70298-0 70298-0

NO. 70298-0-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON,

Appellant,

v.

LG ELECTRONICS, INC. et al.,

Respondents.

REPLY BRIEF OF APPELLANT STATE OF WASHINGTON

ROBERT W. FERGUSON
Attorney General

David Kerwin
Assistant Attorney General
WSBA #35162
800 5th Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7030

TABLE OF CONTENTS

I. INTRODUCTION 1

II. ARGUMENT 2

A. Defendants Engaged in Purposeful Minimum Contacts in Washington. 3

1. Defendants Engaged in Purposeful Minimum Contacts by Targeting an Untold Number of Products at the United States, Knowing and Intending That They Would be Purchased in Washington. 5

2. Defendants' Reliance on *J. McIntyre* is Misplaced. 8

3. Courts Have Applied the Stream of Commerce Theory in Price-Fixing Cases to Exercise Jurisdiction Over Foreign Defendants. 11

B. This Action Arises from Defendants' Purposeful Contacts with Washington. 12

C. Jurisdiction over Defendants is Reasonable and Comports with Notions of Fair Play and Substantial Justice. 14

D. The Trial Court Improperly Held that the Long-Arm Statute Governs Attorney's fees in this Case. 15

1. The trial court's decision permitting Defendants to recover fees under the long-arm statute is reviewed *de novo*. 15

2. The CPA governs the award of attorney's fees here. 16

3. Defendants are not entitled to fees under the CPA. 18

III. CONCLUSION 20

TABLE OF AUTHORITIES

Cases

Asahi Metal Indus. Co., Ltd. v. Superior Court of Cal. Solano Cnty.,
480 U.S. 102, 107 S. Ct. 1026, 94 L. Ed. 2d 92 (1987)................ 4, 6, 10

Burger King Corp. v. Rudzewicz,
471 U.S. 462, 105 S. Ct. 2174,
85 L. Ed. 2d 528 (1985).. 3, 6, 14

Estep v. Hamilton,
148 Wn. App. 246, 201 P.3d 331 (2008)... 16

Execu-Tech Bus. Sys., Inc. v. New Oji Paper Co. Ltd.,
752 So. 2d 582 (Fla. 2000) 11, 12, 13

Grange Ins. Ass'n v. State,
110 Wn.2d 752, 757 P.2d 933 (1988)... 4, 15

Hitt v. Nissan Motor Co., Ltd.,
399 F. Supp. 838 (S.D. Fla. 1975).. 12

In re W. States Wholesale Natural Gas Antitrust Litig.,
715 F.3d 716 (9th Cir. 2013) 12

J. McIntyre Machinery Ltd. v. Nicastro,
131 S. Ct. 2780, 180 L. Ed. 2d 765 (2011).................................. 8, 9, 10

Kustura v. Dep't of Labor and Indus.,
169 Wn.2d 81, 233 P.3d 853 (2010).. 16

Marks v. U.S.,
430 U.S. 188, 97 S. Ct. 990, 51 L. Ed. 2d 260 (1977)............................ 9

Motorola Inc. v. PC-Tel, Inc.,
58 F. Supp. 2d 349 (D. Del. 1999).. 6, 8, 13

Ochoa v. J.B. Martin and Sons Farms, Inc.,
287 F.3d 1182 (9th Cir. 2002) 14

Omstead v. Brader Heaters, Inc.,
5 Wn. App. 258, 487 P.2d 234 (1971), opinion adopted,
80 Wn.2d 720, 497 P.2d 1310 (1972) 8

Oswalt v. Scripto, Inc.,
616 F.2d 191 (5th Cir. 1980) 7

Pfeiffer v. Int'l Acad. of Biomagnetic Med.,
521 F. Supp. 1331 (W.D. Mo. 1981) 12

Russell v. SNFA,
2013 IL 113, 909, 987 N.E.2d 778, (Ill. 2013) 8, 10, 11

SeaHAVN, Ltd. v. Glitnir Bank,
154 Wn. App. 550, 226 P.3d 141 (2010) 17

State v. Black,
100 Wn.2d 793, 676 P.2d 963 (1984) 18, 19

State v. Reader's Digest Ass'n, Inc.,
81 Wn.2d 259, 501 P.2d 290 (1972) 16

Willemsen v. Invacare Corp.,
352 Or. 191, 282 P.3d 867 (Or. 2012) 9, 10

World-Wide Volkswagen Corp. v. Woodson,
444 U.S. 286, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980) 3, 4, 5, 7

Statutes

RCW 19.86.080 15

RCW 19.86.160 .... 16, 17, 18

RCW 4.28.180 16

RCW 4.28.185 .... 16, 17, 18

Other Authorities

Karl Tegland,
14 *Wash. Prac. Civil Procedure* (2d ed. 2011)...................................... 17

I. INTRODUCTION

In their response, Defendants portray themselves as hapless victims, unfairly swept into an overreaching lawsuit. Defendants would have the Court believe that they can barely find the State of Washington on a map, and the fact that our consumers have been harmed by their illegal conduct is a mere coincidence of international trade. Nothing could be further from the truth. Defendants knew well that they would profit illegally from Washington consumers, and intended for the effects of their conduct to reach Washington State. If the State does not have jurisdiction in a case such as this, the result is that millions of Washington consumers will be at the mercy of international corporations who can simply use a middle man to flood our market with goods which violate the Consumer Protection Act ("CPA").

Defendants raise the specter of any business, large or small (or even a single unlucky farmer), being hauled into court in Washington State whenever they put a non-trivial amount of goods into the stream of commerce. This is most decidedly not the situation presented here. Defendants are major electronics manufacturers who, either themselves or through companies under their control, sent millions of priced fixed goods into the stream of commerce with no doubt, and every intention, that a large portion of those goods would end up in products in our state to be

purchased by our consumers. Defendants take a position which would result in serious consequences for our state. A company, no matter its size, no matter the ubiquity of its products, no matter the CPA Antitrust violation committed, and no matter the intent that its products reach our state, will be utterly free from civil prosecution on behalf of indirect purchasers here in Washington State in our state courts, as long as that company is careful enough to sell through a middle man.

By introducing their products into the stream of commerce and intentionally and knowingly targeting the Washington State market, Defendants engaged in purposeful minimum contacts which rightfully bring them under state court jurisdiction. The exercise of jurisdiction is both reasonable and comports with notions of fair play and substantial justice.

II. ARGUMENT

Defendants address the law on personal jurisdiction by relying on cases dealing with the outer bounds of the due process clause. This case, however, falls squarely within the appropriate exercise of specific jurisdiction and requires no convoluted reasoning or reliance on plurality opinions of debatable precedential value.

Under established law, a state may "assert specific jurisdiction over an out-of-state defendant . . . if the defendant has purposefully

directed his activities at residents of the forum, and the litigation results from alleged injuries that arise out of or relate to those activities." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472-73, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985) (citations and internal quotation marks omitted). Applying this test, the Supreme Court has held, in a binding majority opinion, that "the 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 and those products subsequently injure forum consumers." *Id.* (internal quotation marks omitted). That is exactly what happened here, and Defendants are plainly subject to personal jurisdiction in Washington.

A. Defendants Engaged in Purposeful Minimum Contacts in Washington.

The stream of commerce theory does not invoke an exception to the requirement of purposeful minimum contacts. As both the United States and Washington State Supreme Courts have held, a manufacturer "purposefully avails" itself of a forum when the sale of its products 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 Corp. v. Woodson*, 444 U.S. 286, 297, 100 S. Ct. 559,

62 L. Ed. 2d 490 (1980). Thus, when a defendant's conduct satisfies the stream of commerce test, under *World-Wide Volkswagen Corp.*, it has necessarily engaged in purposeful minimum contacts. In reliance on these principles, the State Supreme Court has stated that "purposeful minimum contacts are established when an out-of-state manufacturer places its products in the stream of interstate commerce, because under those circumstances it is fair to charge the manufacturer with knowledge that its conduct might have consequences in another state." *Grange Ins. Ass'n v. State*, 110 Wn.2d 752, 761, 757 P.2d 933 (1988).[1]

Defendants' analysis of *World-Wide Volkswagen* inverts its actual holding. The Court first notes that foreseeability is not based upon, "the mere likelihood that a product will find its way into the forum State"; rather, it is the "defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp.*, 444 U.S. at 297. The Court then develops this idea, clarifying that a corporation is subject to State jurisdiction when

[1] The Defendants attempt to distance the holding in *Grange* from *World-Wide Volkswagen Corp.* by stating that "*Grange* never once cites to *World-Wide Volkswagen*." Resp't Br. at 31. This argument is disingenuous. While it is true that *Grange* doesn't cite to *World-Wide Volkswagen* by name, *Grange's* discussion of the "split of authority" the United States Supreme Court struggled with in *Asahi Metal Indus. Co., Ltd. v. Superior Court of Cal. Solano Cnty.*, 480 U.S. 102, 107 S. Ct. 1026, 94 L. Ed. 2d 92 (1987), necessarily means it understood the holding in *World-Wide Volkswagen* and its distinction from Justice O'Connor's plurality in *Asahi*. *Grange Ins. Ass'n*, 110 Wn.2d at 761. Indeed, *Grange* went on to state that "[t]here seems to be no similar split of authority within this state's courts" and adopted the same standard as *World-Wide Volkswagen Corp. Id.*

it "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. This highlights exactly the facts presented by this case. It deals not with mere likelihood but, instead, with clear expectations. Accordingly, the Defendants' suggestion that the State has advocated for an "unlimited stream of commerce" is wholly unfounded.

1. Defendants Engaged in Purposeful Minimum Contacts by Targeting an Untold Number of Products at the United States, Knowing and Intending That They Would be Purchased in Washington.

It is incorrect to assert that the State does not allege in its Complaint that Defendants intentionally targeted Washington or its consumers. The State alleges that Defendants' activities were intended to, and did have, a substantial and foreseeable effect on the Washington State economy and state consumers, and that Defendants knew and expected that products containing their price-fixed goods would be sold into Washington State. CP at 3.

During the conspiracy, Defendants reaped large profits by selling millions of price-fixed products for incorporation into televisions, computer monitors, and other consumer goods. Defendants knew and intended that these products would be marketed and sold nationwide,

including in Washington. This intent and knowledge establishes minimum contacts.

As outlined in the State's brief, much of Defendants' price fixing activities are already out in the open. Products containing those price-fixed items made their way en-masse into Washington State, and our consumers and our economy suffered financially as a result. Defendants knew full well that their price-fixed products would be included in appliances with household names regularly sold nationwide and in Washington. Thus, Defendants sold their "products expressly for integration into end user products with full knowledge that these goods [would] then be placed into established distribution channels that service" Washington. *Motorola Inc. v. PC-Tel, Inc.*, 58 F. Supp. 2d 349, 355 (D. Del. 1999).

In short, Defendants "deliver[ed] [their] products into the stream of commerce with the expectation that they [would] be purchased by consumers in the forum State," *Burger King Corp.*, 471 U.S. at 472 (citations and internal quotation marks omitted), and consumers were injured when they paid inflated prices for those products. That is enough to assert personal jurisdiction over Defendants. *Id.*; *see also Asahi Metal Indus. Co., Ltd. v. Superior Court of Cal. Solano Cnty.*, 480 U.S. 102, 117, 107 S. Ct. 1026, 94 L. Ed. 2d 92 (1987) (Brennan, J., plurality) (referring

to the stream of commerce as "the regular and anticipated flow of products from manufacture to distribution to retail sale.")

World-Wide Volkswagen only supports this position. In that case, unlike here, the defendants never made even any indirect sales into Oklahoma through middlemen. *World-Wide Volkswagen Corp.*, 446 U.S. at 295. On those facts, the Court found that the plaintiff's "unilateral activity" of bringing a car to Oklahoma provided an insufficient basis to conclude that the defendants—a distributor with a three-state market, and a dealer with a one-state market—had purposefully availed themselves of the Oklahoma market. *Id.* The Court made clear the limited scope of its holding, however, noting that "if the sale of a product of a manufacturer or distributor . . . is not simply an isolated occurrence," and the manufacturer "deliver[ed] its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State," the manufacturer is subject to personal jurisdiction there. *World-Wide Volkswagen Corp.*, 444 U.S. at 297-98.

Indeed, many courts have recognized that *World-Wide Volkswagen* provides a basis for jurisdiction over a manufacturer seeking the largest market possible for its product through nationwide distribution. *See, e.g.*, *Oswalt v. Scripto, Inc.*, 616 F.2d 191, 199-200 (5th Cir. 1980) (jurisdiction over Japanese manufacturer proper where it delivered products to a U.S.

distributor "with the understanding that [the distributor] . . . would be selling the lighters to a customer with national retail outlets," had not "limit[ed] the states in which the lighters could be sold," and thus "had every reason to believe its product would be sold to a nation-wide market . . . in any or all states."); *accord Omstead v. Brader Heaters, Inc.*, 5 Wn. App. 258, 487 P.2d 234 (1971), opinion adopted, 80 Wn.2d 720, 497 P.2d 1310 (1972). *Olmstead* remains good law in Washington State, and anticipates well both State and Federal cases that followed. In these cases, as here, there is far more than mere unilateral activity of a third party; rather, the non-resident Defendants have "contract[ed] with entities that have a market presence both nationally and world-wide [and] can hardly be heard to complain that [they] did not know the likely destination of some of [their] products would include [the forum state]." *Motorola, Inc.*, 58 F. Supp. 2d at 355; *see also Russell v. SNFA*, 2013 IL 113, 909, 987 N.E.2d 778, 797 (Ill. 2013) (exercising jurisdiction over a French manufacturer of a component part where manufacturer "knowingly used a distributor . . . to distribute and market its products throughout the world, including the United States and [the forum state].")

2. Defendants' Reliance on *J. McIntyre* is Misplaced.

In *J. McIntyre Machinery Ltd. v. Nicastro*, 131 S. Ct. 2780, 180 L. Ed. 2d 765 (2011), New Jersey courts asserted personal jurisdiction over a

British manufacturer even though "the defendant [did] not have a single contact with New Jersey short of the machine in question ending up in this state." *Id.* at 2790 (plurality op.) (internal quotation marks omitted). The manufacturer had never "in any relevant sense targeted the State." *Id.* at 2785. That is not the case here. Defendants intended that millions of their price-fixed products were to be incorporated into finished products destined for sale in Washington. *J. McIntyre* does nothing to change the law in such a case.

Because no opinion in *J. McIntyre* garnered five votes, Justice Breyer's concurring opinion is the only controlling precedent to emerge from the case. *See Marks v. U.S.*, 430 U.S. 188, 97 S. Ct. 990, 51 L. Ed. 2d 260 (1977) ("the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds."); *Willemsen v. Invacare Corp.*, 352 Or. 191, 200, 282 P.3d 867 (Or. 2012) (Justice Breyer's opinion controls under *Marks*).

Justice Breyer concluded that *J. McIntyre* could and should be resolved under existing precedent. "None of our precedents finds that *a single isolated sale* . . . is sufficient." *J. McIntyre Machinery Ltd.*, 131 S. Ct. at 2792 (Breyer, J., concurring) (emphasis added). He then described how the Court's prior stream-of-commerce cases supported his conclusion, noting: (1) a "*single sale* to a customer who takes . . . a

product to a different State . . . is not a sufficient basis for asserting jurisdiction," *Id.* (citing *World-Wide Volkswagen Corp.*) (emphasis added); and (2) the Court "has strongly suggested that a *single sale* of a product in a State does not constitute an adequate basis for asserting jurisdiction over an out-of-state defendant" under the stream of commerce theory. *Id.* (citing *Asahi Metal Indus. Co., Ltd.,* 480 U.S. at 111) (emphasis added).

Justice Breyer thus deemed jurisdiction inappropriate because the record reflected only *the sale of a single product in New Jersey*, and even that was through a distributor. *See Russell*, 987 N.E.2d at 795-96 (noting that *J. McIntyre* only dealt with a "single or isolated sale of a defendant's products"). Justice Breyer did not foreclose or even discuss jurisdiction in cases like this one, involving millions of products distributed nationally and into Washington, with intentional targeting of the state. *Cf. Willemsen v. Invacare Corp.*, 352 Or. at 202-04 (rejecting argument that *J. McIntyre* foreclosed jurisdiction over Taiwanese battery manufacturer in Oregon that sold over 1,000 batteries to national wheelchair company that sold wheelchairs in Oregon).

J. McIntyre did no more than hold that the assertion of jurisdiction was improper where only one product has made its way into the forum state, and it unanimously endorses the continued validity of the stream-of-

commerce theory from *World-Wide Volkswagen* to establish personal jurisdiction. *See, e.g., Russell*, 987 N.E.2d at 793.

3. Courts Have Applied the Stream of Commerce Theory in Price-Fixing Cases to Exercise Jurisdiction Over Foreign Defendants.

Defendants argue that the stream of commerce theory is insufficient to establish personal jurisdiction over an antitrust defendant in a price-fixing case. That is not and cannot be the law.

Many courts have found that a defendant's participation in a price-fixing scheme that increased prices nationwide is sufficient to support jurisdiction under a stream of commerce theory. For example, in *Execu-Tech Bus. Sys., Inc. v. New Oji Paper Co. Ltd.*, 752 So. 2d 582 (Fla. 2000), the Florida Supreme Court held that a Japanese manufacturer of fax paper (New Oji) was subject to personal jurisdiction in Florida for its participation in a price-fixing conspiracy. Like Defendants here, New Oji argued that it only sold its fax paper to trading houses in Japan, who then sold the paper to "converters" who cut it down to size, who then sold the paper to other third parties that sold it at retail. The Court rejected this argument, noting that New Oji was a significant manufacturer of fax paper, had plead guilty to a nationwide price-fixing scheme, and its price-fixed fax paper was sold at inflated prices in every state, including Florida.

Id. at 585-86. On these facts, the Court found sufficient minimum contacts to satisfy due process under *World-Wide Volkswagen*. *Id.*

Likewise, in *Hitt v. Nissan Motor Co.*, jurisdiction was proper over a Japanese car manufacturer that had participated in a conspiracy to fix the price of its automobiles sold in the United States through its wholly-owned subsidiary. *Hitt v. Nissan Motor Co., Ltd.*, 399 F. Supp. 838 (S.D. Fla. 1975). The court reasoned that jurisdiction was proper because the manufacturer "invoked the protections and benefits of the laws of the forum states by causing its products to be shipped to the country and sold in the forum states by its wholly owned subsidiary." *Id.* at 849; *see also Pfeiffer v. Int'l Acad. of Biomagnetic Med.*, 521 F. Supp. 1331 (W.D. Mo. 1981) (jurisdiction found over antitrust defendants who delivered their products into the stream of commerce).

B. This Action Arises from Defendants' Purposeful Contacts with Washington.

This lawsuit plainly arises from Defendants' purposeful contacts with Washington, *i.e.*, their indirect sales of price-fixed products that were purchased by Washington residents. *See, e.g.*, *In re W. States Wholesale Natural Gas Antitrust Litig.*, 715 F.3d 716, 742-43 (9th Cir. 2013) ("Plaintiffs' state antitrust claims arise out of . . . Defendants' collusive manipulation of . . . gas price indices . . . [i]n other words, their claims

arise[ ] out of or relate[ ] to the Defendants' alleged forum-related activities.") (internal quotations omitted).

The requisite nexus under the but for test is satisfied here because Defendants sold their price-fixed goods for integration into end-user products with full knowledge that those products would be sold in Washington, and Washington residents were injured by paying supra-competitive prices for those products. As the Florida Supreme Court held in *Execu-Tech*:

> The [non-resident defendant] . . . is [a] leading producer[] . . . of thermal fax paper used in the United States; (2) [the defendant] pled guilty in federal court to engaging in a nationwide criminal scheme to fix the wholesale price of their product at an artificially high level; and (3) thermal fax paper produced and distributed by the conspirators was sold at a correspondingly inflated retail price in every state, including Florida . . . *Based on these allegations and the supporting affidavits, we conclude that the nexus between New Oji and the retail price paid in Florida for price-fixed thermal fax paper is sufficiently clear and direct to satisfy jurisdictional requirements.*

Execu-Tech Bus. Sys., Inc., 752 So. 2d at 585-86 (emphasis added); *see also Motorola, Inc.*, 58 F. Supp. 2d at 355 (holding that cause of action against non-resident defendant who sold its product "for integration into end user products with full knowledge that [these] goods will then be placed into [nationwide] distribution channels" arose out of those activities).

C. Jurisdiction over Defendants is Reasonable and Comports with Notions of Fair Play and Substantial Justice.

"Once it has been decided that a defendant purposefully established minimum contacts within the forum State, these contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with fair play and substantial justice." *Burger King Corp.*, 471 U.S. at 476 (internal quotation marks omitted). Asserting jurisdiction over Defendants here plainly meets this standard.

The factors to be considered include "the burden on the defendant, the forum State's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and the shared interest of the several States in furthering fundamental substantive social policies." *Id.* at 477 (internal quotation marks omitted). "These considerations sometimes serve to establish the reasonableness of jurisdiction upon a lesser showing of minimum contacts than would otherwise be required." *Id.*; *see also Ochoa v. J.B. Martin and Sons Farms, Inc.*, 287 F.3d 1182, 1188 n.2 (9th Cir. 2002).

In assessing fair play and substantial justice, the Court looks at: (1) "the quality, nature, and extent of the activity in the forum state," (2) "the

relative convenience of the parties," (3) "the benefits and protection of the laws of the forum state afforded the respective parties," and (4) "the basic equities of the situation." *Grange*, 110 Wn.2d at 758. The State's opening brief explained in detail why these factors all counsel in favor of jurisdiction here.

As to the basic equities, there is nothing remotely equitable about allowing Defendants to escape liability to Washington residents for their role in a massive criminal conspiracy—a conspiracy that drove up prices for Washington residents and created a windfall for Defendants.

D. The Trial Court Improperly Held that the Long-Arm Statute Governs Attorney's fees in this Case.

The State brought this case under the Consumer Protection Act, which has a specific provision governing attorney's fees. RCW 19.86.080. Given this clearly applicable provision, it was improper for the trial court to award fees under the general long-arm statute.[2]

1. The trial court's decision permitting Defendants to recover fees under the long-arm statute is reviewed *de novo.*

Contrary to Defendants' assertion, the trial court's order granting fees is reviewed *de novo*, because it is based on a legal ruling that the long-arm statute, rather than the CPA, authorizes the award of fees in this

[2] If the Court rules that Defendants are subject to jurisdiction in Washington, then it need not reach the fee issue. But if the Court rejects the State's argument, it should still remand to the trial court for reconsideration of the fee award.

case. *Estep v. Hamilton*, 148 Wn. App. 246, 259, 201 P.3d 331 (2008) ("[W]hether a statute, contract, or equitable theory authorizes [attorney's fees] is a matter of law subject to *de novo* review."). In this case there has been a legal determination that the general long-arm statute applies over the more specific provision of the CPA. *See Kustura v. Dep't of Labor and Indus.*, 169 Wn.2d 81, 87-88, 233 P.3d 853 (2010) (whether a specific statute controls over a general statute is reviewed *de novo*).

2. The CPA governs the award of attorney's fees here.

The CPA and the Long-arm Statute are not complementary simply because the former references the latter. The CPA only references the general long-arm statute for purposes of determining when a non-resident defendant *has submitted itself to the jurisdiction of the courts of Washington*. *See* RCW 19.86.160 (stating that non-resident defendants have "submit[ed] themselves to the jurisdiction of the courts of this state within the meaning of . . . RCW 4.28.180 and 4.28.185"). Submitting to the jurisdiction of the courts of Washington has nothing to do with whether a non-resident defendant is entitled to fees. Rather, submitting to the jurisdiction of courts in Washington speaks to when asserting jurisdiction is consistent with due process. *Cf. State v. Reader's Digest Ass'n, Inc.*, 81 Wn.2d 259, 276-7, 501 P.2d 290 (1972) (citing cases applying RCW 4.28.185 to determine "whether the performance of an

unfair trade practice . . . *is a sufficient contact to establish jurisdiction*") (emphasis added).[3]

Defendants' argument that an analysis regarding the award of fees is similar under the long-arm statute and the CPA, and that they are therefore complementary, is incorrect. Instead, the authority Defendants point to merely supports the accurate proposition that the long-arm statute of RCW 4.28.185 and the long-arm statute of the CPA found in RCW 19.86.160 both extend to the limits allowed by due process, and therefore are analyzed similarly when looking at the question of jurisdiction. *See* Karl Tegland, 14 *Wash. Prac. Civil Procedure* § 4:24 (2d ed. 2011) (discussing "extraterritorial service" of process); *Reader's Digest Ass'n, Inc.*, 81 Wn.2d at 277-78 (analyzing minimum contacts under the two long-arm statutes). As explained elsewhere, the analysis for awarding attorney's fees under the general long-arm statute is quite distinct from doing so under the CPA.

Defendants point to *SeaHAVN* for the proposition that fees in a CPA action might be awarded pursuant to the general long-arm statute. In the case of *SeaHAVN*, however, plaintiffs brought nine causes of action, only one of which purported to be a CPA claim. *SeaHAVN, Ltd. v. Glitnir*

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[3] The phrase "within the meaning of" reinforces the distinction between these two statutes. This phrasing makes clear that RCW 19.86.160, like RCW 4.28.185 which had been enacted two years prior, is a long-arm statute that authorizes courts to exercise jurisdiction over non-resident defendants.

Bank, 154 Wn. App. 550, 560, 226 P.3d 141 (2010). The present matter involves exclusively CPA claims.

In short, RCW 19.86.160 is a counterpart, not a complement, to RCW 4.28.185.

3. Defendants are not entitled to fees under the CPA.

If the Court reaches the issue and agrees that the trial court erred in holding that Defendants are entitled to fees under the long-arm statute, it should remand to the trial court for further briefing on whether fees are justified under the CPA. While the State does not dispute that Defendants are entitled to request fees under the CPA, it is quite incorrect to suggest that the State does not oppose the awarding of those fees. This is not an issue which was fully briefed and ruled on below and it should be remanded, if necessary.

On the merits, attorney's fees would not be justified under the CPA. In *State v. Black*, 100 Wn.2d 793, 676 P.2d 963 (1984), the State Supreme Court held that prevailing defendants in CPA cases may in some instances be entitled to attorney's fees. The Court identified six (6) factors courts should consider in awarding fees under the CPA, including (1) the need to curb serious abuses of governmental power; (2) the necessity of providing fair treatment to vindicated defendants; (3) the strong public interest in continued vigorous State prosecution of consumer protection

violations; (4) the necessity of avoiding hindsight logic in making the determination; (5) the complexity and length of the case; (6) and the necessity of the lawsuit. *Id.* at 806.

Defendants fail to meaningfully show how any of these factors are satisfied. Instead, Defendants attempt to analogize this case to *Black*, but this is unavailing. The court in *Black* was concerned about "[s]mall businessmen"—in that case, a realtor—"be[ing] forced into bankruptcy to defend what may turn out to be legitimate business practices." *Id.* at 805-06. Here, unlike *Black*, it is very much still at issue whether Defendants engaged in legitimate business practices. Some Defendants have already admitted otherwise. Thus, there is no realistic argument that this case represents a serious abuse of governmental power and Defendants' interests in vindication are unclear at best. In contrast, there is both a strong necessity and public interest in the State's action: Washington residents who paid inflated prices for goods containing Defendants' products have no private cause of action against Defendants, and can only be made whole through the State's lawsuit. Because the fee provision in the long-arm statute is inapplicable and none of the *Black* factors are satisfied here, Defendants are not entitled to attorney's fees.

III. CONCLUSION

Defendants claim that asserting jurisdiction here would mean that, "a company placing its goods into the 'international stream of commerce' is subject to suit in every forum—anywhere in the world—in which a non-trivial amount of its products may end up, without any showing that the company specifically targeted that forum in some way." Resp't Br. at 2. This is hyperbole. Defendants sold hundreds of millions of price-fixed goods for incorporation into finished products knowing and intending that Washington residents would buy them. This is not a case in which Defendants merely *might* have been able to foresee injury occurring in our state. Such injury was intentional and it was *inevitable*. On these facts, Defendants are plainly subject to jurisdiction in Washington, and the State asks the Court to reverse the opinion below and its erroneous assessment of fees against the State.

RESPECTFULLY SUBMITTED this 13th day of December, 2013.

ROBERT W. FERGUSON
ATTORNEY GENERAL

#38051

By: ______________________

FOR: DAVID KERWIN, WSBA #35162
Assistant Attorney General
Attorneys for State of Washington

CERTIFICATE OF SERVICE

I certify under penalty of perjury in accordance with the laws of the State of Washington that on the undersigned date the original and one copy of the preceding Reply Brief of Appellant State of Washington and Certificate of Service were filed in the Washington State Court of Appeals, Division I, at the following address:

Court of Appeals of Washington, Division I
One Union Square
600 University Street
Seattle, WA 98101

And, I further certify that a copy of the preceding Reply Brief of Appellant State of Washington was served on counsel electronically:

Counsel for Defendants Chunghwa Picture Tubes, Ltd., CPTF Optronics, & Chunghwa Picture Tubes (Malaysia):

Malaika M. Eaton,
meaton@mcnaul.com

Peter M. Vial,
pvial@mcnaul.com

Counsel for Defendants Hitachi Displays, Ltd., Hitachi Displays Ltd (n/k/a Japan Display Inc.), Hitachi Electronic Devices (USA), Inc., & Hitachi Asia, Ltd.:

Molly A. Terwilliger,
mollyt@summitlaw.com

Andrew Wiener,
andrew.wiener@kirkland.com

Daniel Markman,
dmarkman@morganlewis.com

Eliot A. Adelson,
eliot.adelson@kirkland.com

James Maxwell Cooper,
max.cooper@kirkland.com

Lynn M. Engel,
lynne@summitlaw.com

Counsel for Defendants Koninklijke Philips Electronics N.V. a/k/a royal Philips Electronics N.V. & Philips Electronics North America Corporation:

Charles Malaise,
charles.malaise@bakerbotts.com

David Emanuelson,
david.emanuelson@bakerbotts.com

John M. Taladay,
john.taladay@bakerbotts.com

Steven A. Reiss,
steven.reiss@bakerbotts.com

Robert D. Stewart,
stewart@kiplinglawgroup.com

Counsel for Defendants LG Electronics, Inc., & LG Electronics U.S.A., Inc.:

Hojoon Hwang,
Hojoon.Hwang@mto.com

Laura Sullivan,
Laura.Sullivan@mto.com

William D. Temko,
William.Temko@mto.com

David C. Lundsgaard,
dlundsgaard@grahamdunn.com

Counsel for Defendants MT Picture Display Co., LTD, Panasonic Corporation, & Panasonic Corporation of North America:

Adam C. Hemlock,
adam.hemlock@weil.com

David Yohai,
david.yohai@weil.com

Jeffrey L. Kessler,
jkessler@winston.com

Molly M. Donovan,
mmdonovan@winston.com

Aric H. Jarrett,
ahjarrett@stoel.com

Timothy W. Snider,
twsnider@stoel.com

David Yolkut,
david.yolkut@weil.com

Eva W. Cole,
ewcole@winston.com

Counsel for Defendants Samsung SDI 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.:

John R. Neeleman,
neelemanj@lanepowell.com

Larry S. Gangnes,
gangnesl@lanepowell.com

Counsel for Defendants Toshiba Corporation, & Toshiba America Electronic Components, Inc.:

Dana E. Foster,
defoster@whitecase.com

Bradford J. Axel,
bja@stokeslaw.com

Matthew L. Harrington,
mlh@stokeslaw.com

DATED this 13 day of December 2013, at Seattle, Washington.

KIMBERLY R. HITCHCOCK,
Paralegal