

1 Robert Ahdoot (SBN 172098)  
2 rahdoot@ahdootwolfson.com  
3 Tina Wolfson (SBN 174806)  
4 twolfson@ahdootwolfson.com  
5 **AHDOOT & WOLFSON, PC**  
6 2600 W. Olive Avenue, Suite 500  
7 Burbank, California 91505  
8 Telephone: (310) 474-9111  
9 Facsimile: (310) 474-4521

10 [additional counsel on signature page]

11 *Counsel for Plaintiffs and the Putative Class*

12 **IN THE UNITED STATES DISTRICT COURT**  
13 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
14 **SOUTHERN DIVISION**

15 AMIR KAVEHRAD, WILL  
16 SANDERSON, DEREK WILLIAMS, and  
17 NIKITA BOGOLYUBOV on behalf of  
18 themselves and all others similarly  
19 situated,

20 Plaintiffs,

21 v.

22 VIZIO INC. and VIZIO HOLDING  
23 CORP.

24 Defendants.

Case No. 8:21-cv-01868 JLS (DFMx)

**PLAINTIFFS' FIRST AMENDED  
CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

JUDGE: Hon. Josephine L. Staton  
CTRM: 10A

1 Plaintiffs Amir Kavehrad, Will Sanderson, Derek Williams, and Nikita  
2 Bogolyubov (“Plaintiffs”), individually and on behalf of all others similarly situated, file  
3 this First Amended Class Action Complaint against Defendants VIZIO Inc. and VIZIO  
4 Holding Corp. (collectively, “VIZIO” or “Defendants”), and allege the following based  
5 on personal knowledge as to their own conduct, and upon information and belief as to all  
6 other matters.

7 **SUMMARY OF THE ACTION**

8 1. This is a consumer protection class action on behalf of individuals who  
9 purchased the following flat-screen models of VIZIO OLED, LED 4K UHD and P-Series  
10 televisions: OLED65-H1; OLED55-H1; P65Q9-H1; P65Q9-J01; P75Q9-J01; P75Q9-H1,  
11 P65QX-H1; P75QX-H1; and P85QX-H1 (collectively, “Class Televisions”).

12 2. While VIZIO markets the Class Televisions as top-of-the-line televisions  
13 with “the best proven technolog[y] to deliver exceptional performance” that “should work  
14 with you and your home” which “[g]ets [b]etter [o]ver [t]ime”<sup>1</sup> the Class Televisions are  
15 defective. The Class Televisions suffer from repeated and unexpected power-related  
16 failures which prevent them from working reliably. In particular, the Class Televisions  
17 will power off repeatedly or fail to power back on after being left off for some time  
18 (collectively, the “Power Defect”). When the Power Defect manifests, it can also result  
19 in the loss of video connectivity for HDMI-connected devices, including Apple TV and  
20 gaming consoles. In these instances, though the Class Television is powered on, the screen  
21 goes completely black on the connected devices.

22 3. VIZIO controlled the design, manufacture, marketing, and sale of the Class  
23 Televisions (directly and indirectly through third parties), which sold at price points  
24 ranging from \$1,299 to \$2,999. VIZIO knew the Class Televisions were defective at or  
25 before the time of release through pre-release testing and complaints from consumers

26 \_\_\_\_\_  
27 <sup>1</sup> See <https://web.archive.org/web/20200805051629/https://www.vizio.com/en/tv/oled>;  
28 <https://web.archive.org/web/20210107101632/https://www.vizio.com/en/tv/p-series>  
(last visited December 13, 2021).

1 shortly after launch. Despite knowing that the Class Televisions were prone to failure,  
2 VIZIO failed to disclose to consumers that the Class Televisions are defective. Although  
3 the Class Televisions came with a one-year written warranty covering defects in materials  
4 and workmanship, VIZIO routinely refuses to honor its warranty obligations. Instead of  
5 fixing the reported problems, VIZIO has punted any warranty repairs, instead promising  
6 a “firmware update” that has yet to remedy the Power Defect.

7 4. The Power Defect is substantially certain to manifest—consumers have  
8 reported issues related to power failures with their Class Televisions, many of them very  
9 soon after purchase. Consumers have reported that the Class Televisions exhibited power  
10 failures right out of the box, with their Class Televisions turning on and off during  
11 installation for seemingly no reason. Several owners report that the Class Televisions  
12 would fail to power on altogether. Consumers further report that communications with  
13 VIZIO’s technical support were unsuccessful, as even VIZIO’s own trained technicians  
14 could not solve the power failure problems, leading some consumers to have to return or  
15 replace their Class Televisions. Plaintiffs have consequently been deprived of the benefit  
16 of their bargain.

17 5. The Power Defect existed in each of the Class Televisions at the time they  
18 were sold. As a result of VIZIO’s unfair, deceptive, and/or fraudulent business practices,  
19 owners of Class Televisions, including Plaintiffs, have suffered an ascertainable loss,  
20 injury in fact, and otherwise have been harmed by VIZIO’s conduct. Plaintiffs and class  
21 members were thus deprived of the benefit of their bargain, and Plaintiffs bring this action  
22 to obtain relief for himself and others who purchased Class Televisions. Plaintiffs seek  
23 monetary and other appropriate relief for damages suffered, declaratory relief, and public  
24 injunctive relief.

25 6. VIZIO’s deceptive marketing and the sale of the Class Televisions with the  
26 undisclosed Power Defect continue to this day. On behalf of the general public of  
27 California, Plaintiffs also seek declaratory and injunctive relief against VIZIO to, *inter*  
28

1 *alia*, provide restitution, and enjoin it from continuing to deceptively advertise and sell  
2 its Class Televisions without disclosing the presence of the Power Defect.

3 **PARTIES**

4 7. Plaintiff Amir Kavehrad is an adult individual residing in Pottstown,  
5 Pennsylvania.

6 8. Plaintiff Will Sanderson is an adult individual residing in Los Angeles,  
7 California.

8 9. Plaintiff Derek Williams is an adult individual residing in Whittier,  
9 California.

10 10. Plaintiff Nikita Bogolyubov is an adult individual residing in North  
11 Hollywood, California.

12 11. Defendant VIZIO Inc. is incorporated under California law and maintains its  
13 principal place of business at 39 Tesla, Irvine, California 92618, located in Orange  
14 County, California.

15 12. Defendant VIZIO Holding Corp. was founded in 2002 and is headquartered  
16 at 39 Tesla, Irvine, California 92618 located in Orange County, California. The company,  
17 through its subsidiaries, provides smart televisions, sound bars, and accessories in the  
18 United States.

19 **JURISDICTION AND VENUE**

20 13. This action is brought as a class action to remedy violations of law by VIZIO.  
21 This Court has subject matter jurisdiction over this action pursuant to the California Code  
22 of Civil Procedure.

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

26 15. Venue is proper pursuant to the California Code of Civil Procedure because,  
27 *inter alia*, VIZIO'S principal place of business is located in and a substantial part of the  
28 events or omissions giving rise to the claims occurred in Orange County, California.



1 His correspondence advised Vizio that he was electing to opted-out of pursuing his claims  
2 through arbitration.

3 21. Plaintiff Kavehrad continues to experience power issues impacting the  
4 functionality of his VIZIO OLED. Had he been made aware of the existence of the Power  
5 Defect, he would not have purchased the VIZIO OLED or would have paid significantly  
6 less for it. Plaintiff and Class Members relied on VIZIO’s representations that the Class  
7 Televisions functioned as they were intended to, with a properly working power feature.  
8 As a result of VIZIO’s conduct, Mr. Kavehrad has been injured.

9 22. If the televisions function as advertised, Plaintiff Kavehrad would purchase  
10 one or more additional VIZIO televisions in the future. However, Plaintiff Kavehrad  
11 cannot rely on the validity of the information advertised due to VIZIO’s omission of the  
12 existence of the Power Defect. Absent injunctive relief in a way that ensures that this  
13 material information is fully and accurately disclosed, Plaintiff Kavehrad faces the similar  
14 injury of being unable to rely on VIZIO’s representations in its product advertising and  
15 labeling in deciding whether or not he should purchase the product in the future.

16 **Plaintiff Will Sanderson**

17 23. On or about November 23, 2020, Plaintiff Sanderson purchased a VIZIO  
18 OLED television (model no. OLED55-H1) for approximately \$991.49 from Best Buy.

19 24. Before purchasing his VIZIO OLED, Mr. Sanderson saw advertisements and  
20 marketing materials in which VIZIO touted the Vizio OLED’s “unparalleled power” and  
21 represented that it delivers “best-in-class picture processing with a powerful 4K upscaling  
22 engine.” Immediately upon receiving this television, but before using it, Mr. Sanderson  
23 viewed the VIZIO OLED’s packaging and went through the television initial setup  
24 process, in which VIZIO provided him with more information about the television.

25 25. Within the first few months of owning the VIZIO OLED, it began to fail.  
26 The television began powering-off repeatedly. When the VIZIO OLED would  
27 unexpectedly power-off, it would fail to power-on after being powered-off for some time.

28

1 Even when it turned back on successfully, the TV would switch from Quick Start to Eco  
2 mode, and Plaintiff Sanderson would be force to manually readjust the setting each time.

3 26. On May 2, 2021, he reached out to Vizio customer service about the issues  
4 his TV was having only to be advertised to go through a number of troubleshooting steps  
5 that failed to correct the problem. The representative informed him that the problem  
6 would be eventually fixed with an upcoming firmware release. Plaintiff Sanderson was  
7 not given any kind of approximation of when the firmware would be released.

8 27. Rather than wait for an indefinite amount of time for a firmware update, he  
9 ended up purchasing a new LG C1 OLED TV from Amazon.com on August 10, 2021.

10 28. At the time he purchased his VIZIO OLED, Plaintiff was not aware of, and  
11 VIZIO did not disclose anywhere on its product packaging or elsewhere, that the Class  
12 Televisions are plagued with the Power Defect.

13 29. Plaintiff Sanderson continues to experience power-related issues impacting  
14 the functionality of his VIZIO OLED. Had he been made aware of the existence of the  
15 Power Defect, he would not have purchased the VIZIO OLED or would have paid  
16 significantly less for it. Plaintiff and Class Members relied on VIZIO's representations  
17 that the Class Televisions functioned as they were intended to, with a properly working  
18 power feature. As a result of VIZIO's conduct, Mr. Sanderson has been injured.

19 30. If the televisions function as advertised, Plaintiff Sanderson would purchase  
20 one or more additional VIZIO televisions in the future. However, Plaintiff Sanderson  
21 cannot rely on the validity of the information advertised due to VIZIO's omission of the  
22 existence of the Power Defect. Absent injunctive relief in a way that ensures that this  
23 material information is fully and accurately disclosed, Plaintiff Sanderson faces the  
24 similar injury of being unable to rely on VIZIO's representations in its product advertising  
25 and labeling in deciding whether or not he should purchase the product in the future.

26 **Plaintiff Derek Williams**

27 31. On or about January 26, 2021, Plaintiff Williams purchased a VIZIO QLED  
28 television (model no. P75QX-H1) for approximately \$1,599.99 from Best Buy.



1           32. Before purchasing his VIZIO QLED, Mr. Williams saw advertisements and  
2 marketing materials in which VIZIO touted the VIZIO QLED’s “extraordinary power”  
3 and represented that it was the “best TV for next-gen gaming.” Immediately upon  
4 receiving this television, but before using it, Mr. Sanderson viewed the VIZIO QLED’s  
5 packaging and went through the television initial setup process, in which VIZIO provided  
6 him with more information about the television.

7           33. Within the first two weeks of owning the VIZIO QLED, it began to fail.  
8 The television began powering-off repeatedly. When the VIZIO QLED would  
9 unexpectedly power-off, it would fail to power-on after being powered-off for some time.

10           34. On February 23, 2021, he reached out to Vizio customer service about the  
11 issues his TV was having only to be advised to go through a number of troubleshooting  
12 steps that failed to correct the problem. The representative set-up an appointment to have  
13 a technician diagnose the issue. The technician initially replaced the TV’s power board  
14 believing that was the cause of the issue.

15           35. However, the power-related issues only worsened following the repair, so  
16 the technician ended up reinstalling the original power board. Vizio further advised him  
17 that the problems his TV would experience would be fixed with an upcoming firmware  
18 release.

19           36. After the firmware update finally became available, Plaintiff Williams  
20 installed the update in or around October 2021. While the firmware update fixed a few  
21 issues, the firmware update ended up creating additional problems affecting the  
22 functionality of his TV, including an issue where the TV loses wi-fi connection causing  
23 the TV to freeze and the remote to become unresponsive, forcing Plaintiff Williams to  
24 unplug his TV and plug it back in to reset the TV. Additionally, leaving the TV in Power  
25 Save mode when not in use will often cause the TV to freeze when waking it up.

26           37. At the time he purchased his VIZIO OLED, Plaintiff Williams was not aware  
27 of, and VIZIO did not disclose anywhere on its product packaging or elsewhere, that the  
28 Class Televisions are plagued with the Power Defect.



1           38. Plaintiff Williams continues to experience power issues impacting the  
2 functionality of his VIZIO OLED. Had he been made aware of the existence of the Power  
3 Defect, he would not have purchased the VIZIO OLED or would have paid significantly  
4 less for it. Plaintiff and Class Members relied on VIZIO’s representations that the Class  
5 Televisions functioned as they were intended to, with a properly working power feature.  
6 As a result of VIZIO’s conduct, Mr. Williams has been injured.

7           39. If the televisions function as advertised, Plaintiff Williams would purchase  
8 one or more additional VIZIO televisions in the future. However, Plaintiff Williams  
9 cannot rely on the validity of the information advertised due to VIZIO’s omission of the  
10 existence of the Power Defect. Absent injunctive relief in a way that ensures that this  
11 material information is fully and accurately disclosed, Plaintiff Williams faces the similar  
12 injury of being unable to rely on VIZIO’s representations in its product advertising and  
13 labeling in deciding whether or not he should purchase the product in the future.

14 **Plaintiff Nikita Bogolyubov**

15           40. On or about November 22, 2020, Plaintiff Bogolyubov purchased a VIZIO  
16 OLED television (model no. OLED55-H1) for approximately \$991.49 from Best Buy.

17           41. Before purchasing his VIZIO OLED, Mr. Bogolyubov saw advertisements  
18 and marketing materials in which VIZIO touted the VIZIO OLED’s Vizio OLED’s  
19 “unparalleled power” and represented that it delivers “best-in-class picture processing  
20 with a powerful 4K upscaling engine.” Immediately upon receiving this television, but  
21 before using it, Mr. Bogolyubov viewed the VIZIO OLED’s packaging and went through  
22 the television initial setup process, in which VIZIO provided him with more information  
23 about the television.

24           42. Within the first three weeks of owning the VIZIO OLED, it began to fail.  
25 The television began powering-off repeatedly. When the VIZIO OLED would  
26 unexpectedly power-off, it would fail to power-on after being powered-off for some time.  
27 After it was turned back on, he would often have to readjust certain television settings  
28

1 including setting the TV to quickstart versus Eco mode, which the TV would often revert  
2 to after being powered back-on.

3 43. On January 28, 2021, he reached out to VIZIO customer service about the  
4 issues his TV was having only to be advised to go through a number of troubleshooting  
5 steps that failed to correct the problem. For a number of months, Plaintiff went back-and-  
6 forth with Vizio's customer service to troubleshoot a solution to the issue including  
7 suggesting paying \$250 freight cost in shipping costs for an entirely new TV was likely  
8 more viable of a solution than VIZIO sending out a technician to attempt to diagnose and  
9 repair the television. Vizio ultimately advised Plaintiff Bogolyubov that the problem  
10 would be fixed by a future firmware update.

11 44. After the firmware update finally became available, Plaintiff Bogolyubov  
12 installed the update on October 27, 2021. While the firmware update fixed a few issues,  
13 it introduced other issues such as the TV not powering on due to HDMI handshake/CEC  
14 problems with Vizio's own soundbar Vizio V51-H6 when connected via the standard  
15 HDMI (a)ARC port. The soundbar was also replaced to rule out it being the culprit.  
16 Eco/Quick Start is still being reset back to Eco sometimes on the VIZIO OLED.

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

20 46. Plaintiff Bogolyubov continues to experience power related issues impacting  
21 the functionality of his VIZIO OLED. Had he been made aware of the existence of the  
22 Power Defect, he would not have purchased the VIZIO OLED or would have paid  
23 significantly less for it. Plaintiff and Class Members relied on VIZIO's representations  
24 that the Class Televisions functioned as they were intended to, with a properly working  
25 power feature. As a result of VIZIO's conduct, Mr. Bogolyubov has been injured.

26 47. If the televisions function as advertised, Plaintiff Bogolyubov would  
27 purchase one or more additional VIZIO televisions in the future. However, Plaintiff  
28 Bogolyubov cannot rely on the validity of the information advertised due to VIZIO's

1 omission of the existence of the Power Defect. Absent injunctive relief in a way that  
2 ensures that this material information is fully and accurately disclosed, Plaintiff  
3 Bogolyubov faces the similar injury of being unable to rely on VIZIO’s representations  
4 in its product advertising and labeling in deciding whether or not he should purchase the  
5 product in the future.

## 6 COMMON FACTUAL ALLEGATIONS

### 7 Television Ownership in the United States

8 48. The two prominent types of displays that can be found across monitors,  
9 televisions, mobile phones, cameras and other devices with screens are LED (light-  
10 emitting diode), OLED (organic light-emitting diode) and QLED (quantum dot LED).  
11 LED is the most common type of display on the market. OLED and QLED are newer  
12 “luxury options” used in “flagship” phones and “high-end” televisions models.<sup>2</sup>

13 49. LED screens use a backlight to illuminate their pixels, while OLED’s pixels  
14 actually produce their own light. A pixel is a small element on a screen that can be  
15 accessed by a device such as a touch screen or monitor. This area can change color and  
16 also show movement by combining a group of pixels and having the motion move from  
17 one pixel to another. LED screens are generally brighter than OLED, whereas contrast on  
18 an OLED display is far higher.<sup>3</sup> QLED televisions use quantum dots that are illuminated  
19 by the LED backlight that travels through the liquid crystal layers to create a picture.<sup>4</sup>The  
20 vast majority of Americans own a television of some kind. According to estimates, there  
21 are 121 million televisions in homes in the United States for the 2020-2021 television  
22 season.<sup>5</sup>

23  
24 <sup>2</sup> See Monney, Kob, *OLED vs LED LCD: the best display tech for you*, Trusted Reviews  
25 (July 6, 2021), available: <https://www.trustedreviews.com/opinion/oled-vs-led-lcd-2924602>.

26 <sup>3</sup> See *id.*

27 <sup>4</sup> <https://www.pcmag.com/news/oled-vs-qled-whats-the-difference> (last visited  
December 14, 2021).

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

1           50. The COVID-19 pandemic also has reportedly boosted television viewing.  
2 According to VIZIO, viewing on VIZIO smart televisions surged to 1.1 trillion minutes  
3 in 2020, up more than 20% from 2019 due to the coronavirus pandemic. VIZIO is the  
4 number two maker of smart televisions sold in the United States, with about 20% of the  
5 market over the past five years.<sup>6</sup> It identifies itself as “the #1 American-based TV brand.”<sup>7</sup>

6           51. VIZIO sells over 7 million televisions a year and generates close to \$2 billion  
7 in revenue from those devices. It reportedly earns well over 90% of its revenue from  
8 television sales.<sup>8</sup>

9                           **VIZIO Markets and Launches its LED and OLED Television**  
10                           **Touting Their Superior Display Capabilities**

11           52. VIZIO was founded in Los Angeles nineteen years ago. It first introduced its  
12 line of LED Backlit LCD televisions in 2010.

13           53. VIZIO released its P-Series televisions—its first consumer-grade 4K  
14 television—in 2014. It released its P-Series Quantum 4K LED televisions in 2020.

15           54. VIZIO launched its first OLED televisions in late 2020. Its first OLED TV  
16 models were available in 55- and 65-inch sizes and offer 4K gaming with variable refresh  
17 rates up to 120Hz, which is an attractive feature to shoppers who want to use the television  
18 for gaming purposes. Its first 4K OLED televisions were on sale starting at \$1,200. Today,  
19

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

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

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

1 the price for a VIZIO 55-inch OLED television is \$1,299.99 and the price for a 65-inch  
2 OLED model is \$1,899.99.

3 55. VIZIO controls the design, development, marketing, sales, and support for  
4 the Class Televisions. VIZIO directed virtually every aspect of the development and  
5 manufacture of the Class Televisions.

6 56. VIZIO sells the Class Televisions directly to consumers as well as through  
7 authorized retailers, such as Amazon, Costco, Target, Sam’s Club, Walmart and Best  
8 Buy.<sup>9</sup>

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

16 58. VIZIO markets its P-Series QLED televisions as a top-of-the-line television  
17 with “out of this world picture quality,” “explosive brightness” and a “lightning-fast IQ  
18 Ultra processor [that] delivers superior 4K image quality for a powerfully transportive  
19 viewing experience.”<sup>13</sup>

20 59. VIZIO advertises its OLED televisions as having “the perfect picture” and  
21 “refined attention to every detail.” It touts the OLED as having “unparalleled power” with  
22

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

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

25 <sup>11</sup> See [http://cdn.vizio.com/misc/KBImages/models/OLED2020/2021\\_OLED55-](http://cdn.vizio.com/misc/KBImages/models/OLED2020/2021_OLED55-H1_OLED65-H1-UM-ENG.pdf)  
26 [H1\\_OLED65-H1-UM-ENG.pdf](http://cdn.vizio.com/misc/KBImages/models/OLED2020/2021_OLED55-H1_OLED65-H1-UM-ENG.pdf); [http://cdn.vizio.com/user-manual/PDF/2020/TV/P9-](http://cdn.vizio.com/user-manual/PDF/2020/TV/P9-Series_P65Q9-H1_P65Q9-H61_P75Q9-H1_P75Q9-H61-UM-ENG.pdf)  
27 [Series\\_P65Q9-H1\\_P65Q9-H61\\_P75Q9-H1\\_P75Q9-H61-UM-ENG.pdf](http://cdn.vizio.com/user-manual/PDF/2020/TV/P9-Series_P65Q9-H1_P65Q9-H61_P75Q9-H1_P75Q9-H61-UM-ENG.pdf); [User Manual:](http://cdn.vizio.com/user-manual/PDF/2020/TV/P9-Series_P65Q9-H1_P65Q9-H61_P75Q9-H1_P75Q9-H61-UM-ENG.pdf)  
28 [P65QX-H1, P75QX-H1, P85QX-H1 ENG \(vizio.com\)](http://cdn.vizio.com/user-manual/PDF/2020/TV/P9-Series_P65Q9-H1_P65Q9-H61_P75Q9-H1_P75Q9-H61-UM-ENG.pdf).

<sup>12</sup> See *id.*

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

1 its “IQ Ultra processor” which “delivers the fastest, smartest, best-in-class picture  
2 processing with a powerful 4K upscaling engine, and HDMI 2.1 connectivity for  
3 unrivaled responsiveness.”<sup>14</sup>

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

11 61. After purchasing their Class Televisions, Plaintiffs undertook VIZIO’s  
12 standard setup process on his television in accordance with the user manual. The user  
13 manual also explains the seemingly basic function of pressing the power button to turn  
14 the television on, and pressing and holding the power button to turn the television off.  
15 The manual further provided that a user’s television “should be installed and the power  
16 cord should be connected to an electrical outlet” before beginning the first-time setup.  
17 The on-screen instructions that appeared once the television was power-on and connected  
18 to the internet walked the user step-by-step through customizing the television by (1)  
19 choosing a language, (2) choosing a preferred use, (3) choosing a country, (4) choosing a  
20 Wi-Fi network and entering the password; (5) naming the TV; (6) scanning for channels;  
21 (7) accepting VIZIO’s Terms & Conditions, and (8) viewing and accepting VIZIO’s  
22 Viewing Data Policy. At no place in the User Manual or during this on-screen set-up  
23

24 \_\_\_\_\_  
25 <sup>14</sup> See <https://www.vizio.com/en/tv/oled>.

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



1 process did VIZIO disclose any defect associated with the television repeatedly powering  
2 off without user input and/or failing to power back on.<sup>16</sup>

3 62. Prior to using their Class Televisions, Plaintiffs encountered VIZIO’s  
4 external packaging of the Class Televisions. At no time did the external packaging  
5 disclose any defect associated with the power features of the Class Televisions.

6 63. Plaintiffs were exposed to specific representations by VIZIO prior to and  
7 immediately after purchase. VIZIO marketed and promoted the Class Televisions as  
8 superior products that excelled at providing “unparalleled power” and picture quality. At  
9 no time did VIZIO disclose the Power Defect to Plaintiffs by including in its marketing  
10 or advertising materials that the Class Televisions are prone to power failures. VIZIO  
11 failed to disclose the Power Defect to Plaintiffs despite being aware of the Power Defect  
12 through pre-release testing and pre-market quality control and internal validation.

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

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

18 65. Televisions that suffer from premature power failures—or are not able to be  
19 powered on at all—are thus not suitable for their normal and intended purposes. Such  
20 power failures render a television essentially unusable when the television shuts off  
21 suddenly, and without warning, even when plugged in and without user input. Some users  
22 have to resort to unplugging the Class Television and then plugging them back in to get  
23 them to power back on, but even that does not work in every instance to restore power to  
24 the Class Televisions.

25  
26  
27 <sup>16</sup> See, e.g., [http://cdn.vizio.com/user-manual/PDF/2020/TV/P9-Series\\_P65Q9-](http://cdn.vizio.com/user-manual/PDF/2020/TV/P9-Series_P65Q9-H1_P65Q9-H61_P75Q9-H1_P75Q9-H61-UM-ENG.pdf)  
28 [H1\\_P65Q9-H61\\_P75Q9-H1\\_P75Q9-H61-UM-ENG.pdf](http://cdn.vizio.com/user-manual/PDF/2020/TV/P9-Series_P65Q9-H1_P65Q9-H61-UM-ENG.pdf); [User Manual: P65QX-H1, P75QX-H1, P85QX-H1 ENG \(vizio.com\)](#)



1           66. Within months of the Class Televisions launching, consumers began posting  
2 about the Power Defects on social media, internet message boards, and product pages on  
3 retailer websites.<sup>17</sup>

4           67. Many consumers also complained directly to VIZIO through VIZIO’s own  
5 support page—either via text message or through a live agent chat feature.<sup>18</sup>

6           68. Customer complaints demonstrate that this is not an isolated issue. Many  
7 consumers have recently taken to the internet to gripe about the Power Defect and their  
8 failed experiences in receiving any sort of assistance from VIZIO in addressing or  
9 otherwise fixing the Power Defect. Class Members did not know, and had no reasonable  
10 means of discovering on their own, that the Class Televisions were defective prior to  
11 purchase.

12           69. Publicly available complaints and consumer reviews demonstrate that the  
13 Power Defect manifests the same way across VIZIO’s customer base, interfering with  
14 customers’ use of the Class Televisions. Below are some examples of consumer  
15 complaints concerning manifestation of the Power Defect in their Class Televisions, many  
16 of whom experienced the Power Defect soon after installation. Upon information and  
17 belief, VIZIO monitors online forums and social media posts regarding its products and  
18 consumers.

19           a. Posted 1 year ago<sup>19</sup>

- 20                   i. “I’ve had a great experience with Vizio in the past, and the ordering  
21 and delivery from Best Buy was smooth and quick. The tv looked  
22 great when it worked. But after only two days it will no longer turn  
23 on. **I noticed the tv randomly turning on and off during**

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24 <sup>17</sup> See, e.g.,

25 [https://www.reddit.com/r/VIZIO\\_Official/comments/junr2w/oled\\_wont\\_turn\\_back\\_on\\_need\\_to\\_unplug\\_and\\_replug/](https://www.reddit.com/r/VIZIO_Official/comments/junr2w/oled_wont_turn_back_on_need_to_unplug_and_replug/);

26 <https://twitter.com/EChuck86/status/1330524233190043662> (last visited Oct. 11, 202).

27 <sup>18</sup> See [https://support.vizio.com/s/contact-us?language=en\\_US](https://support.vizio.com/s/contact-us?language=en_US).

28 <sup>19</sup> <https://www.bestbuy.com/site/reviews/vizio-55-class-oled-4k-uhd-smartcast-tv/6416810?rating=1> (last visited Dec. 8, 2021) (emphasis added).

1 installation, but I assumed I was bumping the power button in  
 2 the back. Happened again later after being mounted where the  
 3 tv seemed to briefly turn off and then back on again, but I  
 4 thought it had something to do with setting up CEC. On day 2  
 5 however, after working fine in the afternoon, it wouldn't turn  
 6 back on in the evening. Tried different things, disconnect all  
 7 input devices, but still nothing. Vizio tech support tried to help,  
 8 but they couldn't figure it out. So I will be returning the TV.  
 9 One thing I noticed after packing the tv up again is that the power  
 10 cord that came with the unit doesn't match the shape on the back of  
 11 the tv (non polarized vs polarized, respectively). Brought this up  
 12 with Vizio tech support and they stated that this should be the cause.  
 13 But I'm not sure about that. I've added pictures to show what I'm  
 14 talking about. On another note, CEC commands seemed to be hit or  
 15 miss on this unit when connected to an Apple TV and SONOS Amp.  
 16 My previous TV (SONY) worked just fine with CEC, so I'm not  
 17 sure what the issue was with the Vizio. But this is something that I  
 18 expect they'll fix with a firmware update. Its a shame, the Vizio  
 19 OLED looked really good.”

16 b. Posted 8 months ago<sup>20</sup>

- 17 i. “I normally never right reviews but had to because of how horrible  
 18 this has been. I purchased this tv after owning a Vizio LED TV. It  
 19 had some issues but overall I loved it and was ready to upgrade to  
 20 OLED. After reading some promising tech blog reviews and seeing  
 21 this on sale I took the plunge. I have had this TV for 5 months now  
 22 and here is my review: Setup: Audio – Sonos Arc, Streaming –  
 23 Apple TV 4K, Gaming Consoles- Xbox Series X + Nintendo  
 24 Switch. All HDMI cables are 2.1 certified cables. The TV has  
 25 incredible picture that is really a huge step up from an LCD and  
 26 even LED. The unit itself is gorgeous and looks great on a stand.  
 27 **Cons: This TV constantly fails to power on.** Since I use Apple TV  
 28 to watch most of my content, I use the Apple TV remote to power  
 the TV on and off. 4/10 times the TV will power on as it should.

<sup>20</sup> *Id.* (last visited Dec. 15, 2021) (emphasis added).

1 3/10 times I have to dig up the Vizio remote or walk over to the  
2 TV to turn it on because it does not power up with the Apple  
3 TV. 1/10 times the TV says “no signal” on power up and I have  
4 to unplug the Apple TV HDMI and reconnect. 1/10 times I have  
5 to fully unplug the TV from power and reconnect it (sometimes  
6 several times) to have the TV power on because it will not  
7 respond to the remote or the built in power button. I have reset  
8 this TV back to factory settings over 20 times and reconfigured  
9 it and it still wont fix this. Many times when the TV powers on, it  
10 forgets the soundbar and an annoying pop up stays on screen saying  
11 a new audio device has been configured. The TV has 2 power  
12 modes, eco and quick-start. In order to use Alexa or HomeKit the  
13 TV needs to be in quick-start. For some reason the TV always  
14 reverts to eco which essentially disables Alexa and HomeKit when  
15 the TV is powered off. **Vizio has claimed that they are aware of  
16 these issues but in the 5 months I have owned it, they have only  
17 released 1 update that fixed some issues (ie 120hz refresh rate  
18 for new consoles) but clearly do not seem concerned to fix  
19 something that should never have been broken in the first place.**  
20 My unit also did not come with a stand in the box (box was sealed,  
21 it was a factory error).I had a \$200 Insignia Roku LCD TV with a  
22 similar setup and features that I never had to touch the TV remote  
23 nor once had an issue with at all.If you are deciding between this  
24 and a similar model from LG or Sony I would encourage you to  
25 spend the extra money on a TV that looks good and also powers on.  
26 This will be my last Vizio purchase.”

27 c. Posted 1 year ago<sup>21</sup>:

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

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

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

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

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

13 d. Posted 1 year ago:<sup>22</sup>

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

19 e. Posted 7 months ago:<sup>23</sup>

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

24 **- Sometimes the TV just doesn't power on**

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

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

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.* (emphasis added).

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

10          f. Posted 5 months ago:<sup>24</sup>

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

18          g. Posted 1 year ago:<sup>25</sup>

19           i. Is there a way to rate this no stars?! I have had two of these sets.  
20           The first set in the summer of 2020 was not sharp, lacked clarity,  
21           did not upscale content, had a blotchy backlight, and effectively did  
22           not appear to be high definition. Vizio replaced it with a second set.  
23           The second set, too, is not as clear as the 2018 Vizio P Series that it  
24           replaced and exhibits the same issues as the first P65Q9-H1 set.  
25           Vizio sent out a tech to replace something in this second P65Q9-H1

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

28 <sup>25</sup>[https://www.bestbuy.com/site/vizio-65-class-p-series-quantum-series-led-4k-uhd-](https://www.bestbuy.com/site/vizio-65-class-p-series-quantum-series-led-4k-uhd-smartcast-tv/6416449.p?skuId=6416449)  
[smartcast-tv/6416449.p?skuId=6416449](https://www.bestbuy.com/site/vizio-65-class-p-series-quantum-series-led-4k-uhd-smartcast-tv/6416449.p?skuId=6416449) (last visited Dec. 15, 2021) (emphasis added).

1 set. After that repair, this second set sporadically loses sound, will  
2 not connect to the smart apps, gives a green screen at other times  
3 when it does connect to the apps, **and at times will not power on.**  
4 **The solution most times is to attempt one or more hard restarts**  
5 **that involve unplugging the TV and holding the power button**  
6 **for thirty seconds or more, then plugging everything back in. I**  
7 **have contacted Vizio about this second set, but they have not**  
8 **been receptive to correcting the current issues.** Look at the  
9 photos and tell me if this is what you'd expect from a set that cost a  
10 grand. All I want is a TV that works in my family room. Instead I  
11 have a tv that provides nothing but problems followed by hours (yes  
12 hours) of online chats or phone calls that do not result in a  
13 resolution. As such, I have a tv that my children avoid. I finally had  
14 to move my smaller kitchen Samsung into the family room in order  
15 to bring the family back to that room. At this point, I will shell out  
16 money for a new family TV, and I guess that I have to eat this one.  
17 Yes, this has been a nightmare. The only other recourse I have is to  
18 let fellow consumers know that you are really rolling the dice when  
19 you purchase a Vizio.

16 h. Posted 2 months ago:

- 17 i. Ok, so im on my 2nd one cause the first one developed a brown spot  
18 near the power cable input. I just chalk that up to a bad unit. This  
19 tv, inspite of itself, can produce a 4k image at 120hz. How well and  
20 often it does it is depending on what device, cable, and input you  
21 select. Xbox series X The audio will glitch out and the aspect ratio  
22 will be off sometimes when selecting the input. Happens on inputs  
23 3 and 4, which are the hdmi 2.1 ports. This is by far the best  
24 functioning device hooked up to the tv. And by best functioning i  
25 mean the only device i was able to take out of the box, plug it in,  
26 and it just worked. Playstation 5 Assuming that you managed to slay  
27 the kraken in order to obtain one, you'll be happy to know it just flat  
28 out doesnt work with hdmi 2.1. At all. You will be met with a screen  
of glitched out rainbow pixels. It barely works on hdmi 2.0. I have  
it running through the PSVR breakout box in order to get a signal  
in 4k at 60hz. DO NOT BUY THIS TV FOR PS5 ONLY. PC (Zotac



1 Twinedge 3060 ti output) You can get 4k 120hz on pc ...with the  
 2 right hdmi 2.1 cable. I tried using the cable that came with the series  
 3 x, the ps5, and another rando cable i had. I tried the cables on ports  
 4 3 and 4. None of them would allow me to run above 4k 60hz. I  
 5 bought an amazon basics hdmi 2.1 cable and that seem to fix the  
 6 problem. The audio over 2.1 is glitchy. It literally goes from clear  
 7 audio to chiptune sound waves back to clear audio in 2 minute  
 8 intervals. **In General This tv crashes an unreasonable amount,**  
 9 **to the point where you have to physically unplug the tv to reboot**  
 10 **it.** Your not guaranteed an image or sound when switching between  
 11 inputs. Horrible brown halo on white text against black  
 12 backgrounds. Loads of apps ive never heard of or going to use. Cats  
 13 sleeping dogs. ...this tv is just annoying. It works in very specific  
 14 ways ...sometimes ...very annoyingly.<sup>26</sup>

### **VIZIO Fails to Adequately Address or Disclose the Power Defect**

15 70. VIZIO's registration statements confirm that each product undergoes testing  
 16 at the testing facilities of VIZIO's third-party manufacturers under VIZIO's control.  
 17 Further, VIZIO confirms its LCD panels "go through a proprietary test method in  
 18 manufacturing . . . ." <sup>27</sup> On information an belief, pre-release testing performed by VIZIO  
 19 on the Class Televisions included durability, reliability, and/or environmental testing.  
 20 VIZIO would subject the Class Televisions to power-related testing and analysis to  
 21 replicate consumer use and evaluate the performance of the Class Televisions. VIZIO's  
 22 rigorous testing to ensure quality necessarily revealed to it that the Class Televisions  
 23 experienced power failures during the course of normal use and are plagued with the  
 24 Power Defect. Based on this pre-production testing, pre-production design or failure  
 25 mode analysis, and post-production testing, research, and product failure analysis, VIZIO  
 26 was aware of the Power Defect in its Class Televisions but did not correct the defect prior  
 27 to sale in order to achieve higher profits in selling the Class Televisions, which they

28 <sup>26</sup> *Id.* (emphasis added).

<sup>27</sup> *See, e.g.*, VIZIO Holding Corp. SEC Form S-1 Registration Statement (Mar. 1, 2021).



1 falsely marketed as defect-free. This information was not available to Plaintiffs and  
2 members of the Class at the time of their purchases.

3 71. VIZIO was aware of the consumer complaints soon after release of the Class  
4 Televisions. Not only did many consumers contact VIZIO directly, but VIZIO’s public  
5 responses to complaints from Class Television customers about purported “firmware  
6 fixes” demonstrates VIZIO’s knowledge of the Power Defects Class Television owners  
7 were experiencing.<sup>28</sup>

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

14 73. In addition to the complaints, online publications were also beginning to  
15 emerge about the Power Defect, trying to provide consumers with workarounds since  
16 VIZIO was not taking any steps to resolve the issue itself.<sup>30</sup>

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

22  
23 <sup>28</sup>See, e.g. <https://www.bestbuy.com/site/reviews/vizio-55-class-oled-4k-uhd-smartcast-tv/6416810?rating=1>.

24 <sup>29</sup> See VIZIO Support, “My device won’t power on/will not turn on/no power,” available:  
25 [https://support.vizio.com/s/article/My-device-won-t-power-on-will-not-turn-on-no-power?language=en\\_US](https://support.vizio.com/s/article/My-device-won-t-power-on-will-not-turn-on-no-power?language=en_US).

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

1 of users experiencing power issues and other software bugs when feeding the OLED TVs  
2 a 4K/120 Hz signal from gaming consoles.”<sup>31</sup>

3 75. Despite being aware of the Power Defect, VIZIO has yet to acknowledge the  
4 problem or offer a suitable remedy. VIZIO instead tries to downplay the significance of  
5 the Power Defect, claiming that the issue is “not common.”<sup>32</sup> Examples of customer  
6 complaints experiencing the exact same issues tell a different story. Notably, none of the  
7 customer complaints demonstrate that this is a problem that they anticipated or knew  
8 about prior to purchasing their Class Televisions, as VIZIO worked to conceal the Power  
9 Defect from consumers.

10 76. VIZIO’s customer service support for the Class Televisions is reportedly  
11 unhelpful, and consumers generally report that VIZIO technical support cannot “figure  
12 out” or cure the power related failures. Some users have even complained that VIZIO has  
13 acknowledged that it is aware of the Power Defect, yet it does “not seemed concerned to  
14 fix something that should never have been broken in the first place.”<sup>33</sup>

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

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

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

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

1 a. Posted 9/19/2021<sup>34</sup>

2 i. “There is a common issue with the Vizio Oled TV I purchased where it  
3 will sometimes fail to power on, and sometimes fail to show a screen,  
4 when connected to a PS5. I have had the TV for 11 months, with Vizio  
5 promising a firmware solution that has yet to release. Vizio support would  
6 not honor a warranty request for a refund, or a replacement model that  
7 did not have these issues. I am still under warranty. Vizio case number  
8 22530904.”

9 b. Posted 9/6/21<sup>35</sup>

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

20 c. Posted 8/31/2021<sup>36</sup>

21 i. “I bought a Vizio TV last December. In January it would not turn on. I  
22 chatted with Vizio and they had me reset it. This happened a few more  
23 times and I reset it on my own. It again happened a few weeks ago. I  
24 chatted again and they had me reset it. I explained I have already done  
25 this several times. It should not happen to a new TV. They said it was  
26 under warranty and if it happened again to call them . I saved the January  
27 chat and the one a few weeks ago for proof. This is a faulty TV and they  
28 will not replace it. I asked for a manager. They gave me a number for  
\*\*\*\* who my wife and I have called probably ten times and left several

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

35 *Id.* (last visited October 7, 2021).

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

1 messages. She has never called us back. I think this company is not  
2 honoring its warranty and is purposely not calling us.”

3 d. From Elisha K, on 9/29/21<sup>37</sup>

4  
5 i. “DON'T BUY VIZIO. vizio \*\*\*\*\*. I have a 65 inch vizio it freezes  
6 sometimes. I have a 55 vizio sometimes I have to to unplug it and plug it  
7 back it for it to come on.”

8 78. VIZIO has long known that the Class Televisions are fatally flawed.  
9 Standard product testing should have alerted VIZIO to the Power Defect even prior to  
10 launching the devices.

11 79. Despite the growing number of complaints, and VIZIO’s knowledge of the  
12 Power Defect, VIZIO has declined to provide its customers with adequate warranty  
13 service in accordance with their reasonable expectations.

14 80. The VIZIO warranty provides that, if there is a defect, “VIZIO will (at its  
15 option) repair or replace it, or refund the purchase price to you.”<sup>38</sup> Plaintiffs and members  
16 of the Class lacked the ability to negotiate or even review the terms of the warranty prior  
17 to purchase. The warranties are offered on a “take-it-or-leave-it” basis.

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

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

25  
26  
27 <sup>37</sup><https://www.bbb.org/us/ca/irvine/profile/audio-visual-equipment/vizio-1126-13209958/customer-reviews> (last visited Oct. 7, 2021).

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

1 83. Despite knowing of the Class Televisions' defective nature before it placed  
2 the Class Televisions on the market and before Plaintiffs purchased their Class  
3 Televisions, VIZIO failed to disclose the Power Defect and its associated problems to  
4 Plaintiffs and other consumers prior to purchase and failed to provide Class Television  
5 owners with an adequate remedy when the Power Defect manifested. Instead, VIZIO  
6 downplayed the severity and scope of the problem, and tried to sweep the Power Defect  
7 under the rug with ineffective warranty service. Meanwhile, VIZIO continued to promote  
8 its Class Televisions as top-of-the-line and as offering one of the best televisions on the  
9 market.

10 84. VIZIO has made hollow promises for a firmware fix that has yet to  
11 materialize. VIZIO still has not remedied the Power Defect, recalled the Class  
12 Televisions, provided restitution, extended its warranty, or disclosed the existence of the  
13 Power Defect.

14 85. Because of VIZIO's actions, Class Television owners have suffered damages  
15 in the form of loss of use, failure of the Class Television's core functionality, loss of the  
16 benefit of their bargain, diminution of value of and overpayment for their Class  
17 Televisions, and lost time and expense involved in contacting VIZIO and retailers about  
18 the problem and waiting for replacements and/or repairs.

19 **CLASS ACTION ALLEGATIONS**

20 86. Plaintiffs bring this lawsuit on behalf of themselves and all others similarly  
21 situated, as a class action.

22 87. Plaintiffs seek certification of a class defined as follows:

23 **Nationwide Class:** All individuals in the United States who  
24 purchased one or more of the Class Televisions.

25 In addition, or in the alternative, Plaintiffs seek certification of the following  
26 state classes:

27 **California Class:** All individuals who purchased one or more of the  
28 Class Televisions in California.

1  
2 **Pennsylvania Class:** All individuals who purchased one or more of  
3 the Class Televisions in Pennsylvania.

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

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

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

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

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

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

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

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

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

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

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

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

15 92. **Adequacy.** Plaintiffs are adequate representatives for the Class because  
16 their interests do not conflict with the interests of the Class that they seek to represent.  
17 Plaintiffs have retained counsel competent and highly experienced in complex class  
18 action litigation, including consumer protection and product defect class actions, and  
19 counsel intends to prosecute this action vigorously. The interests of the Class will be fairly  
20 and adequately protected by Plaintiffs and their counsel.

21 93. **Superiority.** A class action is superior to all other available methods for the  
22 fair and efficient adjudication of this controversy. Because the amount of each individual  
23 Class member's claim is small relative to the complexity of the litigation, and because of  
24 VIZIO's financial resources, no Class member is likely to pursue legal redress  
25 individually for the violations detailed herein. Individualized litigation would  
26 significantly increase the delay and expense to all parties and to the Court and would  
27 create the potential for inconsistent and contradictory rulings. By contrast, a class action  
28 presents fewer management difficulties, allows claims to be heard which would otherwise



1 go unheard because of the expense of bringing individual lawsuits, and provides the  
2 benefits of adjudication, economies of scale, and comprehensive supervision by a single  
3 court without the unnecessary duplication of effort and expense that numerous individual  
4 actions would engender.

5 94. Plaintiffs are unaware of any difficulties that are likely to be encountered in  
6 the management of this action that would preclude its maintenance as a class action.

7 **PUBLIC INJUNCTIVE RELIEF**

8 95. Plaintiffs seek an injunction on behalf of themselves, the putative class of  
9 similarly situated California residents, and the general public, prohibiting VIZIO from  
10 making material omissions and misrepresentations to the public as to the nature of its  
11 Class Televisions. Plaintiffs also seeks a public injunction requiring VIZIO to notify all  
12 Class Televisions owners, and the public at large, about the Power Defect, setting forth a  
13 description of the Power Defect in the Class Televisions and that the Class Televisions  
14 do not perform as marketed. VIZIO should also be required to correct its current product  
15 advertising and labeling to disclose the Power Defect to unsuspecting consumers. Under  
16 the circumstances, this injunctive relief should also include an order requiring VIZIO to  
17 provide restitution and to extend the warranty on the Class Televisions.

18 96. The injunctive relief sought is essential to stopping VIZIO's continuing  
19 deceptive scheme. In the absence of an injunction, VIZIO will remain free to continue to  
20 mislead members of the public regarding the Power Defect, causing consumers to believe  
21 VIZIO's material misrepresentations and omissions concerning the function and  
22 reliability of the Class Televisions' power feature.

23 97. VIZIO lures consumers into purchasing the Class Televisions by touting the  
24 Class Televisions as being the "art of perfection" with "refined attention to every detail"  
25 and possessing "unparalleled power."<sup>39</sup> It also touts the Class Televisions as "best in  
26  
27

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

1 class” and possessing “epic power.”<sup>40</sup> VIZIO does not disclose to consumers that Class  
2 Televisions are defective, causing the televisions to prematurely power down and fail to  
3 power on, a basic function that consumers would expect from any television, not to  
4 mention one that they are paying a premium price for. Members of the general public  
5 have the right to know the latent defects with this crucial feature.

6 98. The injunctive relief sought by Plaintiffs will protect the public from  
7 VIZIO’s deceitful marketing practices which misrepresent and omit material facts.  
8 Plaintiffs seek to enjoin VIZIO from misrepresenting the power features of its Class  
9 Televisions to the public.

10 **CAUSES OF ACTION**

11 **COUNT I**

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

15 **(Brought by Plaintiff Kavehrad on behalf of the Pennsylvania Class)**

16 99. Plaintiffs repeat and reallege the allegations contained above as if fully set  
17 forth herein.

18 100. This cause of action is brought by Plaintiff Kavehrad on behalf of the  
19 Pennsylvania class.

20 101. By failing to disclose and actively concealing the Power Defect, VIZIO  
21 engaged in deceptive business practices prohibited by the Pennsylvania Unfair Trade  
22 Practices and Consumer Protection Law, Pa. Stat. Ann. § 201-1, et seq. (“UTPCPL”),  
23 including (i) representing that the Class Televisions have characteristics, uses, benefits,  
24 and qualities which they do not have, (ii) representing that the Class Televisions are of a  
25 particular standard, quality, and grade when they are not, (iii) advertising Class  
26  
27

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

1 Televisions with the intent not to sell them as advertised, and (iv) engaging in acts or  
2 practices which are otherwise unfair, misleading, false, or deceptive to the consumer.

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

7 103. VIZIO owed Plaintiff Kavehrad and Pennsylvania Class members a duty to  
8 disclose the Power Defect, because VIZIO:

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

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

21 104. VIZIO's unfair or deceptive acts or practices were likely to and did in fact  
22 deceive reasonable consumers, including Plaintiff Kavehrad and the Pennsylvania Class  
23 members, about the true performance and characteristics of the Class Televisions.

24 105. As a result of its violations of the UTPCPL detailed above, VIZIO caused  
25 actual damage to Plaintiff Kavehrad and the Pennsylvania Class members. VIZIO  
26 continues to harm Plaintiff Kavehrad and Pennsylvania Class members since it has yet to  
27 fix the Power Defect.

28



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

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

11 115. VIZIO's conduct also constitutes unfair business practices for at least the  
12 following reasons:

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

22 116. As a direct and proximate result of VIZIO's business practices, Plaintiffs and  
23 proposed Class members suffered injury in fact and lost money or property, because they  
24 purchased and paid for a product that they otherwise would not have (or would have paid  
25 less for).

26 117. VIZIO's wrongful acts will continue unless restrained and enjoined by order  
27 of this Court. Plaintiffs and the proposed Class are entitled to an injunction and other  
28 equitable relief, including restitutionary disgorgement of all profits accruing to VIZIO,

1 because of VIZIO’s ongoing unfair and deceptive practices, and such other orders as may  
2 be necessary to prevent VIZIO’s future violations of the UCL. Pursuant to Cal. Bus. &  
3 Prof. Code § 17203, Plaintiffs are entitled to (i) an order on behalf of the general public  
4 of the State of California enjoining VIZIO from committing violations of the UCL; (ii)  
5 requiring VIZIO to immediately cease the sale of Class Televisions with the Power  
6 Defect; (iii) requiring VIZIO to give individualized notice to all consumers who  
7 purchased Class Televisions in the State of California during the applicable limitations  
8 periods and the public at large of the existence of the Defect; (iv) requiring VIZIO to give  
9 individualized notice to all consumers who purchased Class Televisions in the State of  
10 California within the applicable limitations periods of their rights under the UCL and  
11 applicable California law; (v) requiring VIZIO to repair or replace Class members’ Class  
12 Televisions with non-defective Televisions; and (vi) establishing an effective monitoring  
13 mechanism to ensure VIZIO’s continued compliance with the terms of the injunction.  
14 Absent injunctive relief in a way that ensures that material information about the Power  
15 Defect is fully and accurately disclosed, Plaintiffs face the similar injury of being unable  
16 to rely on VIZIO’s representations in its product advertising and labeling in deciding  
17 whether or not they should purchase the product in the future. To the extent any of these  
18 remedies are equitable, Plaintiffs seek them in the alternative to any adequate remedy at  
19 law they may have.

20 **COUNT III**

21 **Violations of the California Consumers Legal Remedies Act**  
22 **(Cal. Civ. Code §§ 1750, *et seq.*) (“CLRA”)**  
23 **(Brought by Plaintiffs Sanderson, Williams, and Bogolyubov on Behalf of the**  
24 **California Class)**

25 118. Plaintiffs incorporate by reference each preceding and succeeding paragraph  
26 as though fully set forth at length herein.  
27  
28

1 119. Plaintiffs Sanderson, Williams and Bogolyubov (for purposes of this cause  
2 of action, “Plaintiffs”) bring this cause of action on behalf of themselves and the  
3 California Class.

4 120. VIZIO is a “person” as that term is defined in CAL. CIV. CODE § 1761(e).

5 121. Plaintiffs and members of the Class are “consumers” as that term is defined  
6 in CAL. CIV. CODE §1761(d).

7 122. VIZIO engaged in unfair and deceptive acts in violation of the CLRA by the  
8 practices described above, and by knowingly and intentionally concealing from Plaintiffs  
9 and the Class members that the Class Televisions suffer from the Power Defect. These  
10 acts and practices violate, at a minimum, the following CLRA sections:

11 (a)(5) Representing that goods or services have sponsorships, characteristics, uses,  
12 benefits or quantities which they do not have;

13 (a)(7) Representing that goods or services are of a particular standard, quality, or  
14 grade, or that goods are of a particular style or model, if they are of another; and

15 (a)(9) Advertising goods and services with the intent not to sell them as advertised.  
16

17 123. VIZIO’s unfair or deceptive acts or practices occurred repeatedly in its trade  
18 or business, and were capable of deceiving a substantial portion of the purchasing public.

19 124. VIZIO knew that the Class Televisions were defective, would fail  
20 prematurely, and were not suitable for their intended use.

21 125. VIZIO was under a duty to Plaintiffs and the Class to disclose the defective  
22 nature of the devices because:

23 a. VIZIO was in a superior position to know the true state of facts about the  
24 defect;

25 b. Plaintiffs and the Class members could not reasonably have been expected  
26 to learn or discover that the devices had a defect at the time of purchase; and  
27  
28



1 c. VIZIO knew that Plaintiffs and the Class members could not reasonably have  
2 been expected to learn or discover the defect and the associated costs until the  
3 manifestation of the defect.

4 126. In failing to disclose the Power Defect and the associated costs and harm that  
5 result from it, VIZIO has knowingly and intentionally concealed material facts and  
6 breached its duty to disclose this material information.

7 127. The facts concealed or not disclosed by VIZIO to Plaintiffs and the Class  
8 Members are material in that a reasonable consumer would have considered them to be  
9 important in deciding whether to purchase the devices or pay a lesser price. Had Plaintiffs  
10 and the Class known about the defective nature of the Class Televisions, they would not  
11 have purchased the Class Televisions or would have paid less for them than they did.

12 128. As a direct and proximate result of VIZIO's conduct, Plaintiffs and Class  
13 members have been harmed, including, but not limited to: (1) paying more for the Class  
14 Televisions than they were worth and more than Plaintiffs and Class Members would  
15 have had they known of the defect, (2) paying out of pocket in an attempt to repair the  
16 defect and/or for replacement controllers; and (3) lost time addressing the Power Defect.

17 129. VIZIO'S wrongful acts will continue unless restrained and enjoined by order  
18 of this Court. Injunctive relief by and large would benefit the general public here.  
19 Injunctive relief benefits Plaintiffs only incidentally as members of the general public  
20 because Plaintiffs have already been injured by and are therefore aware of the alleged  
21 misconduct of Sony. Plaintiffs seek a public injunction (i) enjoining VIZIO from  
22 engaging in violations of the CLRA; (ii) requiring VIZIO to immediately cease selling  
23 Class Televisions with the Power Defect; (iii) requiring VIZIO to give individualized to  
24 all consumers who Class Televisions in the State of California and the public at large of  
25 the existence of the Power Defect, including through corrective advertising; (iv) requiring  
26 Sony to repair or replace Class Members' Class Televisions with non-defective Class  
27 Televisions; and (vi) establishing an effective monitoring mechanism to ensure VIZIO's  
28 continued compliance with the terms of the injunction. Absent injunctive relief in a way

1 that ensures that material information about the Power Defect is fully and accurately  
2 disclosed, Plaintiffs face the similar injury of being unable to rely on VIZIO’s  
3 representations in its product advertising and labeling in deciding whether or not they  
4 should purchase the product in the future.

5 130. Plaintiffs Williams and Sanderson sent a CLRA notice on behalf of  
6 themselves and a Class of similarly situated individuals to VIZIO on August 9 and 10,  
7 2021, respectively, providing the notice required by CAL. CIV. CODE § 1782(a). Sony did  
8 not cure the violations of the CLRA alleged herein within the 30-day period, and thus  
9 Plaintiffs Williams and Sanderson seek an award of damages on behalf of the Class.  
10 Plaintiff Bogolyubov sent a CLRA notice letter on December 15, 2021. Plaintiff  
11 Bogolyubov seeks only injunctive relief pursuant to this claim.

12 131. Plaintiffs further seek an order awarding costs of court and attorneys’ fees  
13 pursuant to CAL. CIV. CODE § 1780(e).

14 132. Attached hereto as Exhibit “A” are CLRA venue declarations submitted  
15 pursuant to CAL. CIV. CODE 1780(d).

16  
17 **COUNT IV**  
18 **Breach of Express Warranty**  
**(On behalf of Plaintiffs and the Classes)**

19 133. Plaintiffs incorporate by reference each preceding and succeeding paragraph  
20 as though fully set forth at length herein.

21 134. VIZIO is a “merchant” as defined under the Uniform Commercial Code  
22 (“UCC”).

23 135. The Class Televisions are “goods” as defined under the UCC.

24 136. VIZIO expressly warranted that the Class Televisions were of high quality  
25 and, at a minimum, would actually work properly. VIZIO specifically warranted attributes  
26 and general functionality of the Class Televisions, including that the Class Televisions  
27 were “the art of perfection” with “refined attention to every detail” and “unparalleled  
28 power.”

1 137. VIZIO also expressly warranted that it would repair and/or replace defects  
2 in material and/or workmanship free of charge that occurred during the applicable  
3 warranty period of one year from the date of original purchase.

4 138. VIZIO's Limited Warranty provides:

5 VIZIO warrants the product against defects in materials and  
6 workmanship when the product is used normally in accordance  
7 with VIZIO's user guides and manuals.<sup>41</sup>

8 139. These warranties formed the basis of the bargain that was reached when  
9 Plaintiffs and other Class members purchased Class Televisions.

10 140. VIZIO offers the Limited Warranty to consumers on a take-it-or-leave it  
11 basis, and customers had no ability to negotiate the terms of the warranty prior to or after  
12 purchasing the Class Televisions. VIZIO also maintains all of the leverage in enforcing  
13 the warranty terms and maintains the "option" of whether to repair or replace a defective  
14 product or refund the purchase price for a product that fails during the warranty period.  
15 Any such replacement parts "may be new or recertified" but at VIZIO's "option and sole  
16 discretion." VIZIO also requires that any customer "obtain pre-authorization before  
17 sending [a] product to a VIZIO service center."

18 141. Looking at the totality of the circumstances, VIZIO's express warranty  
19 provision is unconscionable and unenforceable under these circumstances. VIZIO's  
20 warranty limitation is unenforceable because it knowingly sold a defective product  
21 without informing consumers about the Power Defect. The time limits contained in  
22 VIZIO's warranty period were also unconscionable and inadequate to protect Plaintiffs  
23 and Class Members. Among other things, Plaintiffs and Class Members had no  
24

25 <sup>41</sup> <https://www.vizio.com/en/terms/warranty-and-returns>; *see also*  
26 [https://www.vizio.com/content/dam/vizio/us/en/images/product/2020/tvs/oled/oled55-](https://www.vizio.com/content/dam/vizio/us/en/images/product/2020/tvs/oled/oled55-h1/2021_OLED55-H1_OLED65-H1-UM-ENG.pdf)  
27 [h1/2021\\_OLED55-H1\\_OLED65-H1-UM-ENG.pdf](https://www.vizio.com/content/dam/vizio/us/en/images/product/2020/tvs/oled/oled55-h1/2021_OLED55-H1_OLED65-H1-UM-ENG.pdf); *User Manual: P65Q9-H1, P65Q9-*  
28 [H61, P75Q9-H1, P75Q9-H61 ENG \(vizio.com\)](https://www.vizio.com/content/dam/vizio/us/en/images/product/2020/tvs/oled/oled55-h1/2021_OLED55-H1_OLED65-H1-UM-ENG.pdf); *User Manual: P65QX-H1, P75QX-H1,*  
[P85QX-H1 ENG \(vizio.com\)](https://www.vizio.com/content/dam/vizio/us/en/images/product/2020/tvs/oled/oled55-h1/2021_OLED55-H1_OLED65-H1-UM-ENG.pdf).

1 meaningful choice in determining these time limitations, the terms of which unreasonably  
2 favor VIZIO. A gross disparity in bargaining power exists between VIZIO and Class  
3 Members, and VIZIO knew or should have known that the Class Televisions were  
4 defective at the time of sale and would fail well before the end of their useful lives.

5 142. In the alternative, if the Limited Warranty is enforceable, VIZIO breached  
6 its warranties by selling to Plaintiffs and the Class Members the Class Televisions with a  
7 known materials and workmanship defect, and which are not of high quality, and are  
8 predisposed to fail prematurely and/or fail to function properly. VIZIO also breached its  
9 warranty by failing to provide an adequate repair when contacted by Plaintiffs and the  
10 Class members following manifestation of the defect.

11 143. As a result of VIZIO's actions, Plaintiffs and Class members have suffered  
12 economic and other related damages.

13 144. Plaintiffs and the Class members have complied with all obligations under  
14 the warranty, or otherwise have been excused from performance of said obligations as a  
15 result of VIZIO's conduct described herein.

16 145. Plaintiffs notified VIZIO of the breach within a reasonable time or were ont  
17 required to do so, because affording VIZIO a reasonable opportunity to cure its breach of  
18 written warranty would hae been futile. Further, even for those Class Members who have  
19 been able to contact VIZIO customer support about the Power Defect, VIZIO has not  
20 represented that it has any fix for the Power Defect and has not otherwise provided  
21 adequate repairs.

22 146. As a direct and proximate cause of VIZIO's breach, Plaitniffs and Class  
23 Members bought Class Televisions they otherwise would not have, overpaid for their  
24 Class Televisions, did not receive the benefit of their argain, and their Class Televisions  
25 suffered a diminution in value. Plaintiffs and Class Membes have and will continue to  
26 incur costs for repair and replacement of their defective Class Televisions.

27  
28

1 147. Plaintiffs and Class Members are entitled to legal and equitable relief against  
2 VIZIO, including damages, consequential damages, specific performance, attorney fees,  
3 costs of suit, and such further relief as the Court may deem proper.

4 **COUNT V**  
5 **Breach of the Implied Warranty of Merchantability**  
6 **(On behalf of Plaintiffs and the Classes)**

7 148. Plaintiffs incorporate by reference each preceding and succeeding paragraph  
8 as though fully set forth at length herein.

9 149. VIZIO is a “merchant” as defined under the UCC.

10 150. The Class Televisions are “goods” as defined under the UCC.

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

16 152. Further, VIZIO’s Limited Warranty provides: “ANY IMPLIED  
17 WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF  
18 MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WILL BE  
19 LIMITED IN DURATION TO THE WARRANTY PERIOD SET FORTH ABOVE.”<sup>42</sup>

20 153. The Class Televisions, when sold, and at all times thereafter, were not in  
21 merchantable condition and are not fit for the ordinary purpose for which they are used  
22 for the duration of the Limited Warranty period. The Power Defect renders the televisions  
23 unmerchantable, as they are unreliable, partially or fully inoperable, and not substantially  
24 free from defects. The Power Defect renders the Class Televisions unusable for their  
25 ordinary purposes, because the televisions will power down and/or fail to power back on  
26 intermittently and without warning.

27  
28 <sup>42</sup> <https://www.vizio.com/en/terms/warranty-and-returns>.

1 154. VIZIO was provided with notice of the issues complained of herein by  
2 numerous complaints against them both online and to VIZIO customer service and  
3 including the instant lawsuit, within a reasonable amount of time.

4 155. Plaintiffs and the other Class members have had sufficient direct dealings  
5 with either VIZIO or its agents to establish privity of contract between VIZIO on one  
6 hand, and Plaintiffs and each of the Class members on the other hand. Nonetheless, privity  
7 is not required here because Plaintiffs and each of the Class members are intended third-  
8 party beneficiaries of contracts between VIZIO and its third-party retailers, and  
9 specifically, of VIZIO's implied warranties. The dealers were not intended to be the  
10 ultimate consumers of the devices and have no rights under the warranty agreements; the  
11 warranty agreements were designed for and intended to benefit the consumers only.

12 156. As a direct and proximate result of the breach of said warranties, Plaintiffs  
13 and Class members were injured, and are entitled to damages.

14  
15 **COUNT VI**  
16 **Unjust Enrichment/Quasi Contract**  
17 **(Pleading in the Alternative to Plaintiffs' Warranty-Based Claims)**  
18 **(On behalf of Plaintiffs and the Classes)**

19 157. Plaintiffs incorporate by reference each preceding and succeeding paragraph  
20 as though fully set forth at length herein.

21 158. This claim is pleaded in the alternative to the other warranty-based claims  
22 set forth herein should the Court deem the warranty claims unenforceable.

23 159. As the intended and expected result of its conscious wrongdoing, VIZIO has  
24 profited and benefited from the purchase of Class Televisions with the defect.

25 160. VIZIO has voluntarily accepted and retained these profits and benefits, with  
26 full knowledge and awareness that, as a result of VIZIO's misconduct alleged herein,  
27 Plaintiffs and the Class were not receiving devices of the quality, nature, fitness, or value  
28 that had been represented by VIZIO, and that a reasonable consumer would expect.

1 Specifically, Plaintiffs and the Class Members expected that when they purchased their  
2 devices, they would not suffer from the Power Defect.

3 161. VIZIO has been unjustly enriched by its fraudulent, deceptive, unlawful, and  
4 unfair conduct, and its withholding of benefits and unearned monies from Plaintiffs and  
5 the Class, at the expense of these parties.

6 162. Equity and good conscience militate against permitting VIZIO to retain these  
7 profits and benefits.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs, individually and on behalf of members of the Class,  
10 respectfully requests that the Court certify the proposed Class, designate Plaintiffs as  
11 Class representatives, appoint the undersigned as Class Counsel, and enter judgment  
12 through an Order:

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

15 B. Public injunctive relief in the form of a recall or free replacement  
16 program and notice of the existence of the Power Defect to all class members, including  
17 through corrective advertising;

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

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

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

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

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

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



**JURY TRIAL DEMANDED**

Plaintiffs hereby demand a trial by jury for all claims so triable.

Dated: December 15, 2021

Respectfully submitted,

By:           /s/ Tina Wolfson            
Tina Wolfson

Robert Ahdoot (SBN 172098)  
rahdoot@ahdootwolfson.com  
Tina Wolfson (SBN 174806)  
twolfson@ahdootwolfson.com  
**AHDOOT & WOLFSON, PC**  
2600 W. Olive Avenue, Suite 500  
Burbank, California 91505  
Telephone: (310) 474-9111  
Facsimile: (310) 474-4521

Benjamin F. Johns (admitted *pro hac vice*)  
bfj@chimicles.com  
Beena M. McDonald (*pro hac vice*  
forthcoming)  
bmm@chimicles.com  
Samantha E. Holbrook (admitted *pro hac vice*)  
seh@chimicles.com  
Alex M. Kashurba (admitted *pro hac vice*)  
amk@chimicles.com  
**CHIMICLES SCHWARTZ KRINER  
& DONALDSON-SMITH LLP**  
One Haverford Centre  
361 Lancaster Avenue  
Haverford, PA 19041  
(610) 642-8500

*Counsel for Plaintiffs and the Putative Class*

# **EXHIBIT A**

1 Robert Ahdoot (SBN 172098)  
rahdoot@ahdootwolfson.com  
2 Tina Wolfson (SBN 174806)  
twolfson@ahdootwolfson.com  
3 **AHDOOT & WOLFSON, PC**  
2600 W. Olive Avenue, Suite 500  
4 Burbank, California 91505  
Telephone: (310) 474-9111  
5 Facsimile: (310) 474-4521

6 Benjamin F. Johns (pro hac vice forthcoming)  
bfj@chimicles.com  
7 Beena M. McDonald (pro hac vice forthcoming)  
bmm@chimicles.com  
8 Samantha E. Holbrook (pro hac vice forthcoming)  
seh@chimicles.com  
9 Alex M. Kashurba (pro hac vice forthcoming)  
amk@chimicles.com  
10 CHIMICLES SCHWARTZ KRINER  
& DONALDSON-SMITH LLP  
11 One Haverford Centre  
361 Lancaster Avenue  
12 Haverford, PA 19041  
(610) 642-8500  
13

14 *Counsel for Plaintiff and the Putative Class*

15  
16 UNITED STATES DISTRICT COURT  
17 CENTRAL DISTRICT OF CALIFORNIA

18 AMIR KAVEHRAD, WILL  
SANDERSON, DEREK WILLIAMS,  
19 AND NIKITA BOGOLYUBOV on behalf  
of himself and all others similarly situated,

20 Plaintiffs,

21 v.

22 VIZIO INC. and VIZIO HOLDING  
23 CORP.

24 Defendants.  
25  
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Case No. 8:21-cv-01868 JLS (DFMx)

**CLRA VENUE DECLARATION  
OF PLAINTIFF DEREK  
WILLIAMS PURSUANT TO  
CALIFORNIA CIVIL CODE  
SECTION 1780(d)**

**JURY TRIAL DEMANDED**

1 I, Derek Williams, declare as follows:

2 1 I have personal knowledge of the facts stated herein and, if called upon to do so,  
3 could competently testify thereto.

4 2. I am a Plaintiff in the above-captioned action.

5 3. I submit this declaration in support of the FirstAmended Class Action Complaint, which is  
6 based in part on violations of the Consumers Legal Remedies Act, California Civil Code §§ 1750 et  
7 seq.

8 4. The Class Action Complaint has been filed in the proper place for trial of this action.

9 5. Defendant Vizio, Inc. has its principal place of business in Irvine, California, which is within  
10 Orange County. Vizio conducts substantial business, including the acts and practices at issue in  
11 this action, within San Mateo County.

12 I declare under penalty of perjury under the laws of the United States that the foregoing is true and  
13 correct to the best of my knowledge.

14 Executed on December 15, 2021 in Wittier, California.

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16 Derek Williams

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1 Robert Ahdoot (SBN 172098)  
rahdoot@ahdootwolfson.com  
2 Tina Wolfson (SBN 174806)  
twolfson@ahdootwolfson.com  
3 **AHDOOT & WOLFSON, PC**  
2600 W. Olive Avenue, Suite 500  
4 Burbank, California 91505  
Telephone: (310) 474-9111  
5 Facsimile: (310) 474-4521

6 Benjamin F. Johns (pro hac vice forthcoming)  
bfj@chimicles.com  
7 Beena M. McDonald (pro hac vice forthcoming)  
bmm@chimicles.com  
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seh@chimicles.com  
9 Alex M. Kashurba (pro hac vice forthcoming)  
amk@chimicles.com  
10 CHIMICLES SCHWARTZ KRINER  
& DONALDSON-SMITH LLP  
11 One Haverford Centre  
361 Lancaster Avenue  
12 Haverford, PA 19041  
(610) 642-8500  
13

14 *Counsel for Plaintiff and the Putative Class*

15  
16 UNITED STATES DISTRICT COURT  
17 CENTRAL DISTRICT OF CALIFORNIA

18 AMIR KAVEHRAD, WILL  
SANDERSON, DEREK WILLIAMS,  
19 AND NIKITA BOGOLYUBOV on behalf  
of himself and all others similarly situated,

20 Plaintiffs,

21 v.

22 VIZIO INC. and VIZIO HOLDING  
23 CORP.

24 Defendants.  
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Case No. 8:21-cv-01868 JLS (DFMx)

**CLRA VENUE DECLARATION  
OF PLAINTIFF AMIR  
KAVEHRAD PURSUANT TO  
CALIFORNIA CIVIL CODE  
SECTION 1780(d)**

**JURY TRIAL DEMANDED**

1 I, Amir Kavehrad, declare as follows:

2 1 I have personal knowledge of the facts stated herein and, if called upon to do so,  
3 could competently testify thereto.

4 2. I am a Plaintiff in the above-captioned action.

5 3. I submit this declaration in support of the FirstAmended Class Action Complaint, which is  
6 based in part on violations of the Consumers Legal Remedies Act, California Civil Code §§ 1750 et  
7 seq.

8 4. The Class Action Complaint has been filed in the proper place for trial of this action.

9 5. Defendant Vizio, Inc. has its principal place of business in Irvine, California, which is within  
10 Orange County. Vizio conducts substantial business, including the acts and practices at issue in this  
11 action, within San Mateo County.

12 I declare under penalty of perjury under the laws of the United States that the foregoing is true and  
13 correct to the best of my knowledge.

14 Executed on December 15, 2021 in Pottstown, Pennsylvania



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16 Amir Kavehrad

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1 Robert Ahdoot (SBN 172098)  
rahdoot@ahdootwolfson.com  
2 Tina Wolfson (SBN 174806)  
twolfson@ahdootwolfson.com  
3 **AHDOOT & WOLFSON, PC**  
2600 W. Olive Avenue, Suite 500  
4 Burbank, California 91505  
Telephone: (310) 474-9111  
5 Facsimile: (310) 474-4521

6 Benjamin F. Johns (pro hac vice forthcoming)  
bfj@chimicles.com  
7 Beena M. McDonald (pro hac vice forthcoming)  
bmm@chimicles.com  
8 Samantha E. Holbrook (pro hac vice forthcoming)  
seh@chimicles.com  
9 Alex M. Kashurba (pro hac vice forthcoming)  
amk@chimicles.com  
10 CHIMICLES SCHWARTZ KRINER  
& DONALDSON-SMITH LLP  
11 One Haverford Centre  
361 Lancaster Avenue  
12 Haverford, PA 19041  
(610) 642-8500  
13

14 *Counsel for Plaintiff and the Putative Class*

15  
16 UNITED STATES DISTRICT COURT  
17 CENTRAL DISTRICT OF CALIFORNIA

18 AMIR KAVEHRAD, WILL  
SANDERSON, DEREK WILLIAMS,  
19 AND NIKITA BOGOLYUBOV on behalf  
of himself and all others similarly situated,

20 Plaintiffs,

21 v.

22 VIZIO INC. and VIZIO HOLDING  
23 CORP.

24 Defendants.  
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Case No. 8:21-cv-01868 JLS (DFMx)

**CLRA VENUE DECLARATION  
OF PLAINTIFF NIKITA  
BOGOLYUBOV PURSUANT TO  
CALIFORNIA CIVIL CODE  
SECTION 1780(d)**

**JURY TRIAL DEMANDED**



1 I, Nikita Bogolyubov, declare as follows:

2 1 I have personal knowledge of the facts stated herein and, if called upon to do so,  
3 could competently testify thereto.

4 2. I am a Plaintiff in the above-captioned action.

5 3. I submit this declaration in support of the FirstAmended Class Action Complaint, which is  
6 based in part on violations of the Consumers Legal Remedies Act, California Civil Code §§ 1750 et  
7 seq.

8 4. The Class Action Complaint has been filed in the proper place for trial of this action.

9 5. Defendant Vizio, Inc. has its principal place of business in Irvine, California, which is within  
10 Orange County. Vizio conducts substantial business, including the acts and practices at issue in this  
11 action, within San Mateo County.

12 I declare under penalty of perjury under the laws of the United States that the foregoing is true and  
13 correct to the best of my knowledge.

14 Executed on 12/15/2021 in North Hollywood, California

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16 Nikita Bogolyubov

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1 Robert Ahdoot (SBN 172098)  
rahdoot@ahdootwolfson.com  
2 Tina Wolfson (SBN 174806)  
twolfson@ahdootwolfson.com  
3 **AHDOOT & WOLFSON, PC**  
2600 W. Olive Avenue, Suite 500  
4 Burbank, California 91505  
Telephone: (310) 474-9111  
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bfj@chimicles.com  
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9 Alex M. Kashurba (pro hac vice forthcoming)  
amk@chimicles.com  
10 CHIMICLES SCHWARTZ KRINER  
& DONALDSON-SMITH LLP  
11 One Haverford Centre  
361 Lancaster Avenue  
12 Haverford, PA 19041  
(610) 642-8500  
13

14 *Counsel for Plaintiff and the Putative Class*

15  
16 UNITED STATES DISTRICT COURT  
17 CENTRAL DISTRICT OF CALIFORNIA

18 AMIR KAVEHRAD, WILL  
SANDERSON, DEREK WILLIAMS,  
19 AND NIKITA BOGOLYUBOV on behalf  
of himself and all others similarly situated,

20 Plaintiffs,

21 v.

22 VIZIO INC. and VIZIO HOLDING  
23 CORP.

24 Defendants.  
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Case No. 8:21-cv-01868 JLS (DFMx)

**CLRA VENUE DECLARATION  
OF PLAINTIFF WILL  
SANDERSON PURSUANT TO  
CALIFORNIA CIVIL CODE  
SECTION 1780(d)**

**JURY TRIAL DEMANDED**

1 I, Will Sanderson, declare as follows:

2 1 I have personal knowledge of the facts stated herein and, if called upon to do so,  
3 could competently testify thereto.

4 2. I am a Plaintiff in the above-captioned action.

5 3. I submit this declaration in support of the FirstAmended Class Action Complaint, which is  
6 based in part on violations of the Consumers Legal Remedies Act, California Civil Code §§ 1750 et  
7 seq.

8 4. The Class Action Complaint has been filed in the proper place for trial of this action.

9 5. Defendant Vizio, Inc. has its principal place of business in Irvine, California, which is within  
10 Orange County. Vizio conducts substantial business, including the acts and practices at issue in this  
11 action, within San Mateo County.

12 I declare under penalty of perjury under the laws of the United States that the foregoing is true and  
13 correct to the best of my knowledge.

14 Executed on December 15, 2021 in Los Angeles, California.

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16 WILL SANDERSON

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