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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

KIRK HINSHAW, individually, and on behalf of all persons similarly situated,

Plaintiff,

vs.

VIZIO, INC., and DOES 1 through, 100, inclusive.

CASE NO. SACV14-00876-DOC (ANx)
CLASS ACTION
FINAL JUDGMENT [62]

Assigned to Hon. David O. Carter

This matter came before the Court on Plaintiffs’ Motion for Final Approval of Settlement (“Final Approval Motion”).

WHEREAS, the Court has received and reviewed the Settlement Agreement entered into between the Named Plaintiff on the one hand, and Defendant VIZIO, Inc. (“VIZIO”) on the other hand, (the “Agreement”), and has considered the terms of the proposed settlement set forth therein (the “Settlement”);

WHEREAS, all terms used herein shall have the same meanings as set forth in the Agreement, unless otherwise defined herein;

WHEREAS, on June 16, 2016, the Court entered its order preliminarily approving the Settlement of this class action as between the Named Plaintiff, on the one hand, and VIZIO, on the other hand, and setting a date and time for a fairness hearing to consider whether the Settlement should be finally approved by the Court

1 pursuant to Rule 23(d) of the Federal Rules of Civil Procedure as fair, adequate, and
2 reasonable (the “Preliminary Approval Order”);

3 WHEREAS, the Court later directed that all Settlement Class Members be
4 given notice of the Settlement, and approved the form and method of notice, and of
5 the date for the final fairness hearing;

6 WHEREAS, the Court has received declarations of the notice and claims
7 administrator CPT Group and Vizio Inc. attesting to the e-mailing, TV and
8 publication of the Notice in substantial accordance with the Preliminary Approval
9 Order;

10 WHEREAS, the Court entered a Conditional Class Certification Order on
11 June 16, 2016 that reflects the claims certified for Settlement purposes and the scope
12 of the Settlement Class;

13 WHEREAS, the Court having considered all timely filed objections to the
14 Settlement; and;

15 WHEREAS, the Court having conducted a final fairness hearing on October
16 31, 2016 (the “Settlement Approval Hearing”), and having considered the arguments
17 presented, all papers filed, and all proceedings had therein;

18 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

19 1. The Court has jurisdiction over the subject matter of this action, all
20 Settlement Class Members, and VIZIO.

21 2. In accordance with Rule 23(d) of the Federal Rules of Civil Procedure
22 and the requirements of due process, all members of the Settlement Class have been
23 given proper and adequate notice of the Settlement. Based upon the evidence
24 submitted by the parties to the Agreement, the Agreement, the arguments of
25 counsel, and all the files, records, and proceedings in this case, the Court finds that
26 the Notice and notice methodology implemented pursuant to the Agreement and the
27 Court’s Preliminary Approval Order (a) constituted the best practicable notice under
28 the circumstances; (b) constituted notice that was reasonably calculated, under the

1 circumstances, to apprise members of the Settlement Class of the pendency of the
2 litigation, their right to object to the Settlement, and their right to appear at the
3 Settlement Approval Hearing; (c) were reasonable and constituted due, adequate,
4 and sufficient notice to all persons entitled to notice; and (d) met all applicable
5 requirements of the Federal Rules of Civil Procedure, and any other applicable law.

6 3. The Agreement in this action warrants final approval pursuant to Rule
7 23(e) of the Federal Rules of Civil Procedure because it is fair, adequate, and
8 reasonable to those it affects; it resulted from vigorously contested litigation,
9 discovery and motion practice and extensive good-faith arm's length negotiations
10 between the parties; and it is in the public interest. In making this determination, the
11 Court has considered and balanced several factors, including the following factors
12 identified by the Ninth Circuit Court of Appeals:

13 (a) the strength of the plaintiffs' case;

14 (b) the risk, expense, complexity, and likely duration of further
15 litigation;

16 (c) the risk of not attaining certification of a litigation class, as well as
17 the risk of maintaining class action status throughout the course of the litigation;

18 (d) the amount offered in settlement;

19 (e) the extent of discovery completed, and the stage of the proceedings;

20 (f) the experience and views of counsel; and

21 (g) the reaction of the class members to the proposed settlement.

22 *See Torrasi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993).

23 4. The required CAFA notices were mailed to state and federal authorities
24 and there has been no response. There is no government participant in this
25 litigation.

26 5. The Final Approval Motion is hereby GRANTED, and the Agreement
27 is hereby APPROVED as fair, reasonable, adequate, and in the public interest, and
28 the terms of the Agreement are hereby determined to be fair, reasonable, adequate,

1 and for the exclusive benefit of the Settlement Class Members. The Parties to the
2 Agreement are directed to consummate the Agreement in accordance with its terms.

3 6. The Court FINDS that the following Settlement Class, conditionally
4 certified on June 16, 2016, meets the requirements of Fed. R. Civ. P. 23(a) and
5 23(b)(3) and such certification is hereby made final:

6 All persons residing in the United States who purchased a
7 VIZIO television between January 1, 2014 and June 23,
8 2014 and were unable to access streaming content from
9 Amazon Instant Video after connecting the television to
the internet.

10 7. Excluded from the Settlement Class are those persons eligible for
11 membership in the Settlement Class who timely submitted valid requests for
12 exclusion and are not bound by this Judgment, and are not entitled to any recovery
13 from the settlement proceeds obtained through the Settlement. The six (6) persons
14 who submitted valid requests for exclusion and are excluded from the Settlement
15 Class are: Yvette Bartle, Michael Gewe, Laurie Hunter, Tanya Marsh, Thomas Thor
16 and Anthony Wheeler.

17 8. The Court APPROVES payment of the settlement consideration in
18 accordance with the terms of the Agreement. Each participating class member will
19 receive a free credit/voucher that can be used to purchase any content (television
20 shows or movies) on the Amazon Instant video service. The value of this aspect of
21 the settlement is \$1,826,340, and this amount will be distributed to participating
22 class members on a pro rata basis. The credits will not expire. The Claims
23 Administrator is directed to send the credit/voucher to the participating Class
24 Members.

25 9. The Court APPROVES payment of an Incentive Payment to the Named
26 Plaintiff, Kirk Hinshaw in the amount of \$10,000. The Court finds that Plaintiff Kirk
27 Hinshaw has performed the duties of a class representative with the required level of
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1 diligence and loyalty, has expended significant time assisting in the prosecution of
2 the lawsuit, and therefore is entitled to receive the incentive award. The Settlement
3 Administrator is directed to pay Plaintiff Kirk Hinshaw the amount of the incentive
4 award within five (5) business days.

5 10. The Court APPROVES payment of Attorneys' Fees and litigation costs
6 in the amount of \$440,000 in accordance with the terms of the Agreement. The
7 Court finds the value of the cash and non-cash (credit/voucher) components of the
8 settlement is \$2,346,340. The Court finds that the fees should be calculated using
9 the benchmark 25% of the settlement value approach approved in the Ninth Circuit,
10 and that there is no reason for an upward or downward revision to that benchmark.
11 Class Counsel have agreed as part of the settlement to limit their fee and cost
12 request to \$440,000 representing approximately 19% of the settlement award.

13 11. The Court has also applied the lodestar approach as a cross-check to the
14 fees that would be awarded using the benchmark approach. Class Counsel have
15 submitted contemporaneous time records showing that as of October 3, 2016 (and
16 therefore not counting any work done thereafter including with respect to appearing
17 for this hearing), they have expended over 556.50 hours in the successful
18 prosecution of this lawsuit.

19 12. The Court finds that both attorneys Jeffrey Wilens and Jeffrey Spencer
20 have experience in prosecuting class actions, and that Mr. Wilens is a 30-year
21 attorney and Mr. Spencer is a 20-year attorney. Both attorneys are seeking to be
22 compensated at the hourly rate of \$700 and they have presented evidence of their
23 experience and qualifications as well as a recent court order from the United States
24 District Court for the Central District of California approving compensation for
25 them at \$700 per hour. The Court is familiar with the prevailing market rate for
26 attorneys handling complex litigation matters in the Central District who have
27 comparable levels of experience and finds that \$700 is consistent with that rate.
28 Therefore, the Court approves the hourly rate of \$700 for attorney Jeffrey Wilens

1 and \$700 for attorney Jeffrey Spencer.

2 13. Accordingly, the Court hereby awards Class Counsel \$440,000 in
3 attorney's fees and costs to be allocated pursuant to their existing arrangements. The
4 Settlement Administrator is directed to pay this amount to Class Counsel within five
5 (5) business days.

6 14. In consideration of the Class Settlement Amount, and for other good
7 and valuable consideration, each of the Releasing Settlement Class Members shall,
8 by operation of this Judgment, have fully, finally, and forever released, relinquished,
9 and discharged all Settlement Class Members Released Claims in accordance with
10 the Agreement; shall have covenanted not to sue VIZIO with respect to all such
11 Settlement Class Member Released Claims; and shall be permanently barred and
12 enjoined from instituting, commencing, prosecuting, or asserting any such
13 Settlement Class Member Released Claim against VIZIO.

14 15. As of the Effective Date, Plaintiff and each Settlement Class member
15 acknowledges full satisfaction of all Settled Claims and release, acquit, and forever
16 discharge VIZIO of and from any and all claims, rights, causes of action, penalties,
17 demands, damages, debts, accounts, duties, costs and expenses (other than those
18 costs and expenses required to be paid pursuant to this Agreement), liens, charges,
19 complaints, causes of action, obligations, or liability of any and every kind that (1)
20 were asserted in the Litigation or (2) are based upon, arise out of or reasonably
21 relate to the inability of the Settlement Class Members to receive streaming video
22 from Amazon Instant Video for a period of time, whether such claims are now
23 known or unknown to the Plaintiff or the Settlement Class Members (the "Released
24 Claims").

25 16. With respect to the Released Claims only, the Settlement Class
26 Members stipulate and agree that, upon the Effective Date, the Settlement Class
27 Members shall be deemed to have, and by operation of the Final Judgment shall
28 have, expressly waived and relinquished, to the fullest extent permitted by law, the

1 provisions, rights and benefits of Section 1542 of the California Civil Code, or any
2 other similar provision under federal or state law, which provides: a general release
3 does not extend to claims which the creditor does not know or suspect to exist in his
4 favor at the time of executing the release, which if known by him must have
5 materially affected his settlement with debtor.

6 17. This Judgment is the Final Judgment in the suit as to all Settlement
7 Class Member Released Claims.

8 18. Without affecting the finality of this Judgment in any way, this Court
9 retains jurisdiction over (a) implementation of the Settlement and the terms of the
10 Agreement; (b) distribution of the Class Settlement Amount, the Class
11 Representative Incentive Payments, the Attorneys' Fees and Costs Amount; and (c)
12 all other proceedings related to the implementation, interpretation, administration,
13 consummation, and enforcement of the terms of the Agreement and the Settlement,
14 and the administration of Claims submitted by Settlement Class Members. The time
15 to appeal from this Judgment shall commence upon its entry.

16 19. In the event that the Settlement Effective Date does not occur, this
17 Judgment shall be rendered null and void and shall be vacated, nunc pro tunc, except
18 insofar as expressly provided to the contrary in the Agreement, and without
19 prejudice to the status quo ante rights of Plaintiff, Settlement Class Members, and
20 VIZIO.

21 20. The Court finds that there is no just reason for delay and expressly
22 directs Judgment and immediate entry by the Clerk of the Court.

23 **IT IS SO ORDERED.**

24 DATED: November 15, 2016

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28 Hon. David O. Carter