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14 IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
15 (SAN FRANCISCO DIVISION)

16 IN RE TFT-LCD (FLAT PANEL)
17 ANTITRUST LITIGATION

Case No. Master File No. 3:07-md-1827 SI

18 This Document Relates to Individual
Case No. 3:10-cv-4346 SI
19 STATE OF OREGON, *ex rel* Ellen F.
20 Rosenblum, Attorney General,
21
Plaintiff,
22 v.
23 AU OPTRONICS CORPORATION,
24 et al.,
25 Defendants.

OREGON ATTORNEY GENERAL'S
NOTICE OF MOTION AND MOTION
FOR ORDER GRANTING APPROVAL
OF FINAL PLAN OF DISTRIBUTION
AND ENTRY OF FINAL JUDGMENT
OF DISMISSAL WITH PREJUDICE

Hearing Date: May 20, 2016
Time: 9:00 A.M.
Courtroom: 1 – 17th Floor

Judge: Honorable Susan Illston

NOTICE OF MOTION AND MOTION

1
2 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

3 PLEASE TAKE NOTICE THAT on May 13, 2016, at 9:00 a.m. or as soon
4 thereafter as the matter may be heard, in the Courtroom of the Honorable Susan Illston,
5 United States District Judge for the Northern District of California, located at 450 Golden
6 Gate Avenue, San Francisco, California, the Oregon Attorney General moves under ORS
7 646.775(3) for entry of an Order:

8 1. Confirming that notice has been given in the manner previously proposed
9 by the Oregon Attorney General and previously approved by this Court in satisfaction of
10 due process and ORS 646.775(2) and (3);

11 2. Finding the number of natural persons and Oregon political subdivisions
12 which notified the Oregon Attorney General of a desire to opt out of Oregon's settlement
13 agreement with the respective Defendant groups falls below the number that would allow
14 rescission of any of the settlement agreements;

15 3. Approving the State of Oregon's Final Plan of Distribution; and

16 4. Providing for entry of final judgment with prejudice as to all Defendants.

17
18 Defendants join in seeking entry of the requested Order, and they do not oppose
19 the State's arguments in the following memorandum. The motion is based upon: this
20 Notice; the following Memorandum of Points and Authorities; the accompanying
21 Declarations of Tim D. Nord, Michael G. Neff, Lori L. Castaneda, and Ellen M. Klem;
22 the arguments of the State's counsel; and all records on file in this matter.
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MEMORANDUM OF POINTS AND AUTHORITIES

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2 I. INTRODUCTION AND BACKGROUND.

3 This Court previously approved the Oregon Attorney General's settlements with
4 the respective Defendants and approved the Oregon Attorney General's notice plan
5 ("Notice Plan"), 60-day opt out period ("Opt-Out Period"), and proposed plan of
6 distribution for natural persons and Oregon's political subdivisions. DKT. 9486. This
7 Court also previously approved a number of proposed distributions from the Oregon
8 common settlement fund, including but not limited to, an award of attorney fees and
9 reimbursement of litigation expenses and administrative costs. *Id.* and DKT. 9505.
10

11 The Oregon Attorney General completed notice by publication to natural persons
12 and notice by mail to political subdivisions, and now requests approval of Oregon's final
13 plan of distribution ("Final Plan of Distribution") and entry of final judgment and
14 dismissal of all Defendants with prejudice. Defendants stipulate to entry of final
15 judgment and dismissal with prejudice.
16

17 II. OREGON HAS COMPLETED NOTICE AND THE OPT-OUT PERIOD
18 HAS RUN

19 The Declaration of Tim D. Nord in Support of Motion for Order Granting
20 Approval of Final Plan of Distribution and Final Judgment of Dismissal (Nord Dec.),
21 Declaration Lori L. Castaneda of Garden City Group, LLC in Support of Motion for
22 Entry of Final Judgment of Dismissal (Castaneda Dec.), and Declaration of Ellen M.
23 Klem in Support of Motion for Entry of Final Judgment of Dismissal (Klem Dec.)
24 establish that Oregon has substantially complied with the Notice Plan previously
25 approved by the Court. Oregon's notice by publication and other notice activities are
26

1 adequate, due, and sufficient notice which more than satisfies due process of law and
2 ORS 646.775(2) and (3).

3 Pursuant to the Notice Plan, the Oregon Attorney General: (1) posted on her
4 website the short and long form versions of its form of Notice of Settlement; (2)
5 published the short form notice at least twice in newspapers of general circulation for
6 each of Oregon's counties; (3) established and maintained a dedicated website to provide
7 further information about the litigation and settlements, including internet access for
8 potential claimants to the long form notice and online claim forms; (4) directly mailed the
9 short form notice to more than 1,500 political subdivisions and groups representing these
10 political subdivisions; (5) e-mailed the short form notice to natural persons who have
11 asked to receive consumer-related information from the Oregon Attorney General; (6)
12 established and maintained a toll-free number to provide information on how to request
13 exclusion; (7) posted announcements about the settlements on the Attorney General's
14 Twitter accounts; and (8) made operators at the Oregon Attorney General's Consumer
15 Hotline available to provide callers information about the settlements and how to obtain
16 information about opting out. See Klem Dec., Castaneda Dec. and Nord Dec.
17
18

19 Three of the more than 1,500 political subdivisions to which notice was mailed
20 directly returned opt-out requests to the Oregon Attorney General. Castaneda Dec. at
21 110. The Attorney General also received three opt-out requests from natural persons in
22 response to her notice by publication and other notice activities. *Id.*

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24 *///*

1 III. THE OPT-OUT THRESHOLD ALLOWING FOR RESCISSION WAS
2 NOT MET.

3 Each of the Oregon Attorney General's nine settlements provide that Defendants
4 could rescind if the number of natural persons or political subdivisions which chose to
5 opt out exceeded a defined threshold. DKT. 9477, Ex. A-I and DKT. 9486, paragraph 7.
6 Given the extremely low number of opt-outs received, the opt-out threshold allowing for
7 rescission has not been met. Declaration of Michael G. Neff in Support of Entry of Final
8 Judgment of Dismissal at ,r,r2-3.

9 IV. OREGON'S FINAL PLAN OF DISTRIBUTION ALLOWS ALL
10 CLAIMANTS A REASONABLE OPPORTUNITY TO SECURE
11 AN APPROPRIATE PORTION OF AVAILABLE SETTLEMENT
12 PROCEEDS.

13 In her Motion for Approval of All Settlements, the Oregon Attorney General
14 advised that she would submit a final plan of distribution with her requests for entry of
15 judgments of dismissal. DKT. 9476. Oregon's Final Plan of Distribution is set out in the
16 Declaration of Tim Nord in Support of Motion for Order Granting Approval of Final Plan
17 of Distribution and Final Judgment of Dismissal. After deduction of approved attorney
18 fees and expenses, available settlement proceeds shall be segregated so that 26 percent
19 (approximately \$4,343,249) are distributed to the State of Oregon and its political
20 subdivisions. DKT. 9476 and Nord Dec. at ,rs. The remaining 74 percent of available
21 settlement proceeds (approximately \$12,361,553) will be made available to satisfy
22 natural person claims. *Id.*

23 The Attorney General will distribute the 26-percent government share based upon
24 available census data and estimates of full time equivalent employee ("FTE") numbers
25 for state agencies and political subdivisions. Nord Dec. at ,r11. The Attorney General
26

1 will distribute funds to political subdivisions directly after the judgment is final and the
2 time for appeal has run.

3 The timing and specific amount of disbursements to natural person claimants will
4 depend on the total number of claims received and authenticated from all natural person
5 claimants and the number and type of products purchased by a given claimant. Claimants
6 will be paid a pro-rata share of the portion allocated to natural persons up to the
7 maximum amount described in the Declaration of Tim D. Nord. Nord Dec. at ,r12. Final
8 decisions regarding the validity of claims and restitution will be within the discretion of
9 the Attorney General.
10

11 As set forth in the Nord Declaration, during a not less than initial 90-day claims
12 period the Attorney General will determine the effectiveness of the additional notice
13 efforts. Nord Dec. at ,r13; Castaneda Dec. at ,r11. The Attorney General may choose to
14 provide additional notice of the claims process and further publication of Oregon's
15 settlements based upon the claims rate. Id. Currently, more than 3,000 natural person
16 claims have been submitted as a result of the publication efforts. Castaneda Dec. at ,r11.
17 The Attorney General has contracted with Garden City Group, LLC, to administer the
18 Oregon claims program in accordance with the Court's orders and direction to be
19 provided by the Attorney General. Castaneda Dec. at ,r2; DKT. 9481.
20

21 In the event that distributions to natural persons do not exhaust the natural person
22 portion of the Settlement Fund, or that any other portion of the Settlement Fund remains
23 following distribution to political subdivisions and natural persons, the Attorney General
24 will distribute the remainder to the Oregon Department of Justice Protection and
25
26

1 Education Revolving Account maintained by the Oregon State Treasurer as directed by
2 ORS 646.775(c) and ORS 180.095.

3 V. CONCLUSION -- ENTRY OF A FINAL JUDGMENT OF DISMISSAL
4 WITH PREJUDICE AND AN ORDER APPROVING OREGON'S FINAL
5 PLAN OF DISTRIBUTION IS APPROPRIATE.

6 Given: (1) the Oregon Attorney General has completed notice by publication in
7 satisfaction of due process and ORS 646.775(2) and (3), and has provided additional
8 notice as described; (2) that the Opt-Out Period has expired; (3) that the Oregon Attorney
9 General and all Defendants concur that the nine Oregon settlements are final; and (4) that
10 the Final Plan of Distribution has been presented by the Oregon Attorney General, the
11 State of Oregon respectfully requests the Court enter an order approving Oregon's Final
12 Plan of Distribution. Together with the Defendants, the State of Oregon further requests
13 the Court enter final judgment dismissing Oregon's claims against Defendants with
14 prejudice.

15 Dated this 11th day of April, 2016.

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Attorneys for Plaintiff State of Oregon

CERTIFICATE OF SERVICE

1
2 I hereby certify that on the 11th day of April, 2016, I electronically filed the
3 OREGON ATTORNEY GENERAL'S NOTICE OF MOTION AND MOTION
4 FOR ORDER GRANTING APPROVAL OF FINAL PLAN OF DISTRIBUTION
5 AND ENTRY OF FINAL JUDGMENT OF DISMISSAL WITH PREJUDICE with
6 the Clerk of the Court using the CM/ECF system, which will automatically send email
7 notification to the parties and counsel of record.
8

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9
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