including the costs of class administration (collectively, the “Fees, Awards, and Expenses”).
23

24 5. For purposes of the Settlement, the Court confirms its certification of the
25 Settlement Class, confirms Plaintiff Jeffrey Koenig as Class Representative and Milberg
26 Coleman Bryson Phillips Grossman, PLLC, Crueger Dickinson LLC, Hudock Law Group S.C,
27 and Nelson & Fraenkel LLP as Settlement Class Counsel. The Court concludes that Settlement
28

1 Class Counsel and the Settlement Class Representative have fairly and adequately represented
2 the Settlement Class with respect to the Settlement. Notwithstanding the certification of the
3 Settlement Class and appointment of the Settlement Class Representative for purposes of
4 effecting the Settlement, if this Order is reversed on appeal or the Agreement is terminated in
5 accordance with the provisions of the Agreement, the foregoing certification of the Settlement
6 Class and appointment of the Settlement Class Representatives shall be void and of no further
7 effect and the parties to the Settlement shall be returned to the status each occupied before entry
8 of the Preliminary Approval Order, without prejudice to any legal argument that any of the
9 parties to the Settlement might have asserted but for the Settlement.
10

11 6. The Court has considered the objections to the Settlement and [overrules them].

12 7. The Settlement is in all respects fair, reasonable, adequate, and proper and in the
13 best interests of the Settlement Class. In reaching this conclusion, the Court has considered a
14 number of factors, including: (1) the strength of Plaintiffs' case and Defendant's defenses; (2)
15 the risk, expense, complexity, and likely duration of the litigation; (2) the reaction of the
16 Settlement Class to the settlement; (3) the extent of discovery and stage of the proceedings; (4)
17 the experience and views of counsel; (5) the valuable changes in practice agreed to by the
18 parties under the terms of the Settlement; and (6) the range of reasonableness of the Settlement
19 fund to a possible recovery in light of all the attendant risks of litigation.
20

21 8. The Court finds that the Settlement has been reached as a result of informed and
22 non-collusive arm's-length negotiations. The Court further finds that the Parties have conducted
23 sufficient investigation, discovery and research, and their attorneys were able to reasonably
24 evaluate their respective positions.
25

26 9. The Settlement Agreement is not an admission by Defendant, nor is this Order a
27 finding of the validity of any allegations or of any wrongdoing by Defendant. Neither this Order,
28

1 the Settlement Agreement, nor any document referred to herein, nor any action taken to carry out
2 the Settlement Agreement, may be construed as, or may be used as, an admission of any fault,
3 wrongdoing, omission, concession, or liability whatsoever by or against Defendant.

4 10. The Court finds that the Settlement is fair, adequate, and reasonable and hereby
5 gives final approval to the Settlement.

6 11. Pursuant to the stipulated injunction in the Settlement Agreement, the Court
7 hereby enters the following injunctive relief: for new VIZIO-branded television models sold after
8 the date the Court enters the Final Approval Order, the Court enjoins Defendant from advertising
9 or representing such televisions as having an “effective refresh rate” measured in hertz (Hz),
10 including “120Hz Effective Refresh Rate” or “240Hz Effective Refresh Rate.” VIZIO shall not
11 be obligated to recall or modify labeling for any VIZIO-branded television model that has
12 already been sold or distributed to a third party. This stipulated injunction shall remain in effect
13 in perpetuity, or until such time as VIZIO seeks relief from the Court based on good cause
14 shown.
15

16 12. Pursuant to the Settlement Agreement, the Court also orders payment to be made
17 by the Settlement Administrator to the participating Settlement Class Members who submitted a
18 valid claim that was approved by the Settlement Administrator.
19

20 13. The Parties are hereby ordered to comply with the terms of the Settlement.

21 14. Nothing in this Order will preclude any action to enforce the Parties' obligations
22 under the Settlement or under this Order.
23

24 15. Pursuant to the Settlement, Settlement Class members who have not excluded
25 themselves from the Settlement are permanently barred from prosecuting the Released Claims
26 against the Released Parties under the Settlement.
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16. Without affecting the finality of this Order in any way, the Court retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation and enforcement of this Order and the Settlement.

17. The Court approves Plaintiffs’ attorneys’ fees and costs award of \$9,975,000.

18. The Court approves the Plaintiff enhancement fee of \$25,000.

19. The Parties will bear their own costs and attorneys' fees except as otherwise provided.

IT IS SO ORDERED.

Dated: _____

Honorable Kenneth R. Freeman
Judge of the Superior Court

EXHIBIT F

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

JEFFREY KOENIG on Behalf of himself
and All Others Similarly Situated,

Plaintiffs,
v.
VIZIO, Inc.,

Defendant.

Case No.: BC702266
Hon., Kenneth R. Freeman, Dept. 14

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

DATE: INSERT, 2023
TIME: insert
DEPT: SS 014

Pursuant to the Court’s Order Granting Final Approval of Class Action Settlement dated _____, (“Final Approval Order”):

IT IS ORDERED, ADJUDGED, AND DECREED that:

1. All capitalized terms used herein shall have the same meaning as defined in the Class Action Settlement Agreement (“Settlement” or “Settlement Agreement”) unless they are otherwise defined herein.
2. “Participating Settlement Class Members” mean those Settlement Class Members who have not timely elected to be excluded from the Settlement Class.

1 3. This Court has finally certified, for settlement purposes only, under California
2 Rule of Court 3.769(d), a Settlement Class that is defined as follows (except for persons
3 expressly excluded from the Settlement Class in the Settlement Agreement):

4 all individuals who purchased a VIZIO television in California in the Class Period that
5 was advertised as having a “120Hz Effective Refresh Rate” or “240Hz Effective Refresh
6 Rate.

7
8 The Class Period is from April 30, 2014, through Final Judgment.

9 4. All Participating Settlement Class Members and all Released Claims are covered
10 by and included within the Settlement Agreement and this Final Judgment.

11 5. The Court finally approves the settlement of this Action under the terms of the
12 Settlement Agreement and, having considered the matters required under applicable law
13 including the provisions of California Code of Civil Procedure § 382, finds that the Settlement is
14 in all respects fair, adequate, reasonable, and in the best interest of the Settlement Class,
15 especially in light of the fact that the Settlement Class, by and through their counsel, have
16 investigated the facts and law relating to the matters alleged in the Complaint, including through
17 extensive discovery, motion practice, legal research as to the sufficiency of the claims and
18 defenses, an evaluation of the risks associated with continued litigation, trial, and/or appeal,
19 including risks associated with class certification. The Settlement was reached as a result of
20 arm’s length negotiations between Settlement Class Counsel and counsel for Defendant.

21
22 Moreover, the Settlement confers substantial benefits, in the form of monetary and other relief,
23 upon the Settlement Class, without the costs, uncertainties, delays, and other risks associated
24 with continued litigation, trial, and/or appeal. In finding the Settlement fair, adequate, and
25 reasonable, the Court has also considered the number of exclusions from the Settlement,
26 objections by Settlement Class members, and the opinion of competent counsel concerning such
27
28

1 matters. [No objections to the Settlement have been filed.] or [The objections by __ Settlement
2 Class members are without merit and are overruled and denied in all respects.

3 6. Distribution of Notice directed to the Settlement Class members as set forth in the
4 Settlement Agreement has been completed in conformity with the Preliminary Approval Order.
5 The Notice provided due and adequate notice of the proceedings and of the matters set forth
6 therein, including the proposed Settlement, to all persons entitled to Notice, and the Notice and
7 its distribution fully satisfied the requirements of due process.
8

9 7. The Court hereby approves the Settlement, affirms the stipulated injunction set
10 forth in the Court's Final Approval Order, and directs the Parties to effectuate the Settlement and
11 to make payment to Participating Settlement Class Members according to the Settlement's terms
12 and as set forth in the Court's Final Approval Order.

13 8. The Settlement Class members listed on Exhibit 1 to this Final Judgment have
14 properly and timely opted-out of the Settlement and are therefore not bound by the Settlement,
15 Releases, Final Approval Order or Final Judgment. As of the Effective Date, Participating
16 Settlement Class Members and each of their respective executors, administrators,
17 representatives, agents, heirs, successors, assigns, trustees, guardians, corporations, and all those
18 who claim through them or assert claims on their behalf, shall be deemed to have released the
19 Released Parties from any and all Released Claims. The Released Parties and Released Claims
20 shall have the same meaning as in the Settlement Agreement.
21

22 9. The Court hereby confirms Plaintiff Jeffrey Koenig as Class Representative.
23

24 10. The Court hereby confirms Milberg Coleman Bryson Phillips Grossman, PLLC,
25 Crueger Dickinson LLC, Hudock Law Group S.C, and Nelson & Fraenkel LLP as Settlement
26 Class Counsel.
27
28

1 11. The Court hereby confirms its award of \$9,975,000 to Settlement Class Counsel
2 for attorneys' fees and expenses according to the Settlement's terms. The Court further confirms
3 that a service award in the amount of \$25,000 shall be paid to to Plaintiff Jeffrey Koenig.

4 12. The Court hereby confirms its award in the Class Award Order of up to \$250,000
5 to A.B. Data Ltd. as Settlement Administrator for the costs of providing notice and administering
6 the Settlement according to the Settlement's terms.

7 13. This Final Judgment and the accompanying Class Award Order and the Final
8 Approval Order are not a finding or determination of any wrongdoing by Defendants.

9 14. Pursuant to California Rule of Court 3.769(h), jurisdiction is hereby reserved by
10 this Court to assure compliance with all terms of this Settlement, in accordance with the
11 Settlement Agreement, the Class Award Order and the Final Approval Order. Specifically,
12 without affecting the finality of the Court's Final Approval Order, the Class Award Order or this
13 Final Judgment in any way, the Court retains jurisdiction over: (a) implementation and
14 enforcement of the Settlement Agreement pursuant to further order of the Court until the final
15 judgment contemplated hereby has become effective and each and every act agreed to be
16 performed by the Parties shall have been performed pursuant to the Settlement Agreement; (b)
17 any other action necessary to conclude this Settlement and to implement the Settlement
18 Agreement; and (c) the construction and interpretation of the Settlement Agreement.

19 15. This Final Judgment is intended to be a final disposition of the above captioned
20 action in its entirety and is intended to be immediately appealable. This Judgment resolves and
21 extinguishes all claims released by the Settlement Agreement against the Released Parties.

22 **IT IS SO ORDERED.**

23 Dated: _____

24 _____
25 Honorable Kenneth R. Freeman
26 Judge of the Superior Court
27
28

EXHIBIT G

Purchased a VIZIO LCD TV in California?



**YOU COULD GET MONEY
FROM A CLASS ACTION
SETTLEMENT**

CLICK HERE to Submit a Claim 

RefreshRateClassAction.com

EXHIBIT H

Exhibit H to Settlement Agreement
in *Koenig v. VIZIO*

Phone Service:

For a period of one year, VIZIO agrees to establish a phone number for a picture-quality settings advice service accessible to all Settlement Class Members. To obtain the service, a class member must (1) call the phone number; (2) provide their model number; and (3) confirm their TV was purchased in California during the Class Period.

The customer service representative will walk through any picture quality issues being experienced and advise the customer on certain settings that may improve picture quality and/or motion blur control. For any other questions or issues, the customer may be transferred to general customer service for standard support. For any questions regarding the Action, settlement terms, or monetary relief provided by the settlement, the customer will be referred to the settlement notice.

There is no cap on the number of times a class member may call for this service in the one-year period it is offered. Use of this service is required before a customer may seek coverage under the limited warranty described below.

Limited One-Year Picture-Quality Warranty:

For non-commercial use, VIZIO warrants the picture quality of televisions Settlement Class members purchased during the Class Period on the terms set forth below for one (1) year from the Effective Date of the settlement. This warranty is separate and apart from any limited warranty coverage provided upon purchase of the television.

Phone Service Prerequisite:

Prior to invoking warranty coverage, a class member must call the phone number established for picture-quality settings advice described above and attempt to incorporate any advice provided for correction of the reported problem. If, after incorporating any picture-quality settings advice provided via the above service, the customer encounters a specific picture quality issue included in the “What This Warranty Covers” section below, the customer may request coverage under this warranty if the below requirements are met.

Eligibility Screening:

To obtain coverage under this warranty, a class member must verify current ownership of the television by providing a model number, serial number, and approximate date and location of purchase. VIZIO may, at its discretion, require a class member to submit pictures or video of the defect for which the claim is being made, or to submit other necessary documentation to process the claim.

What This Warranty Covers:

VIZIO warrants the product, when the product is used normally in accordance with VIZIO's user guides and manuals, against defects in materials and workmanship arising after the date of purchase causing picture quality issues visible while content is being displayed, which may present as: line defect, mura, screen banding, eight or more dead or bright pixels, grid pattern, non-functioning 4K, half dark screen, back light bleed, black and white screen, and pink, purple, red or green hue. Depending on the product and failure circumstances, at VIZIO's discretion, VIZIO will either: repair your product (on-site, mail-in or local repair service may be available, in VIZIO's discretion) or replace your product with a product of like kind, quality, and functionality (replacement products may retail at a lower price than your original product). This warranty applies only to the original purchaser of a product. The purchase must have been made from an authorized retailer in the United States (including Puerto Rico) or Canada. The product must also be located in the country where it was purchased at the time of warranty service. Coverage limited to five televisions per residential address. No more than five televisions will be covered by this warranty for an individual Settlement Class Member.

The above warranty does not cover bright or dead individual pixels.

EXHIBIT I

Model
D32-D1
D32f-F1
D32f-G1
D32f-G4
D39f-E1
D39f-F0
D39f-F1
D40f-E1
D40F-F1
D40u-D1
D43-C1
D43-D1
D43-D2
D43-E2
D43-F1
D43f-E1
D43f-E2
D43f-f1
D43f-f2
D48-D0
D48f-E0
D48f-F0
D500i-B1
D50-D1
D50-E1
D50-F1
D50f-E1
D50f-F1
D50u-D1
D55-D2
D55-E0
D55-F2
D55f-E0
D55f-E2
D55u-D1
D58u-D3
D60-D3
D60-F3
D650i-B2
D650i-C3
D65-D2
D65-E0
D65-F1
D65u-D2
D70-D3
D70-F3

E32-C1
E32-D1
E390i-A1
E390i-B0
E390i-B1
E390i-B1E
E400i-B2
E40-C2
E40-D0
E40x-C2
E420d-A0
E420i-A0
E420i-A1
E420i-B0
E43-C2
E43-D2
E43-E2
E43-F1
E43u-D2
E470i-A0
E480i-B2
E48-C2
E48-D0
E48u-D0
E500d-A0
E500i-A0
E500i-A1
E500i-B1
E50-C1
E50-D1
E50-E1
E50-E3
E50-F2
E50u-D2
E550i-A0
E550i-A0E
E550i-B2
E550i-B2E
E551d-A0
E55-C1
E55-C2
E55-D0
E55-E1
E55-E2
E55-F0
E55-F1
E55u-D0

E55u-D2
E600i-B3
E601i-A3
E60-C3
E60-E3
E60u-D3
E650i-A2
E650i-B2
E65-C3
E65-E0
E65-E1
E65-E3
E65-F0
E65-F1
E65u-D3
E65x-C2
E700i-B3
E701i-A3
E70-C3
E70-E3
E70-F3
E70u-D3
E75-E1
E75-E3
E75-F1
E75-F2
E80-E3
E80-F3
M321i-A2
M322i-B1
M370SL
M3D470KDE
M3D550KD
M3D550KDE
M3D550SL
M3D651SV
M401i-A3
M420KD
M420SL
M422i-B1
M437-G0
M43-C1
M470SL
M471i-A2
M492i-B2
M49-C1
M501d-A2R

M502i-B1
M507-G1
M50-C1
M50-D1
M50-E1
M550SL
M550VSE
M551d-A2
M552i-B2
M557-G0
M558-G1
M55-C2
M55-D0
M55-E0
M55-F0
M601d-A3
M602i-B3
M60-C3
M60-D1
M650VSE
M651d-A2
M652i-B2
M656-G4
M657-G0
M658-G1
M65-C1
M65-D0
M65-E0
M65-F0
M701d-A3
M702i-B3
M70-C3
M70-D3
M70-E3
M70-F3
M75-C1
M75-E1
M801d-A3
M801i-A3
M80-C3
M80-D3
P502ui-B1
P502ui-B1E
P50-C1
P552ui-B2
P55-C1
P55-E1

P55-F1
P55RED-F1
P602ui-B3
P652ui-B2
P659-G1
P65-C1
P65-E1
P65-F1
P702ui-B3
P759-G1
P75-C1
P75-E1
P75-F1
PQ65-F1
PX65-G1
PX75-G1
RS65-B2
V405-G9
V435-G0
V436-G1
V505-G9
V555-G1
V555-G4
V556-G1
V605-G3
V655-G9
V656-G4
M556-G4
M706-G3
V585-G1
V705-G1
V705-G3
V755-G4
XVT3D580CM