70299-8

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NO. 70299-8-I

COURT OF APPEALS, DIVISION OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

KONINKLIJKE PHILIPS ELECTRONICS N.V., PHILIPS ELECTRONICS NORTH AMERICA CORPORATION, TOSHIBA CORPORATION, TOSHIBA AMERICA ELECTRONIC COMPONENTS, INC., LG ELECTRONICS, INC., LG ELECTRONICS U.S.A., INC., HITACHI, LTD., HITACHI DISPLAYS, LTD., HITACHI ELECTRONICS DEVICES (USA) INC., AND HITACHI ASIA, LTD.,

Appellants.

THE STATE'S RESPONSE

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ORIGINAL

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I. STATEMENT OF ISSUES

Two questions have been certified to this Court on appeal:

(1) Whether the four-year statute of limitations under RCW 19.86.120 applies to the Washington Attorney General's Complaint brought pursuant to its *parens patriae* authority under RCW 19.86.080 that seeks actual damages for violations of RCW 19.86.030; and

(2) Whether RCW 4.16.160 should be applied to the Washington Attorney General's *parens patriae* antitrust lawsuit seeking actual damages and restitution for citizens of Washington?

II. INTRODUCTION AND STATEMENT OF THE CASE

Defendants fixed the prices of CRTs[1] in violation of the Washington State Consumer Protection Act (CPA). RCW 19.86 *et. seq.* This illegal activity led directly to a very large and unknowable number of Washington State citizens and businesses suffering damages. This illegal activity also harmed the economy of the State. The Attorney General filed

[1] A CRT, or cathode ray tube, is a display technology used in televisions, computer monitors, and other specialized applications.

this lawsuit in response, pursuant to RCW 19.86.030, which makes illegal "[e]very contract, combination, in the form of trust or otherwise, or conspiracy in restraint of trade or commerce." The suit seeks restitution on behalf of persons residing in the State pursuant to RCW 19.86.080 ('080), damages on behalf of State agencies pursuant to RCW 19.86.090 ('090), civil penalties pursuant to RCW 19.86.140, and injunctive relief. Defendants' conspiracy extended to on or about November 25, 2007. The State filed its action on May 1, 2012.

Defendants are now attempting to elude liability for their serious antitrust violations by forcing a statute of limitations onto claims which intentionally have none. But this case does not present the classic question of which statute of limitations applies. Nor is it a close-call matter in which the State's action is difficult to characterize, leaving ambiguous the question of which statute of limitations applies. Rather, it a case in which Defendants grasp onto a statute of limitations which explicitly applies elsewhere, and attempt to force it onto the State's claim. RCW 19.86.120 ('120) states, in relevant part: "Any action to enforce a claim for damages under RCW 19.86.090 shall be forever barred unless commenced within four years after the cause of action accrues." Defendants attempt to argue that the statute of limitations found in '120 somehow applies to an '080

parens claim. This is not simply not so. '120 is explicit on its face as to which claims it applies, and '080 *parens* claims are not among them.

In the alternative, Defendants assert that the State's '080 *parens* claims are barred by one of two catch-all statutes of limitation found in RCW 4.16. This is incorrect. A *parens patriae* claim, brought on behalf of all of the State's consumers, and brought by the only person authorized to bring it, the Attorney General, is brought for the common good of the State as a function of its sovereign power. As such, the claim is explicitly exempted from any RCW 4.16 catch-all statute of limitations by RCW 4.16.160: "...there shall be no limitation to actions brought in the name or for the benefit of the state, and no claim of right predicated upon the lapse of time shall ever be asserted against the state...."

Thus, there is no statute of limitations in the Consumer Protection Act which applies to the State's *parens* claims. And, in addition, the State's *parens* claims are exactly the type of claims, namely those brought for the common good, which the Legislature explicitly exempted from any catch-all statute of limitations. The court below correctly ruled that the State's *parens* claims are not subject to a statute of limitations. That ruling should be affirmed.

Two legal questions of first impression have been certified to this Court on appeal: (1) Whether the four-year statute of limitations under

RCW 19.86.120 applies to the Washington Attorney General's Complaint brought pursuant to its *parens patriae* authority under RCW 19.86.080 that seeks actual damages for violations of RCW 19.86.030; and (2) Whether RCW 4.16.160 should be applied to the Washington Attorney General's *parens patriae* antitrust lawsuit seeking actual damages and restitution for citizens of Washington?

The State notes that the questions certified to the Court contain an error in their phrasing. They refer to the State's *parens patriae* lawsuit as seeking actual damages and restitution. In fact, the *parens* portion of the State's suit, the '080 portion, only seeks restitution.

Defendants engaged in widespread price-fixing of component parts for consumer goods which resulted in enormous damage to the consumers, the businesses, and the economy of Washington State. The vast majority of people harmed by the Defendants' illegal conduct were individual consumers who were indirect purchasers of their goods. Only the State may represent Washington's indirect purchasers in a *parens* antitrust matter. [2] Such a lawsuit is not brought to recover damages for specific

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[2] The distinction between "direct" and "indirect" purchasers is significant under State and federal antitrust laws. For legal and administrative reasons, the U.S .Supreme Court has held that the federal antitrust laws only grant a cause of action to individuals who purchased goods directly from a defendant, as opposed to indirectly through a reseller or retailer. *Illinois Brick. v. Illinois*, 43 U.S. 720 (1977). While some States have followed federal antitrust laws and erected the same bar to indirect purchaser actions under State antitrust laws, many have rejected the Supreme Court's reasoning in Illinois Brick and have instead chosen to bestow a cause of action on their indirect purchasers.

parties, but in order to seek restitution for the State's consumers and economy as a whole. It is a remedy separate and apart from other antitrust causes.

The trial court below correctly ruled that even if a statute of limitations could be found which might arguably apply to the State's '080 *parens* claims, such claims are exempted therefrom by RCW 4.16.160. This exemption enables the State to bring actions for the good of the State and to protect all of its citizens from the type of illegal activity conducted by Defendants.

A. Defendants Participated in a Price-Fixing Conspiracy.

As detailed in the underlying Complaint, Defendants[3] were participants in a global price-fixing conspiracy that saw an enormous quantity of price-fixed CRT products, including televisions and computer monitors, sold into Washington State where they were purchased at inflated prices by this State's consumers. One defendant, 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[4] by fixing prices,

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[3] Defendants listed above in the caption are the parties who argue this appeal, however there are several other named Defendants. The State adopts Appellants' caption for the purpose of consistency.

[4] The Sherman Act, the basis for much of Washington State antitrust law, holds: "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be

reducing output and allocating market shares of CRT Products. Compl. ¶ 96. Several executives from various defendant corporations have been indicted by a federal grand jury. Compl. ¶ 99. Defendant Chunghwa is actively cooperating with the Department of Justice regarding the federal government's investigation into the massive price-fixing enterprise. Compl. ¶ 100. The same price-fixing scheme involving Defendants is, or has been, the subject of litigation in many private actions (MDL No. 1917, Case No. 3:07-CV-5944, In Re Cathode Ray Tube (CRT) Antitrust Litigation, in the US District Court for the Northern District of California), and several State actions, including complaints brought by the States of Florida (consolidated with MDL No. 1917), California (Case No. CGC-11-51578, Superior Court of the State of California, County of San Francisco), Oregon (Case No. 120810246, Circuit Court of the State of Oregon, County of Multnomah), and Illinois (Case No. 12CH35266, Circuit Court of Cook County, Illinois County Department, Chancery Division).

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illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $10,000,000 if a corporation, or, if any other person, $350,000, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court." 15 U.S.C. § 1.

B. The Washington Attorney General's Action.

The complaint alleges that, beginning from at least March 1, 1995, through at least November 25, 2007, Defendants participated in a worldwide conspiracy to fix the prices of CRTs which resulted in higher prices for Washington State citizens and State agencies purchasing products containing CRTs. Compl. ¶ 1, 68. The State alleges that Defendants manufactured, marketed, sold, and/or distributed CRTs and CRT products to customers in Washington State, and that they knew or expected that millions of products containing price-fixed CRTs would be sold into Washington. Compl. ¶ 68. The State seeks (1) injunctive relief, (2) civil penalties, (3) damages for State agencies, and (4) restitution for consumers who purchased CRTs directly from Defendants or indirectly through a finished good. Compl. ¶ 27-28.

C. Procedural History.

After accepting service of process, and prior to any discovery being conducted, Defendants filed motions to dismiss the State's lawsuit as barred by the statute of limitations found in RCW 19.86.120. After taking briefing and hearing argument, the trial court denied the motions. Defendants then made a motion for the trial court to certify the issue to the Appeals Court to consider taking it up on discretionary review. The trial court certified the two legal questions which are before this Court for

review. CP 144-150. The Commissioner of this Court then affirmed that these questions should be certified for consideration on appeal.

Issues of personal jurisdiction were also briefed and heard by the trial court, and are being appealed separately in a linked matter (Case No. 70298-0-I). By stipulation of the parties, the underlying litigation is currently stayed.

III. ARGUMENT

A. The Standard of Review is *De Novo*.

The standard of review on appeal of a summary judgment order is *de novo*. *Castro v. Stanwood School Dist.*, 151 Wn.2d. 221, 224, 86 P.3d 1166 (2004). Additionally, interpretation of a statute is a matter of law which is also reviewed *de novo* on appeal. *Id.* Whether a statute of limitations period applies to bar a claim is a question of law and is also reviewed *de novo*. *Bennett v. Computer Task Group, Inc.*, 112 Wn. App. 102, 106, 47 P.3d 594 (2002).

B. RCW 19.86.120 Does Not Apply to the State's *Parens* Claims.

'080 empowers the Attorney General to bring *parens patriae* claims on behalf of the State's citizens. It States that, "The attorney general may bring an action in the name of the State, or as *parens patriae* on behalf of persons residing in the State, against any person to restrain

and prevent the doing of any act herein prohibited or declared to be unlawful...."

'090 allows private litigants to bring suit on behalf of themselves. It allows "[a]ny person who is injured in his or her business or property by a violation of" the State's antitrust laws to bring suit for damages. It also allows the State to bring suit on behalf of the government itself, and its agencies, if they specifically suffer damages.

'120 sets forth a four year statute of limitations for actions brought under '090. It states:

> "Any action to enforce a claim for damages under ***RCW 19.86.090*** shall be forever barred unless commenced within four years after the cause of action accrues: PROVIDED, That whenever any action is brought by the attorney general for a violation of RCW 19.86.020, 19.86.030, 19.86.040, 19.86.050, or 19.86.060, except actions for the recovery of a civil penalty for violation of an injunction or actions under RCW 19.86.090, the running of the foregoing statute of limitations, with respect to every private right of action for damages under RCW 19.86.090 which is based in whole or part on any matter complained of in said action by the attorney general, shall be suspended during the pendency thereof." (emphasis added). RCW 19.86.120.

The statute is clear on its face and extends no further than specified. There is no reasonable mechanism to impose this statute of limitations on a completely different provision— '080, which is the basis for the State's *parens* claims. '080 and '090 are separate and unique authorizing statutes, despite Defendants' attempts to conflate the two.

1. There is no Ambiguity as to the Application of RCW 19.86.120 and it Does not Apply to *Parens* Claims.

Defendants' argument is premised upon a fundamental misunderstanding of the CPA and of the Attorney General's role in its enforcement. '090 authorizes two types of suit for violations of the CPA. The first is a suit brought by a private plaintiff. The second is a suit brought by the State for damages incurred by State agencies. '080, on the other hand, allows the State to bring suit as *parens patriae* when citizens of the State have been injured through violation of the CPA.[5] The two sections complement each other and contemplate entirely different sets of claims of a very different nature. Thus, Defendants' concerns that litigants might choose between the two statutes at will when bringing a suit, or that identical claims might be represented by private counsel in one case and the State simultaneously in another, are misplaced.

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[5] This distinction arose in a different context that illustrates the distinct authority of the State versus private litigants. In *Blewett v. Abbott Laboratories*, 86 Wn. App. 782, 938 P.2d 842 (1997), Division One of the Court of Appeals found that private litigants lack authority to bring antitrust claims under 19.86.030 for indirect purchases, but that the State can make such claims.

Defendants seem to argue that to not apply the statute of limitations found in '120 to '080 *parens* claims would somehow betray the legislative intent behind the statute. Surely the Legislature intended what it said, in plain language, when it enacted the statute. If the legislature had wished to include '080 *parens* claims within the ambit of '120, it most easily could have. It did not. Where possible, the Court will give effect to the plain meaning of the language used in a statute as the embodiment of legislative intent. *Swinomish Indian Tribal Community v. Washington State Dept. of Ecology*, __ Wn.2d __, 311 P.3d 6, 11 (2013); *see also Shaw v. Clallam County.*, __ Wash. App. __, 309 P.3d 1216, 1220 (2013) (holding that if an enactment's meaning is plain on its face, then the court must give effect to that plain meaning); *State v. Sanchez*, 177 Wn.2d 835, 842-43, 306 P.3d 935 (2013) (holding that the court looks to the plain and ordinary meaning of statutory language to determine legislative intent). The plain meaning of a statute is derived from "the words' ordinary meaning, the context of the enactment where the provision appears, 'related provisions, and the statutory scheme as a whole.'" *Shaw* at 1220, quoting *State v. Jacobs*, 154 Wn.2d. 596, 600, 115 P.3d 281 (2005). The ordinary meanings of the words used in '120 are readily apparent. '120 does not apply to a *parens* claim brought under '080.

In *Blewett v. Abbot Laboratories*, 86 Wn. App. 782, 938 P.2d 842 (1997), the Court relied on federal case law where the CPA was not "facially clear." *Id.* at 787. In that case, the CPA was silent as to whether indirect purchasers had standing to bring claims. The Court looked to federal case law interpreting the federal statute upon which the State statute was based. Finding no basis in Washington law to diverge, the Court followed federal precedent. *Id.* at 788. In the present case, '120 is facially clear. It is very specific as to what it applies and there is no ambiguity. Notably, it was in response to cases such as *Blewett* that our Legislature amended the CPA to explicitly allow the Attorney General to bring '080 claims on behalf of indirect purchasers. It did not, however, amend '120. *See* S. 2007–SSB 5228, Reg. Sess., at 1 (Wa. 2007).

Defendants raise the spectre that the State could wait until the statute of limitations on '090 claims has passed, only to bring the exact same claims under '080.This is unwarranted. The claims brought pursuant to '080 and '090 may indeed be based upon the same illegal conduct and violations of antitrust law, but the actions themselves and the remedies sought are quite different. Private, direct purchaser plaintiffs have the ability to bring suit under '090 and seek damages specific to their loss and recoverable directly by them individually. In contrast, the State brings *parens* actions under '080 in order to seek restitution on behalf of the State

and its citizens generally. The State need not show individual damages. Indeed, in most cases the sheer number of persons represented by the State in a *parens* action make such a showing impossible. Furthermore, it is quite possible, and frequently likely, that individuals upon whose behalf a *parens* action is undertaken will not directly receive any payment at all. Restitution is a remedy which is sought on behalf of the State's consumers as a whole. In addition, the overwhelming number of individuals for whom the State brings a *parens* action are indirect purchasers for whom the only avenue of redress is a *parens* action. There is no scenario in which these individuals litigate their claims under '090.

Where consumers' only recourse lies with the State and its ability to seek restitution under '080, it is entirely reasonable that the Legislature intended a four year statute of limitations to apply to private claims for direct damages under '090, and not to a State *parens* claims for restitution for indirect purchasers under '080. Such a paradigm allows, as is so often the case, private plaintiffs to file cases initially seeking their damages, and for the State to prudently follow, conserving state resources and expenses, then seeking restitution for its citizens while avoiding seeking any duplicative damages, which are disallowed by statute.[6] Indeed, the

[6] RCW 191.86.080(3) reads in relevant part: "The court shall exclude from the amount of monetary relief awarded in an action pursuant to this subsection any amount that duplicates amounts that have been awarded for the same violation."

legislature anticipated exactly this interplay between litigants when it amended '080 to add: "[t]he court should consider consolidation or coordination with other related actions, to the extent practicable, to avoid duplicate recovery."

The language the Legislature employed in '120 is clear on its face and there is no reason for the Court to second guess it. When '120 was implemented the Legislature could easily have included '080 claims. The Legislature chose not to do so. The fact that the Legislature recently amended '080 to include "*parens patriae*" language is without import here. There is no question that the State had *parens* authority prior to this amendment, and that the amendment was merely meant to clarify that fact. *See* S. 2007–SSB 5228, Reg. Sess., at 1 (Wa. 2007). Indeed, upon clarifying '080, the Legislature could have taken the opportunity to also amend '120. It did not do so.

Defendants' reliance upon *Imperato v. Wenatchee Valley College* is misplaced. *Imperato* stands for the proposition that a court must "give effect to the plain meaning of [a] statute, if any, by taking into account the ordinary meaning of the words used as well as the context in which the statute appears, including related provisions." *Imperato v. Wenatchee Valley College,* 160 Wn. App. 353, 361, 247 P.3d 816 (2011) (citing *State v. Jacob*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005)). The language of

'120 could not be more plain. *Imperato* did not involve the application of a statute of limitations to two different claims or claims found in two different statutes, as is the case here. *Imperato* simply dealt with a question of venue. In that case, the Court addressed a statute of limitations that applied to claims brought before the Public Employees Relations Commission. The question before the Court was whether plaintiffs could avoid that statute of limitations by bringing their complaint in Superior Court, instead of before the Commission. The Court found that the plaintiff was bound by the same statute of limitations regardless of the venue in which he chose to assert his claim. *Id.* at 364.

The *Imperato* Court was faced with a question of policy which does not exist in this case. The question here does not regard two different venues, but two different claims altogether. As explained elsewhere, '080 claims are quite distinct from '090 claims, involve almost entirely different groups of persons for whom claims are brought, and there is absolutely no danger of Washington's indirect purchasers choosing which statute they might use to bring suit. Only the State may bring such indirect purchaser claims, and only under '080. The spectre of identically situated parties bringing antitrust claims for the same damages under separate statutes and under separate statutes of limitation is hyperbole and is unfounded.

Defendants' reliance upon *Eastwood v. Cascade Broadcasting Co.*, 106 Wn.2d 466, 722 P.2d 1295 (1986), is equally tenuous. That case, concerning an invasion of privacy claim, turned on a very specific question. Namely, was a common law false-light-libel claim essentially a libel and slander claim, or was it something separate and of its own? Here, there is no doubt that '080 claims are quite distinct from the '090 claims which are subject to '120's statute of limitations.

2. There is no Conflict with Federal Law

Defendants mischaracterize the law by arguing that enforcement of the CPA must "conform" to federal law. Far from that being the case, Washington courts will look to federal court precedent to be guided by the interpretation given to corresponding federal statutes. RCW 19.86.920.[7] Being guided by interpretation of a corresponding federal statute is significantly different from disregarding State law and imposing federal law in its place. In this case, Washington State law differs critically from federal law, and it would be a mistake to force an analogy where there is

[7] In relevant part: "It is the intent of the legislature that, in construing this act, the courts be guided by final decisions of the federal courts and final orders of the federal trade commission interpreting the various federal statutes dealing with the same or similar matters and that in deciding whether conduct restrains or monopolizes trade or commerce or may substantially lessen competition, determination of the relevant market or effective area of competition shall not be limited by the boundaries of the state of Washington. To this end this act shall be liberally construed that its beneficial purposes may be served." RCW 19.86.920.

none. The question here concerns State claims which cannot even be brought under federal law. As such, there is no federal precedent on point.

Even if the Court does find '080 claims and Sherman Act claims analogous, departure from federal precedent is called for where State law is facially clear and any difference in application is rooted in the State statute itself. *See Blewett*, 86 Wn. App. at 788 (holding that the Court should only depart from federal law, "for a reason rooted in our own statutes or case law and not in the general policy arguments that this court would weigh if the issue came before us as a matter of first impression.") Defendants are not asking this Court to follow federal case law, however. They are asking this Court to impose a federal statute in order to limit State claims. State claims which, furthermore, do not even have a federal counterpart.

If there were a federal statute which correlated to our State's '080, in allowing indirect purchaser *parens* claims, and there were federal case law which supported an interpretation of that statute as subject to a statute of limitations that was a corollary to our '120, the argument might hold water. None of that is the case, however.

In *State v. Black*, 100 Wn.2d. 793 (1984), for instance, a case in which the Court relied on federal precedent in interpreting State law, the State statute in question was a "verbatim" replica of the federal statute. *Id.*

at 799. The Court in *Black* was analyzing a claim alleging an "unfair method of competition." In addition to being a claim based on a state statute identical to its federal counterpart, it is also a claim for which significant federal case law exists which can guide State enforcement. In direct contrast to that, indirect purchaser *parens* claims are unique to the State. There is no federal statute, or federal case law interpreting such a statute, that we can specifically look to.

Defendants point to 15 U.S.C. § 15b, the Sherman Act's statute of limitations, for the proposition that '080 claims should be subject to the same federal statute of limitations which applies to Sherman Act claims brought in Federal Court. In this case, however, the State does not bring Sherman Act claims and does not seek redress in Federal Court. It does, however, seek redress for claims under '080 which are completely disallowed under the Sherman Act.

The differences between the statute of limitations found in the Sherman Act at 15 U.S.C. § 15b and in '120 are significant, especially given the very different nature of the claims at issue. The Sherman Act States: "Any action to enforce any cause of action under section 15, 15a, or 15c of this title shall be forever barred unless commenced within four years after the cause of action accrued." 15 U.S.C. § 15b. It thus specifically covers suits by persons injured, suits by the United States, and

suits by State Attorneys General brought under Sherman. '120 is also very specific as to what it pertains—'090 claims only. This is simply not an instance where identical or similar federal and State statutes must be interpreted by looking to federal case law. Interestingly, 15 U.S.C. § 15c, the federal statute Defendants seek to analogize to our own '080, would grant the State treble damages. Unfortunately for the State, that also does not apply.

In *Blewett,* the Court held that one of the purposes of following federal case law was to "minimize conflict between the enforcement of State and federal antitrust laws and to avoid subjecting Washington businesses to divergent regulatory approaches to the same conduct." *Blewett*, 86 Wash. App. at 788. Setting aside for a moment the fact that Defendants are asking for the imposition of a federal statute, and not for the Court to follow federal case law, the potential conflict which is contemplated in *Blewett* is not at issue in this case. The State's '080 claims seek relief that does not exist under federal law. There is no danger of the State regulating antitrust law as it applies to Washington State indirect purchasers, while the Federal Government enforces federal law regarding those same people differently. Federal antitrust law does not reach that class of individuals.

Furthermore, even Defendants do not argue that the Legislature is not completely free to set whatever statute of limitations it likes regarding any given antitrust claim. The issue Defendants raise only comes into play where federal and State law are the same, and the question before the court is where to look for interpretation. Our Legislature, when it comes to indirect purchaser *parens* claims, has most explicitly diverged from federal law. The Legislature also explicitly diverged in implementing our statute of limitations, choosing not to include *parens* claims, despite the fact that federal law did.

Defendants' concerns that time-barred '090 claims might be reasserted as part of an '080 *parens patriae* claim are misplaced. First, this possibility only encompasses a very narrow class of persons: direct purchaser victims who do not seek redress within the four year statute of limitations applicable to '090 claims. This scenario makes the assumption that the State would be bringing a case, four years after a claim accrues, where there has not been a private class of direct purchasers already asserted elsewhere. This is highly unlikely. Second, even where this might be the case, the Legislature has taken the possibility into account and specified that the State shall not seek damages under an '080 claim that have already been accounted for in a separate claim. RCW 19.98.080(3). Thirdly, because of that same double damages provision, the concern can

only be that the State would be asserting such claims for the first time, not reasserting them in any meaningful way. The lack of real concern regarding this scenario is put into perspective by the fact that approximately 99% of the persons for whom the State seeks redress in this case could never have brought a private claim under '090.

Defendants also infer that there are private nationwide claims, one even brought under the CPA, which duplicate the claims brought by the State. The argument above will dispel any concern of this. To the extent that the Attorney General becomes aware of private parties wrongfully asserting claims on behalf of Washington State indirect purchasers, it is the policy of the office to demand that such claims be released, and to intervene in the matter if necessary.

There are quite reasonable policy arguments for allowing the State to pursue almost entirely separate and distinct claims following the expiration of private direct purchaser claims under '090. This is especially true considering the caution taken by the Legislature to avoid any duplicative damages.

C. RCW 4.16.160 Exempts the State's *Parens* Claims From Any Catch-All Statute of Limitations

As an alternative, Defendants point to two generic, catch-all style statutes of limitation. The first is RCW 4.16.080(2), limiting a claim for

"any other injury to the person or rights of another," to a three year statute of limitations. The second is RCW 4.16.130, which very broadly limits an "action for relief not hereinbefore provided for..." to a two year statute of limitations. Even making the leap and assuming that the Legislature contemplated that the State's '080 antitrust claims might be limited to as little as two years, this argument fails. This is because RCW 4.16.160 exists precisely for the purpose of exempting causes of action such as '080 claims from statutes of limitation. RCW 4.16.160 States that:

> The limitations prescribed in this chapter shall apply to actions brought in the name or for the benefit of any county or other municipality or quasimunicipality of the State, in the same manner as to actions brought by private parties: PROVIDED, That, except as provided in RCW 4.16.310, **there shall be no limitation to actions brought in the name or for the benefit of the State**, and no claim of right predicated upon the lapse of time shall ever be asserted against the State... (emphasis added)

1. Antitrust *Parens* Claims are Brought for the Benefit of the State

Enforcement of antitrust law is an exercise of the State's police power. *See v. Sterling Theatres Co.*, 64 Wn.2d. 761, 764, 394 P.2d 226 (1964). If an exercise of police power is reasonable and proper, "it must be reasonably necessary in the interest of the health, safety, morals, or welfare of the people." *Remington Arms Co. v.* Skaggs, 55 Wn.2d. 1, 345 P.2d 1085 (1959). In bringing an '080 *parens* claim, the State seeks to deter illegal activity, obtain restitution for harm incurred by State consumers, and protect the economy of the State.

Parens patriae authority has long been recognized in antitrust cases. The authority of a state to bring a *parens patriae* action for violation of the antitrust laws was recognized by the Supreme Court in *Georgia v. Pennsylvania Railroad Co.*, 324 U.S. 439 (1945). In that case, the State of Georgia sued twenty railroads for fixing prices on interstate rail shipments. The Court recognized a state's right to seek an injunction against price fixing, declaring that antitrust violations could erect trade barriers harmful to the state's "prosperity and welfare," and that the state had a sovereign interest in such "matter[s] of grave public concern." *Id.* at 449.

Parens patriae authority is particularly appropriate where injury is sufficiently small or diffuse as to make it unlikely that individuals could or would pursue litigation to obtain the relief to which they are entitled. *People v. Peter & John's Pump House*, 914 F. Supp. 809, 813 (N.D.N.Y. 1996). In *Maryland v. Louisiana*, 451 U.S. 725 (1981), the Supreme Court upheld the *parens patriae* authority of several states to enjoin a Louisiana tax on natural gas use in order to protect "a substantial portion of the State's population" who bore the cost of the tax. *Id.* at 739. The Court emphasized that the tax did not "fall on a small group of citizens who are likely to challenge the Tax directly." *Id.* Rather:

> [A] great many citizens in each of the plaintiff States are themselves consumers of natural gas and are faced with increased costs aggregating millions of dollars per year . . . . [I]ndividual consumers cannot be expected to litigate the validity of the First-Use Tax given that the amounts paid by each consumer are likely to be relatively small.
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> *Id.*

Thus, a state *parens patriae* action envisions representation of "otherwise unconnected people [who] share a common concern but [who] would be unlikely to sue on their own – perhaps for want of

standing in their own right, perhaps for lack of resources or unifying leadership, or perhaps . . . in fear of retaliation." Larry W. Yackle, *A Worthy Champion for Fourteenth Amendment Rights: The United States in Parens Patriae*, 92 NW. L. REV. 111, 143 (1997).

'080 claims differ in a very important way from '090 claims. While both claims look to damages incurred by citizens of the State, '080 claims allow the State to seek restitution on behalf of all State consumers as a whole. The principal distinction between compensatory damages and restitution is that compensatory damages respond to the plaintiff's loss, restitution to the defendant's gain. Although both deter, if restitution exceeds compensatory damages, restitution will deter more. Doug Rendleman, *Measurement of Restitution: Coordinating Restitution with Compensatory Damages and Punitive Damages*, 68 WASH. & LEE L. REV. 973,980 (2011). It is reserved to the State in antitrust matters, in its exercise of its police powers, to bring claims for restitution, to bring claims for indirect purchasers who have been harmed, and to bring claims as *parens patriae* on behalf of State consumers generally.

A Washington State Court, in an analogous context, has already determined that no statute of limitations applies to the State where it brings an action that benefits the public generally. In *Herrmann v. Cissna*, 82 Wn.2d. 1, 507 P.2d 144 (1973), the Washington State Supreme Court

considered whether an action brought by the State Insurance Commissioner was for the "benefit of the State" under RCW 4.16.160, in which case no statute of limitations could be asserted against it, or whether the action was brought merely to benefit private parties.

It is self-evident in this matter that this case is brought in the name of the State. This is so simply because the State is named as Plaintiff. That is not enough, however, to bring a cause of action within the exemption of RCW 4.16.160. *Herrmann* involved an action by the State Insurance Commissioner, in his capacity as the statutory rehabilitator of an insurer, against former officers and directors of the defunct insurer. The Court in *Herrmann* specified that, "if the State is a mere formal plaintiff in a lawsuit, acting only as a conduit through which one private person can conduct litigation against another, the State is not exempt from the defense that the statute of limitations has run on the action." *Id.* at 5 (quoting *State v. Vinther*, 176 Wash. 391, 29 P.2d 693 (1934)). The action must also be for the benefit of the State.

In holding that the State's action was for the benefit of the State in *Herrmann*, the Court declared that the statute under which the State brought suit was for the benefit of the public and Stated that, "[t]he legislature clearly had in mind, in enacting the insurance code, that such actions on the part of the commissioner would benefit the public

generally." *Id.* at 5. In *Herrmann* the Court quoted with approval this section of the code under which the Insurance Commissioner partially acted: "[t]he business of insurance is one affected by the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. Upon the insurer, the insured, and their representatives rests the duty of preserving inviolate the integrity of insurance." *Id.* at 5-6 (quoting RCW 48.01.30). Here, the State brings suit under RCW 19.86, which states, in part, that the purpose of the statute is to, "protect the public and foster fair and honest competition." RCW 19.86.920. As in Herrmann, the actions taken by the State here, "while they undoubtedly benefit some private parties, are taken primarily in the public interest." *Herrmann*, 82 Wn.2d. at 6.

There is a good deal of case law in Washington State applying the exception found in RCW 4.16.160 to similar State actions. The trial court properly applied the case of *Washington State Major League Baseball Stadium Public Facilities District v. Huber, Hunt & Nichols-Kiewit Construction Company*, 165 Wn.2d 679, 202 P.3d 924 (2009)("*MLB*"). The court in *MLB* held that RCW 4.16.160 applied to a special purpose district which had been created by the legislature for the purpose of

carrying out a sovereign function, in this case the construction of a baseball stadium. *MLB*, 165 Wn.2d at 690-93.

MLB is quite specific that, when evaluating whether an action is for the benefit of the State under RCW 4.16.160, the "only inquiry is whether the municipal action arises from an exercise of powers traceable to delegated sovereign State powers or whether such action is proprietary and thus subject to the statute of limitation." *Id.* at 686. There is no delegation of powers in the present case, so the question simply becomes whether the State is exercising a sovereign power.

The Court in *MLB* then goes on to clarify that, "[t]he principal test for determining whether a municipal act involves a sovereign or proprietary function is whether the act is for the common good or whether it is for the specific benefit or profit of the corporate entity." Again, in this case we deal not with a delegation of power to a municipality, but the direct exercise of sovereign power by the State itself. '080 claims are not brought for the specific benefit or profit of the State itself. This holding from *MLB* also highlights how interdependent the elements of "sovereign function" and "the common good" are in this analysis.

The State Supreme Court has found an action to be "'for the benefit of the State' under RCW 4.16.160 where it involves a duty and power inherent in the notion of sovereignty or embodied in the State

constitution." *Id.* at 689. The exercise of *parens* authority, by its very definition, is a sovereign function which can only be utilized by the State alone. Such activities as maintenance of public parks, swimming pools, and even merry-go-rounds, have been found to be within the sovereign power of government[8]. *Id.* at 690. An exclusively sovereign act, such as bringing a *parens* suit, also finds itself in this category. *Parens* actions are unique to the sovereign, and RCW 4.16.160 necessarily applies.

A statement regarding *MLB* from the Defendants' brief should be highlighted. Defendants State that: "There is simply no 'constitutional or statutory provisions [in the CPA] indicating the sovereign nature of the power' by delegating the enforcement of the CPA exclusively to Plaintiff. *See MLB*, 165 Wn.2d at 687...." Assuming that this was intended to analogize the holding from *MLB* to the present case, it needs to be pointed out that "[in the CPA]" is not a paraphrasing of the language from *MLB*, as it might appear. The *MLB* case never mentions the CPA. It is also important to note that *MLB* does not stand for the proposition that

[8] Other examples of sovereign action which fall under RCW 4.16.160 are the power of taxation, *Gustaveson v. Dwyer*, 83 Wash. 303, 309–10, 145 P. 458 (1915), *Commercial Waterway Dist. No. 1 v. King County*, 10 Wn.2d. 474, 479–80, 117 P.2d 189 (1941), *City of Tacoma v. Hyster Co.*, 93 Wn.2d. 815, 821, 613 P.2d 784 (1980), *Allis–Chalmers Corp. v. City of North Bonneville*, 113 Wn.2d. 108, 112, 775 P.2d 953 (1989), and the design and construction of educational facilities, *Bellevue School District No. 405 v. Brazier Construction Co.*, 103 Wn.2d. 111, 115–16, 691 P.2d 178 (1984).

exclusive delegation of an entire act to the State is necessary in order for an action by the State under that act to be considered sovereign.

Washington Pub. Power Supply Sys. V. Gen. Elec. Co., 113 Wn.2d 288, 778 P.2d 1047 (1989)("*WPPSS*"), is a case which contrasts well with this case and highlights the sovereign role played by the State in bringing a *parens* claim. *WPPSS* involved a municipal corporation charged with delivering electricity within the State. The straightforward holding of the Court was that, "when a municipality brings an action which arises out of the exercise of powers traceable to the sovereign powers of the State which have been delegated to the municipality, the municipality is bringing the action 'for the benefit of the State' within the meaning of RCW 4.16.160." *Id.* at 295. Of course, in the present case, there is no need to trace the exercise of power back to the sovereign power of the State. The State itself is bringing an action only it can bring.

In discussing the ways in which the municipal entity in *WPPSS* fell short of exercising a sovereign function for the benefit of the State, the Court highlighted statutory language making it clear that the entity should not be considered in any manner an agency of the State. *Id.* at 289. This contrasts with the present case where it is the State itself bringing suit. The Court also detailed the very specific purpose of the entity—to produce electricity. The Court found that this narrow duty alone did not rise to a

sovereign function. *Id.* at 299-301. Additionally, the Court pointed out that the production of electricity has historically been carried out by private parties or by municipalities in a proprietary function. *Id.* at 301. Contrary to that, a *parens* action for restitution is inherently a State function.

Defendants argue that because portions of the CPA are enforceable by private parties, that any State enforcement of other portions of the CPA must therefore not be a sovereign function. There is simply no support for this position. Defendants also conflate the private and State actions found within the CPA to make it seem as if the State is merely carrying out a potentially private function when it brings an '080 claim. This is not so. As previously explained, only the State may bring a *parens* action on behalf of the indirect purchasers in this case.

Defendants' assertion that enforcement of the CPA can potentially be wholly accomplished by '090 private plaintiff claims is entirely unfounded. First, because of the enormous scope of the CPA, beyond even antitrust matters, in which the State plays a multitude of roles. Second, because only the State can bring indirect purchaser claims—claims which address damages incurred by potentially millions of consumers. Likewise the claim that Plaintiff has no distinct duty to enforce the CPA is demonstrably false. It is the sole duty of the State to bring indirect purchaser *parens* claims.

Much of the case law already analyzed makes it clear that the subject matter of a State action need not be completely and categorically exclusive to the State in order for that action to be a sovereign one, undertaken for the common good of the State. Private parties may build baseball stadiums, they may build private schools, and may even build parks with merry-go-rounds. All can be accomplished with little or no direct involvement from the State. In such situations, there is little doubt that these would not be considered sovereign actions for the common good. Yet this has no effect on the holdings of *MLB*, *Bellevue School District No. 405*, or *Stuver v. City of Auburn*, 171 Wash. 76 (1932). Private rights of action available under '090 of the CPA do not alter the sovereign nature of State actions undertaken to enforce '080 of the CPA.

2. Antitrust *Parens* Claims are Brought as a Sovereign Function for the Common Good

This *parens patriae* action, by its very nature, is the essence of a sovereign function. It is brought on behalf of State citizens, and it can only be brought by the State itself. As a matter of State law, only the State is empowered to bring an action on behalf of indirect purchasers for recovery of illegal overcharges, and without the State's action, consumers in Washington would have no recourse against the Defendants. RCW 19.86.080(3). The fact that indirect purchaser consumers in Washington

lack standing to bring their own private actions in this matter uniquely brings this action under the ambit of the State's sovereign interest in securing the economic wellbeing of its citizens.

The trial court wisely relied upon recent, important Ninth Circuit precedent which sheds much light on when, in an antitrust *parens* matter, the State is executing its sovereign function. These cases do not address statutes of limitation, but they do make it clear that the State exercises a sovereign function when it brings a *parens* antitrust claim on behalf of indirect purchasers.

After Washington State filed suit against several LCD[9] manufacturers, alleging price-fixing and '080 violations, defendants removed the case to federal court under the Class Action Fairness Act ("CAFA"). When the State sought to remand the case, argument largely turned on whether the State was the real party in interest. See *Washington v. Chimei Innolux Corp.*, 659 F.3d 842, 846 (2011). In a separate decision shortly thereafter, the Ninth Circuit endorsed the district court's decision that the State is indeed the "real party in interest" when bringing claims as *parens patriae* under the CPA:

[9] LCDs, or Liquid Crystal Displays, are a technology used in flat screen televisions, computer monitors, and the like.

> In *Chimei*, although we did not reach the issue of whether a claim for restitution in a consumer protection action rendered the consumers the real parties in interest, the district court had concluded that "the States of California and Washington are the real parties in interest because both **States have a sovereign interest in the enforcement of their consumer protection and antitrust laws** ... [and] in securing an honest marketplace and the economic well-being of their citizens." *In re TFT–LCD (Flat Panel) Antitrust Litig.*, 2011 WL 560593, at *5 (N.D.Cal. Feb. 15, 2011).
>
> (emphasis added). *Nevada v. Bank of America Corp.*, 672 F.3d 661, 671 (2012).

The U.S. Supreme Court has held that "[t]he exercise of sovereign power over individuals and entities within the relevant jurisdiction . . . involves the power to create and enforce legal code, both civil and criminal . . . . ." *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez*, 458 U.S. 592, 601, 102 S.Ct. 3260 (1982). Accordingly, a "State has a sovereign interest in enforcing its own laws." *Id. See also People of State of Cal. v. Fed. Commc'n Comm'n.*, 75 F.3d 1350, 1361 (9th Cir. 1996) (a State may appeal a federal order preempting State law to "vindicate its

own sovereign interest in law enforcement . . . ."); *Castillo v. Cameron Cnty.*, 238 F.3d 339, 351 (5th Cir. 2001) ("[A] State has a sovereign interest in enforcing its laws . . . .").

The State is more than a mere nominal party in this matter because it is seeking relief that is only available to the sovereign. The State has quasi-sovereign interests in (1) maintaining the integrity of its markets; and (2) the economic well-being of the citizens of the State. *Snapp*, 458 U.S. at 607 ("a State has a quasi-sovereign interest in the . . . well-being—both physical and economic—of its residents in general."); see also *Georgia v. Pa. R. Co.*, 324 U.S. 439, 450-51 (Georgia permitted to bring *parens patriae* action on behalf of citizens harmed in price-fixing conspiracy); *Michigan ex rel. Kelley v. Carr*, 442 F. Supp. 346, 356-57 (W.D. Mich. 1977), aff'd in part and rev'd on other grounds, 691 F.2d 800 (6th Cir. 1980) ("Surely some of the most basic of a State's quasi-sovereign interests include . . . prevention of its citizen's revenues from being wrongfully extracted from the State.").

The State is the real party in interest in this matter because it seeks relief that is wholly unique to the sovereign, including relief on behalf of indirect purchasers who do not have their own cause of action. Consequently, RCW 4.16.160 applies to the State's *parens patriae* claims which a catch-all statute of limitations might otherwise restrict.

Defendants stress the fact that RCW 4.16.160 has not been previously applied to a *parens patriae* case in Washington State. This fact, however, is unremarkable. The phrase "*parens patriae*" appears nowhere in the RCW other than in '080. As noted, phrase was only added to '080 by the Legislature in 2007, in order to clarify the authority of the State. And, moreover, antitrust litigation by the State in state court, especially with the State bringing *parens* claims, is with little precedent. Historically, almost all Washington State antitrust cases have been brought in federal court. This is predominantly why the questions certified to the Court for review are ones of first impression.

D. Argument Regarding Alternative Statutes of Limitation Restricting Non-*Parens* Claims Should not be Considered

The questions certified for appeal by the trial court below, and adopted by the Commissioner of this Court, are specific and unambiguous. They pertain only to whether the statute of limitations found in '120 applies to the State's *parens* claims brought pursuant to '080, and whether the exemption found in RCW 4.16.160 would apply to those same *parens* claims and relieve them from any applicable statute of limitations if so. Defendants go beyond the scope of the questions certified and ask the Court to apply various other statutes of limitation to the State's non-'080 *parens* claims.

This Court has recently held that it will not go beyond the scope of the questions which are certified to it upon discretionary appeal. In *Johnson v. Recreational Equipment, Inc.*, 159 Wn. App. 939 (2011), this Court declined to go beyond the issues certified for discretionary review and would not consider a new issue raised by Defendant in its appeal brief. *Id.* at n.7. Similarly, in the recent matter of *City of Bothell v. Barnhart*, 156 Wn. App. 531 (2010), this court declined to address issues which had not been granted discretionary review and the party requesting that review had not pursued a motion to modify the order granting discretionary review. *Id.* at n.2. There are several examples of our State's courts limiting themselves to the questions which are before them and which have properly been certified on discretionary review, or stating that the certified questions before them are the matters to be addressed. *See Clipse v. Michels Pipeline Const., Inc.*, 154 Wn. App. 573, n.15 (2010)(declining to address an issue on appeal which the Court's Commissioner had not certified to the Court), *Litchfield v. KPMG, LLP*, 170 Wn. App. 431, 437 (2012)(specifying the issues to be considered by the court as those certified upon discretionary review), *Grey v. Leach*, 158 Wn. App. 837, 844 (2010)(focusing the Court's review on certified questions of "two legal issues of first impression for Washington courts.").

Defendants, in their brief, resign the questions certified to this Court to a footnote. Their Issues Pertaining to Assignment of Error then go beyond the questions certified. Defendants should not now be allowed to expand their argument beyond what was considered below and what properly is before the court as certified.

The State has never taken the position that if '120 does not apply to the State's *parens* claims, then no statute of limitations at all applies to any of the State's claims. Defendants simply pointed to no other statutes of limitation in briefing before the trial court, and did not ask the trial court to differentiate between '080 and '090 claims, much less claims for civil penalties. As such, no argument was developed below regarding other statutes of limitation, as evidenced in the two questions which were certified for the Court to consider. These questions appear before the court as proposed and drafted by the Defendants. For the reasons laid out above, argument herein should rightfully be constrained to the questions certified.

IV. CONCLUSION

For the foregoing reasons, the State respectfully requests that this Court affirm the Trial Court's ruling below.

RESPECTFULLY SUBMITTED this 27th day of November, 2013.

ROBERT W. FERGUSON
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PROOF OF SERVICE

I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

☒ Via Electronic Mail

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 27th day of November, 2013, at Seattle, WA.

DIANE K. CAMPBELL
Legal Assistant 3

APPENDICES TABLE

Appendix	Description
A	State's Complaint

APPENDIX A

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.	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

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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.

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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.

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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

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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.

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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.

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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.

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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

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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.

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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;

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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.

ROBERT M. MCKENNA
ATTORNEY GENERAL

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