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17
18 **IN THE UNITED STATES DISTRICT COURT**
FOR THE NORTHERN DISTRICT OF CALIFORNIA
19 **SAN FRANCISCO DIVISION**

20
21 IN RE TFT-LCD (FLAT PANEL)
ANTITRUST LITIGATION

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

22 ALL INDIRECT-PURCHASER ACTIONS

Judge: Susan Illston

23 *State of Missouri, et al. v. AU Optronics*
24 *Corporation, et al.*, Case No. 10-cv-03619 SI;

JOINT DECLARATION OF LIZABETH A.
BRADY AND ANNE E. SCHNEIDER IN
SUPPORT OF STATE ATTORNEYS
GENERAL'S JOINT MOTION FOR FEES
AND ADDITIONAL COSTS

25 *State of Florida v. AU Optronics Corporation,*
26 *et al.*, Case No. 10-cv-3517 SI; and

27 *State of New York v. AU Optronics*
Corporation, et al., Case No. 11-cv-0711.

28 JOINT DECLARATION OF BRADY/SCHNEIDER

MASTER FILE NO. 07-MD-1827-SI
CASE NO. 2010-CV-3517 SI; 10-CV-3619 SI; 11-CV-711 SI

1 Lizabeth A. Brady and Anne E. Schneider declare and say that the following is true to the
2 best of our information and belief:

3 1. I, Lizabeth A. Brady, am Chief, Multistate Antitrust Enforcement with the Antitrust
4 Division of the Office of the Attorney General for the State of Florida. The State of Florida is a
5 plaintiff in the above-captioned case.
6

7 2. I, Anne E. Schneider, am an Assistant Attorney General and Antitrust Counsel for the
8 Office of the Missouri Attorney General. The State of Missouri is a plaintiff in the above-
9 captioned case.

10 3. We make this Declaration in support of the State Attorneys General's Joint Motion for
11 Attorneys' Fees and Additional Costs ("Joint States Motion") as co-liaison Counsel for the
12 Attorneys General in the above-captioned litigation. The time expended in preparing this
13 Declaration is not included in this request for fees.
14

15 4. The States of Florida and Missouri have served as co-liaison counsel, unofficially, on
16 behalf of eight State Attorneys General since the filing of the Attorneys General Complaints
17 beginning on August 11, 2010, when Florida filed the first State complaint in this MDL.¹ The
18 States of Arkansas, California, Florida, Michigan, Missouri, New York, West Virginia and
19 Wisconsin ("the Attorneys General") have worked together on both the litigation and mediation
20 throughout these proceedings.
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26 ¹ Missouri, collectively with Michigan, Arkansas, West Virginia, and Wisconsin, filed a States'
27 complaint on August 17, 2010; New York filed its complaint on August 6, 2010, in the Southern
28 District of New York, and California filed its complaint on October 15, 2010, in San Francisco,
California State Court.

1 5. Florida and Missouri were formally designated as co-liaison counsel for the Attorneys
2 General by this Court's order of November 23, 2010. *See* Order for Appointment of Liaison
3 Counsel for State Attorney General Actions (Dkt. No. 2164).

4 6. The Court previously required any plaintiff's counsel seeking recovery of either costs or
5 fees to maintain contemporaneous records of "all time spent, including tasks performed, and
6 expenses incurred." Pretrial Order No. 1 (Dkt. No. 180). One of the responsibilities given the
7 co-liaison counsel for the Indirect-Purchaser Plaintiffs Class and the Direct Purchaser Plaintiffs
8 Class was collecting this information. *See* Pretrial Order No. 3 (Dkt. No. 224). While the
9 specific directive in Pretrial Order No. 3 was not extended to the so-called individual actions,
10 including the actions brought by the eight Attorneys General, we have collected this information
11 on behalf of the Attorneys General.
12

13 7. Accordingly, as confirmed within their separate declarations, the Attorneys General have
14 maintained contemporaneous time records on a monthly basis as they have represented their
15 separate sovereign interests, and have submitted reports from their own timekeeping systems for
16 purposes of complying with the Court's pretrial orders, including the Case Management Order
17 for Individual Action Plaintiffs (Dkt. No. 1727), which incorporates, among others, Pretrial
18 Order No. 1 (Dkt. No. 180). The States of Florida and Missouri, as co-liaison counsel,
19 designated the Missouri Attorney General's office as the initial recipient of those reports. A list
20 of all "timekeepers" whose hours are reflected in those reports, along with their applicable rate,
21 is provided in Exhibit 1-B. The Missouri Attorney General's office has compiled those
22 submissions to generate the summaries attached to this Joint Declaration.
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26 8. Summaries of the hourly time are attached hereto as a composite Exhibit 1-C to this
27 Declaration. Because of the voluminous nature of the underlying time records (and the fact that
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1 some entries would need to be redacted to protect work product), we have filed with the Court
2 relatively detailed summaries but not the records themselves. The Attorneys General are
3 prepared to provide the Court, if necessary, with the underlying time records of all “timekeepers”
4 for whom fees are sought.

5
6 9. The Attorneys General have previously submitted to the Court an interim request for
7 reimbursement of certain costs from the beginning of their investigations through December
8 2011. *See* Indirect-Purchaser Plaintiffs' and State Attorneys General's Motion for Interim
9 Reimbursement of Costs (Dkt. Nos. 5157-5159). Certain additional costs have been incurred by
10 the States collectively, through their Cost Share Fund, and are now being submitted. Those
11 shared costs are discussed further in the Declaration of Anne E. Schneider, Exhibit 3.

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13 10. Certain other additional costs have been incurred by individual States that were not
14 included in the interim request and are now also being submitted. These costs include items such
15 as travel expenses, duplication charges, and expert fees. A summary of these individual States'
16 costs is provided in Exhibit 1-D. The nature and purpose of all costs are further described in the
17 attached declarations and copies of invoices are provided, consistent with the Court's Order
18 entered on July 11, 2012 (Dkt. No. 6128). Attached to the individual State declarations are
19 copies of the underlying expense and cost records, subject to redaction for the protection of work
20 product contained within some of those records.
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24 **Civil Investigative Demand Investigation**

25 11. The States began their investigations into the TFT-LCD manufacturing industry between
26 the end of 2007 and late 2008. In January 2009, several of the States formed a “multistate”
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1 investigation group. The Attorneys General's investigations, through the multistate group and
2 independently, were extensive and consisted of the following:

3 a) Issuance of investigatory subpoenas to numerous original equipment
4 manufacturers from whom the Attorneys General believed they had purchased TFT-LCD
5 products, and negotiation of compliance with those subpoenas;

6 b) Issuance of investigative subpoenas to the manufacturers of TFT-LCD Panels and
7 their U.S. subsidiaries and affiliates, and negotiation of compliance with those subpoenas;

8 c) Negotiation and execution of tolling agreements with several of the manufacturers
9 of TFT-LCD Panels and their U.S. subsidiaries and affiliates that we believed to be involved in
10 the TFT-LCD cartel;

11 d) Negotiation and execution of settlement agreements with Chunghwa Picture
12 Tubes, Ltd.;

13 e) Participation in person and via videoconference in a proffer session with
14 Chunghwa Picture Tubes, Ltd.;

15 f) Review of voluminous documents produced by Chunghwa Picture Tubes, Ltd.;

16 g) Review of thousands of documents produced by original equipment
17 manufacturers in response to the Attorneys General investigative subpoenas;

18 h) Review of documents produced by TFT-LCD manufacturers in response to the
19 investigative subpoenas; and

20 i) Negotiation and execution of common interest and cost share agreements with the
21 multistate group to ensure investigative efficiency.
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27 **MDL Process and the Litigation**

1 12. Prior to the filing of the first Attorneys General complaints in this Court in August, 2010,
2 various private suits had been filed, including class actions brought for direct and indirect
3 purchasers and several individual actions by purchasers on their own behalf. A summary of the
4 history of the class litigation is contained in Indirect Purchaser Class Plaintiff's Motion for
5 Attorneys' Fees and Incentive Awards at 9-16. The Attorneys General began filing their actions
6 in August, 2010, seeking recovery of damages or restitution for governmental purchasers and
7 resident consumers.
8

9 13. The litigation efforts of the Attorneys General in this action have been considerable. The
10 Attorneys General responded to Motions to Dismiss and, as for California and New York, to
11 Removal Motions filed by the Defendants. The State of California won a remand motion in this
12 Court and then defended it against the Defendants' appeal to the Court of Appeals for the Ninth
13 Circuit. *See Washington v. Chimei Innolux Corp.*, 659 F.3d 843 (9th Cir. 2011). The States
14 participated in numerous proceedings before the Special Master on discovery-related issues as
15 they pursued their own additional discovery from the Defendants, responded to discovery
16 requests of the Defendants, took and defended depositions, and engaged in expert-related
17 discovery. Fact discovery in the Attorneys General's cases on the Track One trial schedule
18 ended in January, 2012.
19

20 14. As described above, the Attorneys General conducted extensive discovery in preparation
21 for the litigation of this action, which took a considerable amount of time. Discovery in this
22 action was particularly complex as it required the gathering of many documents and much data
23 from the states' public entities as well as original equipment manufacturers (OEM's).
24 Additionally, information was sought from the Defendants through multiple discovery requests.
25 The Attorneys General discovery efforts included the following:
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1 a) The Attorneys General coordinated efforts to review documents obtained
2 from Defendants during the investigation, which productions essentially were the
3 business records produced to the Grand Jury and, later, to the private class actions and
4 other private plaintiffs in this MDL.

5 b) The Attorneys General that represented state entities collected and tried to
6 standardize purchase information and data from a range of state and other public entities.
7 Attorneys General issued Litigation Hold letters to preserve purchase records and
8 provided counsel to certain agencies.

9 c) Once data was obtained from OEMs, Defendants and entities, counsel for
10 the Attorneys General along with their experts further worked with the data in order to
11 make it useable for a damages analysis.

12 15. In addition to the millions of documents obtained during the investigation, the Attorneys
13 General reviewed a large number of the documents produced during the MDL litigation, and also
14 reviewed much of the extensive deposition testimony taken by counsel for the indirect purchaser
15 and direct-purchaser plaintiffs.

16 16. As some Attorneys General sought to recover pursuant to assignment clauses contained
17 in state contracts with OEMs, they also reviewed thousands of pages of documents produced to
18 them pursuant to subpoena by original equipment manufacturers whose assigned claims
19 Attorneys General purported to represent.

20 21. The Attorneys General also responded to the extensive discovery requests propounded on
21 them by Defendants. For example, New York reviewed and produced over a million pages of
22 documents from its central contracting agency in response to Defendants' document requests.
23 Defendants noticed and took a 30(b)(6) deposition of New York's central contracting agency,
24 25 26 27 28

1 which required New York to prepare and defend the deponent. The Florida Attorney General's
2 Office produced approximately 2.86 gigabytes of data containing state entity purchase
3 information and defended the deposition of its state purchasing entity. In a similar fashion, other
4 States produced voluminous data and records and their purchasing agencies were subjected to
5 depositions.
6

7 18. During the course of this litigation, Plaintiffs' counsel reviewed, coded and imaged
8 hundreds of thousands of responsive documents obtained from defendants and non-parties. In an
9 effort to avoid unnecessary duplication of efforts whenever possible, the task of reviewing and
10 coding responsive documents was generally assigned to only one set of Attorneys General
11 counsel. Much of this work was divided among the different Attorneys General's offices
12 participating in the coordinated review.
13

14 19. During the investigatory stage of this case, counsel for the Attorneys General began
15 interviewing several potential liability and damages experts to assist in the litigation and to
16 eventually prepare the needed expert reports. Counsel from the States of Michigan, Missouri,
17 and Florida formed the States' expert committee. The Attorneys General retained expert
18 economists for their various cases to develop and support theories of liability and to measure the
19 harm allegedly incurred by represented consumers and government purchasers. Counsel
20 continued to work with their economic experts as dictated by their individual litigation tracks.
21 An Expert Report was prepared on behalf of Arkansas, Florida, Michigan, Missouri, Wisconsin
22 and West Virginia, followed by the deposition of their expert and then review of the Defendants'
23 experts' reports and depositions of those experts.
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26 19. In preparation for expert discovery, Florida reviewed and assessed the expert reports filed
27 in the indirect and direct cases, as well as the expert reports filed in cases brought by the Direct
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1 Action Plaintiffs. Florida met with and prepared for the deposition of the expert Gautum
2 Gowrisankaran. As further discussed in Florida's own Declaration, attorneys from that office
3 devoted considerable time to preparing for and taking the depositions of the Defendants' eight
4 expert witnesses. Attorneys from the State of California attended additional depositions of
5 experts endorsed by other Defendants which had not yet filed reports in the States' actions.
6

7 **Settlement Process**

8 20. The citizens of the eight States of Arkansas, California, Florida, Michigan, Missouri,
9 New York, West Virginia and Wisconsin comprised roughly 64% of the population of the IPP
10 Damages Classes during the time period covered by these lawsuits, according to the U.S. Census
11 estimates. For this reason, when the States were ordered to participate in mediation, they began
12 to work diligently to prepare for successful mediations and continued working with the IPP Class
13 counsel. The States' Co-Liaison Counsel, together with the State of California, conducted in-
14 person and telephonic negotiations regarding settlement of the case in conjunction with the like
15 efforts of the Indirect-Purchasing Plaintiffs Class. As list of mediation sessions is attached as
16 Exhibit 1-A.
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19 21. Once settlements in principle were reached with each of the Defendants, the written
20 settlement agreement with each was negotiated over a period of several months. These
21 discussions were at times contentious, and always hard-fought, taking place during the course of
22 numerous face-to-face meetings and lengthy telephone conferences. Virtually every paragraph
23 of each Settlement Agreement was the subject of considerable negotiation and numerous drafts
24 and redrafts. The ten Settlement Agreements, most of which took many months to individually
25 negotiate, became effective as follows:
26

27 Samsung Entities 11/16/2011
28

1	Epson Entities	11/16/2011
2	Sharp Entities	11/22/2011
3	Hitachi Entities	12/1/2011
4	Hannstar Entities	12/2/2011
5	CPT Entities	12/21/2011
6	AUO Entities	06/20/2012
7	LG Display Entities	7/13/2012

9 Once a completed agreement was reached with each Defendant (and had client approval), that
10 agreement was presented and approved by the Attorneys General who had been kept apprised of
11 the progress throughout the lengthy negotiation period. The several assistant attorneys general
12 participating in the mediation efforts expended a considerable amount of time negotiating the
13 terms.
14

15 22. Because the States sought the imposition of civil penalties or fines in their enforcement
16 actions, they approached the many mediations with the demand that the Defendants which had
17 been convicted (through guilty plea or criminal trial) also pay civil penalties. Each of the
18 Defendants with a conviction based on price-fixing has paid, pursuant to separate settlement
19 agreements reached with the States, an additional amount to satisfy those civil penalties
20 demands. Accordingly, as reflected in the table below, the States have settled their enforcement
21 claims for civil penalties through the additional settlements with seven of the Defendants. The
22 States resolved their enforcement claims with Chunghwa through separate settlement agreements
23 outside of these mediation efforts, with most of the States having reached those settlements
24 before initiating litigation.
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TFT-LCD (Flat Panel) Antitrust Litigation Combined State Attorney General and Indirect Purchaser Classes Settlements July 12, 2012	Settlement Agreement Funds (Class/AGs)	Additional Settlements by State Attorneys General of Civil Penalties Claims
AUO (Taiwan)	\$ 161,500,000.00	\$ 8,500,000.00
CMO (Taiwan)*	\$ 110,273,318.00	\$ 5,737,948.00
HannStar (Taiwan)	\$ 25,650,000.00	\$ 1,350,000.00
Hitachi (Japan)	\$ 38,977,224.00	\$ 1,494,760.00
LG Display (Korea)	\$ 361,000,000.00	\$ 19,000,000.00
Samsung (Korea)	\$ 240,000,000.00	
Sharp (Japan)	\$ 115,500,000.00	\$ 6,000,000.00
Toshiba (Japan)	\$ 21,000,000.00	
Epson (Japan)	\$ 2,850,000.00	\$ 150,000.00
Chunghwa (Taiwan)	\$ 5,305,105.00	
Totals	\$ 1,082,055,647.00	\$ 42,232,708.00

23. As the drafting of the various settlement agreements continued, the Attorneys General's efforts were, along with the IPP class counsel, also focused on preparing the motion papers, affidavits and legal memoranda required to seek the Court's preliminary approval and final approval of the settlements. Counsel retained a notice expert to assist with the formulation of a national Plan of Notice to reach consumers affected by the proposed settlements. A claims administrator was also retained to oversee the administration of the settlement, including the claims process. Many hours were spent drafting the text of the summary and long form notices (to be used to notify consumers of the existence of the settlements) and the claim form. The text of the notice, the website design and the telephone messages all had to be created, edited and approved – and counsel for the States were heavily involved in this work. Likewise, additional

1 time was spent to ensure that the claims process was as simple as possible for consumers, while
2 remaining financially secure from fraud.

3 24. As of July 31, 2012, the Attorneys General have spent approximately 21,568 hours of
4 attorney time and 13,652 hours of non-attorney time in furtherance of the investigation, litigation
5 and settlement of this matter as summarized above and in the attached exhibits.
6

7 25. The hourly rates billed by the Attorneys General for attorney and non-attorney time is
8 based upon the level of experience and expertise of the individual time keepers using the *Laffey*
9 matrix. The *Laffey* matrix, as adjusted for the San Francisco Bay Area, reflects the following
10 rates:
11

Experience	2010-2011 <i>Laffey</i> matrix	+ 9% Adjustment for the San Francisco Bay Area
20+ years	\$ 475	\$ 517.75
11-19 years	\$ 420	\$ 457.80
8-10 years	\$ 335	\$ 365.15
4-7 years	\$ 275	\$ 399.75
1-3 years	\$ 230	\$ 250.70
Paralegals and law clerks	\$ 135	\$ 147.15

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19 25. In addition to paralegals and attorneys, Florida's two in-house economists devoted
20 significant time to these actions. The economist tasks included working with the data produced
21 by the public entities and conferring with the states outside economist. The *Laffey* matrix does
22 not contain fees for economists. Florida has used its internal hourly rates for economists of
23 \$200.00 and \$150.00 respectively and applied the same 9% adjustment as was applied to
24 attorney and paralegal hours. The economist hours are included in non-Attorney hours.
25

26 26. Applying the *Laffey* Matrix as adjusted for the San Francisco Bay Area to the hours
27 worked on these actions, total fees for attorneys are \$9,002,749.75 and total fees for non-
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1 attorneys are \$2,067,089.67, for total fees of \$11,125,357.21. As noted in the separate
2 Declaration of Adam Miller, a \$30,000.00 deduction should be applied to this lodestar so that the
3 total fees sought by the States' Joint Motion is \$11,095,357.21.

4 27. The Attorneys General will spend a significant amount of time going forward as this
5 litigation is brought to final resolution. The tasks which Attorneys General must complete in the
6 coming months include the following:

- 7
- 8 a) The preparation of Plaintiffs' Joint Memorandum of Law in Support of Final
9 Approval of the Settlement;
 - 10 b) The continued oversight of the administration of the settlement funds. The
11 Attorneys General have been and will continue to work closely with the claims
12 administrator, Rust Consulting, Inc. regarding the ongoing claims program;
 - 13 d) Participation in the Hearing on the Final Approval of the settlements which is
14 scheduled to take place on November 29, 2012;
 - 15 e) The preparation of responses to any objections to the settlement which may be
16 filed prior to the final approval of the settlements and to any appeals which may be filed
17 in the event that final approval is granted by the Court; and
 - 18 f) The preparation of briefs and presentation of arguments in the event any appeals
19 are filed.

20 26. Additional costs will also be incurred by the Attorneys General in the coming months,
21 and they may be considerable. The Attorneys General do not intend to file a supplemental fee or
22 cost petition.
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1 Dated: September 7, 2012

2 Respectfully submitted,

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4 Executed this 7th Day of September, 2012 in Tallahassee, Florida

5

/s/ Lizabeth A. Brady
Lizabeth A. Brady

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8 Executed this 7th Day of September, 2012 in Jefferson City, Missouri.

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/s/ Anne E. Schneider
Anne E. Schneider

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