QUINN EMANUEL URQUHART & SULLIVAN, LLP
Michael E. Williams (Bar No. 181299)
 michaelwilliams@quinnemanuel.com
Daniel C. Posner (Bar No. 232009)
 danposner@quinnemanuel.com
John Z. Yin (Bar No. 325589)
 johnyin@quinnemanuel.com
Arian J. Koochesfahani (Bar No. 344642)
 ariankoochesfahani@quinnemanuel.com
865 South Figueroa Street, 10th Floor
Los Angeles, CA 90017-2543
Telephone: (213) 443-3000
Fax: (213) 443-3100

Attorneys for Defendant
VIZIO, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE-CENTRAL JUSTICE CENTER

SOFTWARE FREEDOM CONSERVANCY, INC., a New York Non-Profit Corporation, Plaintiff, v. VIZIO, INC., a California Corporation; and DOES 1 through 50, Inclusive, Defendant.	**CASE NO. 30-2021-01226723-CU-BC-CJC** **DEFENDANT VIZIO, INC.'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS MOTION FOR SUMMARY ADJUDICATION** Assigned for All Purposes to Judicial Officer: The Honorable Sandy Leal Dept. C33 Action Filed: October 19, 2021 Hearing Date: July 24, 2025 Hearing Reservation ID: 74506294 Trial Date: September 15, 2025

NOTICE OF MOTION

PLEASE TAKE NOTICE that on July 24, 2025 at 10:00 a.m., in Department C33 of the Central Justice Center at 700 Civic Center Drive, Santa Ana, CA 92701, Defendant VIZIO, Inc. ("VIZIO") will move this Court for summary adjudication as to Software Freedom Conservancy, Inc.'s ("SFC's") first and second causes of action for breach of contract and declaratory relief, with respect to the following issue of contractual duty: whether the open-source software licenses in question (GNU General Public License version 2 ("GPLv2") and GNU Lesser GPL version 2.1 ("LGPLv2.1") require the licensee (here, VIZIO) to provide information necessary to install modified versions of the licensed software back onto the Smart TVs with which the software was originally distributed while ensuring the TVs continue to function properly.

VIZIO moves on the grounds that the plain language of GPLv2 and LGPLv2.1 or, in the alternative, the undisputed extrinsic evidence, compels the conclusion that neither license imposes a duty on licensees to provide all information necessary to permit reinstallation of modified software back on the same device such that the device continues to function properly. Accordingly, SFC's assertion that VIZIO breached GPLv2 and LGPLv2.1 by not providing the information necessary for reinstallation on the Smart TVs fails as a matter of law because VIZIO owed no such duty under GPLv2 and LGPLv2.1. Resolving this question of duty as a matter of law is appropriate for summary adjudication and will significantly narrow the scope of this case for trial.

VIZIO bases this motion on the attached memorandum of points and authorities, compendium of exhibits, all other briefing submitted in connection with this motion, and all matters for which this Court can take judicial notice.

DATED: May 2, 2025

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

By /s/ *Michael E. Williams*
 Michael E. Williams
 Attorney for Defendant VIZIO, Inc.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

VIZIO'S MOTION FOR SUMMARY ADJUDICATION

Statutes

Other Authorities

VIZIO'S MOTION FOR SUMMARY ADJUDICATION

PRELIMINARY STATEMENT

In this case, Plaintiff Software Freedom Conservancy ("SFC") seeks to advance novel legal theories with respect to enforcement of two copyright licenses, GNU General Public License version 2 ("GPLv2") and GNU Lesser GPL version 2.1 ("LGPLv2.1"). SFC contends that it should be entitled to enforce the copyright licenses at issue as a breach-of-contract claim under a third-party beneficiary theory. According to SFC, Defendant VIZIO, Inc. ("VIZIO") breached GPLv2 and LGPLv2.1 by failing to provide the complete source code for the GPLv2- and LGPLv2.1-licensed software included in certain of its Smart TVs. Whether SFC can enforce GPLv2 and LGPLv2.1 as a contract under a third-party beneficiary theory will be the subject of the upcoming bench trial in September 2025. SFC goes further, however, and contends that VIZIO also breached GPLv2 and LGPLv2.1 by failing to accompany the source code with all the information that "a person of ordinary skill" would need to modify the software and reinstall such modified versions of the GPLv2- and LGPLv2.1-licensed software back onto the same VIZIO Smart TVs while ensuring the TVs continue to function properly. SFC contends that VIZIO must provide this "reinstallation" information even if doing so requires VIZIO to disclose encryption keys and authorization codes that VIZIO uses to protect its content-partners and customers from unauthorized access to their proprietary content and personal information. It is this alleged contractual duty, referred to herein as the "reinstallation requirement," that is the subject of VIZIO's current motion for summary adjudication.

The Court may summarily adjudicate an issue of contractual duty, such as whether GPLv2 and LGPLv2.1 impose a reinstallation requirement. Further, the interpretation of GPLv2 and LGPLv2.1 is a question of law for the Court to decide. As explained herein, the Court should conclude that GPLv2 and LGPLv2.1 impose no reinstallation requirement and grant VIZIO's motion for summary adjudication. Doing so will streamline the remaining issues for trial, saving time and expense for the Court and the parties.

When interpreting a contract (which SFC contends GPLv2 and LGPLv2.1 are), the Court

begins with the plain language.[1] Here, the plain language of GPLv2 and LGPLv2.1 make no mention of a reinstallation requirement that would require a distributor of GPLv2- or LGPLv2.1-licensed software to provide all the information needed by "a person of ordinary skill" to modify and reinstall modified software back on the same device while allowing it to continue functioning properly. Indeed, the language of GPLv2 and LGPLv2.1 is not even reasonably susceptible to SFC's proposed interpretation. As such, the Court need not, and should not, consider any extrinsic evidence that SFC may proffer to support its novel interpretation.

Even if the Court considered potentially relevant extrinsic evidence, it would only confirm that SFC's interpretation is unreasonable, violating the reasonable expectations of the open-source community and leading to absurd results. More than 15 years after the Free Software Foundation ("FSF") published GPLv2 and LGPLv2.1, it published new versions of the licenses, GPLv3 and LGPLv3, for the primary purpose of ***adding*** a reinstallation requirement that imposes an obligation on distributors of software licensed under GPLv3 and LGPLv3 to provide the information necessary to reinstall modified software back on the same device while preserving the functionality of the device. But this case only concerns software licensed under GPLv2 and LGPLv2.1—not GPLv3 and LGPLv3;[2] so although this new reinstallation requirement does not apply, it confirms the absence of such a requirement in GPLv2 and LGPL2.1. Nor was the new requirement in GPLv3 and LGPLv3 intended to clarify a purported reinstallation requirement in GPLv2 and LGPLv2.1. Whether to add a reinstallation requirement to GPLv3 and LGPLv3 was subject to contentious debate in the open-source community such that ultimately, FSF only applied this requirement to a limited subset of defined "User Products" containing software licensed under GPLv3. There would be no need for contentious debate if, as SFC contends, this requirement already existed. Moreover, GPLv3 contains a number of express limitations and protections with respect to the distributor's warranty and service obligations relating to any "User Product" which contains user-modified

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[1] VIZIO disputes SFC's contention that GPLv2 and LGPLv2.1 are contracts, as opposed to copyright licenses. However, for purposes of this motion only and without conceding the issue, VIZIO accepts SFC's contention that GPLv2 and LGPLv2.1 are contracts.

[2] *See* ROA # 165 (FAC) ¶ 2.

software. SFC's contention that GPLv2 and LGPLv2.1 implicitly contain a broader reinstallation requirement applying to all products and devices and without these additional protections confirms the unreasonableness of its interpretation.

In fact, before this lawsuit, FSF and SFC both publicly acknowledged that GPLv3 imposed new obligations to allow users to modify and reinstall software back on the same device which GPLv2 did not include. Prominent members of the open-source community shared the understanding that the reinstallation requirement was limited to GPLv3. Indeed, the Linux Foundation, which holds copyrights to the Linux kernel—the most widely used GPLv2 software in the world—elected not to license the Linux kernel under GPLv3 specifically to avoid its new reinstallation requirement. SFC's current interpretation that GPLv2 and LGPLv2.1 contain a reinstallation requirement is contrary to the plain language and the reasonable expectations of the open-source community which has relied on the general understanding that GPLv2 imposes no such requirement.

Accordingly, for these reasons as further explained below, the Court should reject SFC's attempt to rewrite GPLv2 and grant summary adjudication to VIZIO on this issue of duty.

STATEMENT OF FACTS

Plaintiff SFC is a non-profit organization advocating for free and open-source software, whose "mission is to ensure the right to repair, improve and reinstall software." (Compendium of Exhibits ("Comp.") Ex. 1 (SFC Website - "Who We Are" Page) at 3.) SFC sued VIZIO alleging it is violating GPLv2 and LGPLv2.1 by distributing GPLv2-licensed software in certain of its Smart TVs without complying with the source-code requirements of the license. But SFC is not suing as a copyright holder of any of the licensed software at issue. Rather, SFC brought what it has described as a "unique and historic" lawsuit (Comp. Ex. 2 (SFC Press Kit) at 6), suing for breach of contract as a purported third-party beneficiary of GPLv2 and LGPL2.1.

**GPLv2.** FSF created the GPL with the purpose of "protect[ing] your rights with two steps: (1) _copyright_ the software, and (2) offer you this license which gives you legal permission to copy, distribute and/or modify the software." (Comp. Ex. 3 (GPLv2) at 25.) The GPL serves as a standardized form copyright license through which the owners of the copyright in software could

choose to license their software in accordance with certain specified terms and conditions. (Comp. Ex. 4 (Kooyman Deposition Transcript Excerpts) at 34-35.)

In 1991, FSF published GPLv2, one of the relevant licenses at issue. (Comp. Ex. 3 at 25.) By its terms, GPLv2 applies to "any program or other work which contains a notice placed by the copyright holder saying it may be distributed under the terms of this General Public License." (Comp. Ex. 3 at 26.) It provides "**TERMS AND CONDITIONS FOR COPYING, DISTRIBUTION AND MODIFICATION**" while stating "[a]ctivities other than copying, distribution and modification are not covered by this License; they are outside its scope." (Comp. Ex. 3 at 26.) Section 3 of GPLv2 is the source-code condition, which allows users of software licensed under GPLv2 to distribute that software, as long as they satisfy one of the following conditions:

> (a) Accompany it with the complete corresponding machine-readable source code, which must be distributed . . . on a medium customarily used for software interchange; or,
>
> (b) Accompany it with a written offer . . . to give any third party . . . a complete machine-readable copy of the corresponding source code . . . .

(Comp. Ex. 3 at 27.)[3] Under GPLv2, source code is defined as "the preferred form of a work for making modifications to it. For an executable work, complete source code means all the source code for all modules it contains, plus any associated interface definition files, plus the scripts used to control compilation and installation of the executable." (Comp. Ex. 3 at 27.)

**LGPLv2.1.** In February 1999, FSF published LGPLv2.1. (Comp. Ex. 5 (LGPLv2.1) at 39.) As LGPLv2.1 explains, "[t]his license . . . applies to certain designated libraries" and is used "to permit linking those libraries into non-free programs."[4] (Comp. Ex. 5 at 40.) "We call this license

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[3] Section 3 of GPLv2 also contains a subsection (c), however, it is not applicable to this case.

[4] LGPLv2.1 defines a "library" to mean "a collection of software functions and/or data prepared so as to be conveniently linked with application programs (which use some of those functions and data) to form executables." (Comp. Ex. 5 at 40.)

Case No. 30-2021-01226723-CU-BC-CJC

VIZIO'S MOTION FOR SUMMARY ADJUDICATION

the 'Lesser' General Public License because it does Less to protect the user's freedom than the ordinary General Public License." (Comp. Ex. 5 at 40.) Although LGPLv2.1 offers less protection, the definition of "Source code" is similar to GPLv2: 'Source code' for a work means the preferred form of the work for making modifications to it. For a library, complete source code means all the source code for all modules it contains, plus any associated interface definition files, plus the scripts used to control compilation and installation of the library." (Comp. Ex. 5 at 41.) Thus, it substitutes "library" for "executable" but is otherwise identical.

GPLv3. In 2007, FSF published GPLv3. (Comp. Ex. 6 (GPLv3) at 47.) GPLv3 differs substantially from GPLv2. GPLv3 states that "[s]ome devices are designed to deny users access to install or run modified versions of the software inside them . . . Therefore, we have designed this version of the GPL to prohibit the practice for those products." (Comp. Ex. 6 at 48.) In addition to the requirement in GPLv2 to provide source code, GPLv3 adds a requirement for distributors to provide "Installation Information" for "User Products," both of which are defined terms in GPLv3. (Comp. Ex. 6 at 50-51.) GPLv3 defines "User Products" to include "any tangible personal property which is normally used for personal, family, or household purposes" or "anything designed or sold for incorporation into a dwelling." (Comp. Ex. 6 at 50.) "Installation Information for a User Product means any methods, procedures, authorization keys, or *other information required to install and execute modified versions of a covered work in that User Product* from a modified version of its Corresponding Source. *The information must suffice to ensure that the continued functioning of the modified object code is in no case prevented or interfered with solely because modification has been made*." (Comp. Ex. 6 at 51 (emphasis added).)

Before this lawsuit, FSF and SFC made public statements explaining the difference between GPLv2 and GPLv3 with respect to the reinstallation requirement in GPLv3. (Comp. Ex. 7 (FSF Website - Frequently Asked Questions) at 91.) For example, FSF published on its website that "manufacturers comply with GPLv2 by giving you the source code, but you still don't have the freedom to modify the software you're using." (Comp. Ex. 7 at 91.) As to GPLv3, FSF explained: "When people distribute User Products that include software under GPLv3, section 6 requires that they provide you with information necessary to modify that software." (Comp. Ex. 7 at 91.)

Case No. 30-2021-01226723-CU-BC-CJC

VIZIO'S MOTION FOR SUMMARY ADJUDICATION

SFC's former President and Executive Director, and its current Policy Fellow and "Hacker-in-Residence," Bradley Kuhn (Comp. Ex. 8 (Kuhn Deposition Transcript Excerpts) at 105) co-authored "A Practical Guide to GPL Compliance," which similarly explained the difference between GPLv2's requirement to provide the scripts used to control installation of the executable and GPLv3's requirement to provide the information necessary to allow someone to reinstall modified software back on the same device. (*See* Comp. Ex. 9 (Software Freedom Law Center - "A Practical Guide to GPL Compliance") at 117, 121.) This Guide explains that under GPLv2 "[y]ou must provide all information necessary such that someone generally skilled with computer systems could produce a binary similar to the one produced." (Comp. Ex. 9 at 117.) In contrast, GPLv3 "adds specific details that are unique," and that "[i]f you put GPLv3'd software into a User Product . . . you must provide information that makes it possible for the user to install functioning, modified versions of the software." (Comp. Ex. 9 at 117, 121.) This distinction between GPLv2 and GPLv3 is widely understood and accepted in the open-source community. (Comp. Ex. 10 (Dolan Deposition Transcript Excerpts) at 143 (the "reasonable expectation in the open source community is that GPL version 2 does not include a requirement to provide installation information that would allow someone to modify and reinstall the GPL software on the same device."); Comp. Ex. 11 (Landley Deposition Transcript Excerpts) at 163 ("Q: Does GPLv2 require installation back onto the user product? A: No.").)

SFC's Lawsuit Against VIZIO. In October 2021, SFC sued VIZIO alleging that VIZIO violated the distribution provision of GPLv2 and LGPLv2.1 by failing to provide, or offering in writing to provide, the complete source code for the GPLv2- and LGPLv2.1-licensed software incorporated in certain VIZIO Smart TVs. (ROA # 165 (FAC) ¶¶ 128, 131-133.) In addition, SFC contends that:

> Under GPLv2, [VIZIO] is obligated to provide . . . the scripts used to control compilation and installation of the executable on the same device on which the computer program was originally distributed. At a minimum, [VIZIO] should deliver files such that a person of ordinary skill can compile the source code into a functional executable and install it onto the same device, such that all features of the original program are retained, without undue difficulty."

(Comp. Ex. 12 (SFC's Supplemental Objections and Responses to VIZIO's Supplemental Special Interrogatories) at 193.) Thus, SFC seeks to obtain the source code for GPLv2- and LGPLv2.1 licensed software installed on the TVs, as well as all other information necessary to reinstall modified software back onto the TVs, while ensuring the TVs continue to function properly. (Comp. Ex. 12 at 193.) For purposes of this Motion, VIZIO refers to SFC's contention as the "reinstallation requirement."

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ARGUMENT

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I. **THE COURT SHOULD GRANT SUMMARY ADJUDICATION FOR VIZIO BECAUSE THERE IS NO CONTRACTUAL DUTY TO PROVIDE REINSTALLATION INFORMATION UNDER GPLV2 OR LGPLV2.1**

    A. **The Court Can Summarily Adjudicate A Contractual Duty**

A defendant may move for summary adjudication on an issue of duty. Cal. Civ. Proc. Code § 437c(f)(1). This rule applies to contractual duties. *Linden Partners v. Wilshire Associates*, 62 Cal. App. 4th 508 (1998). In *Linden Partners*, the plaintiffs moved for summary adjudication as to whether a contract for the sale of an office building imposed a duty on the defendant to accurately disclose a subtenant's rent. *Id.* at 514-15. The court held that "if, under the facts and circumstances of a given case, a court finds it appropriate to determine the existence or nonexistence of a duty in the nature of a contractual obligation, it may properly do so by a ruling on that issue presented by a motion for summary adjudication." *Id.* at 519. Accordingly, courts "may rule whether a defendant owes or does not owe a duty to plaintiff without regard to the dispositive effect of such ruling on other issues in the litigation." *Id.* at 522.

Here, VIZIO moves for summary adjudication on an issue of contractual duty. SFC contends that VIZIO breached GPLv2 by, among other reasons, failing to provide information that would allow a recipient of source code to modify GPLv2- and LGPLv2.1-licensed software and reinstall it back onto the Smart TVs while ensuring that the TVs continue to function properly. (Comp. Ex. 12 at 193.) VIZIO contends that neither GPLv2 nor LGPLv2.1 imposes any such contractual duty. Thus, the Court may properly resolve this issue of duty on summary adjudication. Indeed, resolving the issue now will serve the purpose of summary adjudication by narrowing the issues for trial and promoting judicial efficiency. *See Serri v. Santa Clara Univ.*, 226 Cal. App. 4th 830, 859 (2014)

Case No. 30-2021-01226723-CU-BC-CJC

VIZIO'S MOTION FOR SUMMARY ADJUDICATION

1 (summary adjudication aims to "reduce the costs and length of litigation by limiting the substantive

2 areas of dispute") (internal quotation omitted).

3   **B.   GPLv2 Imposes No Reinstallation Requirement**

4   The Court determines the meaning of a contract "from the language of the contract alone if

5 the language is clear and explicit, and does not involve an absurdity." *DVD Copy Control.*

6 *Assn., Inc. v. Kaleidescape, Inc.*, 176 Cal. App. 4th 697, 712 (2009) (internal quotation omitted).[5]

7   The relevant contractual language at issue here confirms that GPLv2 does not impose a

8 reinstallation requirement. Specifically, GPLv2 states that "[t]he source code for a work means the

9 preferred form of the work for making modifications to it. For an executable work, complete source

10 code means all the source code for all modules it contains, plus any associated interface definition

11 files, plus the scripts used to control compilation and installation of the executable." (Comp. Ex. 3

12 at 27.) GPLv2 says nothing about requiring the modified source code to be reinstalled on the same

13 device from which it came. Nevertheless, SFC seeks to rewrite this provision to include the

14 following additional language at the end of the sentence: "***on the same device on which the***

15 ***computer program was originally distributed***." (Comp. Ex. 12 at 193.) Neither this language nor

16 any language remotely similar appears anywhere in the text of GPLv2. SFC simply made it up.

17 SFC then interprets this additional, made-up language to mean that, "[a]t a minimum, [VIZIO]

18 should deliver files such that a person of ordinary skill can compile the source code into a functional

19 executable and install it onto the same device, such that all features of the original program are

20 retained, without undue difficulty." (Comp. Ex. 12 at 193.) This language likewise appears

21 nowhere in GPLv2 in form or substance.

22   That SFC has to draft new language to reach its desired interpretation confirms that the plain

23 language of GPLv2 does not include a reinstallation requirement. The plain language makes clear

24 that GPLv2 only requires the licensee to provide scripts necessary to control compilation and

25 installation of the executable. An executable file is a program that can be installed and run on a

26

27 ――――――――――――
   [5] As pertinent to this motion, courts interpret licenses and contracts using the same principles. *See*
28 *DVD Copy Control*, 176 Cal. App. 4th at 712.

computer operating system to perform certain functions. (Comp. Ex. 13 (*Merriam-Webster Dictionary*, "Executable") at 217.) This requirement allows the recipient to install and run the program on a computer or incorporate it into a new software program or device, which is consistent with GPLv2's Preamble, explaining that GPLv2 is designed to make sure "that you receive source code or can get it if you want it, that you can change the software or use pieces of it in new free programs." (Comp. Ex. 3 at 25.) GPLv2 makes no mention of requiring installation of the executable "on the same device on which the computer program was originally distributed," and the mere reference to "installation of the executable" says nothing about requiring reinstallation on the same device. Nor does GPLv2 mention "a person of ordinary skill [who] can compile the source code into a functional executable and install it onto the same device, such that all features of the original program are retained, without undue difficulty." Because the plain language of GPLv2 does not support SFC's strained interpretation that GPLv2 includes a reinstallation requirement, VIZIO is entitled to summary adjudication on the lack of such duty.

C. The Court Need Not Consider Extrinsic Evidence To Conclude That GPLv2 Lacks Any Reinstallation Requirement

In interpreting the meaning of a contract, the Court may consider extrinsic evidence only if it "is relevant to prove a meaning to which the language of the instrument is reasonably susceptible." *Dore v. Arnold Worldwide, Inc.*, 39 Cal. 4th 384, 391 (2006) (internal quotation omitted). "Whether the contract is reasonably susceptible to a party's interpretation can be determined from the language of the contract itself." *Curry v. Moody*, 40 Cal. App. 4th 1547, 1554 (1995). And if a proposed interpretation conflicts with clear contractual language, the Court must reject it, without even considering extrinsic evidence. *Id.* ("extrinsic evidence cannot be used to show that when the parties said 'Bunker Hill Monument' they meant 'the Old South Church.'"). However, to decide whether the contract "is reasonably susceptible of either of the meanings urged by the parties," the Court may provisionally receive extrinsic evidence without admitting it. *Id.* at 1552 (internal quotations omitted). The Court may admit extrinsic evidence only if the contract language demonstrates a "latent ambiguity." *Alameda Cnty. Flood Control & Water Conservation Dist. v. Dep't of Water Res.*, 213 Cal. App. 4th 1163, 1180 (2013).

1   Here, the language of GPLv2 is not reasonably susceptible to SFC's interpretation that it

2   includes a reinstallation requirement. As shown above, there is nothing in GPLv2's definition of

3   "source code" that can be fairly read to include the requirement that one must accompany the source

4   code with information that would allow a "person of ordinary skill" to reinstall a modified version

5   of the source code back onto the same device, while retaining the functionality of all features of the

6   original program. Nor is there any other language in GPLv2 that is reasonably susceptible to SFC's

7   interpretation. SFC is *not* arguing about the meaning of a term it contends is ambiguous; instead,

8   SFC is trying to insert wholly new language and obligations into GPLv2 to add a reinstallation

9   requirement that does not otherwise exist. Under these circumstances, the Court need not consider

10   extrinsic evidence to conclude that SFC's proffered interpretation fails.

11

12   **D.   Even If The Court Considers Extrinsic Evidence, It Only Confirms The Lack
                       Of A Reinstallation Requirement**

13   The interpretation of a contract becomes a question of fact only if the Court admits extrinsic

14   evidence and the evidence conflicts. *DVD Copy Control*, 176 Cal. App. 4th at 713. Even then, the

15   Court may grant summary adjudication if no "reasonable trier of fact" could "find the underlying

16   fact in favor of the party opposing the motion." *Serri*, 226 Cal. App. 4th at 860. Assuming the

17   Court considers extrinsic evidence, it only further reinforces the conclusion that GPLv2 does not

18   impose a reinstallation requirement, so VIZIO would still be entitled to summary adjudication on

19   this issue of duty.

20

21   1.   The Inclusion Of A Reinstallation Requirement In *GPLv3* Confirms That
                             GPLv2 Does Not Contain A Reinstallation Requirement

22   The most compelling extrinsic evidence confirming the lack of a reinstallation requirement

23   in GPLv2 is FSF's issuance of GPLv3 to expressly address the absence of this requirement in

24   GPLv2. In 2007, 16 years after publishing GPLv2, FSF published GPLv3, which contains a

25   reinstallation requirement but only for a limited subset of "User Products" as defined by GPLv3.

26   The Preamble to GPLv3 explains that adding this limited reinstallation requirement was a

27   motivating purpose of the new license agreement:

28

Some devices are designed to deny users access to install or run versions of the software inside them, although the manufacturer can do so. *Because such abuse occurs in the area of products for individuals to use . . . we have designed this version of the GPL to prohibit the practice for those products.* If such problem arise substantially in *other* domains, we stand ready to *extend* this provision to those domains in *future* versions of the GPL

(Comp. Ex. 6 at 48 (emphasis added).)

Consistent with its Preamble, GPLv3 adds a requirement for distributors of GPLv3-licensed software to provide "Installation Information" for "User Products" in addition to the source-code. (*See* Comp. Ex. 6 at 51 ("the Corresponding Source conveyed under this section must be accompanied by the Installation Information.").) GPLv3 defines "User Products" to include "any tangible personal property which is normally used for personal, family, or household purposes" or "anything designed or sold for incorporation into a dwelling." (Comp. Ex. 6 at 50.) In turn, "Installation Information for a 'User Product' means any methods, procedures, authorization keys, or *other information required to install and execute modified versions of a covered work in that User Product* from a modified version of its Corresponding Source. *The information must suffice to ensure that the continued functioning of the modified object code is in no case prevented or interfered with solely because modification has been made*." (Comp. Ex. 6 at 51 (emphasis added).) In other words, if the manufacturer of a "User Product" incorporates software licensed under GPLv3 in that product, the manufacturer must provide "Installation Information" that would allow someone to reinstall and run modified versions of that software back onto that same User Product while ensuring it continues to function properly.

Of course, allowing someone to reinstall and run modified versions of software on a consumer product presents potential risks of malfunction and safety concerns. The reinstallation requirement of GPLv3 properly recognizes, and accounts for, these risks, by making clear that the manufacturer of the User Product is not required "to continue to provide support service, warranty, or updates for a work that has been modified or installed by the recipient, or for the User Product in which it has been modified or installed." (Comp. Ex. 6 at 51.) In addition, GPLv3 provides that "[a]ccess to a network may be denied when the modification itself materially and adversely affects

the operation of the network or violates the rules and protocols for communication across the network." (Comp. Ex. 6 at 51.)

It is undisputed that GPLv2 makes no reference to or distinction between "User Products" and any other product containing GPLv2 software, it contains no limitations on a manufacturer's obligations to provide support or warranties for products after the user installs modified software in the product, nor does it provide protections against the misuse or dangers of reinstalled, modified software. The lack of similar protections in GPLv2 confirms that GPLv3 does not simply "clarify" the supposed implicit reinstallation requirement in GPLv2. According to SFC's strained interpretation of GPLv2, automobile manufacturers such as Audi, Toyota, BMW, or Tesla, which use the GPLv2-licensed Linux operating system to control various vehicle functions,[6] would be required to provide information that would allow consumers to reinstall modified software on their vehicles, while continuing to provide support and warranties to the consumer notwithstanding the software changes the consumer made. Indeed, if GPLv2 already contained a broad reinstallation requirement, then GPLv3 would have made that pre-existing requirement *more narrow*—which makes no sense in light of the Preamble's statement that the purpose of GPLv3 was to address the "problems" of manufacturers preventing users from modifying the software and reinstalling it on their products. These absurd results underscore the fallacy in SFC's position. *See* Cal. Civ. Code § 1638 ("The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.").

Moreover, the starkly different language between GPLv2 and GPLv3 confirms that GPLv3 contains a reinstallation requirement that GPLv2 lacks. FSF undoubtedly knew how to draft a license that clearly required a distributor of GPL-licensed software to provide information sufficient to allow someone to reinstall modified software back onto the same device without impeding the device's functionality. That FSF included this language in GPLv3 but not in GPLv2 further confirms the lack of a reinstallation requirement in GPLv2. *See, e.g.*, *11640 Woodbridge Condo.*

_____

[6] *See* Steven J. Vaughan-Nichols, *It's a Linux-Powered Car World*, ZDNet (Jan. 4, 2019), https://www.zdnet.com/article/its-a-linux-powered-car-world/.

Case No. 30-2021-01226723-CU-BC-CJC
VIZIO'S MOTION FOR SUMMARY ADJUDICATION

Homeowners' Ass'n v. Farmers Ins. Exch., 110 Cal. App. 5th 211, 331 (2025) ("Under the maxim *expressio unius es exclusio alterius*" "the expression of one thing" in a contract "is the exclusion of another"); *U.S. Building & Loan Ass'n of Los Angeles v. Salisbury*, 217 Cal. 35, 39-40 (1932) ("Courts should proceed cautiously in supplying a provision by implication which the parties have omitted from their written contract. Words should not be added where the omission may have been intentional.").

> ## 2. The Reasonable Expectations In The Open-Source Community Confirm That GPLv2 Does Not Contain A Reinstallation Requirement

Where, as here, the contract is a standardized form contract, the Court seeks to ascertain the meaning of the contract based on "the reasonable expectations of the average member of the public" who accepts the contract. Restatement (Second) of Contracts § 211(2), cmt. e; *Williams v. Apple, Inc.*, 338 F.R.D. 629, 638 (N.D. Cal. 2021) (collecting cases); *Employers Cas. Ins. Co. v. Foust*, 29 Cal. App. 3d 382, 386 (1972) ("Canons of construction dictate that courts interpret form contracts to mean what a reasonable buyer would expect them to mean, thus protecting the weaker buyers' expectations at the expense of the stronger positioned draftsman."). As the Court has recognized, the reasonable expectations of the average users of the GPL may be relevant to the meaning of the GPL. (ROA # 211 at 4); *see also* Restatement (Second) of Contracts § 211(2), cmt. e ("courts in construing and applying a standardized contract seek to effectuate the reasonable expectations of the average member of the public who accepts it"); *Employers Cas. Ins. Co.*, 29 Cal. App. 3d at 386. Accordingly, in discerning whether GPLv2 contains a reinstallation requirement, the Court may consider the reasonable expectations of members of the open-source community who regularly use GPL licensed software.

As the author of the GPLs, FSF's public statements reasonably informed the open source community about the meaning of the GPLs. Prior to this lawsuit, FSF publicly confirmed that GPLv3 adds a reinstallation requirement missing from GPLv2. Indeed, FSF published a guidebook that explains how GPLv3 requires "the distributor to provide you with whatever information or data is necessary to install modified software on the device. This may be as simple as a set of instructions, or it may include special data such as cryptographic keys or information about how to bypass an

-13-

integrity check in the hardware." (Comp. Ex. 14 (FSF - "A Quick Guide to GPLv3") at 226.) There would be no need for GPLv3 to address such "existing problems" if GPLv2 already included a reinstallation requirement.

Similarly, SFC's leadership actively educated the open-source community through their publications, which made clear that GPLv2 did not contain a reinstallation requirement. SFC's former President and Executive Director Bradley Kuhn and its current Executive Director Karen Sandler co-authored *A Practical Guide to GPL Compliance*, which distinguished between the source-code requirement of GPLv2 and the device-centric reinstallation requirement of GPLv3. (Comp. Ex. 9 at 117, 121.) This Guide explained that under GPLv2 "[y]ou must provide all information necessary such that someone generally skilled with computer systems could produce a binary similar to the one produced." (Comp. Ex. 9 at 117.) There is no mention of information necessary to allow one to reinstall modified software back on the same device while ensuring it continues to function properly. By contrast, this Guide notes that GPLv3 adds "specific details that are unique," namely, "[i]f you put GPLv3'd software into a User Product (as defined by the license) and *you* have the ability to install modified versions onto that device, you must provide information that makes it possible for the user to install functioning, modified versions of the software" back onto the "User Product." (Comp. Ex. 9 at 117, 121 (emphasis in original).) This Guide even states that "[d]uring the drafting of v3, the debate over this requirement was contentious. However, the provision as it appears in the final license is reasonable and easy to understand." (Comp. Ex. 9 at 121.) There would be no reason for a "contentious debate" over this reinstallation requirement if, as SFC now suggests, GPLv2 already includes an even broader reinstallation requirement.

In addition, SFC and FSF co-sponsored the publication "Copyleft And The GNU General Public License: A Comprehensive Tutorial And Guide," which makes the same point. It explains that the "complete corresponding source code§" requirement of GPLv2 does not go so far as requiring reinstallation: "although the definition of [complete corresponding source] is expansive, it is not sufficient to protect users' freedoms in many circumstances. For example, a GPL'd program, or a modified version of such a program, might be locked-down and restricted. The requirements in GPLv3 § 6 (discussed in Section 9.9 of this tutorial) handle that issue." (Comp. Ex. 15 (SFC and

Case No. 30-2021-01226723-CU-BC-CJC

VIZIO'S MOTION FOR SUMMARY ADJUDICATION

FSF - "Copyleft and the GNU General Public License: A Comprehensive Tutorial and Guide") at 42.) The cited Section 9.9.2 reiterates that GPLv3 "requires that parties distributing object code . . . are required to pass on any information or data necessary to install modified software on the particular device that included it." (Comp. Ex. 15 at 286.) This Tutorial further explained that "GPLv2 did not address the use of technical measures to take back the rights that the GPL granted, because such measures did not exist in 1991, and would have been irrelevant to the forms in which software was then delivered to users. GPLv3 addresses these issues, particularly because copylefted software is ever more widely embedded in devices that impose technical limitations on the user's freedom to change it." (Comp. Ex. 15 at 282.) This evidence shows that before this lawsuit, SFC and FSF were consistent in their public pronouncements that GPLv3 requires reinstallation information, while GPLv2 does not.[7]

Other prominent members of the open-source community shared this same understanding. Arguably the most prominent member of the GPL open-source community is the Linux Foundation. The Linux kernel is an operating system and one of the most widely used software programs licensed under GPLv2. (Comp. Ex. 10 at 130-31.) The Linux Foundation is a non-profit dedicated to promoting Linux and holds copyrights in the Linux kernel. (Comp. Ex. 10 at 127.) According to SFC, "[t]he Linux kernel is perhaps the most successful [free and open source software] project ever" and "forms a crucial component of the Internet, where it helps run major network servers." (ROA # 165 ¶¶ 44-46.) SFC is suing VIZIO in part because of VIZIO's alleged failure to provide the source code for the Linux kernel that VIZIO includes in certain of its Smart TVs. (*Id.*, ¶¶ 63-67.) Linux was initially developed by Linus Torvalds who chose to make it available for license under GPLv2, *not* GPLv3. (Comp. Ex. 10 at 127, 139; Comp. Ex. 16 (DebCon 2016 Transcript) at

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[7] In a transparent attempt at revisionist history, SFC began publishing self-serving blog posts shortly before this lawsuit was filed arguing that GPLv2 actually contains a reinstallation requirement, ignoring all of its prior statements to the contrary. In fact, following his deposition, Bradley Kuhn, the editor-in-chief of "The Copyleft Guide and Tutorial" marked this Guide as "defunct" and "historical" when he realized that SFC's prior statements were inconsistent with SFC's present litigation positions. (*See* Ex. 19 (Copyleft.org - "The Copyleft Guide and Tutorial") at 425.)

Case No. 30-2021-01226723-CU-BC-CJC

VIZIO'S MOTION FOR SUMMARY ADJUDICATION

389-90.) And this was no haphazard decision. Mr. Torvalds has publicly stated that the reason he did not license Linux under GPLv3 is because it contains the reinstallation requirement, which he does not agree with. (Comp. Ex. 16 at 389-90.) According to the Linux Foundation, the "reasonable expectation in the open-source community is that GPL version 2 does not include a requirement to provide installation information that would allow someone to modify and reinstall the GPL software on the same device." (Comp. Ex. 10 at 143.) Linux Foundation's position is that the language "scripts used to control compilation and installation" within GPLv2 does not impose a reinstallation requirement. (Comp. Ex. 10 at 142.)

Similarly, Robert Landley, a prominent software developer who holds copyrights in Linux and BusyBox, both of which are at issue in this case, shares this understanding. (Comp. Ex. 11 at 169; *see* ROA # 165 (FAC ¶ 47(f)).)[8] Mr. Landley has never thought that GPLv2 requires reinstallation of modified code on the same device. (Comp. Ex. 11 at 175.) Rather, consistent with FSF's pre-litigation public statements and the language of the GPL, Mr. Landley believes it is "widely perceived" that GPLv2 does not require reinstallation on the same device. (Comp. Ex. 11 at 164.) In fact, many copyright holders "chose not to switch" to version 3 ***because of*** its reinstallation requirement. (Comp. Ex. 11 at 169-70.) According to Mr. Landley, it would "surprise a lot of people" if SFC succeeded in upending this understanding. (Comp. Ex. 11 at 173.) Indeed, Mr. Landley could think of no one other than SFC who (supposedly) believes that GPLv2 requires reinstallation. (Comp. Ex. 11 at 177-78.)

Finally, Karen Sandler, SFC's Executive Director, was unable to name any publication or public statement from ***anyone*** who shared SFC's position that GPLv2 contained a reinstallation requirement. (Ex. 17 (Karen Sandler Deposition Transcript Excerpts) at 400-413.)

Thus, even if the Court considers extrinsic evidence when interpreting GPLv2, no "reasonable trier of fact" could conclude that GPLv2 contains a reinstallation requirement, as SFC contends. *Serri*, 226 Cal. App. 4th at 860.

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[8] Like Linux, SFC alleges that VIZIO breached GPLv2 by failing to distribute the source code for the Busybox program, which it contends was incorporated in certain of VIZIO's Smart TVs. (ROA # 165 (FAC ¶ 47(f)).)

Case No. 30-2021-01226723-CU-BC-CJC

VIZIO'S MOTION FOR SUMMARY ADJUDICATION

1   **E.   The Court Should Reach The Same Result As To LGPLv2.1**

2   SFC alleges that LGPLv2.1 contains the same reinstallation requirement as GPLv2, claiming

3   that VIZIO "should deliver files such that a person of ordinary skill can compile the source code

4   into a functional executable and install it onto the same device, such that all features of the original

5   program or library are retained, without undue difficulty." (Comp. Ex. 12 at 196-97.) Like SFC's

6   claims about GPLv2's alleged reinstallation requirement, SFC's allegations here are belied by the

7   plain text of LGPLv2.1. LGPLv2.1 uses a near-identical definition of "source code" as GPLv2:

8   "'[s]ource code' for a work means the preferred form of the work for making modifications to it.

9   For a library, complete source code means all the source code for all modules it contains, plus any

10   associated interface definition files, plus the scripts used to control compilation and installation of

11   the library." (Comp. Ex. 5 at 41.) Like GPLv2, SFC's made up terms regarding a reinstallation

12   requirement simply do not appear in LGPLv2.1. *See supra* I.B.

13   Moreover, just like for GPLv2, the Court need not consider extrinsic evidence in interpreting

14   LGPLv2.1 because the definition of "source code" is not reasonably susceptible to SFC's invented

15   requirement that VIZIO must "deliver files such that a person of ordinary skill can compile the

16   source code into a functional executable and install it onto the same device. . . . " (Comp. Ex. 12 at

17   196-97; *see also supra* I.C.)

18   Finally, even if the Court looks to extrinsic evidence, SFC's argument fares no better with

19   respect to the LGPLv2.1. This is confirmed by the fact that FSF published LGPLv3 many years

20   later which ***does include*** a reinstallation requirement, incorporating GPLv3's definition of

21   "Installation Information." (Comp. Ex. 18 (LGPLv3) at 421 ("Provide Installation Information, but

22   only if you would otherwise be required to provide such information under section 6 of the GNU

23   GPL."). Since the only GPL that requires the provision of "Installation Information" is GPLv3, the

24   inclusion of the reinstallation requirement in LGPLv3 confirms that LGPLv2.1 ***does not*** contain that

25   same reinstallation requirement. *See supra* I.D. Because GPLv2 and LGPLv2.1 contain

26   substantively similar language, VIZIO is entitled to summary adjudication on the issue that

27   LGPLv2.1 does not contain a reinstallation requirement either.

28

II. GRANTING VIZIO'S MOTION FOR SUMMARY ADJUDICATION WILL STREAMLINE THE ISSUES FOR TRIAL

"The purpose of the law of summary judgment is to provide courts with a mechanism to cut through the parties' pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute." *Aguilar v. Atlantic Richfield Co.*, 25 Cal. 4th 826, 843 (2001). Although motions for summary judgment and summary adjudication are "procedurally identical," a successful motion for summary judgment will resolve the entire case, whereas a successful motion for summary adjudication will dispose of "one or more elements of the cause of action." *Zamora v. Security Indus. Specialists, Inc.*, 71 Cal. App. 5th 1, 28-39 (2021). Despite not disposing of the entire cause of action, a motion for summary adjudication is a powerful procedural vehicle to "encourage settlement, reduce trial time, save money for the parties and preserve limited judicial resources." *United Community Church v. Garcin*, 231 Cal. App. 3d 327, 329-30 (1991) (superseded by statute on other grounds). Consistent with the purpose of summary adjudication, courts have resolved issues of contractual duty at the summary adjudication stage to narrow the issues for trial. *See, e.g.*, *Linden Partners*, 62 Cal. App. 4th at 522 (affirming court's pre-trial grant of summary adjudication on an issue of contractual duty before proceeding to jury trial on remaining disputed issues); *Colgan v. Leatherman Tool Group, Inc.*, 135 Cal. App. 4th 553 (2006) (affirming trial court's grant of summary adjudication on issues of liability before proceeding to a trial on remedies).

Here, the parties disagree on the legal duties that GPLv2 and LGPLv2.1 impose—namely, whether they contain a reinstallation requirement. Resolving this issue now will significantly streamline the issues at trial by allowing the Court and the parties to focus on whether SFC can assert a breach of contract claim under a third-party beneficiary theory and if so, the issue of breach—whether VIZIO complied with its *actual* obligations under GPLv2 and LGPLv2.1—not on what contractual duties GPLv2 and LGPLv2.1 require in the first instance.

Moreover, "expert testimony is generally not admissible on the legal interpretation of contracts." *Kasem v. Dion-Kindem*, 230 Cal. App. 4th 1395, 1401 (2014). Despite this well-accepted rule, VIZIO expects that SFC will attempt to offer expert witness testimony and its own publications and statements espousing its opinions about the history of GPLv2 and LGPLv2.1 and

why it believes GPLv2 and LGPLv2.1 should be interpreted to include a reinstallation requirement.[9]

Indeed, in a recent unrelated litigation, SFC's Bradley Kuhn attempted to offer purported "expert" opinions on the interpretation of the GPL, including GPLv3. The court properly excluded Mr. Kuhn's opinions because "although these statements are couched in language suggesting that they are Kuhn's professional opinion or industry custom, they ultimately discuss whether [the plaintiff] violated the [the license]" and "such testimony is improper legal opinion." *See Neo4j, Inc. v. PureThink, LLC*, No. 5:18-cv-07182-EJD, 2023 WL 7093805, at *8 (N.D. Cal. Oct. 25, 2023), at *8. Thus, unless this issue is disposed of on summary adjudication, VIZIO has reason to believe SFC will attempt to offer similar, inadmissible opinions on the interpretation of the GPLs, which have no bearing on the Court's judicial function of contract interpretation. Permitting SFC to present this irrelevant and inadmissible information at trial will confuse the issues, requiring VIZIO to present competing testimony and evidence countering these improper "opinions", which will unnecessarily delay the length of the trial.

CONCLUSION

VIZIO respectfully requests the Court grant its Motion for Summary Adjudication and conclude as a matter of law that GPLv2 and LGPLv2.1 contain no reinstallation requirement.

DATED: May 2, 2025

QUINN EMANUEL URQUHART & SULLIVAN, LLP

By /s/ *Michael E. Williams*
_____
Michael E. Williams
Attorney for Defendant VIZIO, Inc.

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[9] SFC's former attorney and designated expert witness Pamela Chestek intends to offer her opinion that GPLv2 and LGPLv2.1 do, in fact, contain a reinstallation requirement.

Case No. 30-2021-01226723-CU-BC-CJC

VIZIO'S MOTION FOR SUMMARY ADJUDICATION

PROOF OF SERVICE

I am employed at the law firm of Quinn Emanuel Urquhart & Sullivan, LLP in the County of Los Angeles, State of California. I am over 18 years old and not a party to the within action. My business address is 865 South Figueroa Street, 10th Floor, Los Angeles, California 90017.

On May 2, 2025, I served a true and correct copy of the document described as **DEFENDANT VIZIO'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY ADJUDICATION, VIZIO'S SEPARATE STATEMENT OF MATERIAL FACTS, COMPENDIUM OF EXHIBITS, THE DECLARATION OF MICHAEL E. WILLIAMS, AND PROPOSED ORDER IN SUPPORT THEREOF,** on the parties in this action via electronic service to the emails below, pursuant to the parties' joint stipulation: "Electronic service will count as personal service on the day of that electronic service, if the electronic service occurs before midnight Pacific Time. If the electronic service occurs after midnight Pacific Time, that service will count as personal service for the following business day that is not a legal holiday."

Sa'id Vakili, Esq.
vakili@vakili.com
John A. Schlaff, Esq.
john.schlaff@gmail.com
David N. Schultz, Esq.
Schu1984@yahoo.com
Stephen P. Hoffman, Esq.
hoffman@vakili.com
VAKILI & LEUS, LLP
3701 Wilshire Blvd., Ste. 1135
Los Angeles, CA 90010-2822
Tel: (213) 380-6010
Fax: (213) 380-6051

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 2, 2025.

/s/ *Delaney Gold-Diamond*

Delaney Gold-Diamond

Case No. 30-2021-01226723-CU-BC-CJC

VIZIO'S MOTION FOR SUMMARY ADJUDICATION

THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

Reserve a Motion Date

Your reservation request has been CONFIRMED by the Superior Court. The hearing date and time below has been reserved. You will be asked to provide your reservation number to the court at a later date.

MOVING PAPERS MUST BE E-FILED WITHIN 24 HOURS AFTER COMPLETING THE ON-LINE RESERVATION. Failure to submit your moving papers within 24 hours will result in the automatic CANCELLATION of the reservation.

NOTE: To expedite your motion, please place the appropriate Court Reservation number (e.g. 7XXXXXXX) on each Motion being submitted. If multiple motions are submitted on one document, all reservations numbers must be listed on the face page of the pleading.

Please do not reply to this email.

Reservation Number: 74506294

Hearing Date:	July 24, 2025
Hearing Time:	10:00 AM
Department:	C33

Motion Type:	Motion for Summary Judgment and/or Adjudication

Case Number:	30-2021-01226723-CU-BC-CJC
Case Title:	Software Freedom Conservancy, Inc. vs. Vizio, Inc.
Judicial Officer:	Sandy Leal

Email:	michaelwilliams@quinnemanuel.com
Requestor Name:	Michael Williams
Requestor Phone:	213-443-3251
Filing Party:	VIZIO, Inc.

Date of Request:	March 06, 2025
Time of Request:	9:09 PM
Transaction Number:	1000536936