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 13 **UNITED STATES DISTRICT COURT**
 14 **NORTHERN DISTRICT OF CALIFORNIA**
 15 **SAN FRANCISCO DIVISION**

16 IN RE TFT-LCD (FLAT PANEL)) Case No. 3:07-MD-1827 SI
 17 ANTITRUST LITIGATION) MDL No. 1827
)

18) **EXHIBIT 5: AMENDED DECLARATION**
 19 This Document Relates to:) **OF ADAM MILLER IN SUPPORT OF**
) **SETTLING STATES' JOINT MOTION**
 20 Indirect-Purchaser Class Action;) **FOR ATTORNEYS' FEES AND COSTS**
)

21 *State of Missouri, et al. v. AU Optronics*) Hearing Date: November 29, 2012
 22 *Corporation, et al.*, Case No. 10-cv-3619;) Time: 3:30 p.m.
) Courtroom: 10, 19th Floor
 23 *State of Florida v. AU Optronics Corporation,*) The Honorable Susan Illston
 24 *et al.*, Case No. 10-cv-3517; and)
)

25 *State of New York v. AU Optronics Corporation,*)
 26 *et al.*, Case No. 11-cv-0711.)
 27)
 28)

1 I, Adam Miller, declare:

2 1. I am an attorney licensed to practice in the State of California and am a Deputy Attorney
3 General for the State of California, in the Antitrust Law Section of the Office of the California
4 Attorney General (the "State"). In this capacity I am the lead attorney and represent the State and
5 other California government entities in the action entitled *People of the State of California et al. v.*
6 *AU Optronics et al.*, San Francisco Superior Court Case No. CGC-10-504651 (the "California State
7 Court Action"). I make this Declaration in Support of the Settling States' Joint Motion for
8 Attorneys' Fees and Costs (the "States' Motion"). I have personal knowledge of the facts stated in
9 this Declaration and, if called as a witness, I could and would testify competently to them.

10 2. The policy of the Office of the Attorney General is to record time divided by quarter
11 hours, and our case management system (ProLaw) records time that way. It is our office practice to
12 lump activities that take less than one quarter hour together so that we do not overbill small
13 increments of time. I generally record my time daily or weekly, entering my time records into
14 ProLaw several times a day, or within a week of my billable activities, and did so in this case. If I
15 am out of the office, I will keep track of my time and enter it when I am back in the office. We are
16 required by office policy to submit our time electronically every week. It becomes a permanent
17 record after submission and cannot be changed by the individual timekeeper.

18 3. Beginning in or around October 2007, the State commenced a pre-complaint investigation
19 into the price fixing of TFT-LCD panels at issue in MDL 1827, including by opening a unique
20 ProLaw docket number for, *inter alia*, recording of attorneys and paralegals time. Our office
21 practice is to open separate pre-complaint investigation and litigation dockets in ProLaw. A separate
22 litigation docket is opened following an investigation when a pleading is filed in court. A unique
23 litigation docket number in this matter was opened when the California State Court Action was filed
24 in October 2010.

25 4. According to ProLaw timesheet records, which are kept and maintained in the ordinary
26 course of business by the State, in addition to myself, the deputy attorneys general ("DAG") listed
27 on the below table performed work on the TFT-LCDs investigation and/or litigation matters. The
28 table also lists each DAG's respective earliest bar admission date (all California, except where

1 otherwise indicated), and their years of experience as of December 31, 2010, for purposes of
 2 utilizing an adjusted *Laffey* matrix hourly rates:

<u>Name of Attorney</u>	<u>Title</u>	<u>Admission Date</u>	<u>Yrs. of experience</u>
Adam Miller	Deputy Attorney General	12/14/1993	17
Cheryl L. Johnson	Deputy Attorney General	12/18/1975	35
Emilio Varanini	Deputy Attorney General	4/9/1993	17
Esther H. La	Deputy Attorney General	12/14/1992	18
Jonathan M. Eisenberg	Deputy Attorney General	12/3/1996	14
Kathleen E. Foote	Senior Asst. Attorney General	12/18/1975	35
Nicole S. Gordon	Deputy Attorney General	1/13/2003	7
Paul A. Moore	Deputy Attorney General	6/21/2000 (MD)	10
Quyên D. Toland	Deputy Attorney General	6/4/1998	12
Sangeetha M. Rangunathan	Deputy Attorney General	12/9/2003	7

15 5. In addition, the following paralegals performed work on the TFT-LCDs investigation
 16 and/or litigation matters: Joan L. Huber, Jonathan Mann, Laura Namba and Samuel Johnson. I am
 17 informed and believe that each of the timekeeping professionals identified in paragraphs 4 and 5 of
 18 this declaration entered their time in ProLaw contemporaneously with their billable activities, and in
 19 compliance with the policy described in paragraphs 2 and 3, above. Several volunteer law clerks
 20 (law students and attorneys) also provided many hours of research and coverage at depositions and
 21 court hearings that was not billed for in ProLaw, nor is this time part of the State's fees request.

22 **Pre-Complaint Investigation**

23 6. California commenced an independent pre-complaint investigation beginning in or about
 24 October of 2007. This investigation was extensive and included the following tasks:

25 a) Negotiation and execution of tolling agreements with multiple corporations
 26 (including named defendants and alleged co-conspirators) that we believed to be involved in the
 27 LCD-TFT cartel;
 28

1 b) Issuance of Civil Investigative Demands (“CIDs”) pursuant to Government
2 Code Section 11180, *et seq.* to defendant LCD manufacturers;

3 c) Independent review of voluminous documents produced by defendant LCD
4 manufacturers, including: AU Optronics, Hitachi, Toshiba, LG Display, Sharp, Chi Mei, HannStar,
5 Hitachi, Samsung, and Chunghwa Picture Tubes;

6 d) Issuance of CIDs to third party entities (e.g., PC OEMs) that possessed
7 records documenting purchases by California state and local government entities;

8 e) Review of OEM data documenting LCDs product purchases by State and
9 local government entities;

10 f) Extensive communications with State and local government entities
11 concerning LCD purchase records, issuance of litigation hold requests, document requests, and
12 review of such documents;

13 g) Retention of several economic experts (Professor John Kwoka of Northeastern
14 University, and The Brattle Group) to assist in review of purchase data, overcharge, and pass-
15 through analysis, and preparation for litigation;

16 h) Drafting, filing and arguing a motion to compel production of documents from
17 AU Optronics, in San Francisco Superior Court;

18 i) Evaluation of our assigned claims, including communications with OEMs that
19 were assignors of such claims; and

20 j) Review of pleadings filed in MDL 1827, discovery materials and related
21 criminal dockets.

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25 **Litigation in California State Court and Removal/Remand**

26 7. Following its extensive and independent investigation, on October 15, 2010, the State of
27 California, through its then-Attorney General, Edmund G. Brown, filed a civil complaint in the
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1 California State Court Action, on behalf of the State, certain named political subdivisions of the
2 State of California, and as *parens patriae* on behalf of natural persons in the State of California,
3 against most of the defendants also in the MDL (the “Complaint”).

4 8. On November 17, 2010, Defendants removed the Complaint to the U.S. District Court for
5 the Northern District of California, MDL 1827, alleging removal jurisdiction pursuant to the Class
6 Action Fairness Act of 2005 (“CAFA”).

7
8 9. On December 17, 2010, the State filed a motion to remand the case back to the Superior
9 Court of the State of California, in the City and County of San Francisco, arguing that the State’s
10 *parens patriae* claims were not removable pursuant to CAFA.

11 10. On February 9, 2011, the State argued its motion for remand before this Court. On
12 February 15, 2011, this Court issued an order remanding the California State Court Action back to
13 state court.

14
15 11. On March 2, 2011, the State filed its First Amended Complaint (“FAC”) in the California
16 State Court Action. On April 1, 2011, defendants filed a motion to strike the FAC, and a motion to
17 stay the California State Court Action. These motions were fully briefed by the parties but hearings
18 on the motions were delayed until the California State Court Action was assigned to Judge Richard
19 Kramer in the San Francisco Superior Court Complex Litigation Department, and until defendants’
20 appeal to the Ninth Circuit was completed.

21
22 12. Both motions were argued on February 14, 2012, and the court denied both motions, with
23 orders dated April 25, 2012. Because of developments in the MDL concerning settlements and trial
24 scheduling, in his order denying defendants’ motion to strike, Judge Kramer did not set a date for
25 defendants to file responsive pleading. As a result, no answers were filed by defendants and no
26 formal civil discovery was conducted in the California State Court Action. Instead, the State
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1 participated in discovery conducted in the MDL, including in-person attendance at many depositions
2 held in San Francisco, and telephonic attendance of out-of-town depositions.

3 13. Since the California State Court Action commenced in October of 2010, the State has
4 attended several Case Management Conferences, and drafted (along with defendants) Joint Case
5 Management Conference Statements for these appearances. For example, on August 21, 2012, the
6 parties appeared before Judge Kramer at a scheduled Case Management Conference and advised him
7 of the pending settlements in the MDL.
8

9 **Appeal of Remand Order**

10 14. On February 25, 2011, defendants petitioned the Ninth Circuit Court of Appeals for
11 permission to appeal this Court's remand order. On March 7, 2011, the State filed an opposition to
12 said petition.
13

14 15. The defendants' petition was granted and the appeal was briefed. On September 13,
15 2011, I argued before the Ninth Circuit Court of Appeals in opposition to defendants' appeal. On
16 October 3, 2011, the Ninth Circuit issued their opinion affirming the remand order entered by this
17 Court.

18 **Litigation in California State court and settlement with Chunghwa Picture Tubes, Ltd.**

19 16. Starting in 2010, during our LCD investigation and litigation of the California State Court
20 Action, the State was also engaged in settlement discussions with Chunghwa Picture Tubes, Inc.
21 ("Chunghwa"). On August 15, 2011, the State entered into a separate settlement agreement with
22 Chunghwa (the "Chunghwa Settlement"). As a condition of the Chunghwa Settlement, on August
23 29, 2011, the State filed a separate complaint entitled *People of the State of California et al. v.*
24 *Chunghwa Picture Tubes, Ltd.*, San Francisco Superior Court Case No. CGC-11-513732 (the
25 "Chunghwa Complaint").
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1 17. The Chunghwa Complaint was also assigned to Judge Richard Kramer in the San
2 Francisco Superior Court Complex Litigation Department. The State and Chunghwa are in the
3 process of filing a revised motion for preliminary approval of class action, in order to get a class of
4 local government entities certified for settlement purposes, and the resulting class action settlement
5 approved in San Francisco Superior Court.

6
7 18. A separate ProLaw docket was not created for the Chunghwa Complaint. Accordingly,
8 all time spent on the Chunghwa Complaint and the Chunghwa Settlement was billed to the common
9 TFT-LCD investigation or litigation ProLaw dockets. The Chunghwa Settlement is for \$300,000.
10 The State intends to request attorneys' fees through the San Francisco Superior Court proceedings
11 related to the Chunghwa Complaint of 10%, or \$30,000, which is the minimum statutory amount
12 permissible for fees pursuant to California Business and Professions Code section 16750(c).
13 Accordingly, the State is deducting \$30,000 from the attorneys' fees it is seeking in this motion.
14

15 **The State's Continued Participation in the MDL**

16 19. As a result of the initial removal to this Court of the California State Court Action,
17 this Court had jurisdiction of the State's initial complaint. This meant that the State was covered by
18 the MDL Protective Order, which continued after the State successfully remanded back to state
19 court. Following remand, the State entered into a stipulation in state court with the defendants to
20 affirm that the State continued to be covered by the MDL Protective Order.

21
22 20. Because the State was covered by the Protective Order, but civil discovery had not
23 commenced in the California State Court Action, the State endeavored to attend many of the
24 depositions that were set in San Francisco. These were attended by the undersigned and several of
25 the DAGs listed in paragraph 4, above, and included fact, expert and Federal Rule of Civil Procedure
26 Rule 30(b)(6) (PMK) witnesses. DAGs from this office also attended several out-of-town
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1 depositions telephonically. DAGs and paralegals also reviewed documents covered by the MDL
2 Protective Order.

3 21. Following removal of the California State Court Action, the State participated in the
4 MDL mediation efforts (described below in ¶23) and began coordinating its separate litigation with
5 the multistate litigation efforts by the other Settling States. This coordination with the multistate
6 group continued following the State's remand back to state court.
7

8 **Attendance at AUO Criminal Trial**

9 22. During the AUO criminal trial in this Court the State had a DAG, paralegal or law clerk
10 attend nearly all hearings, and take notes of all of the proceedings. These notes were used for
11 internal analysis and litigation purposes, and were also shared with the other Settling States. These
12 notes would have proven invaluable had the State not settled with AUO or other defendants and had
13 proceeded to trial.
14

15 **Mediation and Settlement**

16 23. As a result of the initial removal to this Court, the State was part of the initial mediation
17 ordered by this Court. Even after remand back to state court, the State continued to engage in formal
18 and informal mediation efforts by the Indirect Purchaser Plaintiffs and the other states with all
19 defendants.
20

21 24. On behalf of the State, and along with the other Settling States' co-counsel and counsel
22 for the Indirect Purchaser Plaintiffs, I attended all in-person mediations and negotiations with all
23 defendants regarding settlement of the case. In particular, I personally attended every mediation
24 session listed on Exhibit 1-A to the States' Motion (attached to the Joint Declaration of Lizabeth
25 Brady and Anne E. Schneider (the "Joint Declaration")). I also participated in numerous telephone
26 conferences discussing settlement with defendants and the IPPs, and I helped draft, reviewed, and
27 commented on all settlement agreements. Along with the States of Florida and Missouri, I
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1 negotiated and drafted the various civil fines or penalty agreements that were entered into with most
2 of the defendants.

3 25. On behalf of the State I reviewed and commented on drafts of the preliminary approval
4 motions. In particular, the State addressed issues unique to its voluntary participation in the MDL
5 global settlements, while simultaneously litigating in the California State Court Action.

6 26. On behalf of the State I reviewed and commented on drafts of the class notice forms and
7 claims forms, and reviewed the class website.

9 **Calculation of Attorneys' Fees**

10 27. Like the other Settling States, California has elected to rely upon the *Laffey* matrix in
11 effect for 2010-2011, as adjusted for the Northern District of California, pursuant to *Craigslist, Inc.*
12 *v. Naturemarket, Inc.*, 694 F.Supp.2d 1039, 1067 (N.D.Cal. 2010), *Craigslist, Inc. v. Mesiab, et al.*,
13 2010 WL 5300883, at * 7 (N.D. Cal. Nov. 15, 2010) (James, MJ), and *In re HPL*, 366 F.Supp.2d
14 912, 921 (N.D.Cal.2005), which reflects prevailing market rate for legal services in this district.

15 28. As described in *Naturemarket*, *Mesiab*, and *In re HPL*, and consistent with the other
16 Settling States, the State has made the following adjustments to the *Laffey* matrix:
17

18 Experience	2010-2011 <i>Laffey</i> matrix	+ 9% for SF Bay Area
19 20+ years	\$ 475	\$517.79
20 11-19 years	\$ 420	\$457.80
21 8-10 years	\$ 335	\$365.15
22 4-7 years	\$ 275	\$299.75
23 1-3 years	\$ 230	\$250.70
24 Paralegals and law clerks	\$ 135	\$147.15

1 29. The State has provided monthly reports of its contemporaneous ProLaw time records to
2 the State of Missouri. Based upon those records, Missouri has prepared monthly summaries of time
3 for each of the State's timekeepers in this matter. These summaries are included in the Monthly
4 Summaries of Time attached to the Joint Declaration in Support of the States' Motion as Exhibit 1-
5 C, and is incorporated herein by reference.

6
7 30. Each DAG and paralegal that performed work on this matter engaged in discrete tasks
8 directed at analyzing, researching, investigating and litigating this matter. From 2007 through 2008,
9 DAG Toland conducted the initial workup and research, including drafting memoranda analyzing
10 the case and obtaining a formal Delegation of Authority under Government Code section 11180 *et*
11 *seq.* From December 2008 until the present I took charge over this matter, along with DAG Esther
12 La. From December 2008 until she left the Antitrust Law Section in approximately November of
13 2011, DAG La and I jointly conducted the investigation and litigation of this matter. DAGs
14 Eisenberg, Johnson, Varanini, Gordon, Moore and Ranghunathan assisted DAG La and myself, in
15 conducting independent document review, legal research, drafting of pleadings and memoranda, and
16 attendance at court hearings and depositions.

17 31. Even though DAG La and I both worked on this case from December 2008 through
18 November 2011, we worked on separate tasks. For example, while I researched and drafted the
19 opposition to defendants' motion to strike, DAG La researched and drafted the opposition to
20 defendants' motion to stay the California State Court Action. (See ¶¶ 11 & 12, above.)

21 32. The State's ProLaw timesheet entries contains information that is confidential pursuant to
22 the attorney client privilege and/or work product doctrine. Accordingly, no timesheet records are
23 being submitted at this time. If requested, the State will provide timesheet records to the Court or
24 Special Master Quinn for an *in camera* review.

25 **Summary of California's Hours**

26 33. To date, the State has incurred approximately 6955.75 hours of attorney time and 3628.75
27 hours of paralegal time in furtherance of its pre-complaint investigation, litigation and settlement of
28

1 these matters as described above. A summary of each legal professional (attorney and paralegal)
 2 hours, rate, and total fees incurred is listed below:

Name of Legal Professional	Total Hours	Adj. <i>Laffey</i> Rate	Total Fees
Adam Miller	2609.00	\$457.80	\$1,194,400.20
Cheryl L. Johnson	5.25	\$517.79	\$2,718.19
Emilio Varanini	107.25	\$457.80	\$49,099.05
Esther H. La	2409.75	\$457.80	\$1,103,183.55
Jonathan M. Eisenberg	1.50	\$457.80	\$686.70
Kathleen E. Foote	218.50	\$517.79	\$113,128.38
Nicole S. Gordon	547.50	\$299.75	\$164,113.13
Paul A. Moore	289.50	\$365.15	\$132,533.10
Quyên D. Toland	175.50	\$457.80	\$80,343.90
Sangeetha M. Ranghunathan	592	\$299.75	<u>\$177,452.00</u>
Attorney sub-totals:	6955.75		\$3,017,658.20
Joan Huber	32	\$147.15	\$4,708.80
Jonathan Mann	3352.50	\$147.15	\$493,320.38
Laura Namba	234	\$147.15	\$34,433.10
Samuel Johnson	10.25	\$147.15	<u>\$1,508.29</u>
Paralegal sub-totals:	3628.75		<u>\$533,970.57</u>
Grand totals:	10584.50		\$3,551,628.77
	Chunghwa Fees Off-Set		(\$30,000.00)
Total CAG Attorneys Fees			\$3,521,628.77

California's Costs and Expenses

34. The State did not join the multistate group lead by Missouri and Florida until after it filed the Complaint. The State is not a party to the Multistate Cost Share Fund described in Anne

1 Schneider's declaration. Instead, the State has independently retained and paid for its own economic
2 experts, and court hearing transcripts, in furtherance of its litigation efforts. For example, the State
3 has contracted for court reporters to cover several Case Management Conferences and motion
4 hearings in the California State Court Action. The State has also independently purchased copies of
5 several depositions conducted in the MDL. While the State and the multistate group have shared
6 resources, including deposition transcripts, the State has independently purchased deposition and
7 hearing transcripts when necessary, and shared those additional transcripts with the multistate group.

8 35. The State previously submitted costs and expenses independently incurred through
9 January 2012 in the Indirect Purchase Plaintiffs' and State Attorneys General's Joint Notice of
10 Motion and Motion for Interim Reimbursement of Expenses (Dkt. No. 5157). Attached to this
11 declaration and incorporated by reference herein as Exhibit 5-A to the States' Motion is a
12 spreadsheet summarizing all costs and expenses incurred by the State since January 2012. The total
13 amount of costs and expenses requested by the State totals \$18,768.36.

14 36. Attached to this declaration and incorporated by reference herein as Exhibit 5-B to the
15 States' Motion are copies of invoices detailing all costs and expenses incurred by the State in this
16 matter since January 2012. These invoices have been partially redacted to eliminate confidential
17 information that is not material to this motion. If requested by the Court or Special Master Quinn,
18 the State will provide unredacted versions for an *in camera* review.

19 I declare under penalty of perjury pursuant to the laws of the State of California that the
20 foregoing statements of fact are true and correct.

21 Executed this 21st Day of September, 2012 in San Francisco, California.

22
23 /s/ Adam Miller
24 Adam Miller
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