No. 16-559

In The Supreme Court Of The United States

KONINKLIJKE PHILIPS N.V. A/K/A/ ROYAL PHILIPS, PHILIPS ELECTRONICS INDUSTRIES (TAIWAN), LTD., SAMSUNG SDI AMERICA, INC., SAMSUNG SDI BRASIL LTDA., SHENZHEN SAMSUNG SDI CO., LTD., AND TIANJIN SAMSUNG SDI CO., LTD.,

PETITIONERS,

v.

STATE OF WASHINGTON,

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Does this Court have jurisdiction under 28 U.S.C. § 1257 to review an interlocutory state court ruling on personal jurisdiction that remanded for further proceedings, including jurisdictional discovery, and expressly allows Petitioners to renew their challenge to personal jurisdiction?

2. Does the Due Process Clause prevent a forum state from asserting personal jurisdiction over a nonresident component manufacturer that illegally fixes prices of products knowing and intending that finished products incorporating the component will be distributed in massive quantities into the forum state by its subsidiaries, affiliates, and co-conspirators?

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INTRODUCTION

Petitioners are members of two of the world's largest corporate families—Philips and Samsung—who conspired for a decade to fix the price of a key component of TVs and computer monitors. Petitioners and their affiliates, subsidiaries, and co-conspirators marketed, sold, and distributed those end products in massive quantities throughout the United States, including in Washington. Now Petitioners ask this Court to grant certiorari and give them a get-out-of-court-free card to avoid liability for their actions. The Court should deny certiorari for three reasons: (1) the state court decision below is not final, leaving this Court without jurisdiction; (2) the decision below does not present the question Petitioners claim; and (3) the decision below creates no conflict with decisions of this Court.

The first flaw in the petition is a fatal jurisdictional defect. Since the earliest days of the republic, Congress has limited this Court's jurisdiction over state court decisions to those that are final. 28 U.S.C. § 1257. The decision here is not final in two respects: (1) it is an interlocutory jurisdictional ruling, leaving countless issues of state and federal law still to be litigated in state court; and (2) it is not a final ruling even as to personal jurisdiction, because the Washington Supreme Court remanded to the trial court for proceedings including jurisdictional discovery, explicitly allowing Petitioners to renew their motions to dismiss upon a factual record. Though this Court has adopted some

exceptions to the finality rule, Petitioners have not argued and cannot show that any applies.

The second reason to deny the petition is that it offers no opportunity to address Petitioners' question presented. Petitioners claim that this case would allow the Court finally to choose between the competing four-Justice opinions—Justice O'Connor's narrower approach and Justice Brennan's broader approach—in *Asahi Metal Industries Co. v. Superior Court of California*, 480 U.S. 102 (1987). But the court below cited both opinions and never rejected either. Pet. App. 8a-9a. Petitioners thus create a strawman when they claim that the decision below presents the question whether "the Due Process Clause permit[s] a forum state to exercise specific personal jurisdiction over a nonresident defendant based solely on that defendant's placing component parts into the stream of commerce by selling them to third parties who make finished products that foreseeably may come to the forum state[.]" Pet. i. The Washington Supreme Court adopted no such rule. It specifically rejected the idea that due process "allow[s] jurisdiction based on the mere foreseeability that a product may end up in a forum state." Pet. App. 7a. Instead, the court issued a narrow ruling that considered the procedural posture of this case, accepted the State's allegations as true, and determined that defendants who availed themselves of the benefits and protections of the forum state by intentionally exploiting its market were subject to personal jurisdiction.

Finally, the decision below presents no conflict with any decision of this Court. Petitioners claim a conflict with the Court's recent rulings on personal jurisdiction. To the contrary, the decision cites and relies on those opinions, all while grounding its reasoning in longstanding precedent from this Court. In reality, it is Petitioners whose proposed rule would represent a dramatic break from this Court's precedent, allowing even huge multinational companies to evade liability if they simply structure their affairs such that subsidiaries conduct all of their illegal price-fixing overseas. That cannot be the law.

This Court should deny certiorari.

STATEMENT OF THE CASE

The Washington Supreme Court reviewed a dismissal prior to any jurisdictional discovery, treating the State's allegations as true and analyzing Petitioners' claims on that basis. Petitioners have not challenged that approach here. The facts recited below are therefore taken primarily from the State's complaint.

A. Petitioners' Conspiracy to Fix Prices

Petitioners are manufacturers, distributors, or marketers of cathode ray tubes (CRTs) and related companies who illegally conspired to fix prices of their products. BIO App. 2a-3a, ¶¶ 1, 3; 6a-9a, ¶¶ 13, 15, 18, 20, 21, 22. The existence of the conspiracy is not meaningfully disputed. The parent company of the Samsung Petitioners has pled guilty to

conspiring to fix the prices of CRTs,[1] and both the Samsung and Philips Petitioners have agreed to pay hundreds of millions of dollars to U.S. purchasers of their price-fixed products in settling claims brought in multi-district litigation.[2]

During the period relevant to the State's lawsuit, 1995-2007, CRTs were the dominant technology used for manufacturing televisions, computer monitors, and specialized applications such as ATMs. BIO App. 30a-31a, ¶ 90. North America accounted for a substantial share of the global market for CRTs, generating billions in revenue for Petitioners and their co-conspirators. *Id.* at 30a-31a, ¶¶ 90-91.

The CRTs manufactured, distributed, or marketed by Petitioners were incorporated into household-name end products (often by Petitioners' affiliates or co-conspirators) and sold across the United States and in Washington year after year by the millions during the conspiracy. *Id.* at 16a-18a, ¶¶ 44-49; 30a-31a, ¶ 90. As the headquarters for several large retailers of consumer electronics such as Costco and many of the nation's largest technology companies, including Microsoft, Amazon,

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[1] BIO App. 32a, ¶ 96; Amended Plea Agreement, *United States v. Samsung SDI Company, Ltd.*, No. CR 11-0162 (WHA), (N.D. Cal. May 17, 2011), https://www.justice.gov/atr/case-document/file/509301/download (Plea Agreement).

[2] Order Granting Final Approval of Indirect Purchaser Settlements, at 3 n.8, *In re: Cathode Ray Tube (CRT) Antitrust Litigation*, No. C-07-5944 JST (N.D. Cal. July 7, 2016), goo.gl/K0QiJC (Settlement Agreement).

and Nintendo, Washington was a sizable consumer of Petitioners' products.[3]

1. Samsung Defendants

Petitioners Samsung SDI America, Inc.; Samsung SDI Brasil Ltda.; Shenzhen Samsung SDI Co., Ltd.; and Tianjin Samsung SDI Co., Ltd. are all wholly owned and controlled subsidiaries of Samsung SDI Co., Ltd. BIO App. 7a-9a, ¶¶ 17-22. Samsung SDI was a party to the appellate case below, but has not joined the petition. Samsung SDI America is headquartered in California, while the other Samsung petitioners are based outside the United States. *Id.* Each of these Samsung defendants participated in the conspiracy and "manufactured, marketed, sold and/or distributed CRT Products, either directly or indirectly through its subsidiaries or affiliates, to customers throughout the United States and Washington." *Id.*

In August 2011, Samsung SDI pled guilty to a criminal violation of the Sherman Act.[4] It admitted to conspiring with other CRT producers to fix prices, reduce output, and allocate market share of CRTs sold in the United States and elsewhere. Plea

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[3] Washington-based retailers Costco and Magnolia Hi-Fi, LLC have brought anti-trust lawsuits against many of the Petitioners and their co-conspirators, alleging sales of price-fixed CRT products to their Washington offices. *See* First Amended Complaint and Jury Demand, ¶¶ 11, 13, *Costco Wholesale Corp. v. Hitachi, Ltd. et al.*, No. 3:11-cv-06397 (N.D. Cal. 2013); First Amended Complaint, ¶ 21, *Best Buy Co., Inc. v. Hitachi, Ltd. et al.*, No. 3:11-cv-05513 (N.D. Cal. 2013).

[4] BIO App. 32a, ¶ 96; Plea Agreement at 2-3 *supra* note 1.

Agreement at 3, ¶ 4(c) *supra* note 1. Samsung SDI paid a criminal fine of $32,000,000, and the United States agreed not to pursue other criminal charges against Samsung SDI or its related entities. *Id.* at 9, ¶ 14; BIO App. 32a, ¶ 96. Additionally, as part of a settlement agreement with one class of purchasers in the multi-district litigation noted above, Samsung SDI, on behalf of itself and its subsidiaries, including Petitioners here, agreed to pay $225,000,000. Settlement Agreement at 3 & n.8 *supra* note 2.

2. Philips Defendants

Petitioners Koninklijke Philips N.V. a/k/a Royal Philips Electronics N.V. and Philips Electronics Industries (Taiwan), Ltd. are related entities: Philips (Taiwan) is a subsidiary of Royal Philips. BIO App. 7a, ¶ 15. Both are headquartered outside of the United States. During the conspiracy, Royal Philips and Philips (Taiwan) each "manufactured, marketed, sold and/or distributed CRT Products, directly or indirectly through [their] subsidiaries or affiliates, to customers throughout the United States and Washington." *Id*. Each of these Philips defendants participated in the criminal conspiracy to fix prices of CRTs intended to be incorporated into finished goods and sold in Washington. *Id.* at 16a-18a, ¶¶ 44-51. In 2001, Royal Philips transferred its CRT business to a joint venture with LG Electronics, Inc., a defendant below who has not joined the petition. *Id.* at 6a, ¶ 13.

Through several layers of corporate ownership, Royal Philips owns and controls Philips Electronics North America Corporation (PENAC). *Id.* at 6a-7a, ¶ 14. PENAC is a Delaware corporation

with a principal place of business in Massachusetts. *Id.* PENAC has registered with the Washington State Secretary of State for purposes of doing business in Washington and has a registered agent in Washington. *Id.* As part of the settlement agreement noted above, Royal Philips, on behalf of itself and related entities including Petitioner Philips (Taiwan), agreed to pay $175,000,000. Settlement Agreement at 3 & n.4 *supra* note 2.

B. The Washington Attorney General's Complaint

Petitioners' illegal price fixing of CRTs harmed innumerable Washington residents and the state. The Washington Attorney General filed this lawsuit pursuant to the antitrust provisions of the state Consumer Protection Act, seeking restitution and injunctive relief on behalf of state residents and state agencies that purchased price-fixed products. Unlike many states, Washington law does not allow indirect purchasers—consumers who purchased finished consumer electronics containing price-fixed CRTs—to bring their own lawsuits to recover their wrongfully taken funds. *Blewett v. Abbott Labs.*, 938 P.2d 842, 847 (Wash. Ct. App. 1997). Washington law does, however, allow the Attorney General to bring an action on behalf of indirect purchasers. *Id.*; Wash. Rev. Code 19.86.080(3).[5]

[5] Federal antitrust laws provide no cause of action to indirect purchasers. *Illinois Brick Co. v. Illinois*, 431 U.S. 720, 728 (1977).

The Attorney General's complaint specifically alleged that Petitioners: (1) participated in a global conspiracy to inflate prices of CRTs; (2) manufactured, marketed, sold, and/or distributed CRT products, directly or indirectly through their subsidiaries or affiliates, to customers throughout the United States and Washington; (3) sold CRTs into international streams of commerce with the knowledge, intent, and expectation that such CRTs would be incorporated into products sold to consumers throughout the United States, including in Washington; (4) manufactured, marketed, and sold CRT products directly or indirectly to United States companies with the expectation that those CRT products would be resold into the United States or incorporated into finished products for sale in the United States; and (5) intended to have and did have an effect on trade and commerce into and within Washington. *See generally* BIO App. 2a-3a, 6a-9a, 16a-19a, 22a-23a.

C. Proceedings Below

Prior to discovery in the trial court, Petitioners and other defendants filed motions to dismiss the State's lawsuit for lack of personal jurisdiction. The trial court granted Petitioners' motion to dismiss. The Washington Court of Appeals reversed.

The Washington Supreme Court affirmed the court of appeals decision, relying heavily on the procedural posture of the case. Under state procedural rules, because the case arrived before it on a motion to dismiss before any discovery had occurred, the complaint could proceed "if *any* state of facts could exist under which the claim could be

sustained." Pet. App. 14a. Applying this liberal pleading standard, the court concluded that the motion to dismiss should have been denied because the State had alleged sufficient minimum contacts to assert personal jurisdiction over Petitioners. The court explicitly allowed Petitioners to renew their motions after appropriate discovery. *Id.* at 14a.

In reaching its conclusion, the court carefully examined this Court's personal-jurisdiction jurisprudence. It held that jurisdiction must be based on a defendant's act by which it "purposefully avails itself" of the benefits of conducting activities within the forum state. *Id.* at 6a-7a. The court emphasized that (1) a foreign manufacturer does not purposefully avail itself of a forum when the unilateral act of a third party brings the product into the forum state, and (2) mere foreseeability that a product may end up in the forum state is insufficient to allow the assertion of personal jurisdiction. *Id.* at 7a (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295-97 (1980)). Instead, the court reiterated this Court's principle announced in *World-Wide Volkswagen* and oft-since repeated that the defendant's conduct and connection with the state must be such that it should reasonably anticipate being haled into court there. *Id.*

The court also examined this Court's fractured opinions in *Asahi Metal Industries Co. v. Superior Court of California*, 480 U.S. 102 (1987), and *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873 (2011). The court recited the various opinions in *Asahi* without adopting or rejecting any of the approaches suggested there. Pet. App. 8a-10a. In analyzing *McIntyre*, the court concluded that the

holding of this Court was the position taken by the Justices who concurred in the judgment on the narrowest grounds. *Id.* at 11a. The court determined that Justice Breyer's opinion concurred on the narrowest grounds and rejected Petitioners' argument that Justice Breyer's opinion had adopted Justice O'Connor's approach in *Asahi*. *Id.* Instead, the court concluded that Justice Breyer explicitly did not adopt either Justice O'Connor's or Justice Brennan's approach from *Asahi*. *Id.* The court reasoned that *McIntyre* held narrowly that a foreign manufacturer's sale of products through an independent nationwide distribution system is not sufficient, standing alone, for a state to assert jurisdiction when only one product enters a state and causes injury. *Id.* (citing *McIntyre*, 564 U.S. at 888-89 (Breyer, J., concurring)).

Given *McIntyre*'s narrow holding, the court concluded that the decision did not foreclose personal jurisdiction where a substantial volume of sales took place in a state as part of the regular flow of commerce. *Id.* The court noted the numerous post-*McIntyre* opinions in agreement. *Id.* at 12a.

Ultimately, the court simply held that the state had met its prima facie burden of showing that Petitioners had established purposeful minimum contacts through its allegations that

> (1) the Companies together dominated the global market for CRTs, (2) the Companies sold CRTs into international streams of commerce with the intent that the CRTs would be incorporated into millions of CRT products sold across the United States and in

> large quantities in Washington, and (3) along with their coconspirators, the Companies intended for their price-fixing activities to elevate the price of CRT Products purchased by consumers in Washington.

Pet. App. 12a.

Considering these allegations, the court rejected Petitioners' arguments that their products arriving in Washington was merely the result of unilateral acts of third parties, agreeing with the State that the "presence of millions of CRTs in Washington was not the result of chance or the random acts of third parties, but a fundamental attribute of [Petitioners'] businesses." *Id.* at 12a-13a.

REASONS THE COURT SHOULD DENY THE PETITION

A. This Court Lacks Jurisdiction Because the State Court's Decision Is Not Final

This Court lacks jurisdiction to grant the writ because the state court decision is not a final judgment or decree as required by 28 U.S.C. § 1257.[6] The decision merely upholds the sufficiency of a complaint against a motion to dismiss on the pleadings. The remand allows for discovery of jurisdictional facts and states that "[n]othing . . . precludes [Petitioners] from renewing their motions after further discovery bearing on relevant facts." Pet. App. 14a. The decision is thus not final, even as

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[6] "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari . . . ." 28 U.S.C. § 1257(a).

to jurisdiction, and none of the exceptions this Court has adopted to the finality requirement apply here.

1. This Court's jurisdiction is limited to review of final state court decisions

The finality requirement of 28 U.S.C. § 1257 limits this Court's review to final state court judgments. "To be reviewable by this Court, a state-court judgment must be final 'in two senses: it must be subject to no further review or correction in any other state tribunal; it must also be final as an effective determination of the litigation and not of merely interlocutory or intermediate steps therein.'" *Jefferson v. City of Tarrant, Alabama*, 522 U.S. 75, 81 (1997) (quoting *Market Street R. Co. v. R.R. Comm'n of California*, 324 U.S. 548, 551 (1945)). Finality serves to "avoid[] piecemeal review of state court decisions," to "avoid[] giving advisory opinions in cases," and to "limit[] review of state court determinations of federal constitutional issues to leave at a minimum federal intrusion in state affairs." *North Dakota State Bd. of Pharmacy v. Snyder's Drug Stores, Inc.*, 414 U.S. 156, 159 (1973).

The finality requirement is especially critical "when the jurisdiction of this Court is invoked to upset the decision of a State court." *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120, 124 (1945). In such cases, the Court is "in the realm of potential conflict between the courts of two different governments." *Id.*

> [E]ver since 1789, Congress has granted this Court the power to intervene in State litigation only after 'the highest court of a

> State in which a decision in the suit could be had' has rendered a 'final judgment or decree.' . . . This requirement is not one of those technicalities to be easily scorned. It is an important factor in the smooth working of our federal system.

Id. (quoting 28 U.S.C. § 344(a)).

2. The state court has not issued a final judgment or decree

The state court decision here is not final in at least two respects.

First, the decision is not "an effective determination of the litigation," but rather decides "merely interlocutory or intermediate steps therein." *Jefferson*, 522 U.S. at 81. A ruling that a court may assert personal jurisdiction is plainly interlocutory, as it merely allows the merits of the case to proceed. *See* 15A Charles Alan Wright et al., *Fed. Prac. & Proc. Juris.* § 3914.6 (2d ed. WL). Much remains to be done in state court, including discovery, motions addressing legal issues related to the State's claim, and potentially a trial on the merits. The decision below is, therefore, far from a final judgment, and does not meet the first test in *Jefferson*. The ruling remains subject to further review by state courts and does not effectively determine the litigation.

Second, the decision below does not finally resolve even whether Washington will assert personal jurisdiction over Petitioners because it is subject to "further review or correction[.]" *Jefferson*, 522 U.S. at 81. Applying state procedural rules, the state court construed the State's complaint

and denied a motion to dismiss on the pleadings. Pet. App. 13a-14a. In doing so, it emphasized that it could decide only if the allegations of the complaint provide a "prima facie showing of jurisdiction." *Id.* at 5a. It relied on state law to hold that the State should have been entitled to conduct discovery of jurisdictional facts. *Id.* at 13a. The court agreed that after discovery of pertinent jurisdictional facts, a trial court may still reject personal jurisdiction over Petitioners. *Id.* at 14a.

This lack of finality affects more than jurisdiction. Granting the petition to review the non-final rulings here would also advance a poor vehicle for this Court's review of minimum contacts questions. In contrast, a record after jurisdictional discovery can show the quality and degree of contacts between these giant manufacturing companies, their distributors and affiliates, and the forum state. Even if the Court had jurisdiction, it would take a great risk in granting review prior to such discovery. *See generally* 4 Charles Alan Wright et al., *Fed. Prac. & Proc. Civ.* § 1067.4 (4th ed. WL) (a "factual record in any given case is likely to be particularly important" to analysis of personal jurisdiction involving a stream of commerce, and parties "would be wise to seek all relevant discovery regarding the jurisdiction question"). *See also Minnick v. California Dep't of Corrections*, 452 U.S. 105, 127 (1981) (no final state court ruling where the record and facts relevant to deciding the constitutional issue raised by the petition could be developed further by the state courts).

3. This case does not fit the categories in *Cox Broadcasting Corp.* where the Court has deemed a state decision final on a federal issue

In *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975), the Court summarized four categories of cases where a state court decision subject to further state court proceedings is considered a final judgment on a federal issue for jurisdictional purposes under 28 U.S.C. § 1257. Despite their obligation to address this issue,[7] Petitioners never explain how this case meets one of these categories. While it is unfair for the State to have to address this issue before knowing what Petitioners will claim, it is clear that none of the *Cox* exceptions apply.

a. The first *Cox* category concerns cases where "further proceedings—even entire trials—[are] yet to occur in the state courts but where . . . the federal issue is *conclusive or the outcome of further proceedings preordained*," such that "the case is for all practical purposes concluded." *Cox*, 420 U.S. at 479 (emphasis added). *Cox* uses *Mills v. Alabama*, 384 U.S. 214 (1966), to illustrate this category. In *Mills*, a state appeals court remanded a criminal case for trial after rejecting the appellant's only defense. In a nutshell, a conviction was preordained. In contrast, the state court decision here comes nowhere close to rendering the outcome of the case

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[7] *See* Stephen M. Shapiro et al., *Supreme Court Practice* 156 (10th ed. 2013) (the petitioner is "obliged by [Rule 14.1(g)(i)] to discuss such a finality problem in the certiorari petition").

preordained. Petitioners not only remain free to challenge personal jurisdiction after discovery, but will also have the opportunity to litigate other state and federal defenses, as well as the underlying factual question of whether they conspired to raise prices. This case is nothing like *Mills*. Rather, it is like *Florida v. Thomas*, 532 U.S. 774, 777 (2001), where the Court dismissed a writ of certiorari because the state court decision remanded for further fact-finding related to the constitutionality of a police search.

b. The second *Cox* category is where federal issues are "finally decided by the highest court in the State" but the issue "will survive and require decision regardless of the outcome of future state-court proceedings." *Cox*, 420 U.S. at 480. This category applies where further proceedings will not "foreclose or make unnecessary decision on the federal question," *id.*, and the federal issue is "separable and distinct from the subsequent proceedings, so much so that the federal issue will be unaffected and undiluted by the later proceedings," *Supreme Court Practice* at 165. The opposite is true here. Petitioners might prevail on the merits, or under the Foreign Trade Antitrust Improvements Act of 1982, or win in some other way that obviates any need for this Court's review. Indeed, after jurisdictional discovery, Petitioners might even prevail as to personal jurisdiction on a fuller record, obviating a need to review the current decision on the sufficiency of the allegations.

c. The third *Cox* category concerns cases "where the federal claim has been finally decided, with further proceedings on the merits in the state

courts to come, but in which later review of the federal issue cannot be had, whatever the ultimate outcome of the case." *Cox*, 420 U.S. at 481. The illustration of this category is *California v. Stewart*, 384 U.S. 436 (1966), which involved a state court decision that reversed a conviction on constitutional grounds and remanded for retrial. The Court held that this state court decision on the constitutional issue was "'final' since an acquittal of the defendant at trial would preclude, under state law, an appeal by the State." *Id.* (citing *Stewart*, 384 U.S. at 498 n.71). No such barrier exists here. If the State prevails on personal jurisdiction, Petitioners can raise the issue later, even if the State ultimately prevails on the merits. And if Petitioners ultimately prevail on jurisdiction in state court, the State can seek review.

d. The fourth *Cox* category concerns cases where the state court has "finally decided" a federal issue, where "reversal of the state court on the federal issue would be preclusive of any further litigation on the relevant cause of action," and where "refusal immediately to review the state court decision might seriously erode federal policy[.]" *Id*. at 482-83. This category has no application for three reasons.

First, as shown above, the state courts have not "finally decided" the federal issue of whether personal jurisdiction is appropriate.

Second, this Court's review and reversal is not necessarily "preclusive of any further litigation" for reasons similar to those in *Nike, Inc. v. Kasky*, 539 U.S. 654 (2003). In *Nike*, the Court found that a state

court decision addressing a First Amendment defense was not final because the Court's review would not have necessarily ended the litigation. Similarly here, review of the personal jurisdiction question at this stage would not preclude further litigation. For example, even if the Court reversed and articulated a standard for minimum contacts different than the state court, Washington law would allow the State to seek leave to amend its complaint to allege facts consistent with that ruling. *See* 14 Karl B. Tegland, *Washington Practice: Civil Procedure* § 12.36 (2d ed. 2009) (amendment of a complaint is freely granted in Washington absent substantial prejudice to opposing party). And the state court has already determined that the trial court should have allowed jurisdictional discovery, Pet. App. 13a, a ruling that would be disturbed only if this Court ruled that no set of facts could exist based on the State's complaint that would suffice to establish jurisdiction. Review would merely result in an advisory ruling governing further proceedings, without resolving the case.

Third, refusal to review the state court decision immediately does not seriously erode federal policy. No federal policy requires rulings on personal jurisdiction or dismissal of antitrust claims without jurisdictional discovery. The situation in this case contrasts sharply with *Southland Corp. v. Keating*, 465 U.S. 1, 6-8 (1984), where the Court reviewed a state court ruling that the Federal Arbitration Act did not preempt a state law. There, failure to review immediately would have eroded the federal policy of protecting arbitration remedies. *Id.*; *see also Local 438 Constr. & Gen. Laborers' Union v. Curry*, 371

U.S. 542 (1963) (final state court decision on whether a dispute is within exclusive power of the National Labor Relations Board). No similar federal policy concern exists here, where the state court ruling allows further review of personal jurisdiction. Treating this pleading-stage ruling as final under *Cox* would "permit the fourth exception to swallow the rule." *Johnson v. California*, 541 U.S. 428, 430 (2004) (internal quotation marks omitted); *see also Florida*, 532 U.S. at 780 (no federal policy requires immediate review of every state constitutional decision suppressing evidence). This case presents a situation where the review of the issue can await further proceedings "without any adverse effect upon important federal interests." *Flynt v. Ohio*, 451 U.S. 619, 622 (1981).

4. This Court's prior cases involving state court rulings on personal jurisdiction are distinguishable because there was no further state court review possible

Petitioners may invoke *Calder v. Jones*, 465 U.S. 783 (1984), but it is distinguishable. In *Calder*, the Court found jurisdiction to review a final state court ruling on personal jurisdiction and noted that it had exercised jurisdiction to address personal jurisdiction rulings in a handful of prior cases. *Id.* at 788 n.8. The Court emphasized, however, that it was reviewing a state decision on personal jurisdiction that was "plainly final" and "*not subject to further review* in the state courts." *Id.* (emphasis added). Moreover, each example in *Calder* involves a state court decision on personal jurisdiction not subject to further state court review. *See Shaffer v. Heitner*,

433 U.S. 186, 195 n.12 (1977) (defendants whose property was seized were left with a choice of "suffering a default judgment or entering a general appearance and defending on the merits" if the state decision was not considered final); *Rush v. Savchuk*, 444 U.S. 320, 325 (1980) (final state court decision about assertion of quasi in rem jurisdiction); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 289 (1980) (final state court decision denying writ of prohibition to restrain lower court from exercising in personam jurisdiction); *Kulko v. Superior Court of California*, 436 U.S. 84, 89 (1978) (review of a state court final decision sustaining jurisdiction).

The State is aware of no case where this Court has exercised jurisdiction to review a state court ruling that addresses the sufficiency of allegations of personal jurisdiction, but where the defendants retain the right to renew a challenge to personal jurisdiction after jurisdictional discovery. The *McIntyre* litigation is instructive here. There, the trial court initially dismissed for lack of personal jurisdiction and a New Jersey intermediate appellate court reversed and remanded to allow discovery as to jurisdictional facts. *See Nicastro v. McIntyre Mach. America, Ltd.*, 987 A.2d 575, 578 (N.J. 2010). The defendant did not seek certiorari after the first decision. Instead, it engaged in discovery and renewed its challenge at the trial court. *Id.* at 579. It was only after the New Jersey Supreme Court reviewed that second decision—a decision that finally asserted personal jurisdiction based on a developed record—that the defendant sought certiorari and this Court granted review. *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873 (2011).

Given the Washington Supreme Court's definite statement that it has made no final ruling to assert personal jurisdiction, Pet. App. 14a, the state court decision is not final and this Court lacks jurisdiction. Certiorari at this stage would result in piecemeal review of a state court ruling on personal jurisdiction at the pleading stage, before state court remedies are exhausted.

B. This Case Offers No Opportunity to Resolve Petitioners' Question Presented

Petitioners claim this case presents the question whether "the Due Process Clause permit[s] a forum state to exercise specific personal jurisdiction over a nonresident defendant based solely on that defendant's placing component parts into the stream of commerce by selling them to third parties who make finished products that foreseeably may come to the forum state[.]" Pet. i. That is a strawman that has nothing to do with this case.

At least since this Court's decision in *World-Wide Volkswagen*, the answer to Petitioners' distorted question presented has been clear. Mere foreseeability that a foreign manufacturer's product may be sold by a third party in the forum state is not enough to subject the manufacturer to the state's jurisdiction. Neither Washington nor the state court decision ever suggested otherwise.

Contrary to Petitioners' and amici's claims, this case does not represent the paradigmatic conflict between the approaches to jurisdiction advocated by Justice O'Connor and Justice Brennan in *Asahi*. Rather, the facts here represent far more than what Justice Brennan would have found sufficient to

support jurisdiction. And given the liberal pleading standard applied by the court below—a standard not challenged by Petitioners here—the facts alleged here also satisfy Justice O'Connor's test in light of the State's broad allegations that Petitioners directly and indirectly (through affiliates and subsidiaries) targeted the Washington market. Accordingly, this Court should deny the petition.

1. There is no need to address petitioners' strawman question presented because precedent already establishes that due process requires more than that a manufacturer's product may foreseeably enter the forum state

This Court has required three elements for the assertion of personal jurisdiction by a state court over a non-resident defendant to comport with the Due Process Clause: (1) that purposeful minimum contacts exist between the defendant and forum state; (2) that the plaintiff's injuries arise out of or relate to those contacts; and (3) that the forum state's assumption of jurisdiction does not offend traditional notions of fair play and substantial justice. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472-78 (1985). As recognized by the court below, to establish purposeful minimum contacts, there must be some act by which the defendant "'purposefully avails itself of the privilege of conducting activities within the forum State.'" Pet. App. 6a-7a (quoting *Burger King*, 471 U.S. at 475).

In *World-Wide Volkswagen*, this Court first acknowledged the stream-of-commerce theory in

determining whether a foreign defendant had sufficient minimum contacts with a forum state to be subject to personal jurisdiction there. The Court held that a manufacturer purposefully avails itself of a forum when the sale of its product there is "not simply an isolated occurrence, but arises from the efforts of the manufacturer . . . to serve, directly *or indirectly*, the market[.]" *World-Wide Volkswagen*, 444 U.S. at 297 (emphasis added). The stream-of-commerce principle, as enunciated in *World-Wide Volkswagen*, does not allow jurisdiction based upon the mere foreseeability that a product may end up in the forum state, but rather the defendant's conduct and connection with the state must be such that it should reasonably anticipate being haled into court there. *Id.*

In explaining this distinction, the Court reasoned that while an "isolated occurrence" may not cause a defendant to reasonably anticipate being haled into court, "[t]he forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the *expectation* that they will be purchased by consumers in the forum State." *Id.* at 297-98 (emphasis added); *accord Burger King*, 471 U.S. at 473-74.

In *Burger King*, this Court further illuminated the distinction between a foreign defendant that purposefully avails itself of a forum State's market by placing its goods into the stream of commerce, where regular and expected chains of distribution will bring the goods to the forum state, and the "random," "fortuitous," or "attenuated" contacts present when the unilateral act of a third party

brings a manufacturer's product into the forum state. *Burger King*, 471 U.S. at 475-76. Again, the Court stated that mere foreseeability that a manufacturer's product might cause injury in the forum state was insufficient. *Id.* at 474; *see also Asahi*, 480 U.S. at 119 (Brennan, J., concurring) (quoting rationale in *World-Wide Volkswagen* that "mere likelihood" that a product will find its way to the forum state is insufficient).

Therefore, Petitioners' question presented does not need resolution. The Court has already decided that a forum state may not exercise specific personal jurisdiction over a nonresident defendant based *solely* on that defendant's placing component parts into the stream of commerce by selling them to third parties who make finished products that foreseeably *may come* to the forum state. And the state court ruling is consistent with this rule.

2. The court below carefully applied this Court's precedent and never chose between Justice O'Connor's and Justice Brennan's approaches in *Asahi*

Consistent with this Court's statements in *World-Wide Volkswagen* and *Burger King*, the court below applied this Court's test for personal jurisdiction, including the requirement that the defendant purposefully avail itself of the benefits and protections of the forum state. Pet. App. 7a. Like this Court, the state court explicitly concluded that "[t]he stream of commerce theory does not allow jurisdiction based on the mere foreseeability that a product may end up in a forum state." *Id.* The state

court rested its decision not on the notion that Petitioners might have foreseen that their products would end up in Washington, but rather on its conclusion that Petitioners intended their products to be incorporated into finished products and sold in massive quantities in Washington, so much so that the presence of their products in Washington was "a fundamental attribute of [Petitioners'] businesses." *Id.* at 13a.

In arguing to the contrary, Petitioners significantly mischaracterize the decision below. They first claim that the decision "adopted a broad stream-of-commerce approach that allowed 'personal jurisdiction over a foreign defendant where a substantial volume of sales took place in a state as part of the regular flow of commerce.'" Pet. 7 (quoting Pet. App. 11a). But the court adopted no such universal rule. The full quote Petitioners pruned says: "*McIntyre* did not *foreclose* an exercise of personal jurisdiction over a foreign defendant where a substantial volume of sales took place in a state as part of the regular flow of commerce." Pet. App. 11a (emphasis added). This narrow conclusion accurately describes Justice Breyer's opinion in *McIntyre*, which was limited to the facts of that case (a single, isolated sale) and suggested that a substantial volume of sales might lead to a different result. *McIntyre*, 564 U.S. at 888-89 (Breyer, J., concurring).

Petitioners also claim the state court held that minimum contacts can be based solely on "placing CRTs into the stream of commerce with the knowledge and intent that their CRTs would be incorporated into products sold in massive

quantities throughout the United States, including in large numbers in Washington." Pet. 7 (quoting Pet. App. 7a-8a). But their citation is to the court's description of the parties' arguments, not the court's holding. The court based its holding on the State's specific factual allegations, saying: "Taking these allegations as verities, as we must at this stage, we agree with the State that '[t]he presence of millions of CRTs in Washington was not the result of chance or the random acts of third parties, but a fundamental attribute of [Petitioners'] businesses.'" Pet. App. 12a-13a.

Petitioners also err in claiming the state court upheld personal jurisdiction over petitioners "[u]nder Justice Brennan's pure stream-of-commerce approach" from *Asahi*. Pet. 23. In reality, much like Justice Breyer's opinion in *McIntyre*, the state court did not choose between Justice O'Connor's and Justice Brennan's tests from *Asahi*, instead relying on decisions that received a majority of this Court's votes: *World-Wide Volkswagen* and *Burger King*. Pet. App. 7a. In doing so, the state court followed many other courts' approach to applying the stream-of-commerce theory in personal jurisdiction cases. *See* 4 Charles Alan Wright et al., *Fed. Prac. & Proc. Civ.* § 1067.4 (3d ed. WL) ("Other courts have taken a similar conservative approach to *Asahi*, declining to express a preference for one standard over the other.").

In short, the opinion below did not adopt any of the broad rules claimed by Petitioners, but instead applied controlling precedent in a narrow, fact-bound ruling in the context of liberally construing allegations at the pleading stage of a

lawsuit. Petitioners are thus wrong to claim that the case presents an ideal vehicle to resolve disputes over the stream-of-commerce theory.

C. This Case Is a Poor Vehicle Because the Facts Alleged Satisfy Both Justice O'Connor's and Justice Brennan's Theories from *Asahi*

Even if Petitioners' question presented had more accurately reflected the differing approaches in *Asahi*, this case does not present a good vehicle for resolving those issues. The allegations in the State's complaint far exceed the "regular and anticipated" flow of commerce envisioned by Justice Brennan as sufficing to assert personal jurisdiction, and meet Justice O'Connor's additional requirement of conduct showing intent to serve the forum state's market.

In *Asahi*, the Court issued a fractured opinion addressing the stream-of-commerce theory. All justices agreed that, given the facts of that case, traditional notions of fair play and substantial justice prevented the assertion of personal jurisdiction. Then, in dicta, they differed on the proper analysis for the showing of minimum contacts required to show that a defendant had purposefully availed itself of the forum market.

Justice O'Connor wrote for four justices that placing a product into the stream of commerce, without more, was insufficient to establish personal jurisdiction even if the defendant knew that the product "may or will" enter the forum state. *Asahi*, 480 U.S. at 112. In Justice O'Connor's view, the mere placement of a product into the stream of commerce did not necessarily show an intent by a manufacturer

to serve a particular market. *Id.* Instead, there must be some additional conduct of the defendant that showed such an intent. *Id.* Among the cases cited by Justice O'Connor as examples of conduct showing "something more" were those in which a foreign corporation sold its product to a subsidiary, which in turn marketed its product in the United States, or in which a foreign corporation manufactured a component for a finished product designed for a United States and European market. *Id.* at 112-13 (citing *Rockwell Int'l Corp. v. Costruzioni Aeronautiche Giovanni Agusta*, 553 F. Supp. 328 (E.D. Pa. 1982); *Hicks v. Kawasaki Heavy Indus.*, 452 F. Supp. 130 (M.D. Pa. 1978)).

Justice Brennan also wrote for four justices, explaining that the stream-of-commerce theory showed a defendant's purposeful availment of a market because it "refers not to unpredictable currents or eddies, but to the regular and anticipated flow of products from manufacture to distribution to retail sale." *Id.* at 117 (Brennan, J., concurring). Justice Brennan would thus find purposeful availment of a forum where a defendant was aware that the final product was being marketed in the forum state, without the necessity of "something more." *Id.* at 111.

Justice Stevens (joined by two justices who had also joined Justice Brennan's opinion) wrote a separate opinion declining to conclusively address the stream-of-commerce principle. *Id.* at 121. Yet Justice Stevens suggested that the two approaches were not necessarily as divided as they might seem: "The [Justice O'Connor] plurality seems to assume that an unwavering line can be drawn between 'mere

awareness' that a component will find its way into the forum State and 'purposeful availment' of the forum's market." *Id.* at 122. In Justice Stevens's view, an analysis of minimum contacts would depend upon the value, the volume, and the hazardous character of the components. Justice Stevens concluded that "[i]n most circumstances I would be inclined to conclude that a regular course of dealing that results in deliveries of over 100,000 units annually over a period of several years would constitute 'purposeful availment' . . . ." *Id.*

Contrary to Petitioners' assertions, this case does not cleanly present the stream-of-commerce issue because the facts alleged here meet all of the tests advanced in *Asahi*.[8] As Petitioners acknowledge, the complaint readily meets the test advanced by Justice Brennan. And if Justice Stevens would be inclined to find purposeful availment where a defendant's regular course of dealing results in deliveries of a substantial volume to the forum state, the facts here would pass muster under his analysis as well.

Finally, it is not at all clear that Justice O'Connor's "something more" test would not be met here. The purpose of the "something more" in Justice

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[8] Even if the stream-of-commerce issue were cleanly presented, the State notes that this Court recently denied certiorari in a case in which the court below explicitly acknowledged that it was applying Justice Brennan's test and that application of a different test would likely preclude jurisdiction. *Ainsworth v. Moffett Eng'g, Ltd.*, 716 F.3d 174, 177-78, (5th Cir.), *cert. denied*, 134 S. Ct. 644 (2013). Petitioners do not show that anything has changed since that denial to warrant this Court's review.

O'Connor's test is to show evidence of "an intent or purpose to serve the market in the forum State." *Id.* at 112. Here, the State alleges that Petitioners intended that their products be incorporated into finished products (often by their corporate affiliates or co-conspirators) and sold in the forum state, and intended to affect the forum state's market in an anti-competitive manner. BIO App. 17a-18a, ¶¶ 46, 47, 50. Given the liberal notice pleading rules applicable here, such allegations should suffice to show an intent to serve the market.

Indeed, the allegations here are similar to the facts in cases that Justice O'Connor held up as examples of "something more." In one such case, the court upheld personal jurisdiction over the Italian manufacturer of ball bearing assemblies that were sold to an Italian subsidiary and then to an independent Italian corporation, which incorporated the ball bearing assemblies in the production of helicopters marketed to the United States. *Rockwell Int'l Corp.*, 553 F. Supp. 328 (cited at *Asahi*, 480 U.S. at 112). The court found that the manufacturer had purposefully availed itself of the forum state's market in part because its ball bearing assemblies were designed for a helicopter that it knew would be marketed to the United States and Europe. *Id.* at 331. If this is the kind of "designing the product for the market" that Justice O'Connor had in mind as "something more," then the test is easily met here. North America represented a substantial portion of the global market for Petitioners' products, so it is at least within the permissible inferences at the pleading stage to conclude that Petitioners designed

their product with this multi-billion dollar market in mind.

Justice O'Connor also cited with approval a case in which a foreign manufacturer itself had no contacts with the forum state, but sold its product to a subsidiary, which marketed the product in the United States. *Asahi*, 480 U.S. at 112-13 (citing *Hicks*, 452 F. Supp. 130). The court in *Hicks* upheld jurisdiction based on the fact that the subsidiary acted as the sales agent for the defendant, and that it sold to the subsidiary "with the knowledge that its manufactured units would be brought to Pennsylvania and sold at retail . . . ." *Hicks*, 452 F. Supp. at 134. As detailed above, both Samsung and Philips had U.S.-based subsidiaries who are named as defendants here, and the State alleges that Petitioners "sold and/or distributed CRT Products, either directly or indirectly through [their] subsidiaries or affiliates, to customers throughout the United States and Washington." BIO App. 6a-9a, ¶¶ 13, 15, 18, 20, 21, 22. At a minimum, even if the "something more" test were applied, the State should be allowed to discover the extent of influence or control Petitioners had over their subsidiaries and affiliates who distributed the finished products incorporating CRTs to the forum state.

The allegations in the State's complaint, construed liberally as the state court did here, satisfy any version of the stream-of-commerce test from *Asahi*. This case is thus a deeply flawed vehicle for resolving any ongoing dispute between the competing approaches in *Asahi*.

D. The Decision Below Poses No Conflict With Any Decision of This Court; It is Petitioners Who Seek a Radical Change in the Law

Petitioners and amici also claim that the decision below runs contrary to this Court's recent case law. Pet. 18; Amici Br. 9. But the decision below is firmly grounded in this Court's precedent, and it is Petitioners and their amici that seek to redraw jurisdictional principles to protect multi-national corporations sophisticated enough to structure their corporate families to avoid jurisdiction.

1. The decision below is consistent with post-*Asahi* decisions of this Court

Petitioners claim that this Court has significantly narrowed personal jurisdiction since *Asahi* and adopted a more restrictive analysis for manufacturers of component parts. Pet. 19-21; Amici Br. 12-14. Neither premise is supported by this Court's precedent. While it is undoubtedly true that this Court has, since *Asahi*, reaffirmed that purposeful availment of a forum must be based on acts of the defendant and not unilateral acts of third parties, this principle has always been a part of the stream-of-commerce theory, and in no way contradicts it.

Relying primarily on this Court's decision in *Walden v. Fiore*, 134 S. Ct. 1115 (2014), Petitioners and amici argue that application of the stream-of-commerce theory is inconsistent with requiring an act of the defendant to purposefully avail itself of the forum state. Pet. 18-19; Amici Br. 9. In *Walden*, this

Court did not address the stream-of-commerce theory at all, but reaffirmed the principle that jurisdiction must be based on the defendant's connection with the forum as contrasted with "random, fortuitous, or attenuated" contacts made through a third party's connection with the forum. *Walden*, 134 S. Ct. at 1123.

Petitioners' argument misunderstands the stream-of-commerce theory, which has never been an avenue for avoiding the requirement that purposeful availment be based on the acts of the defendant; rather, the stream-of-commerce theory is a tool by which the Court can determine that a defendant who is not physically present in a forum state nevertheless is purposefully seeking to take advantage of its markets. *See, e.g.*, *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980) (defendant who delivers its products into stream of commerce with expectation that it will be purchased in forum state seeks to take advantage of that market, even if indirectly); *accord Asahi*, 480 U.S. at 117 (Brennan, J., concurring).

Put another way, there is little difference in intent or purpose between placing an object on a conveyor belt to arrive at a destination and dropping off the object after carrying it there, even if the conveyor belt is operated by a third party. In either instance, the destination is "targeted" as the journey's end. Similarly, when a manufacturer places its products into the stream of commerce, knowing and intending that the regular chains of commercial distribution will bring the product to a particular market, it is seeking to serve that market, and thus to avail itself of its benefits and protections. That

conclusion is especially obvious when, as here, the manufacturer sells its product to a corporate affiliate who then distributes it to the forum state.

Understood properly, the stream-of-commerce theory is perfectly consistent with this Court's requirement that jurisdiction be based on acts of the defendant showing purposeful availment of a market. Therefore, cases like *Walden* that underscore the importance of a defendant's conduct do not impact in any way the continued validity of the stream-of-commerce principle.

Similarly, Petitioners and amici's attempts to cast even the dissenting opinion in *McIntyre* as supporting a special, more defendant-friendly rule for manufacturers of components misses the primary thrust of that opinion. Pet. 21, Amici Br. 13-14. In claiming support for their position in Justice Ginsburg's dissent, Petitioners and amici make far too much of the statement distinguishing *Asahi* because the defendant there was a component manufacturer that did not itself seek to make sales in the United States. Pet. 21; Amici Br. 13. Justice Ginsburg distinguished *Asahi* not to announce a different rule for component manufacturers or to offer an opinion on whether the manufacturer in *Asahi* had the requisite minimum contacts, but rather to show that *Asahi* did not compel finding a lack of jurisdiction in *McIntyre*. *McIntyre*, 564 U.S. at 908.

The balance of Justice Ginsburg's opinion was concerned with manufacturers profiting from sales to a forum state but avoiding liability by using middlemen, and decried a rule in which a

manufacturer "need only Pilate-like wash its hands of a product by having independent distributors market it." *Id.* at 894 (quoting Russell J. Weintraub, *A Map Out of the Personal Jurisdiction Labyrinth*, 28 U.C. Davis L. Rev. 531, 555 (1995)). Thus, Justice Ginsburg would reject jurisdiction only where a defendant's product reaching the forum was solely the result of random, fortuitous, or attenuated contacts. *Id.* at 905 (citing *Burger King*, 471 U.S. at 475). Both the animating concerns and the test endorsed by Justice Ginsburg's opinion strongly reject Petitioners' view of the law. This rejection is further shown by the cases cited with approval by Justice Ginsburg in an Appendix, some of which involve foreign manufacturers with no direct contact with the forum state, including at least one involving a component manufacturer. *Id.* at 912-13 (citing, *inter alia*, *Oswalt v. Scripto, Inc.*, 616 F.2d 191, 200 (5th Cir. 1980); *Ex parte DBI, Inc.*, 23 So. 3d 635, 654-55 (Ala. 2009)).

The notion that Justice Ginsburg adopted a rule that component manufacturers are subject to a more protective rule regarding personal jurisdiction is also belied by the fact that this Court has never recognized such a rule. Although *Asahi* itself involved a component manufacturer and resulted in three separate opinions, not one suggested a different analysis or result based on the defendant manufacturing a component rather than a finished product, and all of the opinions relied on precedent regarding finished good and component part manufacturers interchangeably. *See Asahi*, 480 U.S. at 109-13 (O'Connor, J., concurring); *id.* at 116-20

(Brennan, J., concurring); *id.* at 121-122 (Stevens, J., concurring).

2. Petitioners seek unprecedented protection from liability for foreign corporations that intentionally profit from wrongdoing that causes harm in a forum state

The court below faithfully relied on long-standing precedent in *World-Wide Volkswagen* and *Burger King*, and applied this Court's later divided opinions conservatively by issuing a narrow, fact-bound decision. But Petitioners and amici advocate a rule that would effectively insulate all non-resident manufacturers from suit within a forum state—at least those manufacturers large and sophisticated enough to structure their businesses to avoid such suits. According to Petitioners, so long as a business only contacts the United States through its subsidiaries or affiliates, it can avoid personal jurisdiction.

Petitioners' and amici's view of what constitutes an act of the defendant directed toward a forum state, and what constitutes unilateral acts of third parties, would allow sophisticated corporations such as Petitioners to choose for themselves whether they will be subject to lawsuits. Their unilateral choice will be without regard to where they derive their profits and where their products most cause harm. This Court's opinions do not afford non-resident corporations this choice, nor should they. As this Court held in *Burger King*, "where individuals 'purposefully derive benefit' from their interstate activities, it may well be unfair to allow them to

escape having to account in other States for consequences that arise proximately from such activities[.]" *Burger King*, 471 U.S. at 473-74 (citation omitted).

CONCLUSION

This Court should deny certiorari.

RESPECTFULLY SUBMITTED.

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December 21, 2016

APPENDIX

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

THE STATE OF WASHINGTON,

Plaintiff,

v.

LG ELECTRONICS, INC.; LG ELECTRONICS U.S.A., INC.; KONINKLIJKE PHILIPS ELECTRONICS N.V. A/K/A ROYAL PHILIPS ELECTRONICS N.V.; PHILIPS ELECTRONICS NORTH AMERICA CORPORATION; PHILIPS ELECTRONICS INDUSTRIES (TAIWAN), LTD.; SAMSUNG SDI CO., LTD. F/K/A SAMSUNG DISPLAY DEVICE CO., LTD.; SAMSUNG SDI AMERICA, INC.; SAMSUNG SDI MEXICO S.A. DE C.V.; SAMSUNG SDI BRASIL LTDA.; SHENZHEN SAMSUNG SDI CO., LTD.; TIANJIN SAMSUNG SDI CO., LTD.; SAMSUNG SDI (MALAYSIA) SDN. BHD.; TOSHIBA CORPORATION; TOSHIBA AMERICA ELECTRONIC COMPONENTS, INC.; MT PICTURE DISPLAY CO., LTD.; PANASONIC CORPORATION F/K/A MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD.; PANASONIC CORPORATION OF NORTH AMERICA; HITACHI, LTD.; HITACHI DISPLAYS, LTD.; HITACHI ELECTRONIC DEVICES (USA), INC.; HITACHI ASIA, LTD.; CHUNGHWA PICTURE TUBES LTD.; CPTF OPTRONICS CO., LTD.; CHUNGHWA PICTURE TUBES (MALAYSIA) SDN. BHD.,

Defendants.

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CASE NUMBER:
12-2-15842-8-SEA

NO. 12-2-15842-8 SEA

COMPLAINT FOR INJUNCTION, DAMAGES, RESTITUTION, CIVIL PENALTIES AND OTHER RELIEF UNDER THE WASHINGTON STATE CONSUMER PROTECTION ACT, RCW 19.86

DEMAND FOR JURY TRIAL

Plaintiff, State of Washington, through its Attorney General, brings this action on behalf of itself and as *parens patriae* on behalf of persons residing in the State, against LG Electronics, Inc., LG Electronics U.S.A., Inc., Koninklijke Philips electronics N.V. *a/k/a* Royal Philips Electronics N.V., Philips Electronics North America Corporation, Philips Electronics Industries (Taiwan), Ltd., Samsung SDI Co., Ltd. *f/k/a* Samsung Display Device Co., Ltd., Samsung SDI America, Inc., Samsung SDI Mexico S.A. de C.V., Samsung SDI Brasil Ltda., Shenzhen Samsung SDI Co., Ltd., Tianjin Samsung SDI Co., Ltd., Samsung SDI (Malaysia) Sdn. Bhd., Toshiba Corporation, Toshiba America Electronic Components, Inc., MT Picture Display Co., Ltd., Panasonic Corporation *f/k/a* Matsushita Electric Industrial Co., Ltd., Panasonic Corporation of North America, Hitachi, Ltd., Hitachi Displays, Ltd., Hitachi Electronic Devices (USA), Inc., Hitachi Asia, Ltd., Chunghwa Picture Tubes Ltd., CPTF Optronics Co., Ltd., and Chunghwa Picture Tubes (Malaysia) Sdn. Bhd., to recover damages, restitution, civil penalties, costs and fees, and injunctive relief. The state of Washington demands trial by jury of all issues stated herein.

I. NATURE OF THE CASE

1. This action alleges that defendants engaged in violations of state antitrust law prohibiting anticompetitive conduct from at least March 1, 1995, through at least November 25, 2007 (the "Conspiracy Period"). Defendants' actions included, but were not limited to, conspiring to suppress and eliminate competition by agreeing to raise prices and agreeing on production levels in the

market for cathode ray tubes, commonly referred to as CRTs.

2. The state of Washington, through its Attorney General, brings this action on behalf of itself and as *parens patriae* on behalf of persons residing in the State pursuant to RCW 19.86, the Consumer Protection Act.

3. Defendants' conspiracy affected billions of dollars in United States commerce and damaged a large number of Washington State agencies and residents.

II. JURISDICTION AND VENUE

4. This action alleges violations of the Consumer Protection Act ("CPA"), RCW 19.86. Jurisdiction exists pursuant to RCW 19.86.160.

5. Venue is proper in King County because the Plaintiff resides therein; a significant portion of the acts giving rise to this action occurred in King County; the Defendants' and their co-conspirators' activities were intended to, and did have, a substantial and foreseeable effect on Washington State trade and commerce; the conspiracy affected the price of CRTs and CRT Products purchased in Washington; and all Defendants knew or expected that products containing their CRTs would be sold in the U.S. and into Washington.

III. DEFINITIONS

6. As used herein,

a. "CRT" or "CRTs" means cathode ray tube(s). A CRT is a display technology used in televisions, computer monitors, and other specialized

applications. A CRT is a vacuum tube that is coded on the inside face with light sensitive phosphors. An electron gun at the end of the vacuum tube emits electron beams. When the electron beams strike the phosphors, the phosphors produce either red, green, or blue light. A system of magnetic fields inside the CRT, as well as voltage variations, directs the beams to produce the desired colors. This process is rapidly repeated several times per second to produce the desired images.

b. "CDT" or "Color Display Tubes" means a type of CRT which is used in computer monitors and other specialized applications.

c. "CPT" or "Color Picture Tubes" means a type of CRT which is used in televisions.

d. Color Display Tubes and Color Picture Tubes are collectively referred to herein as "cathode ray tubes" or "CRTs."

e. "CRT Products" means CRTs and products containing CRTs, such as televisions and computer monitors.

f. "OEM" means an Original Equipment Manufacturer of CRT products.

g. "Resident" and "Person" mean any individual, partnership, corporation, association, or other business or legal entity as defined in Wash. Rev. Code 19.86.010(1).

h. "Conspiracy Period" means the period beginning March 1, 1995 through at least November 25, 2007.

IV. THE PARTIES

A. Plaintiff

7. The Plaintiff is the State of Washington on its own behalf and as *parens patriae* on behalf of Residents of the State during the Conspiracy Period, by and through its Attorney General.

8. The state of Washington has a quasi-sovereign interest in maintaining the integrity of markets operating within its boundaries, protecting its citizens from anticompetitive and unlawful practices and supporting the general welfare of its Residents and its economy.

9. The Washington Attorney General is charged with representing the citizens of the State as *parens patriae* and is the only authorized legal representative of its state agencies.

B. Defendants

10. Defendant LG Electronics, Inc. ("LGE") is a corporation organized under the laws of the Republic of Korea with its principal place of business located at LG Twin Towers, 20 Yeouido-dong, Yeoungdeungpo-gue, Seoul 150-721, South Korea. The company's name was changed from GoldStar to LG Electronics, Inc. in 1995. LGE acquired Zenith, a US corporation, in 1995. In 2001, LGE's CRT business became part of a joint venture with Defendant Royal Philips, forming LG Philips Displays. During the Conspiracy Period, LGE manufactured, marketed, sold and/or distributed CRT Products, directly or indirectly through its subsidiaries or affiliates, to customers throughout the United States and Washington.

11. Defendant LG Electronics U.S.A., Inc. ("LGEUSA") is a Delaware corporation with its principal place of business located at 1000 Sylvan Avenue, Englewood Cliffs, NJ 07632. LGEUSA is a wholly-owned and controlled subsidiary of Defendant LGE. During the Conspiracy Period, LGEUSA manufactured, marketed, sold and/or distributed CRT Products, directly or indirectly through its subsidiaries or affiliates, to customers throughout the United States and Washington. LGEUSA has registered with the Washington State Secretary of State for purposes of doing business in Washington and does have a registered agent in Washington State.

12. Defendants LGE and LGEUSA are collectively referred to herein as "LG."

13. Defendant Koninklijke Philips Electronics N.V. *a/k/a* Royal Philips Electronics N.V. ("Royal Philips") is a Dutch company with its principal place of business located at Amstelplein 2, Breitner Center, 1070 MX, Amsterdam, The Netherlands. In 2001 Royal Philips transferred its CRT business to a joint venture with Defendant LG Electronics, Inc. During the Conspiracy Period, Royal Philips manufactured, marketed, sold and/or distributed CRT Products, directly or indirectly through its subsidiaries or affiliates, to customers throughout the United States and Washington.

14. Defendant Philips Electronics North America Corporation ("PENAC") is a Delaware corporation with its principal place of business located at 3000 Minuteman Road, Andover, MA 01810. PENAC is a wholly-owned and controlled

subsidiary of Philips Holding USA, Inc., which directly and indirectly is a wholly owned subsidiary of Defendant Royal Philips. During the Class Period, PENAC manufactured, marketed, sold and/or distributed CRT Products, directly or indirectly through its subsidiaries or affiliates, to customers throughout the United States and Washington. PENAC has registered with the Washington State Secretary of State for purposes of doing business in Washington and does have a registered agent in Washington State.

15. Defendant Philips Electronics Industries (Taiwan), Ltd. ("Philips Taiwan") is a Taiwanese company with its principal place of business located at 15F 3-1 Yuanqu St., Nangang District, Taipei, 115, Taiwan. Philips Taiwan is a subsidiary of Defendant Royal Philips. During the Conspiracy Period, Philips Taiwan manufactured, marketed, sold and/or distributed CRT Products, directly or indirectly through its subsidiaries or affiliates, to customers throughout the United States and Washington.

16. Defendants Royal Philips, PENAC, and Philips Taiwan are collectively referred to herein as "Philips."

17. Defendant Samsung SDI Co., Ltd. *f/k/a* Samsung Display Device Co., Ltd. ("Samsung SDI"), is a South Korean company with its principal place of business located at 428-5 Gongse-dong Giheung-gu, Yongin-si Gyeonggi-do, South Korea 031-288-4114. Samsung SDI is a public company. During the Conspiracy Period Samsung SDI manufactured, marketed, sold and/or distributed CRT Products,

directly or indirectly through its subsidiaries or affiliates, to customers throughout the United States and Washington.

18. Defendant Samsung SDI America, Inc. ("Samsung SDI America") is a California corporation with its principal place of business located at 3333 Michelson Drive, Suite 700, Irvine, California. Samsung SDI America is a wholly-owned and controlled subsidiary of Defendant Samsung SDI. During the Conspiracy Period, Samsung SDI America manufactured, marketed, sold and/or distributed CRT Products, either directly or indirectly through its subsidiaries or affiliates, to customers throughout the United States and Washington.

19. Defendant Samsung SDI Mexico S.A. de C.V. ("Samsung SDI Mexico") is a Mexican company with its principal place of business located at Blvd. Los Olivos No. 21014, Parque Industrial El Florido, Tijuana, B.C. Samsung SDI Mexico is a wholly-owned and controlled subsidiary of Defendant Samsung SDI. During the Conspiracy Period, Samsung SDI Mexico manufactured, marketed, sold and/or distributed CRT Products, either directly or indirectly through its subsidiaries or affiliates, to customers throughout the United States and Washington.

20. Defendant Samsung SDI Brasil Ltda. ("Samsung SDI Brazil") is a Brazilian company with its principal place of business located at Av. Eixo Norte Sul, S/N, Distrito Industrial, 69088-480 Manaus, Amazonas, Brazil. Samsung SDI Brazil is a wholly-owned and controlled subsidiary of Defendant

Samsung SDI. During the Conspiracy Period, Samsung SDI Brazil manufactured, marketed, sold and/or distributed CRT Products, either directly or indirectly through its subsidiaries or affiliates, to customers throughout the United States and Washington.

21. Defendant Shenzhen Samsung SDI Co., Ltd. ("Samsung SDI Shenzhen") is a Chinese company with its principal place of business located at Huanggang Bei Lu, Futuan Gu, Shenzhen, China. Samsung SDI Shenzhen is a wholly-owned and controlled subsidiary of Defendant Samsung SDI. During the Conspiracy Period, Samsung SDI Shenzhen manufactured, marketed, sold and/or distributed CRT Products, directly or indirectly through its subsidiaries or affiliates, to customers throughout the United States and Washington.

22. Defendant Tianjin Samsung SDI Co., Ltd. ("Samsung SDI Tianjin") is a Chinese company with its principal place of business located at Developing Zone of Yi-Xian Park, Wuqing County, Tianjin, China. Samsung SDI Tianjin is a wholly-owned and controlled subsidiary of Defendant Samsung SDI. During the Conspiracy Period, Samsung SDI Tianjin manufactured, marketed, sold and/or distributed CRT Products, directly or indirectly through its subsidiaries or affiliates, to customers throughout the United States and Washington.

23. Defendant Samsung SDI (Malaysia) Sdn. Bhd. ("Samsung SDI Malaysia") is a Malaysian company with its principal place of business located at Lot 635 & 660, Kawasan Perindustrian, Tuanku,

Jaafar, 71450 Sungai Gadut, Negeri Semblian Darul Khusus, Malaysia. Samsung SDI Malaysia is a wholly-owned and controlled subsidiary of Defendant Samsung SDI. During the Conspiracy Period, Samsung SDI Malaysia manufactured, marketed, sold and/or distributed CRT Products, directly or indirectly through its subsidiaries or affiliates, to customers throughout the United States and Washington.

24. Defendants Samsung SDI, Samsung SDI America, Samsung SDI Mexico, Samsung SDI Brazil, Samsung SDI Shenzhen, Samsung SDI Tianjin, and Samsung SDI Malaysia are referred to collectively herein as "Samsung."

25. Defendant Toshiba Corporation is a Japanese corporation with its principal place of business at 1-1, Shibaura 1-chome, Minato-ku, Tokyo 105-8001, Japan. In 2002, Toshiba Corporation entered into a joint venture with Defendant Panasonic Corporation called MT Picture Display Co. Ltd., in which the entities consolidated their CRT businesses. During the Conspiracy Period, Toshiba Corporation manufactured, marketed sold and/or distributed CRT Products, either directly or indirectly through its subsidiaries or affiliates, to customers throughout the United States and Washington. Toshiba Engineering Center, located in Kirkland, Washington is owned by Toshiba America Information Systems Inc., an independently operating company owned by Toshiba America Inc., a subsidiary of Toshiba Corporation.

26. Defendant Toshiba America Electronic Components, Inc. ("TAEC") is a California

corporation with its principal place of business located at 9775 Toledo Way, Irvine, California 92618, and 19000 MacArthur Boulevard, Suite 400, Irvine, California 92612. TAEC is a wholly-owned and controlled subsidiary of Toshiba America, which is a holding company for Defendant Toshiba Corporation. During the Conspiracy Period, TAEC manufactured, marketed, sold and/or distributed CRT Products, either directly or indirectly through its subsidiaries or affiliates, to customers throughout the United States and Washington. During the Conspiracy Period, defendant Toshiba Corporation controlled the finances, policies, and affairs of TAEC. TAEC has registered with the Washington State Secretary of State for purposes of doing business in Washington and does have a registered agent in Washington State.

27. Defendants Toshiba Corporation and TAEC are referred to collectively herein as "Toshiba."

28. Defendant MT Picture Display Co., Ltd. ("MTPD") was established as a joint venture between Defendants Panasonic Corporation and Toshiba Corporation. MTPD is a Japanese entity with its principal place of business located at 1-1, Saiwai-cho, Takatsuki-shi, Osaka 569-1193, Japan. On April 3, 2007, Defendant Panasonic Corporation purchased all other shares of MTPD, making it a wholly-owned subsidiary, and renamed it MT Picture Display Co., Ltd. During the Conspiracy Period, MTPD manufactured, marketed, sold and/or distributed CRT Products, either directly or indirectly through its subsidiaries or affiliates, to customers throughout the United States and Washington.

29. Defendant Panasonic Corporation, which was at all times during the Conspiracy Period known as Matsushita Electric Industrial Co., Ltd. and became Panasonic Corporation on October 1, 2008, is a Japanese entity with its principal place of business located at 1006 Oaza Kadoma, Kadoma-shi, Osaka 571-8501, Japan. In 2002, Panasonic Corporation entered into a joint venture with Defendant Toshiba Corporation forming Defendant MTPD. On April 3, 2007, Panasonic Corporation purchased all other shares of MTPD, making MTPD a wholly-owned subsidiary of Panasonic Corporation. During the Conspiracy Period, Panasonic Corporation manufactured, marketed, sold and/or distributed CRT Products, either directly or indirectly through its subsidiaries or affiliates, to customers throughout the United States and Washington.

30. Defendant Panasonic Corporation of North America ("Panasonic NA") is a Delaware corporation with its principal place of business located at One Panasonic Way, Secaucus, New Jersey 07094. Panasonic NA is a wholly-owned and controlled subsidiary of Defendant Panasonic Corporation. During the Conspiracy Period, Panasonic NA manufactured, marketed, sold and/or distributed CRT Products, either directly or indirectly through its subsidiaries or affiliates, to customers throughout the United States and Washington. Panasonic NA operates a branch of its business in Kent, Washington. Panasonic NA has registered with the Washington State Secretary of State for purposes of doing business in Washington

and does have a registered agent in Washington State.

31. Defendants Panasonic Corporation and Panasonic NA are collectively referred to herein as "Panasonic."

32. Defendant Hitachi, Ltd. is a Japanese company with its principal place of business located at 6-1 Marunouchi Center Building 13F, Chiyoda-ku, Tokyo 100-8280, Japan. During the Conspiracy Period, Hitachi Ltd. manufactured, marketed, sold and/or distributed CRT Products, either directly or indirectly through its subsidiaries or affiliates, to customers throughout the United States and Washington. Hitachi Data Systems, located in Bellevue, WA, is a wholly owned subsidiary of Hitachi, Ltd.

33. Hitachi Displays, Ltd. ("Hitachi Displays") is a Japanese company with its principal place of business located at AKS Bldg. 5F, 6-2, Kanda Neribei-cho 3, Chiyoda-ku. Tokyo, Japan. In 2002, Defendant Hitachi, Ltd spun off its CRT business to create a separate company called Hitachi Displays, Ltd. During the Conspiracy Period, Hitachi Displays and its predecessor companies manufactured, marketed, sold and/or distributed CRT Products, either directly or indirectly through its subsidiaries or affiliates, to customers throughout the United States and Washington. Defendant Hitachi, Ltd. controlled the finances, policies, and affairs of Hitachi Displays during the Conspiracy Period.

34. Hitachi Electronic Devices (USA), Inc. ("HEDUS") is a Delaware corporation with its

principal place of business located as 1000 Hurricane Shoals Road, Ste. D-100, Lawrenceville, GA 30043. HEDUS is a subsidiary of Defendant Hitachi, Ltd. During the Conspiracy Period, HEDUS manufactured, marketed, sold and/or distributed CRT Products to customers, either directly or indirectly through its subsidiaries or affiliates, to customers throughout the United States and Washington. Defendant Hitachi, Ltd. controlled the finances, policies, and affairs of HEDUS during the Conspiracy Period.

35. Defendant Hitachi Asia, Ltd. ("Hitachi Asia") is a Singapore company with its principal place of business located at 7 Tampines, Grande #08-01, Hitachi Square, Singapore 528736. Hitachi Asia is a wholly-owned and controlled subsidiary of Defendant Hitachi, Ltd. During the Conspiracy Period, Hitachi Asia manufactured, marketed, sold and/or distributed CRT Products, either directly or indirectly through its subsidiaries or affiliates, to customers throughout the United States and Washington. Defendant Hitachi, Ltd. controlled the finances, policies, and affairs of Hitachi Asia during the Conspiracy Period.

36. Defendants Hitachi Ltd., Hitachi Displays, HEDUS, and Hitachi Asia are collectively referred to herein as "Hitachi."

37. Defendant Chunghwa Picture Tubes Ltd. ("CPTL") is a Taiwanese company with its principal place of business located at No. 1127, Hépíng Rd, Bade City, Taoyuan County, Taiwan 334. During the Conspiracy Period, CPTL manufactured, marketed, sold and/or distributed CRT Products,

both directly and through its wholly-owned and controlled subsidiaries in Malaysia, China, and Scotland, to customers throughout the United States and Washington.

38. Defendant CPTF Optronics Co., Ltd. ("CPTF") is a Chinese company with its principal place of business located at NO.1 Xing Ye Road, Mawei Hi-tech Development Zone, Fuzhou, China. During the Conspiracy Period, CPTF manufactured, marketed, sold and/or distributed CRT Products, either directly or indirectly through its subsidiaries or affiliates, to customers throughout the United States and Washington. Defendant CPTL controlled the finances, policies, and affairs of CPTF during the Conspiracy Period.

39. Defendant Chunghwa Picture Tubes (Malaysia) Sdn. Bhd. ("Chunghwa Malaysia") is a Malaysian company with its principal place of business located at Lot 1, Subang Hi-Tech Industrial Park, Batu Tiga, 4000 Shah Alam, Selangor Darul Ehsan, Malaysia. Chunghwa Malaysia a wholly-owned and controlled subsidiary of Defendant CPTL. During the Conspiracy Period, Chunghwa Malaysia manufactured, marketed, sold and/or distributed CRT Products, either directly or indirectly through its subsidiaries or affiliates, to customers throughout the United States and Washington. Defendant CPTL controlled the finances, policies, and affairs of Chunghwa Malaysia during the Conspiracy Period.

40. Defendants CPTL, CPTF, and Chunghwa Malaysia are collectively referred to herein as "Chunghwa."

V. CO-CONSPIRATORS AND AGENTS

41. Various other persons, unknown to plaintiff at present, conspired with the Defendants in violation of the laws alleged in this complaint. These co-conspirators engaged in conduct and made statements in furtherance of the conspiracy alleged herein.

42. Any reference herein to any action, transaction, or statement by a corporation means that that corporation engaged in such activity through its officers, directors, employees, agents, or representatives while representing the corporation.

43. Defendants are also liable for acts committed by companies acquired through merger, acquisition, or otherwise, in furtherance of the alleged conspiracy.

VI. TRADE AND COMMERCE

44. During the Conspiracy Period, the Defendants manufactured CRTs that were incorporated into consumer products that were sold globally, both directly and indirectly, including in the United States and to residents of Washington State. CRT Products include, but are not limited to, televisions, computer monitors, and ATMs.

45. The CRT is a vacuum tube containing an electron gun (a source of electrons) and a fluorescent screen used to view images. It has a means to accelerate and deflect the electron beam onto the fluorescent screen to create the images. CRTs are manufactured to a specific size, regardless of manufacturer, and CRTs of like specifications are generally interchangeable regardless of their

manufacturer. Manufacturing standard CRT sizes across the industry facilitates price transparency and allows manufacturers to monitor CRT prices from competitors. These characteristics of the industry enable CRT manufacturers to easily determine when competitors are deviating from cartel pricing levels. During the Conspiracy Period, CRT Products containing price-fixed CRTs produced by the Defendants were sold into the United States and in Washington State, resulting in profits to the Defendants and their co-conspirators.

46. Each of the Defendants sold CRTs into international streams of commerce with the knowledge, intent and expectation that such CRTs would be incorporated into CRT Products to be sold to consumers throughout the United States, including in Washington State.

47. Each of the Defendants manufactured, marketed, and sold CRT Products directly or indirectly to United States companies with the expectation that those CRT Products would be resold into the United States or incorporated into finished CRT Products for sale in the United States.

48. The State of Washington participated in the market for CRTs by virtue of being a purchaser during the Conspiracy Period of CRT Products manufactured by the Defendants or manufactured by companies supplied with CRTs by the Defendants.

49. Washington State Residents participated in the market for CRTs by virtue of being purchasers during the Conspiracy Period of CRT Products containing CRTs manufactured by the

Defendants or manufactured by companies supplied with CRTs by the Defendants.

50. The actions of the Defendants and their co-conspirators were intended to, and did have a direct, substantial, and reasonably foreseeable effect on U.S. domestic import trade and commerce, and on import trade and commerce into and within the State of Washington.

51. The actions of the Defendants and their co-conspirators proximately caused the injuries alleged in this complaint, in that governmental purchasers, businesses, consumers, and other indirect purchasers of CRT Products paid more than they would have in the absence of the conspiracy. This injury is concrete and quantifiable and is traceable to the Defendants' and co-conspirators' conduct.

52. In addition to knowingly and intentionally directing their business towards the United States, some of the Defendants also targeted consumers in the United States by maintaining a physical presence in the United States through offices or subsidiaries, advertising CRT products in the United States, and regularly traveling for business in the United States.

53. Defendant Panasonic, during the Conspiracy Period, targeted Magnolia Hi-Fi, a Washington State retailer of electronics, as a purchaser and reseller of CRT Products, and did make sales of CRT Products containing price fixed CRTs to Magnolia Hi-Fi for resale to Washington State residents.

54. Defendant Panasonic, during the Conspiracy Period, engaged in business concerning the production and sales of CRT Products with Prima Technology, Inc., a subsidiary of Xiamen Overseas Chinese Electronic Co., Ltd. ("XOCECO") located in Washington State.

A. The CRTs Market

55. Until recently, CRTs represented the dominant technology for manufacturing televisions and computer monitor.

56. The structural characteristics of the CRT market are conducive to the type of collusive activity alleged in this Complaint. These characteristics include market concentration, ease of information sharing, relatively consolidated manufacturers, multiple interrelated business relationships, significant barriers to entry, maturity of the CRT Product market and homogeneity of products.

57. During the Conspiracy Period, the CRT industry was dominated by relatively few companies. In 2004, Samsung, LG Philips Displays, MTPD and Chunghwa together held a collective 78% share of the global CRTs market. This high degree of market concentration has facilitated coordination since there are fewer cartel members among which to coordinate pricing or allocate markets, making it easier to monitor the pricing and production of the cartel members.

58. There have been frequent opportunities for Defendants to discuss and exchange competitive information. These include common membership in

trade associations representing the CRTs market and related markets (e.g., TFT-LCD) and interrelated business arrangements such as joint ventures. Communications between Defendants to discuss and agree upon pricing for CRTs took place through at least the use of meetings, telephone calls, and e-mails.

59. Defendants Chunghwa, Hitachi, and Samsung are all members of the Society for Information Display. The annual Society for Information Display Symposium was held in Washington State on least one occasion during the Conspiracy Period. Defendants Samsung and LGE are two of the co-founders of the Korea Display Industry Association. Similarly, LGE, LG Philips Displays, and Samsung were all members of the Electronic Display Industrial Research Association. Defendants discussed and agreed upon pricing for CRTs and monitored their conspiracy while engaged in the business of these trade associations.

60. The CRTs Product industry also experienced a significant degree of consolidation and alignment during the Conspiracy Period, including: (a) the creation of LG Philips Displays in 2001 as a joint venture between Royal Philips and LGE., (b) the 2002 merger of Toshiba Corporation and Panasonic's CRT business into MTPD, and (c) in 1995, Defendant Chunghwa entered into a technology transfer agreement with Defendant Toshiba for large CRTs.

61. In the course of consolidation, defendants also agreed to and did in fact reduce

manufacturing capacity and levels in order to artificially inflate prices.

62. Close business relationships between Defendants provided opportunity for Defendants in the interconnected CRT industry to collude. These business relationships have also created a common interest among competitors, making the conspiracy easier to implement and to enforce than without such relationships.

63. To new market entrants, today or during the Conspiracy Period, the CRT industry would present substantial barriers to entry, which would require substantial time, resources, and industry knowledge to overcome.

64. It is extremely unlikely that a new producer would want to attempt entry into the CRT market in light of the rapidly declining demand for CRT Products.

65. A mature industry, such as the CRT market, is characterized by slim profit margins, which create a strong motivation for competitors to collude.

66. CRT monitors accounted for over 90 percent of the retail market for computer monitors in North America in 1999. Although that figure had dropped to 73 percent by 2002, it was still a substantial share of the market.

67. CRT televisions accounted for 73 percent of the North American television market in 2004 and still held a 46 percent market share at the end of 2006. Globally, CRT televisions accounted for 75 percent of Television units sold in 2006.

VII. ANTICOMPETITIVE CONDUCT

68. Defendants and co-conspirators, through their officers, directors and employees, effectuated a contract, combination, trust, or conspiracy in restraint of trade amongst themselves by participating in meetings and otherwise communicating for the purpose of exchanging price information, agreeing on the prices of CRTs, and manipulating the supply of CRTs so as to reduce production and increase prices. These actions were taken with respect to global sales, and were intended to and did produce effects in United States trade and commerce, including sales in and to Washington State.

69. Each of the Defendants and co-conspirators was a party to joint ventures and other cooperative arrangements. The Defendants and co-conspirators sold CRTs among themselves, providing on-going opportunities to exchange price and output information of the type that is normally closely protected by competitive businesses. These relationships provided both a forum and cover for Defendants' and co-conspirators' collusion. Defendants and co-conspirators had a continuing opportunity to implement and regulate the illegitimate agreements to fix and stabilize prices and to limit output for CRTs during the Conspiracy Period.

70. From 1995 to 1996, Defendants utilized informal bilateral discussions to carry out their conspiracy. During this period, representatives from Defendants visited the other Defendant manufacturers to discuss raising prices for CRTs

generally and to specific customers. These meetings took place in Taiwan, Thailand, Japan, Malaysia, Indonesia, and Singapore.

71. At some point during the Conspiracy Period, Defendants began to meet in a more organized, systematic fashion, and a system of multilateral and bilateral meetings was put in place. Defendants' representatives attended many of these meetings during the Conspiracy Period.

72. The overall CRT conspiracy raised and stabilized worldwide prices that Defendants charged for CRTs, affecting prices for CRT Products purchased in the United States and in Washington State.

A. Glass Meetings

73. A series of meetings referred to by the Defendants as Glass Meetings were held at various locations where Defendants discussed price forecasts, volume, allocation, and supply and demand for CRTs.

74. At these Glass Meetings, Defendants agreed to fix the price of CRTs and reduce the output of CRTs. Defendants exchanged information on inventories, production, sales, and exports. This information was exchanged in ways designed to enable the attendees to agree on what the price should be for CRTs.

75. Top Meetings, the first level of Glass Meetings, were attended by high-level company executives including CEOs, Presidents, and Vice Presidents.

76. Management Meetings, the second level of meetings, were attended by the Defendants' high

level sales managers. Attendees at Management Meetings handled the implementation of the agreements made at Top Meetings.

77. Working Level Meetings, the third level of meetings, were attended by lower level sales and marketing employees. Working Level Meetings were mostly limited to exchanging information and discussing pricing of CRTs because these lower-level employees did not have authority to enter into agreements. The attendees transmitted the competitive information received at meetings up the corporate ladder to those employees with pricing authority.

78. Participants at the Chinese Glass Meetings included the manufacturers located in China, including, but not limited to, Samsung SDI Shenzhen, Samsung SDI Tianjin, and CPTF.

79. Occasionally, Glass Meetings also occurred in various European countries. Attendees at these meetings included Defendants with subsidiaries and/or manufacturing facilities located in Europe, including Philips, LG, Chunghwa, and Samsung.

80. Glass Meetings occurred in Taiwan, South Korea, Europe, China, Singapore, Japan, Indonesia, Thailand, and Malaysia during the Conspiracy Period.

81. Examples of specific agreements reached at the Glass Meetings include, but are not limited to, the following:

a. agreements on CRT prices, including establishing target prices, price ranges, market shares, and price guidelines;

b. agreements as to communications to customers rationalizing price increases;

c. agreements to exchange information regarding shipments, capacity, production, prices, and customer demands for CRTs;

d. agreements to coordinate uniform public statements regarding available capacity and supply;

e. agreements to allocate both overall market shares and shares of certain customers' purchases;

f. agreements to allocate customers;

g. agreements regarding capacity, including agreements to restrict output or to shut down production in certain areas;

h. agreements to audit compliance with such agreements including agreements to visit each other's production facilities;

i. authorized the participation of subordinate employees in the conspiracy; and

j. agreements to keep their meetings secret.

82. Defendants also agreed on the prices at which some of the Defendants would sell CRTs to their own corporate subsidiaries and affiliates that manufactured CRT Products. Defendants attempted to keep internal pricing to their affiliated OEMs at a high enough level to support the high CRT prices set

for other OEMs in the market. By keeping both prices at superficially high levels, Defendants ensured that all direct-purchaser OEMs paid supracompetitive prices for CRTs.

83. Defendants concluded that they needed to make their price increase on CRTs high enough so that their direct customers would be able to justify a corresponding price increase to indirect purchasers. In doing so, Defendants' actions ensured that price increases for CRTs were passed on to indirect purchasers of CRT Products.

84. Defendants, as part of the conspiracy, monitored each other's adherence to these agreements.

B. Ongoing Meetings and Communications

85. Throughout the Conspiracy Period, Defendants engaged in relatively informal discussions. These bilateral discussions occurred on a frequent basis and were more informal than the group meetings. These discussions usually took place between sales and marketing employees and consisted of meetings, telephone calls, or e-mails.

86. Defendants had informal discussions in order to exchange information about pricing, production levels, sales information.

87. Defendants also engaged in such discussions during price negotiations with customers, including customers in the United States.

88. Informal meetings supplemented group meetings and were used to coordinate pricing.

89. Beginning in 1995, examples of Defendants' participation in Glass Meetings and informal communications included, but were not limited to, the following:

a. From at least 1995 through 2007, Defendant Samsung, through Samsung SDI, Samsung SDI Malaysia, Samsung SDI Shenzhen, and Samsung SDI Tianjin, Samsung SDI America, Samsung SDI Brazil, and Samsung SDI Mexico, participated in Glass Meetings at all levels. In addition, Samsung regularly engaged in informal discussions with each of the other Defendants. Through these discussions, Samsung agreed on prices and supply levels for CRTs.

b. From at least 1995 through 2001, Defendant LG, through LGE, participated in Glass Meetings at all levels. After 2001, LG participated in the CRT conspiracy through its joint venture with Royal Philips, LG Philips Displays. LG also engaged in informal discussions with each of the other Defendants on a regular basis. Through these discussions, LG agreed on prices and supply levels for CRTs.

c. Defendant LGEUSA participated or was represented in the Glass Meetings. To the extent LGEUSA sold or distributed CRT Products, they had an important role in the conspiracy since Defendants wanted to ensure that the prices for CRT Products paid by direct purchasers would not undercut the CRT pricing agreements arrived at during Glass Meetings. After 2001, LG participated in the CRT conspiracy through its joint venture with Royal Philips, LG Philips Displays.

d. Between at least 1996 and 2001, Defendant Philips, through Royal Philips, Philips Taiwan, and PENAC, participated in Glass Meetings at all levels. After 2001, Philips participated in the alleged CRT conspiracy through its joint venture with LGE, LG Philips Displays. Philips also engaged in numerous informal discussions with other Defendants. Through these discussions, Philips agreed on prices and supply levels for CRTs.

e. From at least 1995 through 2006, Defendant Chunghwa, through CPTL, CPTF, Chunghwa Malaysia, and representation from their factory in Scotland, participated in Glass Meetings at all levels. A substantial number of these meetings were attended by the highest ranking executives from Chunghwa, including the former Chairman and CEO of CPTL, C.V. Lin. Chunghwa also engaged in informal discussions with each of the other Defendants on a regular basis. Through these discussions, Chunghwa agreed on prices and supply levels for CRTs.

f. Between at least 1995 and 2003, Defendant Toshiba, through Toshiba Corporation and TAEC, participated in several Glass Meetings. After 2003, Toshiba participated in the CRT conspiracy through its joint venture with Panasonic Corporation, MTPD. These meetings were attended by high-level sales managers from Toshiba and MTPD. Toshiba also engaged in multiple informal discussions with other Defendants. Through these discussions, Toshiba agreed on prices and supply levels for CRTs.

g. Between at least 1996 and 2001, Defendant Hitachi, through Hitachi, Ltd., HEDUS, and Hitachi Asia, participated in several Glass Meetings which included attendance by high-level sales managers from Hitachi. Hitachi also engaged in multiple informal discussions with other Defendants. Through these discussions, Hitachi agreed on prices and supply levels for CRTs.

h. Defendant Hitachi Displays participated or was represented in the Glass Meetings. To the extent Hitachi entities sold or distributed CRT Products, they had an important role in the conspiracy since Defendants wanted to ensure that the prices for CRT Products paid by direct purchasers would not undercut the CRT pricing agreements arrived at during Glass Meetings.

i. Between at least 1996 and 2003, Defendant Panasonic, through Panasonic Corporation (known throughout the Conspiracy Period as Matsushita Electric Industrial Co. Ltd.), participated in several Glass Meetings. After 2003, Panasonic participated in the CRT conspiracy through its joint venture with Toshiba Corporation, MTPD. These meetings were attended by high-level sales managers from Panasonic and MTPD. Panasonic also engaged in multiple informal discussions with other Defendants. Through these discussions, Panasonic agreed on prices and supply levels for CRTs.

j. Defendant Panasonic NA participated or was represented in the Glass Meetings. To the extent Panasonic entities sold or distributed CRT

Products, they had an important role in the conspiracy since Defendants wanted to ensure that the prices for CRT Products paid by direct purchasers would not undercut the CRT pricing agreements arrived at during Glass Meetings. After 2003, Panasonic participated in the CRT conspiracy through its joint venture with Toshiba Corporation, MTPD.

k. Between at least 2003 and 2006, Defendant MTPD participated in multiple Glass Meetings. These meetings were attended by high-level managers from MTPD. In addition, MTPD engaged in informal discussions with other Defendants. Through these discussions, MTPD agreed on prices and supply levels for CRTs.

l. Where this complaint refers to a corporate family or companies by a single name in its allegations of participation in the conspiracy, Plaintiff is alleging that one or more employees or agents of entities within the corporate family engaged in conspiratorial meetings on behalf of every company in that family. The individual participants entered into agreements on behalf of, and reported these meetings and discussions to, their respective corporate families. As a result, the entire corporate family was represented in meetings and discussions by their agents and was a party to the agreements reached in them.

B. The CRT Market During the Conspiracy

90. Until recently, CRTs were the dominant technology used in displays such as television and computer monitors. During the Conspiracy Period, this translated into the sale of millions of CRT

Products, resulting in billions of dollars in annual profits to the Defendants.

91. During the whole of the Conspiracy Period, North America was the largest market for CRT televisions and computer monitors. The 1995 worldwide market for CRT monitors was 57.8 million units, 28 million of which were purchased in North America. By 2002, North America still accounted for around 35 percent of the world's CRT monitor supply.

92. Defendants' collusion is evidenced by unusual price behavior in the CRT Product market during the Conspiracy Period. Despite industry predictions that the price of CRT Products would drop and the existence of economic conditions warranting a drop in prices, CRT Product prices remained stable.

93. Defendants also conspired to limit the production of CRTs by shutting down production lines for agreed periods of time and closing or consolidating their manufacturing facilities.

94. Later in the Conspiracy Period, while demand in the United States and other areas for CRT Products declined, Defendants' conspiracy was effective in moderating the normal downward pressures on prices for CRTs caused by the entry and popularity of the new generation LCD panels and plasma display products.

95. Price increases and later relative price stability in the market for CRTs during the Conspiracy Period are inconsistent with a competitive market for a product facing rapidly

decreasing demand caused by a new, substitutable technology.

C. Civil, Criminal, and International Proceedings

96. In August 2011, Samsung SDI paid a $32,000,000 fine to the United States Department of Justice and pled guilty to violating Section 1 of the Sherman Act by fixing prices, reducing output and allocating market shares of color display tubes from at least as early as January 1997 until as late as March 2006.

97. The Samsung SDI plea agreement stated that, in furtherance of the conspiracy, Samsung SDI, through its officers and employees, engaged in discussions and attended meetings with representatives of other major color display tube producers and that in these meetings, agreements were reached to fix prices, reduce output, and allocate market shares of color display tubes to be sold in the United States and elsewhere.

98. On February 10, 2009, a federal grand jury in San Francisco returned a two-count indictment against the former Chairman and Chief Executive Officer of Defendant CPTL, Cheng Yuan Lin, aka C.Y. Lin, for his participation in global conspiracies to fix the prices of two types of CRTs used in computer monitors and televisions. An additional five executives employed by various Defendants during the conspiracy period have been indicted. These executives are currently considered fugitives from the Court.

99. In January 2011, the Korean Fair Trade Commission collectively fined Samsung SDI, CPTL, Chunghwa Malaysia and CPTF approximately $23,600,000 for agreeing to fix prices and cut production in the color display tube market from 1996 through 2006.

100. Chunghwa, in addition to reaching a settlement agreement with the Indirect Purchaser Class which includes providing cooperation, has entered into a Leniency Agreement with the United States Department of Justice, under the Antitrust Criminal Penalty Enhancement and Reform Act of 2004, and is actively cooperating with the DOJ and several civil plaintiffs regarding the allegations contained in this complaint. Royal Philips has reached a settlement agreement with the Direct Purchaser Class which includes cooperation.

VIII. FRAUDULENT CONCEALMENT

101. The Defendants and their co-conspirators repeatedly sought to mask or conceal the conspiracy. At no time did the conspirators publicly admit that they were collaborating to set, stabilize or fix prices and output. Among other actions, they:

a. agreed to actively conceal the nature and existence of their price-fixing agreement;

b. agreed to disseminate false and pretextual reasons for the inflated prices of CRTs during the Conspiracy Period by describing such pricing falsely as being the result of external costs rather than collusion;

c. agreed among themselves on what to tell their customers about price changes, and agreeing upon which attendee would communicate the price change to which customer;

d. agreed among themselves upon the content of public statements regarding capacity and supply; and

e. engaged in a successful, illegal price-fixing conspiracy that by its nature was inherently self-concealing.

102. The state of Washington did not discover, and could not have reasonably discovered the existence of the conspiracy alleged herein prior to learning of the initiation of a class action lawsuit.

IX. CAUSE OF ACTION

Violation of the Consumer Protection Act, RCW 19.86.030

103. Plaintiff realleges and incorporates by reference, as if fully set forth herein, the allegations in paragraphs 1-102 above.

104. The conduct of each of the Defendants alleged herein constitutes a contract, combination or conspiracy with other Defendants in restraint of trade or commerce.

105. Defendants' contract, combination or conspiracy was for the purpose of, and had the effect of, raising and/or stabilizing prices or price levels in violation of the state Consumer Protection Act, RCW 19.86.030.

X. INJURY

106. During the Conspiracy Period consumers and the state of Washington paid supracompetitive prices for CRT products because of the unlawful agreements among the Defendants and their co-conspirators.

107. The acts of the Defendants and co-conspirators caused antitrust injury to victims in the United States, including in Washington State.

XI. REQUEST FOR RELIEF

Plaintiff requests that the Court:

A. Enter judgment in favor of the State of Washington and against Defendants jointly and severally;

B. Adjudge and decree that the Defendants have engaged in the conduct alleged herein;

C. Adjudge and decree the conspiracy described herein to be an unlawful contract, combination or conspiracy in restraint of trade or commerce in the state of Washington in violation of the Unfair Business Practices – Consumer Protection Act, RCW 19.86.030;

D. Award full damages and restitution to the state of Washington on behalf of its state agencies and residents;

E. Award any and all civil penalties allowed by law;

F. Award pre-judgment and post-judgment interest at the highest allowable legal rate and from the earliest time allowable by law;

G. Award costs and attorneys' fees expended in this suit to the full extent allowed by law;

H. Issue appropriate injunctions to prohibit illegal activity; and

I. Any additional relief this Court deems proper and just.

DATED this 1st day of May, 2012.

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