No. 12-1036

IN THE

Supreme Court of the United States

STATE OF MISSISSIPPI,
EX REL. JIM HOOD, ATTORNEY GENERAL,
Petitioner,

v.

AU OPTRONICS CORP., ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

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QUESTION PRESENTED

The Fifth Circuit has now twice held that, in determining whether an action filed in state court may be removed to federal court under the Class Action Fairness Act of 2005 ("CAFA"), real parties in interest should be identified using a "claim-by-claim" approach. These two Fifth Circuit holdings bookend contrary holdings by the Fourth, Seventh, and Ninth Circuits that real parties in interest should be identified using a "whole-case" approach. Notwithstanding Congress's purpose to achieve national uniformity, these conflicting approaches have led to an intractable circuit split regarding whether actions filed by state attorneys general seeking monetary relief claims on behalf of particular citizens of the State are removable to federal court under CAFA. The circuit split has led to conflicting results even in cases arising out of the same conduct by the same defendants, namely cases alleging a global price-fixing conspiracy among manufacturers of liquid crystal display (LCD) panels. *Compare AU Optronics Corp. v. South Carolina*, 699 F.3d 385 (4th Cir. 2012) (denying removal under whole-case approach), *petition for cert. held*, No. 12-911 (U.S. Mar. 22, 2013), *with Mississippi ex rel. Hood v. AU Optronics Corp.*, 701 F.3d 796 (5th Cir. 2012) (Pet. App. at 1a-22a) (granting removal under claim-by-claim approach).

The question presented here is whether an action filed by a state attorney general in state court is removable under CAFA where the State is the only named plaintiff but the action includes, among other things, monetary relief claims on behalf of particular citizens of the State.

RULE 29.6 STATEMENT

Pursuant to Rule 29.6 of this Court's Rules, petitioner states as follows:

Toshiba Corporation ("TSB"), Toshiba Mobile Display Co., Ltd. (f/k/a Toshiba Matsushita Display Technology Co., Ltd.) ("TMD"), Toshiba America Electronic Components, Inc. ("TAEC"), and Toshiba America Information Systems, Inc. ("TAIS") state as follows: TSB has no parent company and no publicly held corporation owns 10 percent or more of its stock. TMD is now known as Japan Display, Inc., which is 70 percent owned by Innovation Network Corporation of Japan, and TSB, Hitachi Ltd., and Sony Corporation each holds 10 percent of its outstanding shares. TAEC and TAIS are wholly owned subsidiaries of Toshiba America, Inc., which is a holding company wholly owned by TSB.

AU Optronics Corporation and AU Optronics Corporation America state as follows: AU Optronics has no parent company and no publicly held corporation owns 10 percent or more of its stock. AU Optronics America is a wholly owned but indirect subsidiary of AU Optronics Corporation, a publicly traded company.

Chi Mei Corporation and Chimei Innolux Corporation (*f/k/a* Chi Mei Optoelectronics Corporation), Chi Mei Optoelectronics USA, Inc. (*f/k/a* International Display Technology USA, Inc.), and CMO Japan Co., Ltd. (*f/k/a* International Display Technology Ltd.) state as follows: Chi Mei Corporation is a privately held corporation in Taiwan. Chi Mei Corporation has no parent company and no publicly held corporation owns 10 percent or more of its stock. Chi Mei Corporation, a privately

held corporation, owns 10 percent or more of the outstanding stock of Chimei Innolux Corporation. Chi Mei Optoelectronics USA, Inc. is a wholly owned subsidiary of CMO Japan Co., Ltd., which in turn is a wholly owned subsidiary of Chimei Innolux Corporation, a publicly traded corporation. CMO Japan Co., Ltd. is a wholly owned subsidiary of Chimei Innolux Corporation, a publicly traded corporation.

HannStar Display Corporation states as follows: HannStar Display Corporation has no parent company and no publicly held corporation holds 10 percent or more of its stock.

LG Display Co., Ltd. (*f/k/a* LG Phillips LCD Co., Ltd.) and LG Display America, Inc. (*f/k/a* LGD LCD America, Inc.) state as follows: LG Electronics owns 10 percent or more of the outstanding stock of LG Display Co., Ltd. LG Display America, Inc. is a wholly owned subsidiary of LG Display Co., Ltd.

Samsung Electronics Co., Ltd., Samsung Semiconductor, Inc., and Samsung Electronics America, Inc. state as follows: Samsung Electronics Co., Ltd. has no parent company and no publicly held corporation owns 10 percent or more of its stock. Samsung Semiconductor, Inc. is a wholly owned subsidiary of Samsung Electronics America, Inc. Samsung Electronics America, Inc. is a wholly owned subsidiary of Samsung Electronics Co., Ltd., a publicly held corporation.

Sharp Corporation and Sharp Electronics Corporation state as follows: Sharp Corporation has no parent company and no publicly held corporation holds 10 percent or more of its stock. Sharp

Electronics Corporation is a wholly owned subsidiary of Sharp Corporation, a publicly held corporation.

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INTRODUCTION AND STATEMENT OF THE CASE

1. Respondents agree that the petition presents an intractable conflict among the circuits on a recurring question of national importance. Respondents also agree that the circuit split has become intolerable because courts of appeals have issued conflicting decisions even in cases involving the same alleged conduct by the same defendants. *Compare Mississippi ex rel. Hood v. AU Optronics Corp.*, 701 F.3d 796, 800 (5th Cir. 2012) (Pet. App. at 4a) ("claim-by-claim approach contrasts with other circuits that look to a state's complaint 'as a whole'"), *with AU Optronics Corp. v. South Carolina*, 699 F.3d 385, 394 (4th Cir. 2012), *petition for cert. held*, No. 12-911 (U.S. Mar. 22, 2013) ("adopting the whole-case approach and rejecting the claim-by-claim approach"). And Respondents agree that the issue presented here has percolated through the courts sufficiently that it is ripe for this Court's review. Indeed, in the decision below, the Fifth Circuit confirmed the correctness of its analysis in the face of conflicting decisions in other circuits, and declined to reconsider that approach *en banc*. *Mississippi ex rel. Hood*, 701 F.3d at 800 (Pet. App. at 4a), *reh'g en banc denied* (Feb. 4, 2013) (Resp. App. at 68a-69a).

Respondents strongly disagree with Petitioner, however, as to Petitioner's characterization of the question presented and as to the merits of how that question should be resolved. Petitioner's question presented presumes that this case is a "*parens patriae* action" and that the State has "common-law authority to assert all claims in the complaint." Pet. at i. But the Fifth Circuit expressly held to the contrary that Petitioner "is acting, not in its *parens*

patriae capacity, but essentially as a class representative." Pet. App. at 7a. In other words, Petitioner's question presented incorrectly assumes that the key point of contention in the circuit conflict is not in dispute in this case. Petitioner's question presented ignores the particular citizens on whose behalf Petitioner seeks monetary relief claims. In fact, the circuits are split over whether "real parties in interest" should be identified "claim by claim" or based on a characterization of the "whole case" for purposes of determining federal jurisdiction under CAFA. Respondents submit that the claim-by-claim approach is the only correct standard under the plain language of CAFA and under this Court's precedents, and certiorari is necessary to set that standard as a nationwide rule. Respondents' question presented accurately frames the issue in a way that invites definitive guidance for the lower courts.

a. CAFA expands federal diversity jurisdiction for both "class actions" and "mass actions." 28 U.S.C. § 1332(d)(1)-(2), (d)(11) (2006). Class actions are defined as "any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action." *Id.* § 1332(d)(1)(B).

A "mass action" is defined as "any civil action . . . in which monetary relief claims of 100 or more persons are proposed to be tried jointly . . . ." *Id.* § 1332(d)(11)(B). The definitions of "class actions" and "mass actions" are connected, as a mass action is "deemed to be a class action removable" to federal court "if it otherwise meets the provisions" of a "class action," including CAFA's unique minimal-

diversity and amount-in-controversy requirements. *Id.* § 1332(d)(11)(A).

Before CAFA, federal diversity jurisdiction required *complete* diversity of citizenship: every plaintiff had to be diverse from every defendant. Act of June 25, 1948, ch. 646, 62 Stat. 869, 930 (codified as amended at 28 U.S.C. § 1332(a)). Because a State is not a citizen, having a State as a party destroys complete diversity under § 1332(a). *See Moor v. Cnty. of Alameda*, 411 U.S. 693, 717 (1973).

CAFA, however, does not require complete diversity for removal to federal court of class actions and mass actions filed in state court. The removal standard under CAFA is *minimal* diversity, which is satisfied when "any member of a class of plaintiffs" is a citizen of a State different from any defendant. 28 U.S.C. § 1332(d)(2). "Class members" under CAFA means the "persons (*named or unnamed*) who fall within the definition of the proposed or certified class in a class action." *Id.* § 1332(d)(1)(D) (emphasis added). In other words, CAFA's minimal-diversity requirement is satisfied where there is diversity of citizenship between *any* defendant and *any* named or unnamed person on whose behalf the action is filed. This minimal-diversity requirement applies to mass actions because, as noted above, mass actions are deemed to be class actions for removability under CAFA to the extent they otherwise meet the requirements of § 1332(d)(2)-(10).

As also noted above, to qualify as a mass action under § 1332(d)(11)(B), and therefore be deemed a class action, a civil action must involve "monetary relief claims of 100 or more persons." Determining

whether this condition is satisfied requires consideration of whose claims are actually being asserted, as this Court has held that diversity jurisdiction must be based "upon the citizenship of real parties to the controversy." *Navarro Sav. Ass'n v. Lee*, 446 U.S. 458, 461 (1980) (citations omitted).

Therefore, under CAFA's minimal-diversity requirement, the inclusion of a State as a party will *not* destroy diversity if the action filed by the State seeks monetary relief claims on behalf of unnamed persons who are among the real parties in interest and any one of them is diverse from any defendant. Indeed, the Senate considered and rejected an amendment to CAFA that would have exempted state actions filed by state attorneys general from removal under CAFA. 151 CONG. REC. S1157 (daily ed. Feb. 9, 2005).

b. The circuit conflict arises in actions that are filed by a state attorney general in state court asserting claims for monetary relief on behalf of particular citizens of the State, and are removed to federal court under CAFA. The courts of appeals are split over how to identify the real parties in interest in such actions. The claim-by-claim approach identifies the real parties in interest for each claim, including the monetary relief claims on behalf of particular citizens; if the complaint contains any "monetary relief claims of 100 or more persons," then the action qualifies as a "mass action." 28 U.S.C. § 1332(d)(11)(B). The whole-case approach identifies the real parties in interest by attempting to characterize the action as a whole based on the overall nature and effect of the action; if the action as a whole can be fairly characterized as an action on

behalf of the State, this approach disregards whether there may be other real parties in interest.

The Fifth Circuit was the first court of appeals to address this issue, and applied the claim-by-claim approach. *Louisiana ex rel. Caldwell v. Allstate Ins. Co.*, 536 F.3d 418, 424-25, 429 (5th Cir. 2008). At least one district court outside the Fifth Circuit has followed the claim-by-claim approach. *West Virginia ex rel. McGraw v. Comcast Corp.*, 705 F. Supp. 2d 441, 449 (E.D. Pa. 2010). The Fourth, Ninth, and Seventh Circuits have applied the conflicting whole-case approach. *AU Optronics Corp.*, 699 F.3d at 394 (4th Cir. 2012); *Nevada v. Bank of Am. Corp.*, 672 F.3d 661 (9th Cir. 2012); *LG Display Co., Ltd. v. Madigan*, 665 F.3d 768, 773-74 (7th Cir. 2011).

In this case, the Fifth Circuit acknowledged the contrary whole-case approach but reaffirmed the claim-by-claim approach first set forth in *Caldwell*, thereby confirming and entrenching the circuit split. Pet. App. at 1a-11a.

c. As discussed in more detail below in Section II.A., the claim-by-claim approach is mandated by the plain language of CAFA, which defines a mass action as a civil action "*in which* monetary relief *claims* of 100 or more persons are proposed to be tried jointly." 28 U.S.C. § 1332(d)(11)(B) (emphasis added). The only proper way for courts to determine whether a case is a civil action "in which" there are 100 or more persons with monetary relief "claims" is to evaluate each claim in the complaint one by one.

Other provisions of CAFA confirm the claim-by-claim approach. For example, the general-public provision under § 1332(d)(11)(B)(ii)(III) illustrates

that actions are not mass actions where "*all* of the claims . . . are asserted on behalf of the general public . . . pursuant to a state statute specifically authorizing such action." In order to evaluate whether this provision applies, courts must review the claims one by one to determine whether they are "all" asserted on behalf of the general public and whether all of the claims are pursuant to a "state statute."

Moreover, unlike complete diversity, minimal diversity cannot be destroyed merely because the State is a plaintiff. Evaluating the "whole case" to determine whether a State is a party is dispositive for the complete diversity test, but not for minimal diversity. If other real parties in interest exist (named or unnamed), their citizenship must be taken into account for minimal diversity. Thus, courts must identify all real parties in interest claim by claim to determine whether the minimal-diversity requirement is satisfied. The whole-case approach effectively avoids the inquiry necessitated by the statute.

d. Extending federal jurisdiction to actions like this one serves the principal objective of CAFA. Congress enacted CAFA in 2005 with the express purpose of expanding the district courts' diversity jurisdiction to reach class action cases of national importance. Class Action Fairness Act of 2005, § 2(b)(2), Pub. L. No. 109-2, 119 Stat. 4, 5. Congress explicitly found that "[a]buses in class actions undermine the national judicial system, the free flow of interstate commerce, and the concept of diversity jurisdiction as intended by the framers of the United States Constitution." *Id.* § 2(a)(4). Thus, CAFA's

express remedial purpose was to "restore the intent of the framers of the United States Constitution by providing for Federal court consideration of interstate cases of national importance under diversity jurisdiction." *Id.* § 2(b)(2). This Court recently confirmed that "CAFA's primary objective [is] ensuring 'Federal court consideration of interstate cases of national importance.'" *Standard Fire Ins. Co. v. Knowles*, 133 S. Ct. 1345, 1350 (2013) (quoting CAFA). That general guidance will not, however, alleviate the entrenched circuit conflict because *Standard Fire* addressed only the amount-in-controversy provisions of CAFA.

The lawsuit brought here by the Mississippi Attorney General against twenty-two corporate entities from nine multinational corporate families is exactly the type of interstate case — indeed it is an *international* case — contemplated by CAFA. None of the Respondents is a Mississippi resident, and all of them are part of corporate families headquartered in Asia. Resp. App. ¶¶ 3-31. The Mississippi Attorney General alleges that Respondents engaged in an international conspiracy to fix prices for liquid crystal display ("LCD") panels. *Id.* ¶ 41. All of Respondents' alleged conspiratorial activities are alleged to have occurred outside of Mississippi, mostly in Asia. *Id.* ¶¶ 79, 81-82. Respondents sold billions of dollars' worth of LCD panels in the international market from 1996 through 2006, which is the relevant period in the complaint. *Id.* ¶¶ 40-41. Certain of those panels were incorporated into common consumer electronic products such as LCD televisions, notebook computers and cell phones, and placed into international and interstate commerce

before being purchased nationwide, including by Mississippi consumers. *Id.* ¶¶ 50, 52, 77.

This action is one of dozens of similar actions that have been filed across the country in both state and federal courts asserting similar claims based on the same alleged conspiracy. A consolidated multidistrict proceeding is pending in the Northern District of California ("MDL Court"), *In re TFT-LCD (Flat Panel) Antitrust Litigation*, MDL Docket No. 1827, which includes various private class actions (including a class action brought on behalf of Mississippi consumers who purchased LCD products), direct actions by "opt-out" plaintiffs, and actions brought by the attorneys general of several States.

Indeed, much of the Petitioner's complaint is a *carbon copy* of complaints filed in the MDL Court, including the complaint filed by the class of Mississippi purchasers. *Compare* Resp. App. ¶¶ 52, 56, 77, *with* Indirect-Purchaser Pls.' Second Consolidated Am. Compl. ¶¶ 101, 105, 128, *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. 3:07-md-01827, MDL Docket No. 1827 (N.D. Cal. Dec. 5, 2008), ECF No. 746.

These LCD cases are follow-on litigation to a federal-government antitrust investigation; Petitioner's complaint admits this "action arises from criminal charges and indictments by the U.S. Department of Justice related to price fixing by LCD manufacturers." Resp. App. at 2a. This case concerns not only Mississippi, but rather is interconnected with the other class actions litigated in the MDL Court and other proceedings across the

country and in foreign jurisdictions, all of which will have implications for both interstate and international commerce and raise sensitive issues of comity with foreign jurisdictions. Therefore, the LCD antitrust actions filed against Respondents in federal and state courts asserting claims based on alleged overcharges — all of which are based on the same alleged international conspiracy — are exactly the type of "interstate cases of national importance" that Congress intended to be litigated in federal court under CAFA.

2. Petitioner, the Mississippi Attorney General, originally filed a complaint in Mississippi state court. The complaint asserts two claims: one for alleged violations of the Mississippi Consumer Protection Act ("MCPA"), Miss. Code Ann. § 75-24-1 et seq., and the other for alleged violations of Mississippi's Antitrust Act ("MAA"), Miss. Code Ann. § 75-21-1 et seq. Resp. App. ¶¶ 192-206. The complaint expressly alleges that this "action is brought pursuant to the Attorney General's authority" under the MCPA and MAA. Resp. App. at 2a.

Based on statutory authority under the MCPA and MAA, Petitioner is "bringing this action on behalf of the State of Mississippi in its proprietary capacity on its own behalf, *and on behalf of Mississippi residents*, including local governmental entities." Resp. App. at 65a ¶ 3 (emphasis added). The complaint asserts that, while certain Respondents have paid criminal fines to the United States government with regard to the alleged price fixing conspiracy, those fines left "[u]naddressed . . . any form of restitution for consumers or governmental entities which purchased products at

an artificially inflated price." Resp. App. at 2a. In its prayer for relief, the complaint requests restitution for the State's purchases of LCD products and "*for the purchases of its citizens*." Resp. App. at 65a ¶ 2 (emphasis added).

The complaint thus confirms that Petitioner is seeking to represent Mississippi consumers who purchased LCD products, and is seeking restitution on their behalf (*i.e.*, "monetary relief claims of 100 or more persons"). Resp. App. at 2a ("Attorney General Jim Hood brings this action *on behalf of . . . natural persons* residing in the State"); *id.* ("The attorney general brings this suit in the State's proprietary capacity on its own behalf, including *on behalf of Mississippi citizens*"); *id.* at 65a ¶ 3 ("bringing this action *on behalf of . . . Mississippi residents*") (emphasis added).

Petitioner is not simply seeking restitution on behalf of the State for the State's proprietary purchases. Petitioner admits in the petition to seeking restitution "on behalf of [Mississippi's] citizens . . . *who suffered losses by purchasing LCD panel products* during the relevant period." Pet. at 7 (emphasis added). Petitioner is seeking to represent a class of Mississippi citizens who purchased LCD panel products during the period in question. Indeed, that is what the Fifth Circuit expressly held: "At its core, this case practically can be characterized as a kind of class action in which the State of Mississippi is the class representative." Pet. App. at 10a.

Respondents removed the action to federal court under CAFA as a "mass action" under 28 U.S.C. § 1332(d)(11), and as a "class action" under 28 U.S.C.

§ 1332(d)(2). Resp. App. at 73a. Following removal to federal court, Petitioner filed a motion to remand to state court, and the district court granted the motion. Pet. App. at 23a-60a. The district court held that the suit is a mass action because Mississippi consumers are the real parties in interest as to Petitioner's claims for restitution, but held that federal jurisdiction does not extend to this case because the general-public provision of 28 U.S.C. § 1332(d)(11)(B)(ii)(III) applies. Pet. App. at 44a-52a. The district court also rejected Respondents' argument that this case is a "class action" under 28 U.S.C. § 1332(d)(1)(B). Pet. App. at 40a-44a. The Fifth Circuit reversed, upholding the removal under CAFA. Pet. App. at 1a-12a.

The Fifth Circuit held that the "real parties in interest in Mississippi's suit are those more than 100 persons who, by substantive law, possess the right sought to be enforced, and not necessarily the person who will ultimately benefit from the recovery." Pet. App. at 5a (citation omitted). Applying a claim-by-claim analysis, the court held that both "the State (as a purchaser of LCD products) *and* individual citizens who purchased the products within Mississippi possess 'rights to be enforced,'" and thus "the real parties in interest include not only the State, but also individual consumers residing in Mississippi." *Id.* at 5a-6a (emphasis in original). The Fifth Circuit expressly acknowledged that its claim-by-claim approach "contrasts with other circuits that look to a state's complaint 'as a whole' and then subjectively determine if the state alone is the real party in interest." Pet. App. at 4a. The Fifth Circuit also expressly relied on this Court's precedent for its

identification of the real parties in interest. *Id.* at 8a (citing *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 602 (1982)).

Although the Fifth Circuit agreed with the district court that this case is a mass action and that it is not a class action under § 1332(d)(1)(B), it reversed the district court's ruling regarding CAFA's general-public provision and held that the provision does not apply because the "requirement that 'all of the claims' be asserted on behalf of the public is not met here." *Id.* at 9a. Thus, granting the petition using Respondents' question presented will allow this Court to address the question of whether class actions should be evaluated for minimal-diversity purposes under the claim-by-claim or whole-case approach.

REASONS FOR GRANTING THE WRIT

This is a compelling case for the Court's review, which is needed to resolve an intractable circuit conflict on a recurring question of national importance. It is intolerable for the circuits to apply divergent removal standards causing opposite outcomes for indistinguishable claims arising out of the same alleged conduct against the same defendants under almost identical state statutes. This issue has made its way through the courts and four circuits have now embraced one of two approaches: the claim-by-claim approach or the whole-case approach. These are the only two approaches taken by the courts and no others have been suggested by any court. In this case, the Fifth Circuit confirmed that it will apply the claim-by-claim approach despite the conflicting standard

applied by other circuits. The Fourth Circuit, in a case involving many of the same defendants, applied the conflicting whole-case approach leading to the opposite outcome. *See* Pet. for Writ of Certiorari at 13, *AU Optronics Corp. v. South Carolina*, No. 12-911 (U.S. Jan. 23, 2013). The circuit split is entrenched and only this Court can resolve it.

In actions across the country filed by state attorneys general asserting monetary relief claims on behalf of particular citizens, courts are applying the "whole-case" approach and ignoring unnamed real parties in interest, contrary to the text and purpose of CAFA. *See* Pet. at 30 (collecting numerous cases). This is a recurring problem. Indeed, four actions by state attorneys general arising out of the same alleged global LCD conspiracy have been remanded to state court under that approach. *Madigan*, 665 F.3d at 773-74 (Illinois); *AU Optronics Corp.*, 699 F.3d at 394 (South Carolina); *Washington v. Chimei Innolux Corp.*, 659 F.3d 842, 849 (9th Cir. 2011) (Washington and California attorney general cases consolidated for appeal). These LCD cases involve billions of dollars in international commerce and mostly foreign defendants located in Asia. Resp. App. at ¶¶ 3-31, 41. Congress intended for all of these class action cases of national importance to be litigated in federal court, but the whole-case approach has prevented their removal.

For the reasons set forth below, the Court should grant the petition to set a nationwide standard for assessing federal jurisdiction under CAFA over state attorney general actions that include monetary relief claims on behalf of particular citizens of a state.

I. THERE IS AN ACKNOWLEDGED AND INTRACTABLE CIRCUIT CONFLICT ON THE REMOVABILITY STANDARD UNDER CAFA.

Courts have expressly acknowledged the circuit split. The Ninth Circuit observed that it "adopted the approach of looking at the case as a whole to determine the real party in interest, rather than the claim-by-claim approach adopted in *Caldwell*." *Nevada*, 672 F.3d at 670. The Seventh Circuit "rejected the claim-by-claim analysis" and held that whether "a state is the real party in interest in a suit is a question to be determined from the 'essential nature and effect of the proceeding.'" *Madigan*, 665 F.3d at 773 (citations omitted) (internal quotation marks omitted). All of the parties in this case acknowledge the split. Pet. at 13-18.

The claims in *AU Optronics Corp. v. South Carolina* and this case both arise out of the same alleged global LCD price fixing conspiracy, and both cases involve many of the same defendants. Pet. for Writ of Certiorari at ii, 7, 8, *AU Optronics Corp.*, No. 12-911 (U.S. Jan. 23, 2013); Resp. App. ¶¶ 3-5, 17-19, 40, 41. The respective state attorney general in each case seeks restitution on behalf of individuals who purchased LCD products. The Fourth Circuit applied the whole-case approach and remanded the case to state court. The Fifth Circuit, however, applied the claim-by-claim approach and held that federal jurisdiction under CAFA extends to this case. Thus, because of the circuit conflict, cases involving nearly identical claims have experienced opposite outcomes depending on the circuit.

The circuit split has spread across four of the most populous circuits in the country in terms of

population, encompassing nineteen States and approximately 150 million people.

The conflict cannot be resolved without guidance from this Court on how to identify the real parties in interest under CAFA. Identifying the real parties in interest is necessary for several reasons. CAFA defines mass actions as actions "in which monetary relief claims of 100 or more *persons* are proposed to be tried jointly"; identifying the real parties in interest enables courts to determine whether the 100-person threshold has been met. 28 U.S.C. § 1332(d)(11)(B) (emphasis added). Furthermore, identification of the real parties in interest is necessary to determine whether CAFA's minimal-diversity requirement — which requires that both named and unnamed plaintiffs must be considered — has been met. 28 U.S.C. § 1332(d)(1)-(2). Finally, ascertaining whether particular citizens are real parties in interest is necessary to determine whether "all" claims satisfy the general-public provision.

Petitioner's question presented does not squarely address the circuit conflict. By ignoring the particular citizens on whose behalf Petitioner asserts monetary relief claims, Petitioner's question presented leapfrogs over the issue of identifying the "real" parties in interest. Respondents' question presented more accurately frames the issues presented by the petition, and the circuit split. This case is unquestionably an action brought by the state attorney general naming only the State as a plaintiff in the complaint, but seeking monetary relief on behalf of particular citizens of the State. The issue is whether jurisdiction under CAFA extends to such actions, and whether the real parties in interest for

the monetary relief claims should be taken into consideration (*i.e.*, whether the real parties in interest should be identified claim-by-claim).

II. CIRCUITS APPLYING THE WHOLE-CASE APPROACH ARE REMANDING CASES OF NATIONAL IMPORTANCE, CONTRARY TO CAFA'S TEXT AND PURPOSE.

A. The Text of CAFA Mandates a Claim-by-Claim Approach to Identifying the Real Parties in Interest.

The text of CAFA mandates the claim-by-claim approach. CAFA defines "mass action" with reference to whether it is a "civil action" with "claims of 100 or more persons" proposed to be tried together. 28 U.S.C. § 1332(d)(11)(B)(i). Thus, CAFA expressly recognizes that separate "claims" may be part of a larger "civil action." *Id.* CAFA effectively instructs courts to determine whether any "claims" in a civil action are asserted on behalf of or made by "100 or more persons." To do so, courts must evaluate each "claim," not the civil action "as a whole," and determine who the real parties in interest are for each claim. *See Bailey v. United States*, 516 U.S. 137, 146 (1995) ("We assume that Congress used two terms because it intended each term to have a particular, nonsuperfluous meaning."). Moreover, the principle that diversity jurisdiction must be based on the citizenship of the real parties in interest, rather than that of the named parties, is established by settled precedent of this Court. *See Navarro*, 446 U.S. at 461 ("A federal court must . . . rest jurisdiction only upon the citizenship of real parties

to the controversy."); *Mo., Kan. & Tex. Ry. Co. v. Hickman*, 183 U.S. 53, 59 (1901).

Further, the definition of mass action does not exclude actions where a State is "a" real party in interest. During Congress's formulation of CAFA, forty-six state attorneys general wrote a letter to the Senate majority and minority leaders supporting an amendment that would have precluded CAFA's application to actions filed by state attorneys general. 151 CONG. REC. S1157, 1158-59 (daily ed. Feb. 9, 2005). The Senate considered and rejected such an amendment. 151 CONG. REC. S1157, S1165 (daily ed. Feb. 9, 2005).

The proposed amendment would have "create[d] a loophole that . . . plaintiffs' lawyers will surely manipulate . . . to persuade a State attorney general to . . . lend the name of his or her office to a private class action." 151 CONG. REC. S1157, 1163-64 (daily ed. Feb. 9, 2005). Indeed, in this case, Petitioner is represented by an out-of-state private law firm that specializes in representing class action plaintiffs. Likewise, counsel for the South Carolina Attorney General in *AU Optronics Corp. v. South Carolina* also represented a plaintiff in one of the class actions in the MDL Court in one of the related LCD cases.

The very fact that CAFA refers to "monetary relief claims" indicates that a court must examine each of the "claims" to determine which ones seek monetary relief and which seek only declaratory or injunctive relief or civil or administrative penalties. Furthermore, CAFA's definition of a mass action does not look to the civil action "as a whole," but to actions "*in which* monetary relief claims of 100 more persons

are proposed to be tried jointly." 28 U.S.C. § 1332(d)(11)(B) (emphasis added). Whether the civil action includes claims other than monetary relief claims has no bearing under the statutory language. The whole removability scheme under CAFA is claim-based.

The claim-by-claim approach, and CAFA's terminology, comport with modern, claims-based pleading practice. For example, Rule 2 of the Federal Rules of Civil Procedure provides that there "is one form of action — the civil action"; Rule 3 provides that a "civil action is commenced by filing a complaint"; Rule 8(a) provides that a complaint shall state a "claim"; and Rule 18 provides for liberal joinder of "claims." In this context, CAFA's definition of a "mass action" plainly includes an action with a complaint containing the qualifying monetary relief claims of 100 or more persons.

Furthermore, the general-public provision of the mass action definition confirms that CAFA mandates a claim-by-claim approach. That provision illustrates that CAFA's mass action definition does not apply to those actions in which "*all* of the claims in the action are asserted on behalf of the general public (and not on behalf of *individual claimants* or members of a purported class) pursuant to a State statute specifically authorizing such action." 28 U.S.C. § 1332(d)(11)(B)(ii)(III) (emphasis added). Courts can determine whether "all" claims are asserted on behalf of the general public only by analyzing each claim one by one because if any single claim is asserted on behalf of an individual, the provision does not apply. If Congress intended to exempt actions simply because the State is bringing *some* claims — or even

most claims — on behalf of the general public, as the whole-case approach seems to require, it would have used the word "any" instead of "all" in the general-public provision. Furthermore, courts can only determine if all of the claims are pursuant to a "state statute" (as opposed to some of them being pursuant to common law) by examining each individual claim.

Petitioner is mistaken in arguing that the Fifth Circuit's claim-by-claim approach improperly renders superfluous CAFA's general-public provision. Pet. at 27 (discussing § 1332(d)(11)(B)(ii)(III)). Section 1332(d)(11)(B)(ii), the CAFA subsection containing the general-public provision, confirms and illustrates the definition of "mass action." For example, while the definition of "mass action" in § 1332(d)(11)(B)(i) expressly refers to a civil action in which monetary relief claims of 100 or more persons are "to be tried jointly," § 1332(d)(11)(B)(ii)(IV) provides that "mass action" shall not include actions in which "claims have been consolidated or coordinated solely for pretrial proceedings." The latter provision is plainly underscoring or illustrating the definition in the former provision, which after all has already defined "mass action" with reference to claims to be "tried jointly." Likewise, the general-public provision — in stating that "mass action" does not include actions in which "all" claims are on behalf of the general public — underscores or illustrates that "mass action" includes any action that includes any claim for monetary relief on behalf of 100 or more persons. *See Christopher v. SmithKline Beecham Corp.*, 132 S. Ct. 2156, 2170 (2012) (recognizing that Congress uses the word "mean" to "cabin a definition to a specific list of enumerated items," as distinguished from the

word "include," which "makes clear that the examples enumerated in the text are intended to be illustrative, not exhaustive"); 2A SUTHERLAND STATUTORY CONSTRUCTION § 47:7 (7th ed. 2012) (highlighting that the word "include" usually indicates enlargement or illustrations, while the word "mean" "excludes any meaning that is not stated").

The plain language of CAFA thus calls for the claim-by-claim approach correctly adopted by the Fifth Circuit.

B. The Whole-Case Approach Is Unworkably Subjective.

As the Fifth Circuit observed, the whole-case approach suffers from being subjective. Pet. App. at 4a (observing that "other circuits . . . look to a state's complaint 'as a whole' and then subjectively determine if the state alone is the real party in interest"). That approach requires courts to engage in an artificial balancing test to determine which claims the district court views as most important — something that may not be clear from the face of the complaint. Moreover, the whole-case approach forces courts to ignore that a case may have multiple real parties in interest. *AU Optronics Corp.*, 699 F.3d at 394 (finding by Fourth Circuit that "the statutes authorizing these actions in the name of the State also permit a court to award restitution to injured citizens is incidental to the State's overriding interests and to the substance of these proceedings"). The claim-by-claim approach, on the other hand, allows courts to assess the realities of the case that

may include multiple claims and multiple real parties in interest.

The application of the whole-case approach by the Fourth and Ninth Circuits highlights a glaring problem with that approach. Both of those courts concluded that the monetary claims on behalf of particular citizens were merely "tacked on" to the other claims in the complaint, including those seeking injunctive relief and civil penalties. *AU Optronics Corp.*, 699 F.3d at 393 (Fourth Circuit) (finding that the "nature and effect of these actions demonstrate that South Carolina is the real party in interest, a fact that is unencumbered by the restitution claims . . . when tacked onto other claims being properly pursued by the State"); *Nevada*, 672 F.3d at 671 (Ninth Circuit) ("Nevada's sovereign interest in protecting its citizens and economy from deceptive mortgage practices is not diminished merely because it has tacked on a claim for restitution"). In fact, the potential liability posed by restitution claims can dwarf the civil penalties and injunctive relief sought in cases of this type. Dismissively characterizing the restitution claims as being "tacked on" ignores the realities of these cases. And there is no principled basis on which courts can determine which claims are "important" and which are simply "tacked on."

In this case, Petitioner's restitution claims are based on the alleged overcharges from every single purchase of an LCD product by a Mississippi consumer for a ten-year period. Resp. App. ¶ 40. Petitioner is likely to seek hundreds of millions of dollars in restitution. The injunctive relief, on the other hand, is based on alleged conduct that, even on

the face of the complaint, ended in 2006. *Id.* (defining the relevant period as January 1, 1996 to December 11, 2006). As it is pleaded, the reality of this case is that it is mostly about the restitution claims asserted on behalf of the individual Mississippi purchasers. *See* 151 CONG. REC. 1157 at 1161-62 (noting the proposed amendment excluding state attorneys general actions from CAFA "would create a potential loophole big enough to drive a truck through" and recounting experiences in Texas where the state attorney general was used as a conduit by private plaintiffs' attorneys). Yet, as the decisions by the Fourth and Ninth Circuits illustrate, courts applying the whole-case approach could conclude that the injunctive relief claims are the "essential nature" of the complaint while the restitution claims are merely "tacked on."

C. The Claim-by-Claim Approach Comports with this Court's Precedent and the Minimal-Diversity Test in CAFA.

Petitioner argues that the claim-by-claim approach is inconsistent with this Court's prior precedent regarding the "real party in interest test." Pet. at 20-24. In fact, the Court has never addressed federal "mass action" jurisdiction under CAFA. Congress enacted CAFA in 2005, and since then the Court has decided only one case interpreting the scope of CAFA jurisdiction; the Court found in favor of federal jurisdiction in that case. *Standard Fire Ins. Co.*, 133 S. Ct. at 1350.

The claim-by-claim approach is consistent with the history of the Court's real-party-in-interest analysis. That analysis has been developed mostly in

cases filed in or removed to federal court under either the complete diversity requirement of § 1332(a) or the Court's original jurisdiction over disputes between States under 28 U.S.C. § 1251(a). In those cases, jurisdiction often hinged on whether the State was "a" real party in interest (if so, jurisdiction was precluded in complete diversity cases but present in disputes between States), and the Court could ignore whether other real parties in interest were present in a subset of the claims in the complaint.

Under CAFA, however, only minimal diversity is required. 28 U.S.C. § 1332(d)(2). Thus, even if the State is a real party in interest, the minimal-diversity requirement can be met by the existence of other real parties in interest (named or unnamed). By refusing to recognize the particular individuals — on whose behalf the States are seeking monetary relief claims — as real parties in interest, the whole-case approach relies entirely on case law developed under the pre-CAFA "all or nothing" approach to complete diversity cases and disputes between States, where jurisdiction hinges on the diametrically opposed consideration of whether the State is "a" real party in interest.

This Court has held that, outside the complete-diversity context, "most of the other statutory prerequisites for federal jurisdiction, including the federal-question and amount-in-controversy requirements, can be analyzed *claim by claim*." *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 552-54 (2005) (emphasis added). Under CAFA, where complete diversity is not required, the rationale of the claim-by-claim approach advocated in other jurisdictional contexts must apply. The cases

cited by Petitioner do not say otherwise. Pet. at 20-24 (citing cases evaluating the "essential nature and effect of the proceeding" where minimal diversity was not at issue).

Here, the Fifth Circuit held that Petitioner's restitution claims belong to Mississippi citizens, and they are the real parties in interest for those claims, not the State. Pet. App. at 8a-9a (holding that "the real parties in interest in this suit include both the State and individual consumers of LCD products"). That opinion is fully consistent with this Court's "real party in interest" jurisprudence. *See Snapp*, 458 U.S. at 602 ("[P]rivate parties are obviously not in themselves sovereign interests, and they do not become such simply by virtue of the State's aiding in their achievement. In such situations, the State is no more than a nominal party."); *Oklahoma v. Atchison, Topeka & Santa Fe Ry. Co.,* 220 U.S. 277, 289 (1911) (holding that State is a nominal party for purposes of federal jurisdiction where it did not seek to protect its own property or any other interest, but sought "only to vindicate the wrongs of some of its people").

III. THIS CASE, THROUGH RESPONDENTS' QUESTION PRESENTED, IS A COMPELLING VEHICLE FOR RESOLVING THE CIRCUIT CONFLICT.

This case comes to the Court on a clean record with the issue crisply presented in a way that will enable the Court to resolve the circuit conflict and provide authoritative guidance to the lower courts. The lower courts in this case addressed both the "real party in interest test" and the general-public provision, two issues over which the courts are split.

Compare Pet. App. at 9a-10a (Fifth Circuit finding the general-public provision does not apply in this case), *with Madigan*, 665 F.3d at 772 (Seventh Circuit finding the general-public provision applies in a nearly identical case to this one).

Moreover, if the Court grants the petition on Respondents' question presented, it may address the related issue of whether "class action" cases under 28 U.S.C. § 1332(d)(1)(B) should be evaluated for purposes of minimal diversity under the claim-by-claim or whole-case approaches. That issue was fully briefed and considered by both lower courts. Pet. App. at 2a-3a & Pet. App. at 40a-44a. Although those courts rejected Respondents' class action argument, it provides an alternative ground for affirming the Fifth Circuit's judgment.

"Class actions" and "mass actions" are interrelated, and many of the same issues arising out of the circuit split apply to "class action" cases because "mass actions" are deemed "class actions" for purposes of CAFA. 28 U.S.C. § 1332(d)(11)(A). Thus, the minimal-diversity requirement applies to both "mass actions" and "class actions."

Moreover, unlike other removal statutes, Congress intended CAFA to be interpreted liberally to allow removal of mass actions and class actions, and thus the burden of defeating removal is on Petitioner. Therefore, in cases where a state is essentially acting as a class representative — as the Fifth Circuit held here — for monetary relief claims on behalf of particular citizens of a state, the provisions of CAFA should be broadly construed to allow removal. *See, e.g.*, *Acosta v. Master Maint. &*

Constr. Inc., 452 F.3d 373, 376-77 (5th Cir. 2006) (finding "general rule of construing removal statutes strictly" to be improper where Congress's purpose and intent is "to provide federal courts with broad jurisdiction"); *In re Tex. E. Transmission Corp. PCB Contamination Ins. Coverage Litig.*, 15 F.3d 1230, 1243 (3d Cir. 1994) (giving the removal statute under the Foreign Sovereign Immunities Act an "expansive interpretation" given "Congress's unusually strong preference for adjudication of claims against foreign states in the federal court system").

CONCLUSION

The petition for a writ of certiorari should be granted on the question presented in this response.

Respectfully submitted.

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APPENDIX

APPENDIX A

IN THE CHANCERY COURT OF THE
FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI

[Filed March 25, 2011]

Civil Action No. G2011-516 T/1

THE STATE OF MISSISSIPPI, ex rel.
JIM HOOD, ATTORNEY GENERAL,

Plaintiff,

v.

AU OPTRONICS CORPORATION; AU OPTRONICS CORPORATION AMERICA INC.; CHI MEI CORPORATION; CHI ME OPTOELECTRONICS CORPORATION; CHI MEI OPTOELECTRONICS USA, INC., F/K/A INTERNATIONAL DISPLAY TECHNOLOGY USA, INC.; CMO JAPAN CO., LTD., F/K/A INTERNATIONAL DISPLAY TECHNOLOGY LTD.; CHUNGHWA PICTURE TUBES LTD.; HANNSTAR DISPLAY CORPORATION; HITACHI, LTD.; HITACHI DISPLAYS, LTD.; HITACHI ELECTRONIC DEVICES (USA), INC.; LG DISPLAY CO., F/K/A LG PHILLIPS LCD CO., LTD.; LG DISPLAY AMERICA, INC., F/K/A LGD LCD AMERICA, INC.; SAMSUNG ELECTRONICS CO., LTD.; SAMSUNG SEMICONDUCTOR, INC.; SAMSUNG ELECTRONICS AMERICA, INC.; SHARP CORPORATION; SHARP ELECTRONICS CORPORATION; TOSHIBA CORPORATION; TOSHIBA MOBILE DISPLAY CO., LTD. F/K/A TOSHIBA MATSUSHITA DISPLAY TECHNOLOGY CO., LTD.; TOSHIBA AMERICA ELECTRONIC COMPONENTS, INC.; AND TOSHIBA AMERICA INFORMATION SYSTEMS, INC.,

Defendants.

PRELIMINARY STATEMENT

This action arises from criminal charges and indictments by the U.S. Department of Justice related to price fixing by LCD manufacturers, subsequent guilty pleas by various co-conspirators, and criminal fines, exceeding $890 million paid to the U.S. government. Unaddressed is any form of restitution for consumers or governmental entities which purchased products at an artificially inflated price. Also unaddressed are the civil penalties due to States whose laws were violated by the wrongful conduct. Attorney General Jim Hood brings this action on behalf of the State of Mississippi, including natural persons residing in the State, the State of Mississippi in its proprietary capacity and local governmental entities in the State of Mississippi. This action is brought pursuant to the Attorney General's authority under Mississippi Code § 75-24-1, et seq., and under § 75-21-1, et seq. The illegal scheme conducted by the defendants in this action artificially inflated the prices of Liquid Crystal Display ("LCD") panels and products—sold throughout the State as components of computers, televisions, and electronic devices. Defendants' wrongdoing has affected each sale of LCD panels and products sold in the State of Mississippi. Accordingly, this action seeks injunctive relief, restitution, damages, and civil penalties for each violation, pursuant to Mississippi Code §§ 75-24-1 et seq. and 75-21-1, et seq.

THE PARTIES

1. The State of Mississippi is the Plaintiff in this case, brought in its name on relation of the attorney general. The attorney general brings this suit in the State's proprietary capacity on its own behalf, including on behalf of Mississippi citizens, and on behalf of

local governmental entities; the State of Mississippi has a quasi-sovereign interest in the direct and indirect effect of defendants' illegal conspiracy on the state's economy and the citizens' economic condition.

2. LCD panels are employed in a wide range of products affecting the education, business, home life, and commerce of Mississippi, including laptop computers, personal computer monitors, mobile phones, digital cameras, video cameras, LCD TVs and car navigation systems.[1] The segment of citizens adversely impacted by defendants' conduct is a sufficiently substantial segment of the State's population to establish Mississippi's quasi-sovereign interests, as relief is sought on behalf of all local governmental entities and consumers (not limited groups of private parties) who bought a wide range of price-fixed products. Additionally, the fact that the State of Mississippi has already addressed illegal anti-trust conduct like defendants', through its Mississippi Antitrust Act and the Mississippi Consumer Protection Act is evidence that the State of Mississippi has a quasi-sovereign interest.

3. AU Optronics Corporation, one of the largest manufacturers of LCD panels, with its corporate headquarters at No. 1, Li-Hsin Rd. 2, Hsinchu Science Park, Hsinchu 30078, Taiwan, is hereby named as a defendant. During the relevant time frame this defendant manufactured, marketed, sold and/or distributed LCD panels to customers throughout the United States, including Mississippi.

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[1] In 2005, 71% of U.S. households had cell phones, according to data released by the U.S. Census Bureau. http://www.census.gov/newsroom/releases/archives/income_wealth/cb09-174.html. In 2000, 61.8% of U.S. households had computers. http://www.census.gov/population/www/pop-profile/files/dynamic/Computers.pdf.

4. AU Optronics Corporation America, Inc., a wholly owned and controlled subsidiary of defendant AU Optronics Corporation, with its corporate headquarters at 9720 Cypresswood Drive, Suite 241, Houston, Texas and facilities located in San Diego and Cupertino, California, is hereby named as a defendant. During the relevant time frame this defendant manufactured, marketed, sold and/or distributed LCD panels to customers throughout the United States, including Mississippi.

5. Defendants AU Optronics Corporation and AU Optronics Corporation America, Inc. are referred to collectively herein as "AU Optronics."

6. Chi Mei Corporation, another of the largest manufacturers of LCD panels, with its corporate headquarters at No. 11-2, Jen Te 4th St., Jen Te Village, Jen Te, Tainan 717, Taiwan, is hereby named as a defendant. During the relevant time frame this defendant manufactured, marketed, sold and/or distributed LCD panels to customers throughout the United States, including Mississippi.

7. Chi Mei Optoelectronics Corporation, another of the largest manufacturers of LCD panels and a wholly-owned subsidiary of Chi Mei Corporation, with its global headquarters at No. 3, Sec. 1, Huanshi Rd., Southern Taiwan Science Park, Sinshih Township, Tainan County, 74147 Taiwan, is hereby named as a defendant. During the relevant time frame this defendant manufactured, marketed, sold and/or distributed LCD panels to customers throughout the United States, including Mississippi.

8. Chi Mei Optoelectronics USA, Inc., f/k/a International Display Technology USA, Inc., a wholly owned and controlled subsidiary of Chi Mei Cor-

poration, with its corporate headquarters at 101 Metro Drive Suite 510, San Jose, California, is hereby named as a defendant. During the relevant time frame this defendant manufactured, marketed, sold and/or distributed LCD panels to customers throughout the United States, including Mississippi.

9. CMO Japan Co., Ltd., f/k/a International Display Technology, Ltd., a subsidiary of Chi Mei Corporation, with its principal place of business located at Nansei Yaesu Bldg. 3F, 2-2-10 Yaesu, Chuo-Ku, Tokyo 104-0028, Japan, is hereby named as a defendant. During the relevant timeframe this defendant manufactured, marketed, sold and/or distributed LCD panels to customers throughout the United States, including Mississippi.

10. Defendants Chi Mei Corporation, Chi Mei Optoelectronics Corporation, ChiMei Optoelectronics USA, Inc., and CMO Japan Co., Ltd., are referred to collectively herein as "Chi Mei."

11. Chunghwa Picture Tubes Ltd. ("Chunghwa"), a leading manufacturer of LCD products, with its global headquarters at 1127 Hopin Rd., Padeh City, Taoyuan, Taiwan, is hereby named as a defendant. During the relevant time frame this defendant manufactured, marketed, sold and/or distributed LCD panels to customers throughout the United States, including Mississippi.

12. HannStar Display Corporation ("HannStar"), with its headquarters at No. 480, Rueiguang Road, 12th Floor, Neihu Chiu, Taipei 114, Taiwan, is hereby named as a defendant. During the relevant time frame this defendant manufactured, marketed, sold and/or distributed LCD panels to customers throughout the United States, including Mississippi.

13. Hitachi, Ltd., with its headquarters at 6-6 marunouchi 1-chome, Chiyoda-ku, Tokyo, 100-8280, Japan, is hereby named as a defendant. During the relevant timeframe this defendant manufactured, marketed, sold and/or distributed LCD panels to customers throughout the United States, including Mississippi.

14. Hitachi Displays, Ltd., with its principal place of business located at AKS Bldg. 5F, 6-2 Kanda Neribei-cho 3, Chiyoda-ku, Tokyo, 101-0022, Japan, is hereby named as a defendant. During the relevant time frame this defendant manufactured, marketed, sold and/or distributed LCD panels to customers throughout the United States, including Mississippi.

15. Hitachi Electronic Devices (USA), Inc., a wholly owned and controlled subsidiary of defendant Hitachi Ltd., with its principal place of business located at 575 Mauldin Road, Greenville, South Carolina 29607, is hereby named as a defendant. During the relevant timeframe this defendant manufactured, marketed, sold and/or distributed LCD panels to customers throughout the United States, including Mississippi.

16. Defendants Hitachi Displays Ltd., Hitachi America Ltd. and Hitachi Electronic Devices (USA), Inc. are referred to collectively herein as "Hitachi."

17. LG Display Co., Ltd., f/k/a LG Phillips LCD Co., Ltd., a leading manufacturer of LCD panels and a joint venture created in 1999 by Philips Electronics NV and LG LCD, which maintains offices in San Jose, California, and which has its principal place of business located at 20 Yoido-dong, Youngdungpo-gu, Seoul, 150-721, Republic of Korea, is hereby named as a defendant. During the relevant time frame this

defendant manufactured, marketed, sold and/or distributed LCD panels to customers throughout the United States, including Mississippi.

18. LG Display America, Inc. f/k/a LGD LCD America, Inc., with its principal place of business located at 150 East Brokaw Rd., San Jose, CA 95112, is hereby named as a defendant. During the relevant time frame this defendant manufactured, marketed, sold and/or distributed LCD panels to customers throughout the United States, including Mississippi.

19. Defendants LG Display Co., Ltd. and LG Display America, Inc. are referred to collectively herein as "LGD."

20. Samsung Electronics Co., Ltd., with its principal place of business at Samsung Main Building, 250-2 ga, Taepyung-ro Chung-gu, Seoul, Republic of Korea, is hereby named as a defendant. During the relevant time frame this defendant manufactured, marketed, sold and/or distributed LCD panels to customers throughout the United States, including Mississippi.

21. Samsung Semiconductor, Inc., a wholly-owned and controlled subsidiary of Samsung Electronics Co., Ltd., with its principal place of business at 3655 North First Street, San Jose, California 95134, is hereby named as a defendant. During the relevant timeframe this defendant manufactured, marketed, sold and/or distributed LCD panels to customers throughout the United States, including Mississippi.

22. Samsung Electronics America, Inc., ("Samsung America"), a wholly-owned and controlled subsidiary of defendant Samsung Electronics Company, Ltd., with its principal place of business at 105 Challenger Road, Ridgefield Park, New Jersey 07660, is hereby

named as a defendant. During the relevant time frame Samsung America sold and distributed LCD Products manufactured by Samsung Electronics Company, Ltd. to consumers throughout the United States, including Mississippi.

23. Defendants Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung Semiconductor, Inc. are referred to collectively herein as "Samsung."

24. Sharp Corporation, with its principal place of business at 22-22 Nagaike-cho, Abeno-ku, Osaka 545-8522, Japan, is hereby named as a defendant. During the relevant time frame this defendant manufactured, marketed, sold and/or distributed LCD panels to customers throughout the United States, including Mississippi.

25. Sharp Electronics Corporation, a wholly owned and controlled subsidiary of Sharp Corporation with its principal place of business at Sharp Plaza, Mahwah, New Jersey, 07430, is hereby named as a defendant. During the relevant time frame this defendant manufactured, marketed, sold and/or distributed LCD panels to customers throughout the United States, including Mississippi.

26. Defendants Sharp Corporation and Sharp Electronics Corporation are referred to collectively herein as "Sharp."

27. Toshiba Corporation, with its principal place of business at 1-1, Shibaura 1-chome, Minato-ku, Tokyo, 105-8001, Japan, is hereby named as a defendant. During the relevant time frame this defendant manufactured, marketed, sold and/or distributed LCD panels to customers throughout the United States, including Mississippi.

28. Toshiba Matsushita Display Technology Co., Ltd., with its principal place of business located at Rivage Shinagawa, 1-8, Konan 4-chome, Minato-ku, Tokyo, 108-0075, Japan, is hereby named as a defendant. During the relevant time frame this defendant manufactured, marketed, sold and/or distributed LCD panels to customers throughout the United States, including Mississippi.

29. Toshiba America Electronics Components, Inc., a wholly owned and controlled subsidiary of defendant Toshiba Corporation with its corporate headquarters at 19900 MacArthur Blvd., Ste, 400, Irvine, CA 92612, is hereby named as a defendant. During the relevant timeframe this defendant manufactured, marketed, sold and/or distributed LCD panels to customers throughout the United States, including Mississippi.

30. Defendant Toshiba America Information Systems, Inc. is a California corporation with its principal place of business at 9470 Irvine Boulevard, Irvine, California. Toshiba America Information Systems, Inc. is a wholly-owned and controlled subsidiary of Toshiba America, Inc. During the relevant time frame Toshiba America Information Systems, Inc. sold and distributed TFTLCD Products manufactured by Toshiba Corporation to customers throughout the United States, including Mississippi.

31. Defendants Toshiba Corporation, Toshiba Matsushita Display Technology Co., Ltd., and Toshiba America Electronic Components, Inc. are referred to collectively herein as "Toshiba."

32. Wherever in this complaint a family of defendant-corporate entities is referred to by a common name, it shall be understood that Plaintiff is

alleging that one or more officers or employees of one or more of the named related defendant companies participated in the illegal acts alleged herein on behalf of all of the related corporate family entities.

33. Various persons and entities whose identities are unknown to Plaintiff at this time, participated as co-conspirators in the violations alleged herein and performed acts and made statements in furtherance thereof. Once the identities of these presently-unknown co-conspirators are ascertained, Plaintiff will seek leave of court to add them as named defendants herein.

34. Other co-conspirators whose identities are known to Plaintiff include the following companies: Epson Imaging Devices Corporation, ("Epson"); LG Electronics, Inc. and LG Electronics USA, Inc. ("LG Electronics"); Royal Philips Electronics N.V. and Philips Electronics North America Corp. ("Philips Electronics"). Other co-conspirators whose identities are known to plaintiffs include the following: Hydis Technologies Co., Ltd., f/k/a BOE Hydis Technology Co., Ltd. ("Hydis").

35. Should the facts warrant, Plaintiff may at a later date move to add as defendants herein all of these named co-conspirators.

36. The acts charged in this Complaint have been done by defendants and their co-conspirators, or were authorized, ordered, or done by their respective officers, agents, employees, or representatives while actively engaged in the management of each defendant's business or affairs.

37. Each of the defendants named herein acted as the agent or joint venturer of or for the other defendants with respect to the acts, violations and

common course of conduct alleged herein. Each defendant that is a wholly-owned subsidiary of a foreign parent is the United States agent for its parent company.

JURISDICTION AND VENUE

38. Although the conspiratorial and other acts complained of herein may have occurred outside the state of Mississippi, the conspiratorial agreements, sale ofthe LCD products at monopoly prices and the other overt and/or unlawful acts complained of herein were intended to and, in fact, have caused substantial harmful effects within the state of Mississippi. Therefore, this court under Miss. Code §75-24-9 has subject matter jurisdiction over this action. It likewise has in personam jurisdiction over defendants under the substantial effects doctrine.[2]

39. Pursuant to Miss. Code §75-24-9, this Court is likewise a proper venue for this action.

FACTUAL ALLEGATIONS

40. This case arises out of a long-running conspiracy extending from at least January 1, 1996 through at least December 11, 2006, at a minimum, among defendants and their co-conspirators, the purpose and effect of which was to fix, raise, stabilize, and maintain prices for LCD panels sold to the public including the consuming public of the State of Mississippi.

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[2] *Strassheim v. Daily,* 221 U.S. 280, 285 (1911) (Holmes, J.*); United States v. Aluminum Co. of Am.,* 148 F.2d 416, 443 (2d Cir. 1945) (Hand, J.*). See also Hartford Fire Ins. Co. v. California,* 509 U.S. 764 (1993) (Court found Sherman Act jurisdiction over foreign conduct which "was meant to produce and did in fact produce some substantial effect in the United States.")

41. Defendants and their co-conspirators illegally formed an international cartel to restrict competition in the LCD panel market, affecting billions of dollars of commerce, throughout the United States, including Mississippi, where thousands of LCD transactions took place. The conspiracy included communications and meetings in which defendants agreed to eliminate competition and fix the prices for LCD panels. As a result of defendants' price fixing conspiracy, the defendants have violated the consumer protection laws and antitrust laws of the State of Mississippi.

42. The conspiracy described herein affected adversely every LCD transaction in the State of Mississippi, and, more particularly, Mississippi State Agencies and other consumers who indirectly purchased defendants' LCD panels. Specifically, Defendants' conspiracy has resulted in an adverse monetary effect on indirect-purchasers throughout Mississippi.

43. Prices of LCD panels in Mississippi were raised to supra-competitive levels by the defendants and their co-conspirators. Defendants knew that commerce in LCD panels and LCD-containing products in Mississippi would be adversely affected by implementing their conspiracy. By their conspiracy they:

a. Raised the cost of LCD-containing products for State Agencies and also to the residents of the state of Mississippi;

b. Raised the cost of LCD-containing products in the state of Mississippi by acts or omissions committed outside Mississippi and by regularly doing or soliciting business in Mississippi;

c. Engaged in persistent courses of conduct within Mississippi and/or derived substantial

revenue from the marketing of LCD panels or the products in which they are used in Mississippi (and services relating to such marketing); and

d. Committed acts or omissions that they knew or should have known would Raised the cost of LCD-containing products (and did, in fact, cause such damage) in Mississippi.

A. Definitions

44. As used herein, the phrase "LCD" means the LCD display technology that involves sandwiching a liquid crystal compound between two glass plates called "substrates." The resulting screen contains hundreds or thousands of electrically charged dots, called pixels, that form an image. This panel is then combined with a back light unit, a driver, and other equipment to create a "module" allowing the panel to operate and be integrated into a television, computer monitor or other product.

45. As used herein, the phrase "LCD panel" refers to the particular kinds of LCD panels that are used in LCD products.

46. As used herein, the phrase "LCD products" includes but is not limited to the following products of which LCD panels are a component: televisions, computer monitors, laptop computers, phones, etc.

47. As used herein, the term "OEM" means any original equipment manufacturer of LCD products.

48. As used herein, the term "ODM" means any original design manufacturer of LCD products.

49. As used herein, the term "relevant time frame" refers to the time period January 1, 1996 through December 11, 2006.

B. LCD Technology

50. During the relevant time frame, the State of Mississippi and its citizens indirectly purchased LCD panels contained in LCD products from one or more of the defendants named herein for end use and not for resale.

51. As a result of defendants' illegal price-fixing agreement, Plaintiff and other consumers in Mississippi paid more for LCD products than they would have absent such illegal conduct.

52. LCD is a type of display technology utilized in products including TVs, computer monitors, laptops, mobile phones, digital cameras, and numerous other electronic products. LCD panels are the dominant form of display screen in the TV, computer monitor, and laptop industries. Computer monitors now comprise approximately 50% of revenues for the large LCD products market, with TVs and laptop computers accounting for approximately 27% and 21% of revenues, respectively. All other LCD products combined accounted for between 2-5% of LCD panel revenues during the relevant time frame.

53. LCD technology offers benefits over both traditional cathode-ray tube (CRT) technology and the other flat screen technology, commonly called "plasma." LCD is thin and light and uses low power. Thus, unlike CRTs, which are heavy and bulky, LCD panels can fit into a laptop and permit mobility. Because a CRT is so bulky, CRTs have never been used in laptop computers. For TVs and monitors, LCD panels use less space than traditional CRT technology, can be mounted on a wall because of their light weight, and offer superior viewing angles.

54. The other flat panel technology, plasma, is not practical for use in laptops. Because plasma has a high power requirement, it "runs hot" and cannot be operated by battery power. In addition, because of problems called "burn-in" and the fragility of the plasma panel itself, plasma has not been used in the laptop market. Thus, normally only LCD panels are used to make laptops.

55. LCD technology dominates the flat panel market. It has virtually 100% market share for laptops and flat panel computer monitors, and at least 80% market share for flat panel TVs.

C. Manufacturing An LCD Panel

56. The technology behind LCDs is not new. In the 1950s and 1960s, RCA Corp. researched whether liquid crystals could be the basis for lightweight, low-power display technology. In the 1970s, after RCA Corp. discontinued its efforts, Japanese companies took the lead in commercializing liquid crystal technology. These efforts resulted in monochrome calculators and watches. By the early 1990s, liquid crystal technology was introduced in notebook computers and small, low-resolution televisions. In the mid-1990s, the technology advanced further with the development of LCDs.

57. LCD uses liquid crystal to control the passage of light. More specifically, an LCD panel is made of two glass sheets sandwiching a layer of liquid crystal. The front glass sheet is fitted with a color filter, while the back glass substrate has transistors fabricated on it. When voltage is applied to a transistor, the liquid crystal is bent, allowing light to pass through to form a pixel. The front glass sheet contains a color filter, which gives each pixel its own color. The combination

of these pixels in different colors forms the image on the panel.

58. There are significant manufacturing and technological barriers to entry in the LCD products market. A state-of-the-art fabrication plant (called "fabs" in the industry) can cost upwards of $2 billion, and changing technology requires constant investments in research and development. The most expensive material used to make an LCD panel is the glass. In industry language, glass sizes advance in what are called "generations." These generation sizes have developed at a rapid pace, continuing to expand in size.

59. Since 2000, glass substrate size for LCD panels has approximately doubled every eighteen months. Large-generation glass offers great economies of scale: larger sheets allow display manufacturers to produce more, and larger, panels from a single substrate more efficiently.

60. Today's eighth generation glass substrates have about four times the surface area of fourth generation substrates, which means they yield more (and larger) LCD panels. For instance, one eighth generation substrate can produce the panels needed for fifteen 32" LCD televisions. Larger sheets of glass reduce manufacturing costs. For example, panel costs were approximately $20/inch for fourth generation fabs, falling to $10/inch for fifth generation fabs, and then falling another 80% to the eighth generation.

61. There have been at least eight generations of LCD fabs, each requiring significant new investment. Because building a new fabrication line or retrofitting the old line, is very expensive, and because the glass is nearly all sourced from the same supplier, Corning

Incorporated, LCD panel manufacturers use standard sizes for their products. Thus, for the major input cost, each has the same supplier. A fab line that works with one size glass cannot switch over to another size without substantial retrofitting.

62. Additionally, because the fabrication plants are most efficient when they cut standard sizes for panels, different manufacturers with different generation fabs seek to make only the most efficient size panels for that fab. For example, a fab that makes 730 mm x 920mm glass sheets can cut that sheet to make exactly six 17" LCD panels. A fab that uses 680mm x 880mm glass can cut exactly six 15" panels from that glass. But different generation fabs inefficiently yield non-standard LCD panel sizes, with the rest of the glass as waste. Thus, when defendants need other panel sizes not efficiently made by their fabs, they cross-purchase from each other. For example, LGD supplies certain size panels to other s, and, in turn, buys other size panels from Chunghwa, Chi Mei, and AU Optronics. HannStar and Chunghwa have an agreement whereby Chunghwa supplies 17" panels to HannStar and HannStar supplies 19" panels to Chunghwa. Samsung has a joint venture with Sony to supply each other with LCD panels, but Samsung also purchases panels from AU Optronics and HannStar. HannStar makes panels for Hitachi. Chunghwa makes panels for AU Optronics, and Chi Mei makes panels for Sharp and Toshiba, as well as Sanyo.

63. These cross-licensing and cross-purchasing agreements provide opportunities for collusion and coordination among members, as well as a means of checking, agreeing on, and controlling prices and output, not only a priori, but a posteriori in order to

detect cheating on agreements to limit output and fix prices. Antitrust risk is also particularly acute when there are cooperative efforts to develop, design, implement, and license certain technologies, as exist in the LCD products market.

64. There is a great deal of cross-licensing and there are many cooperative arrangements in the LCD products market, all of which create additional opportunities for collusive activity. The various joint ventures, cross licenses, and other cooperative arrangements among the s have provided a means of implementing and policing the agreements to fix prices and limit output for LCD panels that defendants have entered into at numerous meetings described hereafter. For example, defendants Samsung, and LGD recently agreed to an unprecedented level of cooperation in conducting their flat-panel display businesses. In addition, with respect to LCD products:

a. Defendant Chi Mei has licensing arrangements with defendants Sharp, AU Optronics, Chunghwa, HannStar, and Hitachi.

b. Defendant AU Optronics has licensing agreements with defendants Sharp and Samsung.

c. Defendant Hitachi has a joint venture with, inter alia., Toshiba called IPS

d. Alpha.

e. Defendant Sharp makes LCD panels for defendant Toshiba.

f. Defendants Samsung and Sharp have cross licenses for the sharing of LCD panel technology and intellectual property.

65. These combinations are between significantly large rivals and not trivial. The effects of these combinations substantially lessen competition and/or tend to create a monopoly, and were used as part and parcel of the conspiracy alleged herein and in furtherance of it.

D. The Size and Structure of the Markets for LCD Panels and LCD Products

66. The market for LCD panels is huge. Manufacturers produced approximately 48.4 million LCDs for televisions in 2006, and flat-panel sales—most of those using LCD technology—reached approximately $US 88 billion in 2006 and $US 100 billion in 2007.

67. The market for the manufacture and sale of LCD panels is conducive to the type of collusive activity alleged herein. Since January 1996 at the latest to the present (the "conspiratorial period"), defendants collectively controlled a significant share of the market for LCD panels, both globally and in the United States. Specifically, the top six companies (Samsung, LGD, Chi Mei, AU Optronics, Sharp and Chunghwa) currently control in excess of 80% of the LCD panels market. As such, the defendants' conspiracy to fix the price of LCD panels substantially affected interstate trade and commerce in the LCD products market.

68. The LCD panels industry has experienced significant consolidation during the conspiratorial period, as reflected by AU Optronics' acquisition of Quanta Display, the creation in 2001 of AU Optronics itself through the merger of Acer Display and Unipac Electronics, Fujitsu Limited's transfer of its LCD business to Sharp in 2005, the merger of the LCD operations of Toshiba and Matsushita into one entity,

defendant Toshiba Matsushita Display Co., Ltd., in 2002, and the joint venture for the production of LCD panels for televisions by Hitachi, Toshiba, and Matsushita in 2004.

69. A number of the defendants and/or their corporate parents or subsidiaries, including Samsung, Hitachi, Epson, Sharp, and Toshiba, have either pled guilty to, or are currently being investigated by the U.S. Department of Justice for entering into one or more price-fixing agreements in other closely-related industries similar to that alleged herein. Such industries include dynamic random access memory ("DRAM") computer chips, static random access memory ("SRAM") computer chips, and NAND chips or flash memory ("Flash"). The DRAM, SRAM, and Flash industries are oligopoly industries dominated by many of the same defendants as in the LCD panel industry, which has a similar oligopoly structure. The defendants' entry into express price-fixing agreements in other computer electronics markets demonstrates that the oligopoly structure of those industries has not in itself been sufficient to achieve price uniformity and output controls, but that agreement among the market participants has been required to achieve price uniformity and output controls. Such evidence tends to exclude the possibility that price uniformity in the LCD panel industry, which is similar to the DRAM, SRAM, and Flash industries and includes some of the same defendants is merely a result of normal market forces, rather than express agreement.

70. Notably, LCD panels are the largest product by revenue for many of these defendants. For example, in 2005, the LCD panel industry was nearly double the size of the DRAM market.

71. Products using medium-size and large LCD panels, such as televisions, desktop monitors, and computers, in 2004, made up 90% of the revenues for LCD panel makers. Direct purchasers buy LCD panels in order to include them as components in TVs, computer monitors, laptops, and other electronic products. The largest direct purchasers of LCD panels are computer OEMs such as Dell, HP, Apple, and Gateway, Significantly, a number of the defendants are also computer and/or television OEMs, such as Toshiba and Samsung (computers) and Samsung, Hitachi, and Toshiba (televisions).

72. LCD panels have no independent utility, and have value only as components of other products, such as TVs, computer monitors, and laptops. The demand for LCD panels thus directly derives from the demand for such products.

73. The market for LCD panels and the market for the products into which they are placed are inextricably linked and intertwined because the LCD panel market exists to serve the LCD products markets. The market for LCD panels and the markets for the products in which LCD panels are placed are, for all intents and purposes, inseparable in that one would not exist without the other.

74. Plaintiff and other indirect purchasers within the State of Mississippi have participated in the market for LCD panels through their purchases of products containing such panels. The defendants' unlawful conspiracy has inflated the prices at which Plaintiff and other indirect purchasers have bought products made with LCD panels, and Plaintiff and other indirect-purchasers in Mississippi have paid supra-competitive prices for LCD panels contained in such products.

75. Plaintiff and other Mississippi indirect purchasers participate in the market for products containing LCD panels. To the extent Plaintiff and other indirect purchasers bought LCD panels as part of an LCD product, defendants' unlawful conspiracy inflated the prices at which OEMs resold LCD panels in these products.

76. Each transaction in the state of Mississippi constituted a violation of Mississippi statute, due to supra-competitive prices for products containing LCD panels.

E. Anti-Competitive Violations Alleged

77. Beginning at a date as yet unknown to the Plaintiff, but at least as early as January 1, 1996, and continuing thereafter up to and including December 11, 2006, at a minimum, defendants and their co-conspirators agreed, combined, and conspired to raise, maintain, and stabilize at artificial levels the prices at which LCD panels have been sold directly and indirectly in the United States, in Mississippi.

78. Defendants, through their officers, directors, and employees, effectuated a contract, combination, trust, or conspiracy between themselves and their coconspirators by, among other things:

a. Participating in meetings and conversations to discuss the prices and supply of LCD panels in the United States;

b. Agreeing to fix the prices and limit the supply of LCD panels sold in the United States in a manner that deprived direct and indirect purchasers of free and open competition;

c. Issuing price announcements and quotations in accordance with the agreements reached;

d. Selling LCD panels to various customers in the United States at fixed, noncompetitive prices; and,

e. Invoicing customers in the United States at the agreed-upon fixed prices for LCD panels and transmitting such invoices via U.S. mail and other interstate means of delivery.

F. Defendants' Agreements to Set Prices and Limit Production

79. The LCD panel conspiracy alleged herein was effectuated through a combination of group and bilateral discussions that took place in Japan, Korea, Taiwan, and the United States. In the early years, beginning in at least 1996, representatives of the Japanese defendants Hitachi, Sharp and Toshiba met and agreed to fix prices for LCD panels generally, as well as to specific OEMs; they also agreed to limit the amount of LCD panels each would produce.

80. In the early years, when the conspiracy was principally limited to the Japanese defendants, bilateral discussions were the preferred method of communication. As more manufacturers entered the conspiracy, however, group meetings became more prevalent.

81. As LCD production in Korea began to increase and become more sophisticated, the Japanese defendants expanded their meetings to include their Korean competitors, including defendants LGD and Samsung, both of which also agreed to fix prices and control supply. At or about this same time, the Japanese defendants began to partner with those defendants located in Taiwan to trade technology and collaborate on supply. Japanese engineers were lent to Taiwanese firms, and Taiwanese output was

shipped to Japan. In 2001, the Korean defendants convinced Taiwanese LCD panel manufacturers, including defendants AU Optronics, Chi Mei, Chunghwa, and HannStar, to join the conspiracy to fix prices and control supply. Defendants' conspiracy included agreements on the prices at which certain defendants would sell LCD panels and products to their own corporate subsidiaries and affiliates that manufactured LCD-panel containing products, thereby ensuring that LCD panel prices remained the same as between defendants and their OEM customers, preventing any price competition on LCD products to consumers.

G. Crystal Meetings

82. In early 2001, high-level employees of at least two large manufacturers of LCD panels met in person and agreed to engage in periodic meetings to exchange sensitive competitive information and to fix the price of LCD panels and limit their production. From early 2001 through at least 2006, officials from defendants Samsung, AU Optronics, Chunghwa, Chi Mei, HannStar, LGD, and Sharp, met periodically in Taiwan to discuss and reach agreements on LCD panel prices, price increases, production, and production capacity, and did in fact reach agreements increasing, maintaining, and/or fixing LCD panel prices and limiting their production. The group meetings these defendants participated in were called "Crystal Meetings." Each defendant attended multiple meetings with one or more of the other defendants during this period. The Crystal price-fixing and output-limitation meetings occurred in Taiwan; other similar meetings took place in South Korea, Japan, and the United States on a regular basis throughout this period.

83. The Crystal Meetings were highly organized and followed a set protocol. Meetings among defendants' high-level executives were called "CEO" or "Top" meetings; and, those among defendants' vice presidents and senior sales executives were called "Commercial" or "Operational" meetings.

84. "CEO" meetings occurred quarterly from approximately 2001 to 2006. The purpose and effect of these meetings was to stabilize or raise prices. Each meeting followed the same general pattern, with a rotating designated "chairman" who would use a projector or whiteboard to put up figures relating to the supply, demand, production, and prices of LCD panels for the group to review. Those attending the meetings would take turns sharing information concerning prices, monthly and quarterly LCD fab output, production, and supply, until a consensus was reached concerning the participants' prices and production levels of LCD panels in the coming months or quarter.

85. The structure of "Commercial" meetings was largely the same as "CEO" meetings. These meetings took place more frequently than "CEO" meetings and occurred approximately monthly.

86. During all of these meeting, defendants exchanged information about current and anticipated prices for their LCD panels, and thereafter, reached agreement concerning the specific prices to be charged in the coming weeks and months for LCD panels. Defendants set these prices in various ways, including, but not limited to, setting "target" prices, "floor" prices, and the price range or differential between different sizes and types of LCD panels.

87. During these CEO/Commercial meetings, defendants also exchanged information about supply, demand, and their production of LCD panels, and, thereafter, often reached agreement concerning the amounts each would produce. Defendants limited the production of LCD panels in various ways, including, but not limited to, line slowdowns, delaying capacity expansion, shifting their production to different-sized panels, and setting target production levels.

88. During these CEO/Commercial meetings, defendants also agreed to conceal the fact and substance of the meetings, and, in fact, took various steps to do so. Top executives and other officials attending these meetings were instructed on more than one occasion to refrain from disclosing the fact of these meetings to outsiders, or even to other employees of the defendants not involved in LCD panel pricing or production. On at least one occasion top executives at a CEO meeting staggered their arrivals and departures at the meeting site so that they would not be seen in the company of each other coming or going to the meeting.

89. The structure ofthe so-called "working level" meetings was less formal than the CEO or Commercial meetings, and often occurred at restaurants over a meal. The purpose of the "working level" meetings was to exchange information on price, supply and demand, and production information which then would be transmitted up the corporate reporting chain to those individuals with pricing authority which facilitated implantation of the conspiracy and effectuated the agreements made at the CEO and at the Commercial meetings.

90. In approximately the summer of 2006, when they began to have concerns about antitrust issues,

defendants discontinued the working-level meetings in favor of one-on-one meetings to exchange pricing and supply information. These meetings were coordinated so that on the same date, each competitor met one-on-one with the other in a "round robin" set of meetings until all competitors had met with each other. These "round robin" meetings took place until at least November or December of 2006. The information obtained at these meetings was transmitted up the corporate reporting chain to permit the defendants to maintain their price-fixing and production-limitation agreement.

H. Bilateral Discussions

91. During the Crystal Meetings, defendants also agreed to engage in bilateral discussions with those defendants not attending these meetings. Certain defendants were "assigned" other defendants not in attendance and agreed to and did in fact communicate with non-attending defendants to synchronize the price and production limitations agreed to at the Crystal Meetings. For example, HannStar contacted Hitachi, to relay the agreed-upon prices and production limitations. Subsequently, the Japanese defendants implemented the agreed-upon pricing and production limitations that had been conveyed to Hitachi by Hannstar. This is one of the ways in which the Japanese defendants participated in the conspiracy to fix the prices and limit the production of LCD panels.

92. Crystal Meetings were also supplemented by additional bilateral discussions between various defendants in which they exchanged information about pricing, shipments, and production. As is more fully alleged below, defendants had bilateral discussions with one another during price negotiations with

customers in order to avoid cutting prices and to implement the fixed prices set by defendants during the Crystal Meetings. These discussions usually took place between sales and marketing employees in the form of telephone calls, e-mails, and instant messages. The information gained in these contacts was then shared with supervisors and taken into account in determining the price to be offered the defendants' OEM customers.

I. Defendants' Participation in Group and Bilateral Discussions

93. Defendants AU Optronics, Chi Mei, Chunghwa, HannStar, LGD, and Samsung attended multiple CEO, Commercial, and working-level meetings, as well as bilateral discussions during the conspiratorial period. Additionally, Quanta Display and Unipac, which merged with AU Optronics, participated in working-level meetings. At the CEO and Commercial meetings, these defendants agreed on prices, price increases, and production limits and quotas for LCD panels.

94. Defendant Sharp participated in multiple working-level meetings, as well as bilateral discussions with other defendants, during the conspiratorial period. Through these discussions, Sharp agreed with the other defendants and co-conspirators named in this complaint on prices, price increases, and production limits and quotas for LCD panels.

95. Defendant Hitachi participated in multiple bilateral discussions with defendants, including HannStar, during the conspiratorial period. Through these discussions, Hitachi agreed on prices, price increases, and production limits and quotas for LCD panels.

96. Defendant Toshiba participated in multiple bilateral discussions with other defendants, including Sharp, during the conspiratorial period. Through these discussions, Toshiba agreed on prices, price increases, and production limits and quotas for LCD panels. As pleaded below, defendant Sharp admitted to participating in bilateral meetings, conversations, and communications in Japan and the United States with unnamed co-conspirators during which they fixed the prices of LCD panels sold to Dell for use in computers; panels sold to Apple for use in iPods; and panels sold to Motorola for use in Razr phones during the conspiratorial period. During this time, Toshiba was one of Sharp's principal competitors in the sale of LCD panels to Dell for use in computers, as well as for panels sold to Apple for use in the iPod. In fact, in the small-to-medium size LCD display market, Toshiba Matsushita was ranked second (behind Sharp) in worldwide market share in the first half of 2005, with a 14.5 percent market share during the first quarter and a 14.1 percent market share during the second quarter. Sharp could not have successfully fixed the prices of LCD panels sold to Dell or Apple unless Toshiba agreed to fix prices of similar LCD panels at supra-competitive levels to those two OEMs.

97. Toshiba also participated in the conspiracy by entering into joint ventures and other arrangements to manufacture or source flat panels with one or more of the defendants that attended the Crystal Meetings. The purpose and effect of these joint ventures by Toshiba and others was to limit the supply of LCD panels and fix prices of such panels at unreasonably high levels and to aid, abet, notify and facilitate the effectuation of the price-fixing and production-limitation agreements reached at the meetings. Dur-

ing the relevant time frame, Toshiba sought and formed strategic partnerships with other LCD manufacturers which allowed it to easily communicate and coordinate prices and production levels with other manufacturers as part of the overall conspiracy alleged herein. For instance, Toshiba formed HannStar in January 1998 as a manufacturing joint venture. In 2001, Toshiba, Sharp, Matsushita, and Hitachi formed a joint venture to share basic LCD research costs. In 2001, Toshiba and Matsushita formed a joint venture, Advanced Flat Panel Displays, which merged their LCD operations. In April of 2002, Toshiba and Matsushita formed a joint venture, Toshiba Matsushita Display Technology Co., Ltd., which combined the two companies' LCD development, manufacturing, and sales operations. In 2004, Toshiba, Matsushita, and Hitachi formed a joint venture, IPS Alpha Technology, Ltd., which manufactures and sells LCD panels for televisions. In 2006, Toshiba purchased a 20% stake in LGD' LCD panel manufacturing facility in Poland. And in 2007, Toshiba and Sharp formed a joint venture in which Toshiba agreed to provide 50% of Sharp's chip needs and Sharp agreed to provide 40% of Toshiba's panel needs. The operation and management of these many different joint ventures enabled Toshiba and the other defendant-joint venture partners regular opportunities to communicate with each other to agree on prices, price increases and production limits and quotas for LCD panels that each defendant manufactured and sold.

98. Plaintiff is informed and believes, and alleges, that the three predecessor companies, AU Optronics, Unipac, QDI, and ACER participated as co-conspirators in the conspiracy. AU Optronics, by assuming all rights and obligations of these co-conspirators, is

jointly liable for their anticompetitive conduct. For example, before its merger with ACER to form AU Optronics, Unipac attended several working level meetings with Chunghwa, Chi Mei, Samsung, Sharp, and Mitsubishi, and exchanged market, shipment, and pricing information with these competitors. In addition, before it was merged into AU Optronics, QDI had anti-competitive contacts with AU Optronics, Chunghwa, Chi Mei, HannStar, Samsung, Sharp, LG, Toshiba, and Hitachi dating at least as far back as 2001.

99. Plaintiff is informed and believes, and thereon alleges, that conspirator Hydis participated in multiple working level meetings with AU Optronics, Chunghwa, Chi Mei, HannStar, and Samsung, and at least one bilateral meeting between at least 2002 and 2005. Through these discussions, Hydis agreed on prices, price increases, and production limits and quotas for LCD panels.

100. Plaintiff is informed and believes, and thereon alleges, that Mitsubishi participated in working level meetings in 2001 with a number of defendants. For example, an April 28, 2001, internal e-mail of AUO reflects that a "consensus" amount LG, Samsung, Chunghwa, Mitsubishi, and HannStar had been reached regarding pricing for 15" panels.

J. Market Conditions Demonstrating the Conspiracy

101. Since at least 1996, the LCD panel market has not behaved as would be expected of a competitive market free of collusion. Rather, the behavior in this market strongly evidences that the defendants engaged in a significant price-fixing conspiracy which

had the purpose and effect of stabilizing and raising prices for LCD panels at supra-competitive levels.

102. After initially being introduced into a market, consumer electronics products and their component parts typically are characterized by steady downward pricing trends. However, since at least 1996, the LCD panel market has been characterized by unnatural price stability and certain periods of substantial upward pricing trends.

103. Moreover, since at least 1996, the LCD panel market has not followed the basic laws of supply and demand in a competitive market. In a competitive market, price increases normally occur during periods of shortage. Since at least 1996, however, there have been significant price increases in the LCD panel market during periods of both oversupply and shortage.

104. It is generally acknowledged that demand for consumer electronic products and their component parts increases steadily over time. As would be expected, demand for LCD panels and products made with them were steadily and substantially increasing throughout the relevant time frame. For instance, a June 2006 forecast indicated that 2006 shipments of LCD panels used in televisions would reach 46.7 million units, a 74% increase from 2005. By 2009, sales of LCD televisions are expected to surpass sales of CRT televisions for the first time; and by 2010, LCD televisions will account for a majority of all televisions sold worldwide.

105. Rather than competing for this increased demand, however, since at least 1996, defendants worked together to stabilize prices by agreeing to fix prices at artificially high levels and to restrict the

supply of LCD panels through, among other things, decreasing their capacity utilization and refraining from expanding existing capacity. Those defendants which were not already manufacturing LCD panels in 1996 joined this conspiracy when they began manufacturing LCD panels.

106. In 1996, the LCD panel market was experiencing excess supply and drastic price cuts. Prices had already fallen 40 to 50 percent in 1995, and were projected to continue dropping due to lower manufacturing costs. However, LCD panel prices began rising in 1996, allegedly due to insufficient production capacity. In fact, defendants were fixing the prices.

107. The reverse in the downward spiral of LCD panel prices began in early 1996. Defendants blamed the sudden increase in prices on an alleged inability to supply enough LCD panels to meet demand. By May of 1996, an industry magazine was reporting that, "[f]lat-panel-display purchasers are riding a roller coaster of pricing in the display market, with no clear predictability anytime soon .... Perplexed purchasers trying to keep up with the gyrating market can take solace that even vendors are constantly being surprised by the sudden twists and turns."

108. Soon thereafter, industry analysts began commenting on the unusual rise in TFT LCD panel prices, noting that this rise in prices was "quite rare in the electronics industry."

109. The year 1996 also brought the advent of third generation fabrication plants. Since 1996, as defendants entered the LCD panel market, they have updated their production facilities for LCD panels in

order to keep pace with developing technology, which has resulted ultimately in at least eight generations of LCD panels. LG Electronics was scheduled to have its third generation fab online by 1997, and Hyundai was scheduled to do so by early 1998. Each new LCD panel generation was produced from ever larger pieces of glass, so as to reduce the cost of the screens used in televisions, computer monitors, and laptops. Ever-increasing production capacity threatened to outstrip demand for LCD panels, with the result that prices of LCD panels should have decreased rapidly. Instead, defendants falsely claimed to be operating at full capacity and unable to meet demand, despite the millions of units of over-capacity that had supposedly existed months earlier, and prices surged upwards. These price increases were also inconsistent with the fact that production had become more efficient and cost effective.

110. The artificially high costs of LCD panels during the relevant time frame are demonstrated by, inter alia, the fact that costs were decreasing. One of the most significant costs in producing an LCD panel is the cost of its component parts. Some of the major component parts for an LCD panel include the back light, color filter, PCB polarizer, and glass. Indeed, for large area LCD panels, the costs of these components comprise over two-thirds of the total cost of production. During the relevant time frame, the costs of these components collectively and individually have been generally declining, and in some periods at a substantial rate. Thus, the gap between LCD panel manufacturers' prices and their costs was unusually high during the relevant time frame.

111. During the end of 2001 and 2002, LCD panel prices increased substantially while the costs to

produce these panels remained flat or decreased. Similarly, during the end of 2003 to 2004, LCD panel prices again increased by a substantial amount, while costs remained flat or decreased. This economic aberration is the intended and necessary result of defendants' conspiracy to raise, fix, maintain, or stabilize the prices of LCD panels. LCD panel prices increased by more than 5% for the first time in 2001 in October of that year. These price increases continued until June of 2002, resulting in an approximately 35% increase in the average selling price of 15-inch LCD panels. Defendants were essentially able to raise the prices of LCD panels by at least $60 USD from October of 2001 through May 2002.

112. At the time, defendants blamed these cost increases on supply shortages. In fact, these price increases were a direct result of defendants' agreement to fix, maintain, and/or stabilize the prices of LCD panels and defendants' false statements about supply shortages were designed to conceal their price-fixing agreement. When asked why prices had increased, defendants repeatedly explained that the increases in LCD prices were due to increased demand and a "supply shortage."

113. These price increases occurred as production costs declined due to lower prices for parts and components as well as improvements in manufacturing efficiency. While the price of 15-inch LCD panels, for instance, shot up from US$190-200 in the third quarter of 2001 to US$250 in the first quarter of this year, current production costs remained at approximately US$200. These decreasing costs should have led to lower prices and competition among defendants. Instead, because defendants had entered into

an agreement to fix, raise, and maintain LCD panels at artificially high levels, it resulted in extremely high profits.

114. For example, defendants AU Optronics Inc., Chi Mei Optoelectronics Corp., Chunghwa Picture Tubes Ltd., and HannStar Display Inc. posted higher pretax profits than expected in the first quarter of 2002.

115. This increase in prices and revenue was unprecedented. During the first six months of 2002, revenue for Taiwan's five major LCD panel manufacturers (defendants AU Optronics, Chi Mei, Chunghwa Picture Tubes Ltd., HannStar Display Inc., and Quanta Display Inc. (later purchased by AU Optronics) rose 184% from the same period in 2001.

K. Public Statements Reflecting the Conspiracy

116. Additionally, defendants made repeated public statements admitting to or referencing their agreement to fix LCD panel prices through supply manipulation.

117. On or about January 20, 2003, Hsu Wen-lung, defendant Chi Mei's Chairman, stated that "both Taiwanese and South Korean TFT-LCD panel makers should avoid the fierce price competition and build a money-making environment. To this end, both sides are recommended to exchange market information periodically."

118. Again, on January 29, 2003, KY. Lee, the Chairman of defendants AU Optronics publicly stated that "the local TFT-LCD industry should move to set up a reasonable and healthy pricing strategy thus avoiding the price fluctuations."

119. Soon after these public statements were made, LCD panel prices increased for five consecutive quarters in 2003 and 2004, the direct result of the CEO, Commercial and working-group meetings identified above and which took place on a regular basis over this period of time. LCD panels used in laptops and computer monitors increased by as much as 28% during this time period as reported by defendant AU Optronics. Similarly, defendant LGD reported similar price increases over the same period.

120. This price-fixing scheme resulted in substantial increases in the profits reaped by the defendant LCD panel manufacturers. For example, the eight largest LCD panel manufacturers reported a collective profit increase of 740% between the second quarter of 2003 and the second quarter of 2004. These record profits resulted from defendants' agreement to fix, raise, maintain or stabilize the price of LCD panels.

121. Although the price increases were the direct result of defendants' agreement to fix, raise, and maintain the price of LCD panels, they repeatedly made public statements blaming these price increases on other factors. For example, at an August 2003 flat panel industry conference sponsored by DisplaySearch, Dr. Hui Hsiung, executive vice president of defendant AU Optronics, explained the recent increases in the price of LCD panels was due to increased demand and supply shortage. In March of 2004, Liu Chih-chun, Chunghwa's vice president blamed the high prices on an inadequate supply of key parts from upstream suppliers.

122. In fact, while LCD panel prices were increasing in late 2003 and the first half of 2004, defendants AU Optronics, Chi Mei, and HannStar

were decreasing capacity utilization. AU Optronics delayed construction of a new generation plant to help prices increase. Similarly, while LCD panel prices were increasing in 2003 and 2004, LCD panel manufacturers' capacity growth rate was decelerating. Defendants' artificial supply restriction had the purposeful effect of fixing, raising, maintaining, or stabilizing LCD panel prices at artificially high levels.

123. Reducing production capacity is not something an LCD panel manufacturer would do unless its competitors were doing so as well. As AU Optronics executive Hsu Hsiung himself would later note when discussing defendants' cuts in production capacity in public statements made at a May 2006 annual international conference on Taiwan's flat panel display industry, reducing production capacity pushes an LCD panel manufacturer's fixed production costs up, and is not effective in fixing or maintaining the price of LCD panels unless the other defendants do so as well. Yet, as Mr. Hsiung himself noted in those public statements, an increase of 2 to 3 percent of AU Optronics' fixed production costs was preferable to a drop of 15 to 20 percent in LCD panel price.

124. Defendants' public statements admitting to their agreement to fix, maintain, and stabilize LCD panel prices continued. In late 2004, panel makers in Taiwan were reported to "agree the ultimate solution" to keep supply and demand in their favor was to "involve closer cooperation." For example, Chi Mei's Chairman, C.H. Lin, noted that mergers were not likely because of the large size of the companies in the industry, but he encouraged "a new era of mutual cooperation." He noted that the Japanese companies

Toshiba and Panasonic had done so, as had Samsung and Sony.

125. These public statements referenced an agreement among defendants to fix prices, and resulted in, among other things, a temporary halt in the expansion of production capacity among defendants. Because of this illegal agreement to fix, raise, and maintain LCD panel prices, defendants were able to maintain LCD panel prices at artificially high levels in 2005.

126. On a November 25, 2005 conference call with investors, Dr. Hui Hsiung, executive vice president of defendant AU Optronics, admitted to, conspiring with other LCD panel manufacturers to artificially increase the LCD panel prices. Discussing the "under supply/oversupply" of LCD panels, he noted "there's various actions we can take such as slightly reduce the capacity loading or shift the product mix," but predicted that, with respect to supply levels, "we will see some parity among different panel suppliers in 2006." In response to a question about what AU Optronics would do if demand turned out to be weaker than expected, Dr. Hsiung stated:

> Our policy, our strategy, has always been minimizing our inventory and that turned out to be quite successful in the past few years by keeping their inventory lower. And I think in the past we did have some problem convincing our competitors doing the same thing. But in recent months, especially this year, actually, it did start to happen. I think that the industry understand [sic] the benefit of keeping capacity low. Again, even if the scenario does happen that we have a 5% over capacity this is not the drastic action to reduce about 5% of the loading So, we think the

> industry become [sic] more mature. That is precisely what our competitors would do. (emphasis added)

127. Similarly, a November 3, 2005, Samsung presentation, available on its website, stated that "it was possible to secure a reasonable amount of profit while following industry leaders" during the conspiratorial period. This too constituted a public signal and invitation to the other defendants to fix prices by restricting output.

128. Thereafter, in the spring of 2006, at a conference of manufacturers of LCD panels in Taiwan, Mr. Hsiung publicly stated that the defendants should collectively look at cutting back on production from 100 percent to at least 85 percent. Otherwise, Mr. Hsiung said, if supply outpaced demand, manufacturers would be forced to cut prices. This was an express invitation to reduce output in order to raise, fix, stabilize, and peg the prices of LCD panels and LCD products.

129. In June of 2006, Mr. Hsiung told the Wall Street Journal that AU Optronics had cut production of LCD panels because of bloated inventories, a move that could bring more stability to LCD panel prices by the third quarter if other companies followed suit. Mr. Hsiung also told the Wall Street Journal, "You have to have discipline every month to adjust inventory. If others follow, that will help prices stabilize by the third quarter." Mr. Hsiung further said that buildup of LCD panel inventories led to a bigger than expected decline in prices recently. He urged other LCD panel makers to stop building up inventory during periods of oversupply. "Supply and demand balance can be maintained during a period of overcapacity if lab' loading is reduced by only 5 percent to

10 percent," he said, adding that a slight reduction would increase unit fixed costs by only 2 percent to 3 percent. Mr. Hsiung stated that AU Optronics was making efforts to cut manufacturing costs to prevent margin erosion. He added that further mergers and acquisitions were needed in the LCD panels industry to help stabilize prices. The foregoing statements were reported by the Wall Street Journal on June 15, 2006, in an article entitled "AU Optronics Cuts LCD Output in Bid to Stabilize Falling Prices." When Mr. Hsiung made these statements to the Wall Street Journal, he knew and intended that they would be publicly reported and would become known to all of the defendants; and, in making these statement, he intended to send a signal and an invitation to the other defendants to cut production in order to raise, fix, stabilize, and peg prices of LCD panels and LCD products.

130. Mr. Hsiung made his comments to the Wall Street Journal after defendant LGD LCD publicly announced that it was lowering its outlook for the second quarter because of high inventories of LCD panels. The President of defendant LGD LCD, Ron Wirahadiraksa, publicly stated on June 12, 2006, that the company would review its capacity plans for 2006. These statements were also signals and an invitation to the other defendants to curtail production of LCD panels and LCD products and thereby raise, fix, stabilize, and peg prices for LCD panels and LCD products.

131. Thereafter, defendants announced plans to cut back production. In the second half of 2006, LGD announced plans to cut its capacity expansion by two thirds; AU Optronics Corp announced plans to cut capital expanse by 30% to 40%; Chi Mei announced

plans to delay the mass-production date of its newest production plant; and HannStar adopted a "build to order" mode. These public statements and actions allowed defendants to continue to fix, maintain, and stabilize the price of LCD panels at artificially high levels.

132. Defendants had ample opportunities for collusion when they met and discussed pricing at various industry trade shows where all major participants in the LCD products industry were present. For example, on June 20 and June 21, 2001, a Market Seminar meeting was held at National Chiao Tung University, Hsinchu, Taiwan. The meeting was co-sponsored by DisplaySearch and the industry trade group, Semiconductor Equipment and Materials Institute ("SEMI"). The agenda stated that "this year's seminar will be expanded to two days and cover all major FPD [flat panel display] applications including notebook PCs, desktop monitors, LCD TVs, mobile phones, PDAs and internet appliances. Also covered will be the TFT LCD supply and demand, pricing, component shortages and the TFT LCD equipment and materials markets. In addition to DisplaySearch analysts, leading executives from FPD producers, OEMs, brands and equipment and materials suppliers are expected to be present."

133. Most, if not all, of the defendants were represented at this seminar at which discussions regarding LCD panel supply and pricing were held.

134. The express invitations to collude referred to herein above were in fact accepted, agreed to, and acted upon by the defendants, who, during the relevant time frame, repeatedly and continuously jointly and collusively limited output of LCD panels in order to raise, fix, and stabilize prices of LCD

panels and LCD products, each defendant knowing and understanding that the other defendants had agreed to do likewise and were doing likewise.

L. Government Investigations of Price-Fixing

135. In December 2006, authorities in Japan, Korea, the European Union and the United States revealed the existence of a comprehensive investigation into anti-competitive activity among LCD panel manufacturers.

136. In a December 11, 2006, filing with the Securities and Exchange Commission, defendant LGD disclosed that officials from the Korea Fair Trade Commission and Japanese Fair Trade Commission had visited the company's Seoul and Tokyo offices and that the United States Department of Justice had issued a subpoena to its San Jose office.

137. On December 12, 2006, news reports indicated that in addition to LGD, defendants Samsung, Sharp, Epson Electronics America, Inc. and AU Optronics were also under investigation.

138. The U.S. Department of Justice ("DOJ") acknowledged that it was "investigating the possibility of anti-competitive practices and is cooperating with foreign authorities."

139. These government investigations have the potential to result in hundreds of millions of dollars in fines. "Min Chun Hong, an analyst at Goodmorning Shinhan Securities, stated that if the companies [Samsung and LGD] were convicted, penalties could amount to about 200 billion won, or $216 million, each."

140. At least one of the defendants has approached the Antitrust Division of the DOJ to enter into a

leniency agreement with respect to the defendants' conspiracy to fix prices of LCD panels. In order to enter into a leniency agreement under the Corporate Leniency Policy of the Department of Justice, this defendant has reported the defendants' price-fixing conspiracy to the Department of Justice and has confessed its own participation in the defendants' price-fixing conspiracy.

141. On or about November 12, 2008, defendants LGD, Sharp, and Chunghwa agreed to plead guilty and pay a total of $585 million in criminal fines for their roles in the conspiracy to fix prices in the sale of LCD panels.

142. LG agreed to plead guilty and pay $400 million, the second-highest criminal fine ever imposed by the DOJ's Antitrust Division, and Chunghwa agreed to plead guilty and pay a $65 million criminal fine. LG admitted to participating in a conspiracy from September 2001 to June 2006 to fix the price of LCD panels sold worldwide, and to participating in meetings, conversations, and communications in Taiwan, Korea, and the United States to discuss the prices of LCD panels, agreeing to fix the prices of LCD panels, and exchanging pricing and sales information for the purpose of monitoring and enforcing adherence to the agreed-upon prices. Chungwa admitted to participating in a conspiracy from September 2001 to December 2006 to fix the price of LCD panels sold worldwide and to participating in meetings, conversations and communications in Taiwan to discus the prices of LCD panels, agreeing to fix the prices of LCD panels, and exchanging pricing and sales information for the purpose of monitoring and enforcing adherence to agreed-upon prices.

143. Sharp agreed to plead guilty and pay a $120 million criminal fine. Sharp admitted to participating in a conspiracy with unnamed conspirators to fix the price of LCD panels sold to Dell from April 2001 to December 2006, to Apple Computer from September 2005 to December 2006, and to Motorola from fall 2005 to December 2006, and to participating in bilateral meetings, conversations, and communications in Japan and the United States with unnamed co-conspirators to discuss the prices of LCD panels, agreeing to fix the prices of LCD panels, and exchanging pricing and sales information for the purpose of monitoring and enforcing adherence to the agreed-upon prices.

144. In a December 9, 2009, press release the Department of Justice stated: "A Thin-Film Transistor-Liquid Crystal Display (TFT-LCD) producer and seller has agreed to plead guilty and pay $220 million in criminal fines for its role in a conspiracy to fix prices in the sale of liquid crystal display panels... According to a one-count felony charge filed today in U.S. District Court in San Francisco, Chi Mei Optoelectronics participated in a conspiracy to fix the prices of TFT-LCD panels sold worldwide from Sept. 14, 2001, to December 1, 2006....Including today's charges, as a result of this investigation, six companies have pleaded guilty or have agreed to plead guilty and have been sentenced to pay or have agreed to pay criminal fines totaling more than $860 million. Additionally, nine executives have been charged to date in the department's ongoing investigation." In a June 10, 2010, press release the Department of Justice said, "A federal grand jury returned a superseding indictment against the largest Taiwanese thin-film transistor-liquid display panels (TFT-LCD) producer and seller, its Houston-based American

subsidiary, and six of its executive for participating in a conspiracy to fix prices of TFT-LCD panels....As a result of this ongoing investigation, six companies have pleaded guilty and have been sentenced to pay criminal fines totaling more than $860 million. Additionally, including today's indictment, 17 executives have been charged to date in the department's ongoing investigation."

M. The Pass-Through of the Overcharges to Consumers

145. Defendants' conspiracy to raise, fix, or maintain the price of LCD panels at artificial levels resulted in harm to Plaintiff and other indirect-purchaser consumers in Mississippi because it resulted in their paying higher prices for products containing LCD panels than they would have in the absence of defendants' conspiracy. The entire overcharge for LCD panels at issue was passed on to Plaintiff and other Mississippi consumers. As the DOJ acknowledged in announcing the agreements to plead guilty by defendants LGD, Sharp, and Chunghwa, "These price-fixing conspiracies affected millions of American consumers who use computers, cell phones, and numerous other household electronics every day."

146. The defendants identified above as having attended CEO, Commercial, and/or working-group meetings made sure that so-called "street-prices" (i.e., consumer retail prices) of LCD products were monitored on a regular basis. The purpose and effect of investigating such retail market data was at least two-fold. First, it permitted defendants, such as Chungwa, which did not manufacture LCD products, the way defendant Samsung did, to police the price-fixing agreement to be sure that intra-defendant LCD

panel sales were kept at supra-competitive levels. Secondly, it permitted all defendants to police their price-fixing argument to independent OEMs who would reduce prices for furnished goods if there was a corresponding reduction in LCD panel prices from a defendant. As a result of street-pricing monitoring, defendants assured that 100% of the supra-competitive over—charges for LCD panels were passed on to indirect-purchaser consumers.

N. LCD Panels Make up a High Percentage of the Cost of Products Containing Such Panels

147. When an LCD panel leaves a defendant's manufacturing plant, it requires minimal additional labor or materials to make it into a TV or a computer monitor, or to install it into a laptop computer. The LCD panel itself typically accounts for 60-70% of the total retail price of a TV (even more for panels exceeding 40"), while comprising between 70-80% of the retail price of computer monitors. LCD panels typically comprise roughly 10% of the retail cost of a laptop computer.

148. The only differences between a computer monitor and a TV are the other materials added to make the finished products. For example, an LCD TV will have internal speakers and a TV tuner. There is no technological difference between a computer monitor's LCD panel and the LCD panel in a laptop.

149. To turn an LCD panel into an LCD monitor, an assembler fits the panel with a back light, plastic framing around the screen, and a power source. It is then branded by the OEM as its monitor, and sold to the end user—either directly from the OEM's store (like Gateway or Apple), on its website (like Dell or Hewlett-Packard), in an electronics store (like Best

Buy or Circuit City), or through a mass merchandiser (like Wal-Mart or Target). 197, To turn an LCD panel into an LCD TV, an assembler fits the panel with a TV tuner, speakers, and a power source.

150. To turn an LCD panel into a laptop, the panel is incorporated into a plastic frame, and a computer motherboard with its components is fitted into the bottom half of the frame. This is essentially the same process for iPods, which are essentially portable computers dedicated to media processing.

151. LCD panels are commodity products, with functionally equivalent products available from the defendants, who manufacture LCD panels pursuant to standard specifications and sizes.

O. The Price of Products Containing LCD Panels Was Directly Dependent on the Price of the Panels

152. The indirect-purchaser consumer buys products containing LCD panels through one of two distribution chains: either from the direct-purchaser OEM, such as Dell, or through a reseller such as Best Buy.

153. Computer and TV OEMs are not "manufacturers" at all, but assemblers of components and purveyors of brand names. For example, for computers, a company like HP or Apple does not make any of the parts that go into making an LCD monitor or laptop. Rather, such companies purchase LCD panels from defendants, and hire contract assemblers to turn the panels into the finished products. On information and belief, Computer and TV OEMs price their end-products on a "cost-plus" basis. Thus, changes in the cost of LCDs have immediate effects on the cost of the finished products.

154. On information and belief, there are two methods by which OEMs sell their branded LCD products to the retailer. The first method is to obtain pre-orders. These OEMs obtain prior orders for their products before they have them manufactured. Under this method, the TV or computer OEM obtains orders for its TVs, laptops, or computer monitors before it orders any of the parts for those products. It negotiates with retailers prices and quantities at which it will sell its finalized products to the retailers. The OEM will base its sales price on the current prices of the other components, the assembly costs, delivery costs, and a profit margin.

155. OEMs also sell their branded products to retailers by estimating the retail market for LCD products, and purchasing the LCD panels before the orders for the end product are obtained. Because the OEM is not locked in to an agreed-upon price for its product, it can pass through the entire overcharge unencumbered by downstream contracts.

156. In either case, because of the breadth of the price fixing conspiracy, the OEM is also not constrained by its competitors from passing on the overcharge. Because each OEM's end-product competitors are also buying LCD panels at supra-competitive prices from conspiracy members, no OEM faces end-product price competition from an OEM who is not paying supra-competitive prices for its LCD panel inputs. Neither prior price commitments nor end-product price competition interferes with the overcharge being passed on down the supply chain.

157. All supra-competitive overcharges are always passed through to the indirect-purchaser, end-user consumers such as Plaintiff and other Mississippi

consumers who pay more for a product containing LCD panels than in a competitive market place.

158. The price of products containing LCD panels is directly correlated to the price of LCD panels. The margins for OEMs are sufficiently thin that price increases of LCD panels force OEMs to increase the prices of their products.

159. OEMs and retailers of products containing LCD panels are all subject to vigorous price competition, whether selling TVs, computer monitors, or laptops. The demand for LCD panels is ultimately determined by purchasers of products containing such panels. The market for LCD panels and the market for products containing these panels are therefore inextricably linked and cannot be considered separately. Defendants are well aware of this intimate relationship, and use forecasts of TVs, laptops, and computer monitors to predict sales of LCD panels.

160. Because OEMs have thin net margins, they must pass on any increase in component costs, such that increases in the price of LCD panels lead to quick corresponding price increases at the OEM level for products containing such panels.

161. LCD panels are one of the most expensive components in products in which they are incorporated. As noted, the cost of an LCD panel in an LCD TV is 60-70% of the retail price; in a laptop is 10% of the retail price; and in a computer monitor is 70-80% of the retail price.

162. The computer industry is highly competitive. Computers arc commodities, with little or no brand loyalty, such that aggressive pricing causes consumers to switch preferences to different brands. Com-

puter prices are closely based on production costs, which are in turn directly determined by component costs, as assembly costs are minimal. OEMs accordingly use component costs, like the cost of LCD panels, as the starting point for all price calculations. Thus, computer prices closely track increases and decreases in component costs.

163. The close relationship between the price of LCD panels and products was recognized by the defendants during the conspiracy. Defendants monitored the prices of LCD products and the demand for LCD products during the relevant time frame. During several "Crystal" meetings referenced above, defendants specifically discussed "street" prices of LCD products and evinced concern that LCD panel increases would cause the price of LCD products to increase to such a degree that demand for LCD products would be affected.

164. Finally, many of the defendants and/or co-conspirators themselves have been and are manufacturers of TVs, monitors, and/or laptops containing LCD panels. Such manufacturers include, for example, Samsung, Sharp, Hitachi, LO Electronics, Philips Electronics, S-LCD, Sanyo, and Toshiba. Having agreed to fix the prices for LCD panels, the major component of the end products they were manufacturing, these defendants intended to pass on the full cost of this component in their finished products, and in fact did so. They agreed to fix prices of the major component of their TVs, monitors, and laptops with the understanding and expectation that the full cost of the LCD panels would be passed on to their customers in the prices of TVs, monitors, and laptops. To have agreed or to have done otherwise would have defeated the very purpose of the defendants' conspir-

acy. They did not agree to eliminate price competition at one level of production in order to implement it at another level.

P. The Effect of the Price of LCD Panels on the Price of Products Is Discernable Across the Economy

165. Once an LCD panel leaves its place of manufacture, it remains essentially unchanged as it moves through the distribution system. LCD panels are identifiable, discreet physical objects that do not change form or become an indistinguishable part of the TVs, computer monitors, laptops, or other products in which they are contained. And a given LCD product contains one and only one LCD panel.

166. Thus, LCD panels follow a traceable physical chain from the defendants to the OEMs to the purchasers of the finished products incorporating LCD panels.

167. Moreover, just as LCD panels can be physically traced through the supply chain, their price can also be traced to show that changes in the prices paid by direct purchasers of LCD panels affect prices paid by indirect purchasers of products containing LCD panels.

168. Because defendants control the market for LCD panels, there are virtually no choices for persons and businesses that require products containing such panels other than buying such products manufactured by a direct purchaser that paid supra-competitive prices for LCD panels to defendants because of defendants' conspiracy alleged herein.

169. When distribution markets are highly competitive, as they are in the case of products contain-

ing LCD panels as components, all of the overcharge will be passed through to ultimate consumers, such as Plaintiff and other Mississippi indirect-purchasers. In addition, as set forth in paragraph 158, supra., many of the defendants themselves manufacture, market, and distribute products including LCD panels, such as televisions (e.g., Samsung and Sharp) and computer monitors (e.g., Samsung) and laptops (e.g., Toshiba). This means that these defendants have passed through and will continue to pass through to their customers 100% of the supra-competitive price increases that resulted from the defendants' conspiracy, combination, and agreement to fix, increase, and stabilize the prices for LCD panels.

170. Hence, the inflated prices of products containing LCD panels resulting from defendants' price-fixing conspiracy have been passed on to Plaintiff and other Mississippi indirect purchasers by direct-purchaser manufacturers, distributors, and retailers.

171. During the relevant time frame, a number of large OEMs sold their products containing LCD panels directly to end-buyers. The OEM with the largest share of computer monitor and laptop sales in the United States market, Dell, sold exclusively to end-buyers, as did Gateway. During the conspiratorial period, Compaq and Apple also sold large portions of their laptops and computer monitors directly to the end-buyer. Dell has a 35.4% market share for LCD monitors.

172. Computer models sold by other OEMs to retailers were generally updated several times a year, and the price was changed for each new model. For example, for one large retailer, more than 90 percent of the computers sold during 2000 were either new

models or were sold at a different price from the price in the previous month. OEMs, retailers and distributors often use a "standard markup" method to set prices, meaning that they add a standard percentage to their own costs to determine selling prices. Thus, changes in the price of LCD panels were passed on rapidly rather than absorbed.

173. In retailing, it is common to use a "markup rule." The retail price is set as the wholesale cost plus a percentage markup designed to recover non-product costs and to provide a profit. This system guarantees that increases in costs to the retailer will be passed on to end buyers. For example, CDW, a large seller of LCD monitors and laptops, uses such a system. In general, CDW employs a "building block" approach to setting its advertised prices. The first building block is the Cost of Goods Sold (COGS), which represents the price CDW paid to acquire the product. CDW adds a series of positive markups to the cost to CDW to acquire a given product. These markups are in addition to the pass through effect of changes in the costs charged to CDW for that product by a given vendor.

174. As more fully explained in paragraphs 170, 171, and 172, below, the economic and legal literature has recognized that unlawful overcharges in a component normally result in higher prices for products containing that price-fixed component.

175. As Professor Herbert Hovenkamp, a noted antitrust scholar, has stated in his treatise, FEDERAL ANTITRUST POLICY, THE LAW OF COMPETITION AND ITS PRACTICE (1994) at 624:

> A monopoly overcharge at the top of a distribution chain generally results in higher prices at

> every level below. For example if production of aluminum is monopolized or cartelized, fabricators of aluminum cookware will pay higher prices for aluminum. In most cases they will absorb part of these increased costs themselves and pass part along to cookware wholesalers. The wholesalers will charge higher prices to the retail stores, and the stores will do it once again to retail consumers. Every person at every stage in the chain likely will be poorer as a result of the monopoly price at the top. Theoretically, one can calculate the percentage of any overcharge that a firm at one distributional level will pass on to those at the next level.

176. Similarly, two other antitrust scholars—Professors Robert G. Harris (Professor Emeritus and former Chair of the Business and Public Policy Group at the Haas School of Business at the University of California at Berkeley) and the late Lawrence A. Sullivan (Professor of Law Emeritus at Southwestern Law School and author of the Handbook of the Law of Antitrust)—have observed that "in a multiple-level chain of distribution, passing on monopoly overcharges is not the exception: it is the rule."

177. As Professor Jeffrey K. McKie-Mason (Arthur W. Burks Professor for Information and Computer Science and Professor of Economics and Public Policy at the University of Michigan), an expert who presented evidence in a number of the indirect purchaser cases involving Microsoft Corporation, said (in a passage quoted in a judicial decision in that case):

> As is well known in economic theory and practice, at least some of the overcharge will be passed on by distributors to end consumers, When the distribution markets are highly

> competitive, as they are here, all or nearly the entire overcharge will be passed on through to ultimate consumers... Both of Microsoft's experts also agree upon the economic phenomenon of cost pass through, and how it works in competitive markets. This general phenomenon of cost pass through is well established in antitrust laws and economics as well.

178. Quantitative correlation analysis strongly suggest that the market for products containing LCD panels is inextricably linked to the market for LCD panels by virtue of the strong correlation between the price of LCD panels and the price of LCD monitors, TVs, and laptop computers.

179. The purpose of the conspiratorial conduct of the defendants was to raise, fix or stabilize the price of LCD panels and, as a direct and foreseeable result, products containing such panels. Economists have developed techniques to isolate and understand the relationship between one "explanatory" variable and a "dependent" variable in those cases when changes in dependent variable are explained by changes in a multitude of variables—when all such variables may be changing simultaneously. That analysis-called regression analysis—is commonly used in the real world and in litigation to determine the impact of a price increase on one cost in a product (or service) that is an assemblage of costs. Thus, it is possible to isolate and identify only the impact of an increase in the price of LCD panels on prices for products containing such panels even though such products contain a number of other components whose prices may be changing over time. A regression model can explain how variation in the price of LCD panels affects changes in the price of products containing

such panels. In such models, rather than being treated as the dependent variable, the price of LCD panels is treated as an independent or explanatory variable. The model can isolate how changes in the price of LCD panels impact the price of products containing such panels while holding controlling for the impact of other price-determining factors.

180. Economic and legal literature recognizes that the more pricing decisions are based on cost, the easer it is to determine the pass-through rate. The directness of affected costs refers to whether an overcharge affects a direct (i.e. variable) cost or an indirect (i.e., overhead) cost. Overcharges will be passed-through sooner and at a higher rate if the overcharge affects direct costs. Here LCD panels are a direct (and substantial) cost of products containing such panels.

181. Other factors that lead to the pass-through of overcharges include: (I) whether price changes are frequent; (ii) the duration of the anti-competitive overcharge; (iii) whether pricing decisions are based on cost; (iv) whether the overcharge affects variable, as opposed to overhead, costs; (v) whether the re-sellers' production technology is uniform; (vi) whether the reseller supply curve exhibits a high degree of elasticity; and (vii) whether the demand of the resellers is inelastic. All of these factors were present in the LCD market during the relevant time frame. The precise amount of such an impact on the prices of products containing LCD panels can be measured and quantified. Commonly used and well-accepted economic models can be used to measure both the extent and the amount of the supra-competitive charge passed-through the chain of distribution.

182. Plaintiff and other indirect purchasers in Mississippi have been forced to pay supra-competitive prices for products containing LCD panels. These inflated prices have been passed on to them by direct purchaser manufacturers, distributors, and retailers. Those overcharges have unjustly enriched defendants.

ACTIVE CONCEALMENT

183. Defendants and their co-conspirators actively and fraudulently concealed the existence of their contract, combination or conspiracy. Because defendants' agreement, understanding and conspiracy were kept secret, Plaintiff was unaware of defendants' unlawful conduct alleged herein and did not know that State Agencies and other Mississippi consumers were paying artificially high prices for LCD panels and the products in which they were used.

184. The affirmative acts of the defendants alleged herein, including acts in furtherance of the conspiracy, were actively concealed and carried out in a manner that precluded detection.

185. By its very nature, defendants' price-fixing conspiracy was inherently self-concealing. As alleged above, defendants had secret discussions about price and output. Defendants agreed not to publicly discuss the existence or the nature of their agreement. In fact, the top executives who attended the CEO and Commercial Crystal Meetings agreed to stagger their arrivals and departures at such meetings to avoid being seen in public with each other and with the express purpose and effect of keeping them secret. Moreover, when the participants in those meetings became fearful that they might be subject to antitrust scrutiny, they agreed to the one-on-one so-called

"round robin" meetings described above to avoid detection.

186. Moreover, defendants repeatedly gave pretextual justifications for the inflated prices of LCD panels in furtherance of the conspiracy.

187. There have been a variety of other false, but purportedly market-based, explanations for price increases. The first was supply and demand. In early 1999, Omid Milani, a marketing manager for NEC, stated that "demand by far is outstripping our supply capability" and predicted that "prices will continue to increase until a reasonable balance is achieved." Boch Kwon, Vice President of LGD' Sales Division, and Yoon-Woo Lee, President and CEO of Samsung's Semiconductor Division, also falsely reported in 1999 that price increases were due to "acute" shortages. Another false rationale provided by defendants was undercapitalization. In 1999, Joel Pollack, a marketing manager for Sharp, stated: Prices have dropped at a steady rate over the past couple of years to the point where it was difficult to continue the necessary level of capitalization. The [low prices] have starved the industry.

188. A third rationale for the steep price hikes of 1999 was offered by Yoon-Woo Lee, CEO of Samsung. He claimed that the demand for larger panels was reducing the industry's capacity because each display used more square inches of motherglass substrate.

189. Increased demand was repeatedly cited by defendants throughout the conspiratorial period. On February 4, 2001, Bruce Berkoff, Executive Vice-President at LGD was quoted in News.com as saying that price increases were due to shortages. He claimed, "demand grew so fast that the supply can't

keep up." Koo Duk-Mo, an executive at LGD, similarly predicted in 1999 that prices would rise 10 to 15 percent due to increased demand for the holiday season. In 2005, Koo Duk-Mo of LGD stated "[w]e are seeing much stronger demand for large-size LCD TVs than expected, so LCD TV supply is likely to remain tight throughout the year."

190. Hsu Jen-Ting, a Vice-President at Chi Mei, and Chen Shuen-Bin, president of AU Optronics, offered another rationale for the 2001 price hike in an interview for the Taiwan Economic News in October 2001. They blamed "component shortages due to the late expansion of 5th generation production lines and new demand from the replacement of traditional cathode ray tubes with LCD monitors."

191. Regardless of when defendants' true conduct became known, limitations of actions periods do not run against the State of Mississippi for the claims raised in this complaint.

LEGAL BASIS FOR RELIEF

COUNT I

Violations of Mississippi Consumer Protection Act

192. Plaintiff incorporates and realleges; as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Complaint.

193. Beginning at a time currently unknown to Plaintiff, but at least as early as January 1, 1996, and continuing through the filing of this Complaint, the exact dates being unknown to Plaintiff, defendants and their co-conspirators entered into a continuing agreement, understanding, and conspiracy in restraint of trade artificially to fix, raise, stabilize, and peg prices for LCD panels and LCD products in

the United States generally, and, in Mississippi, in particular, in violation of Miss. Code §§75-21-1, et seq. and Miss. Code §§ 75-24-1, et seq.

194. In formulating and carrying out the alleged agreement, understanding, and conspiracy, the defendants and their co-conspirators did those things that they combined and conspired to do, including but not limited to the acts, practices, and course of conduct set forth above, and the following, among others:

a. Fixing, raising, stabilizing, and pegging the price of LCD panels; and, allocating among themselves and collusively reducing the production of LCD panels.

b. Price competition in the sale of LCD panels has been restrained, suppressed, and/or eliminated in the State of Mississippi;

c. Prices for LCD panels sold by defendants and their co-conspirators have been fixed, raised, maintained and stabilized at artificially high, non-competitive levels throughout the State of Mississippi;

d. Those, including the State of Mississippi, who purchased LCD panels directly or indirectly from defendants and their co-conspirators have been deprived of the benefits of free and open competition;

e. The economy of the State of Mississippi has been damaged;

f. Plaintiff and other Mississippi indirect purchasers have paid supra-competitive, artificially inflated prices for LCD products; and,

g. During the relevant time frame as a result of defendants' illegal conduct the intrastate commerce of the state of Mississippi has been substantially affected.

195. The Mississippi Consumer Protection Act makes unlawful unfair methods of competition, unfair trade practices and deceptive trade practices. Miss. Code §75-24-5(1). In particular, the CPA prohibits representing that goods or services have characteristics that they do not have. Miss. Code A §75-24-5(2). A characteristic of every commodity in our economy is its price, which is represented by every seller to every buyer that the product being sold is being sold at a legal, competitive, and fair market value.

196. Beginning on a date unknown to Plaintiff, but at least as early as January 1, 1996, and continuing thereafter at least up through the filing of this Complaint, defendants committed and continue to commit acts of unfair competition, unfair trade practices and deceptive trade practices, by engaging in the acts and practices specified above. Thus, Defendants and their co-conspirators represented that their LCD panels were priced at legal, competitive, and fair market value. This misrepresentation duped Plaintiff, its citizens, and its local governmental entities into paying illegal overcharges for over a decade.

197. Defendants' conduct as alleged herein violated Miss. Code §75-24-5. The acts, omissions, misrepresentations, practices and non-disclosures of defendants, as alleged herein, constituted a common, continuous, and continuing course of conduct of unfair competition as well as unfair and/or deceptive trade

practices, including, but not limited to, their violation of the Mississippi antitrust laws.

198. Defendants' acts, omissions, misrepresentations, practices, and non-disclosures, as described above, whether or not concerted or independent acts, are otherwise unfair methods of competition and unfair and/or deceptive trade practices.

199. The illegal conduct alleged herein is continuing and there is no indication that defendants will not continue such activity into the future.

200. But for the defendants' anti-competitive acts, Plaintiff would have been able to purchase LCD panels and LCD products at lower prices, and/or would have been able to purchase more capable, larger and/or higher performance LCD products than were actually offered for sale to them.

201. The unlawful and unfair business practices of defendants, as described above, have caused and continue to cause Plaintiff and other indirect Mississippi consumers to pay supra-competitive and artificially-inflated prices for LCD products. As a result of the misconduct described above, each purchase of an LCD product in Mississippi, therefore, constitutes a violation of Mississippi law.

COUNT II

Violations of Mississippi Antitrust Laws

202. Plaintiff incorporates and realleges, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Complaint.

203. Based on the foregoing factual allegations, defendants and their co-conspirators have violated Miss. Code § 75-21-1, by entering into a continuing agreement, understanding, and conspiracy in re-

straint of trade artificially to fix, raise, stabilize, and peg prices for LCD panels and LCD products in the United States generally, and, in Mississippi, in particular.

204. The illegal conduct alleged herein is continuing and there is no indication that defendants will not continue such activity into the future.

205. But for the defendants' anti-competitive acts, Plaintiff would have been able to purchase LCD panels and LCD products at lower prices, and/or would have been able to purchase more capable, larger and/or higher performance LCD products than were actually offered for sale to them.

206. The unlawful and unfair business practices of defendants, as described above, have caused and continue to cause Plaintiff and other indirect Mississippi consumers to pay supra-competitive and artificially-inflated prices for LCD products. As a result of the misconduct described above, each purchase of an LCD product in Mississippi, therefore, constitutes a violation of Mississippi law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this complaint would be received and filed and that after consideration thereof the Court would grant it the following relief:

A. That judgment be entered in favor of Plaintiff and against Defendants;

B. That the Court determine that defendants have violated the Mississippi Consumer Protection Act;

C. That the Court determine that defendants have violated Mississippi anti-trust laws;

D. That the Plaintiff, the State of Mississippi, be granted the following specific relief:

1. In accordance with Miss. Code §75-24-9 and 75-21-1 that defendants, their affiliates, successors, transferees, assignees, and the officers, directors, partners, agents, and employees thereof, and all other persons acting or claiming to act on their behalf or in concert with them, be permanently enjoined and restrained from in any manner continuing, maintaining, or renewing the conduct, contract, conspiracy or combination alleged herein, or from entering into any other conspiracy alleged herein, or from entering into any other contract, conspiracy or combination having a similar purpose or effect, and from adopting or following any practice, plan, program, or device having a similar purpose or effect;

2. In accordance with Miss. Code §75-24-19(1)(b) that the State of Mississippi be awarded civil penalties of Ten Thousand Dollars ($10,000.00) for each sale of an LCD product in Mississippi during the relevant time frame which was sold at an artificially inflated price as a result of the defendants' unfair methods of competition and/or unfair and/or deceptive trade practices; the State may be awarded additional penalties under § 75-2-7. In accordance with Miss. Code § 75-24-11 that defendants be ordered to restitute any and all monies to the State of Mississippi for its purchases of its purchases of LCD products and the purchases of its citizens,

3. That Plaintiff, bringing this action on behalf of the State of Mississippi in its proprietary capacity on its own behalf, and on behalf of Mississippi residents, including local governmental entities,

a. be awarded restitution and its damages in an amount according to proof;

b. be awarded punitive damages in accordance with Miss. Code § 11-1-65;

c. be awarded pre- and post-judgment interest as provided by law, and that such interest be awarded at the highest legal rate from and after the date of service of the initial complaint in this action;

d. recover its costs of suit, including its reasonable attorney's fee, as provided by law; and

e. be awarded such other, further, and different relief as the case may require and the Court may deem just and proper under the circumstances.

DATED this 25th day of March, 2011.

JIM HOOD, ATTORNEY GENERAL FOR THE STATE OF MISSISSIPPI

By /s/ Geoffrey Morgan

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APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

[Filed Feb. 4, 2013]

No. 12-60704

STATE OF MISSISSIPPI,
ex rel Jim Hood, Attorney General,
Plaintiff - Appellee

v.

AU OPTRONICS CORPORATION; AU OPTRONICS CORPORATION AMERICA, INCORPORATED; CHI MEI CORPORATION; CHIMEI INNOLUX CORPORATION, formerly known as Chi Mei Optoelectronics Corporation; CHI MEI OPTOELECTRONICS USA, INCORPORATED, formerly known as International Display Technology USA, Incorporated; CMO JAPAN COMPANY, LIMITED, formerly known as International Display Technology, Limited; HANNSTAR DISPLAY CORPORATION; HITACHI, LIMITED; JAPAN DISPLAY EAST, INCORPORATED; HITACHI ELECTRONIC DEVICES (USA); LG DISPLAY COMPANY, LIMITED, formerly known as LG Phillips LCD Company, Limited; LG DISPLAY AMERICA, INCORPORATED, formerly known as LGD LCD America, Incorporated; SAMSUNG ELECTRONICS COMPANY, LIMITED; SAMSUNG SEMICONDUCTOR, INCORPORATED; SAMSUNG ELECTRONICS AMERICA, INCORPORATED; SHARP CORPORATION; SHARP ELECTRONICS CORPORATION; TOSHIBA CORPORATION; TOSHIBA MOBILE DISPLAY COMPANY, LIMITED, formerly known as Toshiba Matsushita Display Technology Company, Limited; TOSHIBA AMERICA ELECTRONIC COMPONENTS,

INCORPORATED; TOSHIBA AMERICA INFORMATION SYSTEMS, INCORPORATED,
Defendants - Appellants

Appeal from the United States District Court for the Southern District of Mississippi, Jackson

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ON PETITION FOR REHEARING EN BANC

(Opinion _____, 5 Cir., _____, _____, F.3d_____)

Before JOLLY, CLEMENT, and ELROD, Circuit Judges.

PER CURIAM:

(X) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

( ) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. The court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having voted in favor (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ E. Grady Jolly
United States Circuit Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

[Filed 06/09/11]

No. 3:11CV345CWR-FKB

Removed from:
Chancery Court of Hinds County, Mississippi
First Judicial District

Civil Action No. G2011-516 T/1

THE STATE OF MISSISSIPPI,
ex rel JIM HOOD, ATTORNEY GENERAL,
Plaintiff,

v.

AU OPTRONICS CORPORATION; AU OPTRONICS CORPORATION AMERICA, INC. CHI MEI CORPORATION; CHI ME OPTOELECTRONICS CORPORATION; CHI MEI OPTOELECTRONICS USA, INC., f/k/a INTERNATIONAL DISPLAY TECHNOLOGY USA, INC.; CMO JAPAN CO., LTD., f/k/a INTERNATIONAL DISPLAY TECHNOLOGY LTD.; CHUNGHWA PICTURE TUBES LTD.; HANNSTAR DISPLAY CORPORATION; HITACHI, LTD.; HITACHI DISPLAYS, LTD.; HITACHI ELECTRONIC DEVICES (USA), INC.; LG DISPLAY CO., f/k/a LG PHILLIPS LCD CO., LTD.; LG DISPLAY AMERICA, INC. f/k/a LGD LCD AMERICA, INC.; SAMSUNG ELECTRONICS CO., LTD.; SAMSUNG SEMICONDUCTOR, INC.; SAMSUNG ELECTRONICS AMERICA, INC.; SHARP CORPORATION; SHARP ELECTRONICS CORPORATION; TOSHIBA CORPORATION; TOSHIBA MOBILE DISPLAY CO., LTD.

f/k/a TOSHIBA MATSUSHITA DISPLAY TECHNOLOGY CO., LTD.; TOSHIBA AMERICA ELECTRONIC COMPONENTS, INC.; and TOSHIBA AMERICA INFORMATION SYSTEMS, INC.,

Defendants.

JOINT NOTICE OF REMOVAL

The undersigned Defendants AU Optronics Corporation; AU Optronics Corporation America, Inc.; Chi Mei Corporation; Chimei Innolux Corporation f/k/a Chi Mei Optoelectronics Corporation; Chi Mei Optoelectronics USA, Inc.; CMO Japan Co., Ltd.; HannStar Display Corporation; Hitachi, Ltd.; Hitachi Displays, Ltd.; Hitachi Electronic Devices (USA), Inc.; LG Display Co., Ltd.; LG Display America, Inc.; Samsung Electronics Co., Ltd.; Samsung Semiconductor, Inc.; Samsung Electronics America, Inc.; Sharp Corporation; Sharp Electronics Corporation; Toshiba Corporation; Toshiba Mobile Display Co., Ltd. f/k/a Toshiba Matsushita Display Technology Co., Ltd.; Toshiba America Electronic Components, Inc.; and Toshiba America Information Systems, Inc. (collectively, "Removing Defendants"),[1] hereby remove this action from the Chancery Court of the First Judicial District of Hinds County, Mississippi, to the United States District Court for the Southern District of Mississippi. This Court has original jurisdiction of this action pursuant to the Class Action

[1] Although unanimous consent of all defendants is not required for removal under the Class Action Fairness Act pursuant to 28 U.S.C. § 1453(b), all named and served defendants join this removal. Defendant Chunghwa Picture Tubes Ltd. has not been served and has not signed a waiver of service.

Fairness Act ("CAFA"), 28 U.S.C. § 1332(d), and federal question jurisdiction under 28 U.S.C. § 1331.

I. INTRODUCTION

1. On March 25, 2011, the Mississippi Attorney General, Jim Hood filed a complaint (the "Complaint") in the Chancery Court of the First Judicial District of Hinds County, Mississippi (the "Chancery Court"). The Complaint is attached as part of comprehensive Exhibit A, which consists of a true and correct copy of the pleadings and filings in the Chancery Court file of this action.

2. The Attorney General purports to bring claims in the name of the State of Mississippi on its own behalf, on behalf of local governmental entities, "on behalf of Mississippi citizens" and "on behalf of Mississippi residents" (collectively, the "Plaintiffs"). Compl. pp. 2, 54. In this Notice, the Removing Defendants will use "the State" to refer to all of the Plaintiffs. The Complaint alleges that the named Defendants and others engaged in a conspiracy to fix prices for liquid crystal display ("LCD") panels lasting from January 1, 1996 to December 11, 2006. Compl. ¶¶ 40, 49. The State alleges violations of the Mississippi Consumer Protection Act, Miss. Code Ann. § 75-24-5, and Mississippi Antitrust Laws, Miss. Code Ann. § 75-21-1, *et seq.*, and seeks civil penalties under Miss. Code Ann. §§ 75-24-19(1)(b), 75-21-7, punitive damages under Miss. Code Ann. § 11-1-65, restitution and damages under Miss. Code Ann. § 75-24-11, and injunctive relief under Miss. Code Ann. §§ 75-24-9 and 75-21-1. Compl. pp. 50-54.

3. In April 2007, over 100 civil cases alleging price fixing of LCD panels, by the same manufacturers named as defendants in the State's Complaint,

were transferred and consolidated in a multidistrict litigation proceeding in the District Court for the Northern District of California. *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. 3:07-md-01827-SI (N.D. Cal. filed Apr. 20, 2007) (the "MDL"). If the Plaintiffs file a motion to remand this action to state court, this Court should decide the motion rather than the MDL. *Illinois ex rel. Lisa Madigan v. AU Optronics Corp.*, No. ILN/1:10-cv-05720 (J.P.M.L. Feb. 3, 2011), ECF No. 27 (order postponing decision on motion to vacate conditional transfer of the action to the MDL until the Northern District of Illinois rules on plaintiff's motion for remand to state court) (attached as Exhibit B).

II. NOTICE OF REMOVAL IS TIMELY

4. On May 10, 2010, the Defendants AU Optronics Corporation; AU Optronics Corporation America, Inc.; Chi Mei Corporation; Chimei Innolux Corporation f/k/a Chi Mei Optoelectronics Corporation; Chi Mei Optoelectronics USA, Inc.; CMO Japan Co., Ltd.; HannStar Display Corporation; Hitachi, Ltd.; Hitachi Displays, Ltd.; Hitachi Electronic Devices (USA), Inc.; LG Display Co., Ltd.; LG Display America, Inc.; Samsung Electronics Co., Ltd.; Samsung Semiconductor, Inc.; Samsung Electronics America, Inc.; Sharp Corporation; Sharp Electronics Corporation; Toshiba Corporation; Toshiba Mobile Display Co., Ltd. f/k/a Toshiba Matsushita Display Technology Co., Ltd.; Toshiba America Electronic Components, Inc.; and Toshiba America Information Systems, Inc. (collectively, "Stipulating Defendants") and the Mississippi Attorney General filed a stipulation in the Chancery Court whereby the Stipulating Defendants agreed to waive service of the Complaint under Federal Rule of Civil Procedure 4(d) and the laws of

Mississippi, including the Mississippi Rules of Civil Procedure § 4(e), *et seq.*, and the Mississippi Attorney General agreed to extend the time for Defendants to answer, move to dismiss or otherwise respond to the Complaint until after a decision is rendered on a motion to remand this action to state court. This Stipulation is included in Exhibit A to this Notice.

5. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is being filed within thirty days of first receipt by any defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which the state court proceeding is based.[2]

III. THE STATE'S ACTION IS REMOVABLE UNDER CAFA

6. This action is removable to federal court under CAFA, 28 U.S.C. §§ 1332(d) and 1453. The action is removable both as a "class action" under 28 U.S.C. § 1332(d)(2) and as a "mass action" under 28 U.S.C. § 1332(d)(11).

A. This Court Has Jurisdiction Over this Action as a "Class Action."

7. Removal is proper because this action is a "class action" within the meaning of CAFA. CAFA

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[2] Removing Defendants expressly reserve all defenses or contentions they may assert in this action, including, without limitation, lack of personal jurisdiction, insufficient service of process (except to the extent of the stipulation previously executed by the Removing Defendants), insufficient evidence or allegations to obtain class certification, and lack of subject matter jurisdiction. This notice of removal is not intended in any way to constitute an appearance or a waiver of service on behalf of any defendant, except to the extent of the stipulation previously executed by the Removing Defendants.

provides federal jurisdiction over "class actions," as defined therein, that arise solely under state law if there is minimal diversity of citizenship and the amount in controversy exceeds $5,000,000. 28 U.S.C. § 1332(d)(2), (5).

8. CAFA defines a class action as "any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action." 28 U.S.C. § 1332(d)(1)(B). This definition should be "interpreted liberally" and "lawsuits that resemble a purported class action should be considered a class action for the purpose of applying these provisions." *Louisiana ex rel. Caldwell v. Allstate Ins. Co.*, 536 F.3d 418, 424 (5th Cir. 2008) (quoting S. Rep. No. 109-14, at 35 (2005), *reprinted in* 2005 U.S.C.C.A.N. 3). CAFA is intended to prevent "jurisdictional gamesmanship," and thus a court must "look to the substance of the action and not only at the labels that the parties may attach." *Id.* (quotation omitted). The identity of the real parties in interest in an action determines whether subject matter jurisdiction exists. *Id.* at 428; *see also Navarro Say. Assn v. Lee*, 446 U.S. 458, 460-61 (1980) ("a federal court must disregard nominal or formal parties and rest jurisdiction only upon the citizenship of real parties to the controversy").

9. As in *Caldwell*, the Attorney General brings claims in a representative capacity "on behalf of Mississippi citizens" and "on behalf of Mississippi residents." Compl. pp. 2, 54. The Complaint seeks damages and restitution for injuries sustained by private Mississippi purchasers. *See, e.g.*, Compl. p. 2 ("Unaddressed [in the DOJ actions] is any form of

restitution for consumers or governmental entities which purchased products at an artificially inflated price.") (emphasis added); *id.* p. 12 ("As a result of defendants' illegal price-fixing agreement, Plaintiff and other *consumers in Mississippi* paid more for LCD products than they would have absent such illegal conduct.") (emphasis added); *id* p. 54 (that "Plaintiff, bringing this action . . . on behalf of Mississippi residents . . . be awarded restitution and its damages . . . .").

10. Furthermore, the Complaint seeks damages and restitution on behalf of local government entities, (Compl. pp. 2, 54), which are citizens for diversity jurisdiction purposes. *Moor v. County of Alameda*, 411 U.S. 693, 718 (1973); *Reeves v. City of Jackson*, 532 F.2d 491, 495 n.5 (5th Cir. 1976); *PYCA Indus., Inc. v. Harrison Cnty. Waste Water Mgmt. Dist.*, 81 F.3d 1412, 1416-17 (5th Cir. 1996).

11. The individual Mississippi residents and local government entities who purchased LCD panels and products are the real parties in interest. Where a state attorney general asserts a claim for monetary damages based on injuries suffered by individuals, the Fifth Circuit has determined that those individuals are the real parties in interest for that claim. *Caldwell*, 536 F.3d at 429 (treating individuals, not the state, as the real parties in interest where Louisiana Attorney General's complaint made "clear that it is seeking to recover damages suffered by individual policyholders"). Because the Attorney General has filed this representative action on behalf of a group of unnamed Mississippi residents and citizens, it is an action brought "by 1 or more representative persons" and is therefore a CAFA class action. *Id.* at 430.

12. All the requirements for a CAFA class action are met here. The number of claimants in this action exceeds 100 persons. The Complaint states that this action is brought on behalf of each Mississippi resident and citizen who purchased a product such as a notebook computer or television set containing an LCD panel over a ten-year period. Compl. pp. 2, 54. By the Complaint's own count, this involves thousands (if not millions) of transactions. *Id.* ¶ 41.

13. In addition, no Defendant, as alleged in the Complaint, is a resident of Mississippi. *See* Compl. ¶¶ 3-31. The majority of the Defendants are foreign corporations incorporated and headquartered in Asia, including Taiwan (AU Optronics Corporation; Chi Mei Corporation; Chimei Innolux Corporation f/k/a Chi Mei Optoelectronics Corporation; Chunghwa Picture Tubes Ltd.; HannStar Display Corporation), Korea (LG Display Co., Ltd; Samsung Electronics Co., Ltd.) and Japan (CMO Japan Co., Ltd.; Hitachi, Ltd.; Hitachi Displays, Ltd.; Sharp Corporation; Toshiba Corporation; Toshiba Mobile Display Co., Ltd. f/k/a Toshiba Matsushita Display Technology Co., Ltd.). *Id.* Those Defendants with U.S. affiliates or sales agents are incorporated or have their principal place of business, even as alleged in the Complaint, in California (AU Optronics Corporation America, Inc.; Chi Mei Optoelectronics USA, Inc.; LG Display America, Inc.; Samsung Semiconductor, Inc.; Toshiba America Electronic Components, Inc.; Toshiba America Information Systems, Inc.), South Carolina (Hitachi Electronic Devices (USA), Inc.), New Jersey (Samsung Electronics America, Inc.; Sharp Electronics Corporation) and Texas (AU Optronics Corporation America, Inc.), not Mississippi. *Id.*

14. Because the real parties in interest reside in Mississippi and the Defendants, as alleged in the Complaint, are non-residents of Mississippi, the minimal diversity requirement of 28 U.S.C. § 1332(d)(2) is met.

15. Finally, the aggregate amount in controversy exceeds $5,000,000. 28 U.S.C. § 1332(d)(2). While the Complaint does not explicitly quantify the damages sought, the State seeks damages for alleged overcharges on every LCD panel manufactured by all Defendants, and every product containing such a LCD panel, which would include televisions and notebook computers, purchased by any Mississippi resident over a 10-year period. Therefore, the damages sought on behalf of these Mississippi residents must exceed $5,000,000.

B. In the Alternative, this Action Is a "Mass Action" Removable Under CAFA.

16. In the alternative, this action is removable as a "mass action" under CAFA. *See* 28 U.S.C. § 1332(d)(11). CAFA defines a "mass action" for purposes of federal jurisdiction as "any civil action . . . in which monetary relief claims of 100 or more persons are proposed to be tried jointly on the ground that the plaintiffs' claims involve common questions of law or fact." 28 U.S.C. § 1332(d)(11)(B)(i). As with a class action, a CAFA mass action requires monetary claims by 100 or more persons, an aggregate amount in controversy of at least $5,000,000, and plaintiffs who are at least minimally diverse from defendants. 28 U.S.C. § 1332(d)(11)(B)(i). A "mass action" also must satisfy the diversity jurisdictional amount requirements under 28 U.S.C. § 1332(a).

17. In *Caldwell*, the Fifth Circuit held that when an action is brought by the State on behalf of its people and the people are the real parties in interest, the action is a mass action under CAFA. 536 F.3d at 430. Such is the case here.

18. As set forth above, the citizens and residents of Mississippi are the real parties in interest to this action and they number over 100.

19. These citizens' and residents' claims involve common questions of law under the Mississippi Consumer Protection Act, Miss. Code Ann. § 75-24-5, and Mississippi Antitrust Laws, Miss. Code Ann. §§ 75-21-1, *et seq.*, and common questions of fact based on alleged agreements to fix the prices for LCD panels. Compl. ¶¶ 192-206.

20. As set forth above, the diversity requirement of CAFA is met.

21. As set forth above, the $5,000,000 statutory threshold is met.

22. A case can proceed in federal court under CAFA mass action jurisdiction if the amount in controversy exceeds $75,000 in damages. 28 U.S.C. § 1332(d)(11)(B)(i). This requirement is satisfied because the aggregate "punitive damages" sought by the Plaintiffs is almost certain to be more than $75,000. *See Allen v. R. & H. Oil & Gas Company*, 63 F.3d 1326, 1335-36 (5th Cir. 1995); *Montgomery v. First Family Fin. Servs., Inc.*, 239 F. Supp. 2d 600 (S.D.Miss. 2002) (finding that unspecified demand for punitive damages satisfies jurisdictional demand).

23. Furthermore, local government entities are also citizens for diversity jurisdiction purposes. In the Complaint, the Attorney General purports to repre-

sent all local governmental entities, which would include cities, counties, community hospitals, school districts, waste water districts, utility districts, economic development authorities, and other local government entities. Especially in light of "punitive damages" sought by Plaintiffs, the matter in controversy for one or more, if not all, of these Plaintiffs, based on their allegations, exceeds $75,000.

24. Additionally, Mississippi seeks damages "on behalf of Mississippi residents," Compl. p. 54, and thus appears to be asserting claims on behalf of resident corporations and associations as well as individual persons. Especially in light of "punitive damages" sought by Plaintiffs, the matter in controversy for one or more, if not all, of these Plaintiffs, based on their allegations, exceeds $75,000.

C. This Court has Supplemental Jurisdiction over the Remainder of the State's Claims.

25. This Court has supplemental jurisdiction under 28 U.S.C. § 1367 over the State's claims for injunctive relief, civil penalties, restitution and damages on behalf of the State and its agencies. Compl. pp. 2, 52-55.

IV. THIS COURT HAS JURISDICTION BECAUSE THE COMPLAINT PRESENTS A FEDERAL QUESTION.

26. Under 28 U.S.C. § 1331, United States district courts "shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

27. The federal removal statute specifically provides for the removal of "[a]ny civil action of which the district courts have original jurisdiction founded

on a claim or right arising under the Constitution, treaties or laws of the United States. . . ." 28 U.S.C. § 1441(b). The statute further provides that the district court may also hear any otherwise non-removable claims asserted in such an action. *See* 28 U.S.C. § 1441(c).

28. Although a plaintiff is generally the master of his complaint, there are exceptions to that rule. *Hoskins v. Bekins Van Lines*, 343 F.3d 769, 773 (5th Cir. 2003) ("The well-pleaded complaint rule, however, is not without its exceptions."). A *"state claim* may be removed to federal court ... when a federal statute wholly displaces the state-law cause of action through complete pre-emption". *Id.* at 773 (emphasis in original) (quoting *Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 8 (2003)). Furthermore, "courts will not permit [a] plaintiff to use artful pleading to close off [a] defendant's right to a federal forum . . . [and] the removal court will seek to determine whether the real nature of the claim is federal, regardless of plaintiffs' characterization." *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398 n.2 (1981) (citation and quotations omitted). Therefore, "[w]hen the federal statute completely pre-empts the state-law cause of action, a claim which comes within the scope of that cause of action, even if pleaded in terms of state law, is in reality based on federal law." *Beneficial*, 539 U.S. at 8.

29. In this case, the State has pleaded its claims under Mississippi law to prevent a federal claim under the Sherman Act, 15 U.S.C. § 7 et seq. Mississippi Antitrust Laws apply only to intrastate activity. *Standard Oil Co. of Ky. v. State ex rel. Att'y Gen.*, 65 So. 468, 470-71 (Miss. 1914), *overruled on other grounds by Mladinich v. Kohn*, 164 So. 2d 785 (Miss.

1964). Here, however, the Complaint's state antitrust claim is based on alleged conspiratorial conduct occurring outside the U.S. and transactions occurring in interstate commerce. Thus, these claims actually arise under the Sherman Act.

30. Since the *Beneficial* and *Hoskins* decisions, the Fifth Circuit has not decided whether a Mississippi state antitrust claim based on interstate activity is preempted by the Sherman Act. *Cf. Terrebonne v. SMA Health Plan, Inc.*, 271 F.3d 186 (5th Cir. 2001) (finding no preemption of a Louisiana antitrust claim under an outdated standard). After the Fifth Circuit's *Terrebonne* decision, the Supreme Court decided *Beneficial*, and the Fifth Circuit later adopted the *Beneficial* standard in *Hoskins* and reversed its position on preemption regarding other statutory areas. Although the Fifth Circuit has not applied the *Beneficial* standard in the antitrust context since *Terrebonne*, other courts have found preemption of state antitrust claims made with factual allegations similar to those in the Complaint. *See, e.g., H-Quotient. Inc. v. Knight Trading Grp*, No. 03 Civ. 5889 (DAB), 2005 WL 323750, at *4 (S.D.N.Y. Feb. 9, 2005) ("Where the conduct complained of principally affects interstate commerce, with little or no impact on local or intrastate commerce, it is clear that federal antitrust laws operate to preempt the field and oust state courts of jurisdiction.") (citation and quotations omitted); *In re Wiring Device Antitrust Litig.*, 498 F. Supp. 79, 82 (E.D.N.Y. 1980) (stating that where interstate commerce is involved, federal antitrust laws preempt state antitrust laws). Because this Court should similarly find that the federal antitrust laws preempt the Complaint's claims that are based on interstate conduct and transactions with little to no impact on

local or intrastate commerce, this case presents a federal question and removal is appropriate.

31. To the extent there are any claims that are primarily based on intrastate conduct and transactions, this Court has supplemental jurisdiction over these claims pursuant to 28 U.S.C. § 1367.

V. ALL OTHER REMOVAL PREREQUISITES HAVE BEEN MET

32. As required by 28 U.S.C. § 1446(a), a true and correct copy of the Complaint is included in Exhibit A.

33. A true and correct copy of the stipulation filed in the Chancery Court on May 10, 2010 described above, is included in Exhibit A.

34. True and correct copies of all other process, pleadings or papers that have been received by Defendants or filed in the Chancery Court, as of the date of this Notice of Removal, are included in Exhibit A.

35. Under 28 U.S.C. § 1441(a), the United States District Court for the Southern District of Mississippi is the federal district court for the district and division embracing the place where the state court suit is pending.

36. Pursuant to 28 U.S.C. § 1446(d), all adverse parties are being provided with written notice of the filing of this Notice of Removal.

37. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being filed with the Clerk of the Chancery Court of the First Judicial District of Hinds County, Mississippi.

38. Defendants reserve the right to amend or supplement this Notice of Removal.

WHEREFORE, Removing Defendants remove the above-captioned case from the Chancery Court of the First Judicial District of Hinds County, Mississippi, to this Court.

Dated: June 9, 2011

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