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

IN RE TFT-LCD (FLAT PANEL)
ANTITRUST LITIGATION

This Document Relates to Individual
Case No. 3:10-cv-4346 SI

STATE OF OREGON, *ex rel* Ellen F.
Rosenblum, Attorney General,

Plaintiff,

v.

AU OPTRONICS CORPORATION,
et al.,

Defendants.

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

**DECLARATION OF MICHAEL K.
KELLEY IN SUPPORT OF MOTION
FOR APPROVAL OF SETTLEMENTS**

The Honorable Susan Y. Illston

1 I, Michael K. Kelley, declare as follows:

2 1. I am an attorney licensed to practice in the State of Oregon and
3 am a Special Assistant Attorney General for the State of Oregon, in which capacity I
4 also serve as Lead Counsel for the Oregon Attorney General in this action. In this
5 capacity I represent the State of Oregon. I make this Declaration in Support of the
6 State of Oregon's Motion for Approval of Settlements. I have personal knowledge of
7 the facts stated in this Declaration and, if called as a witness, I could and would
8 testify competently to them.

9 2. I have been a practicing attorney for 31 years and have been handling
10 antitrust matters as antitrust counsel for over 15 years.

11 3. I participated in all negotiations that have resulted in the settlements that are
12 now pending the Court's approval. All of the settlement agreements referenced in
13 this Declaration are the result of arm's-length negotiations conducted by counsel
14 experienced in antitrust class actions.

15 4. Prior to filing suit in this multi-district litigation, the State of Oregon
16 engaged in extensive pre-litigation discovery utilizing investigative subpoena
17 authority and reviewing documents produced by certain defendants in this MDL and
18 other materials. Since filing this litigation and consenting to the Court's protective
19 order, the State of Oregon has continued its trial preparation by engaging in
20 extensive discovery and motion practice.

21 5. Prior to our firm agreeing to serve as counsel for the State of Oregon in this
22 litigation, the Oregon Department of Justice entered into a settlement agreement with
23 Chunghwa Picture Tubes ("Chunghwa"). As part of this agreement Chunghwa
agreed to provide extensive documents and other cooperation to the State of Oregon.

24 6. During early 2011, the State of Oregon participated in mediation sessions
involving the Indirect Purchaser Plaintiffs ("IPPs"), several other states, and all
named Defendants ("Defendants"). Initial mediation sessions resulted in a settlement

1 plan involving the Hitachi and Chi Mei Optoelectronics (“Chi Mei”) defendant
2 groups. Under this settlement plan, the Hitachi and Chi Mei defendant groups agreed
3 to make lump sum payments to the group of participating plaintiffs in return for
4 release from all plaintiffs participating in the mediation. As class counsel for the
5 IPPs did not represent Oregon consumers, Oregon negotiated individual settlement
6 agreements with the Hitachi and Chi Mei defendant groups which provided Oregon
7 would receive its pro rata share of the lump sum settlement based on state
8 populations of all participating plaintiffs.

9 7. Following conclusion of these two settlements arising from the mediation
10 process, the Oregon Department of Justice and our firm ceased participating in the
11 group mediation after concluding that Oregon likely would be better served if
12 Oregon broke from the IPP-led group and independently pursued its claims against
13 the other seven defendant groups. Oregon withdrew from the IPP mediation group
14 during the summer of 2011.

15 8. Both before and after Oregon’s break from the IPP-led group of states,
16 attorneys working on this case for the Oregon Attorney General reviewed a
17 voluminous number of documents produced by Defendants. Many of the materials
18 reviewed were incorporated into reports prepared by Oregon’s experts and utilized
19 during the depositions of Defendant representatives or defense experts. Knowledge
20 of these documents also was valuable as Oregon analyzed the strength of each
21 Defendant’s asserted legal positions, deposed Defendants’ witnesses, prepared and
22 served written discovery requests on Defendants, and prepared for dispositive motion
23 practice and trial.

24 9. Since joining the MDL in September 2010, Oregon’s attorneys
25 telephonically attended dozens of fact witness and expert depositions and reviewed
26 and summarized dozens of fact and expert witness deposition transcripts and
27 exhibits. Oregon’s work on written discovery involved the review of hundreds of

1 sets of requests for production, interrogatories, and requests for admission
2 propounded by the MDL plaintiffs and the Defendants. The total number of
3 subpoenas and sets of discovery requests for production, interrogatories, and requests
4 for admission propounded just by Oregon against the Defendants and third parties
5 easily exceeds 50. Oregon's offensive discovery requests and Oregon's responses to
6 Defendants' discovery requests were the subject of numerous conferrals with various
7 Defendants.

8 10. Oregon worked with Dr. Kenneth Flamm to analyze whether Defendants'
9 price-fixing activities effectively increased prices for desktop computers, laptop
10 computers, and flat screen televisions ("TFT-LCD products") purchased in Oregon.
11 Dr. Flamm prepared initial and reply reports for Oregon which concluded
12 Defendants operated an effective TFT-LCD panel price-fixing cartel during Oregon's
13 damages period and which concluded Defendants' explicit fixing of prices of certain
14 index panels resulted in effective price-fixing for all similar TFT-LCD panels
15 regardless of whether these panels were explicitly mentioned during the frequent
16 cartel meetings. Dr. Flamm further concluded that because the conspirators who
17 participated in the cartel made up such a large percentage of the market that the price
18 fixing of the conspirators had the effect of increasing the price of all panels
19 regardless of the manufacturer. Dr. Flamm also determined that because these panels
20 became components of desktop computer monitors, laptop computers, and flat screen
21 televisions, Defendants' price-fixing activities had the effect of increasing prices of
22 these TFT-LCD products.

23 11. Prior to filing its TFT-LCD complaint, the Oregon Department of Justice
initiated the process of requesting readily available pre-2008 transaction records
from state and local Oregon public entities related to the purchase of desktop
computers, laptop computers, and flat screen televisions ("TFT-LCD products").
The Oregon Department of Administrative Services provided purchase records to

1 which it had access, and many of the agencies contacted were able and willing to
2 supply to the Oregon Department of Justice or our firm at least a partial record of
3 such past purchases. After the filing of Oregon's complaint, attorneys with my firm
4 expended significant effort to obtain additional pre-2008 Oregon state and local
5 government purchase records for TFT-LCD products. In total, Oregon located,
6 assembled, reviewed, and provided to Defendants the reasonably available TFT-LCD
7 product transaction records for no less than 60 Oregon public entities, which
8 included Oregon's ten largest public employers.

9 12. During the 2002 to 2006 period, Oregon state and local government
10 agencies numbered approximately 1,500. An evaluation of the incomplete state and
11 local government purchase records we obtained for the Oregon damages period
12 2002-2006 led to the conclusion that the best way to determine damages suffered by
13 Oregon state and local government purchasers of TFT-LCD products would be to
14 prove these damages in the aggregate by statistical methods or another reasonable
15 system of estimating the damages. This was the same approach we already had
16 determined would be appropriate for determining damages suffered by natural
17 persons purchasing TFT-LCD products during the period 2002-2006.

18 13. To calculate the amount of TFT-LCD cartel-caused damage to Oregon
19 governmental entities and natural persons, Oregon retained Dr. Mark Meitzen and
20 Dr. Kevin Cahill. Dr. Meitzen prepared initial and reply reports quantifying
21 estimated TFT-LCD cartel-caused damage flowing from all purchases of TFT-LCD
22 products in Oregon during the statutory damages period. Because Oregon's antitrust
23 statutes do not provide a cause of action for recovery of damages for business
entities, Oregon retained Dr. Cahill to quantify the percentage of Oregon TFT-LCD
product purchases by each of the three purchaser groups contemplated by Oregon's
antitrust statutes – natural persons, government entities, and business entities. In
order to ensure Dr. Cahill did not overestimate or underestimate the shares of TFT-

1 LCD products purchased by these respective purchase groups in Oregon during the
2 period 2002-2006, attorneys at my firm encouraged him to rely upon multiple
3 purchase data sources. Exhibit J attached is the most recent calculation by Dr. Cahill
4 of damages suffered by these respective Oregon purchaser groups during 2002 to
5 2006 as a result of the overcharges attributable to the TFT-LCD price fixing cartel.
6 Taking the total damages during the 2002 to 2006 period to natural persons and
7 government entities, Dr. Cahill's calculations show that 74.6 percent of this total
8 should be allocated to natural persons, and 25.4 percent should be allocated to
9 Oregon government entities.

10 14. Oregon's Second Amended Complaint advanced multiple damages theories
11 under Oregon law. One theory relied upon statutory damages provided for by the
12 Oregon Antitrust Act at ORS 646.775-780. Two other theories -- which Defendants
13 sought to strike but which this Court allowed Oregon to plead -- sought disgorgement
14 of profits under Oregon common law and the Oregon Antitrust Act. Lastly, Oregon's
15 complaint sought civil penalties made available as a remedy to the Oregon Attorney
16 General under the Oregon Antitrust Act at ORS 646.760.

17 15. Case law from Oregon state and federal courts interpreting the various
18 state-law damages theories advanced in Oregon's complaint is minimal. What does
19 exist provides little guidance to practitioners. The language used in the Oregon
20 Antitrust Act does explicitly provide that federal court decisions "relating to the
21 same subject" shall be persuasive authority in construction of the Oregon Antitrust
22 Act. Given that the statutory damages language in the Oregon Antitrust Act is
23 modeled after similar language in federal antitrust statutes which has been well
developed in federal case law, and given that little case law exists applying Oregon's
disgorgement and civil penalty remedies, the damages approach for Oregon which
provides the most certainty and the least litigation risk is the statutory damages
language set out at ORS 646.775-780.

1 16. With the exception of Chunghwa, Oregon's settlement agreements with the
2 TFT-LCD groups of Defendants are attached as follows: Ex. A (Hitachi Display);
3 Ex. B (Chi Mei); Ex. C (Epson); Ex. D (LG Display); Ex. E (Sharp); Ex. F
4 (Samsung); Ex. G (AU Optronics); Ex. H (Toshiba); and Ex. I (HannStar). Under
5 the terms of these agreements, Defendants collectively agreed to pay the Oregon
6 Attorney General \$21,505,000. Before the end of 2015, all of these agreed-to
7 payments will have been paid by Defendants to an escrow account established by the
8 parties. Each of the settlement agreements provide that a specific amount of the
9 proceeds to be paid may be used for administrative and notice-related expenses.
10 Collectively, the amount authorized for use for these purposes in the settlement
11 agreements (set out at Exs. A-I) is \$815,000.

12 17. Oregon prepared and offered three separate 30(b)(6) witnesses to
13 Defendants for a total of four days of deposition testimony. Oregon's Chief
14 Procurement Officer – Ms. Dianne Lancaster – provided two days of testimony
15 responding to questions that focused on the State of Oregon's procurement laws and
16 policies, identification of TFT-LCD product procurement records which were
17 maintained by Oregon state government agencies, and TFT-LCD product group
18 purchase agreements which state government agencies were required to use and
19 which local government agencies were allowed to use. The other initial primary
20 30(b)(6) witness made available to Defendants was Mr. Dugan Petty. Mr. Petty
21 served as the State of Oregon's Chief Procurement Officer during Oregon's damages
22 period (2002 through 2006) and was made available by Oregon even though he no
23 longer was in the state's employ at the time of his deposition. Lastly, Oregon made
Aaron Howell of Oregon State University available to discuss Oregon State
University's procurement process and policies, whether this process and these
policies extended to other members of Oregon's public higher education system, and
to discuss the existing records of Oregon State University's procurement of TFT-

1 LCD products during the 2000-to-2008 period. At the time of his deposition, Mr.
2 Howell was Oregon State University's Assistant Vice President and Controller.

3 18. Prior to making these 30(b)(6) witnesses available to Defendants, Oregon
4 produced available state agency electronic purchase data requested by Defendants
5 and potentially relevant custodial e-mails sent and received by the Oregon 30(b)(6)
6 deponents during the 2000-to-2008 period.

7 19. In response to Oregon's expert reports, Defendants served four separate
8 expert reports. Defendants' experts disputed the number of manufacturers involved
9 in the TFT-LCD panel cartel, disputed the effectiveness of the TFT-LCD panel
10 cartel, and stated that Oregon purchasers of TFT-LCD products were damaged very
11 little or not at all.

12 20. Oregon's experts determined damages to Oregon's natural persons and
13 government entities fell within a defined high-low range. Taking the midpoint of
14 this range (assuming a jury would select the midpoint of the range following trial),
15 the \$21,505,000 in settlements payments represent 62 percent of what Oregon's
16 experts have estimated are Oregon's potential single damages at trial. I am familiar
17 with the settlements previously approved by this Court for the TFT-LCD certified
18 classes and the various states which have pursued claims against the TFT-LCD MDL
19 defendants. For each of the these previously-approved TFT-LCD settlements I have
20 analyzed, Defendants' settlements with the Oregon Attorney General provide for a
21 proportionately greater damages recovery on a per capita basis. I also am familiar
22 with many of the settlements approved by state courts agreed to by members of the
23 TFT-LCD cartel. In addition, I am familiar with many previous settlements
approved in other consumer antitrust class actions and parens patriae litigation.
Based upon my knowledge of the details of these previously approved settlements
and my litigation and antitrust experience, I believe the settlements the Oregon
Attorney General has reached with the TFT LCD MDL defendants are fair and

1 reasonable and in the best interests of Oregon’s natural persons and local political
2 subdivisions.

3 DATED this 25th day of September, 2015.

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5 /s/ Michael K. Kelley _____
6 Michael K. Kelley
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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of September, 2015, I electronically filed the **DECLARATION OF MICHAEL K. KELLEY IN SUPPORT OF MOTION FOR APPROVAL OF SETTLEMENTS**, with the Clerk of the Court using the CM/ECF system, which will automatically send email notification to the parties and counsel of record.

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