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NO. 70298-0-I

**COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON**

THE STATE OF WASHINGTON,

Appellant,

v.

LG ELECTRONICS, INC. et al.,

Respondents.

**SUPPLEMENTAL BRIEF OF APPELLANT
STATE OF WASHINGTON**

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I. INTRODUCTION

This Court's decision in *State v. AU Optronics Corp.*, No. 69318-2-I, 2014 WL 1779256 (Wn. App. May 5, 2014) is dispositive of the jurisdictional issue on appeal here. *AU Optronics* involved an identical question and nearly identical facts. Because this case is fundamentally the same, finding personal jurisdiction necessarily follows.

II. ARGUMENT

Personal jurisdiction over an out-of-state defendant requires: (1) purposeful minimum contacts between the defendant and the forum state; (2) that the plaintiff's claim arise out of those contacts; and (3) that jurisdiction is consistent with notions of fair play and substantial justice. *Grange Ins. Ass'n v. State*, 110 Wn.2d 752, 758, 757 P.2d 933 (1988). *AU Optronics* reaffirmed these requirements, and Defendants' actions fully satisfy them.

A. Defendants Purposefully Availed Themselves of Washington State Law

The exercise of personal jurisdiction over an out-of-state defendant requires "purposefulness" in the defendant's actions towards the forum. This Court, in *AU Optronics*, held that the regular flow of a foreign component manufacturer's goods into Washington constitutes that requisite purposefulness. *See* 2014 WL 1779256, at *21.

1. This Case Is Factually Identical To *AU Optronics*

There is no distinction between the indirect sales in this case and in *AU Optronics*. In both cases, foreign defendants manufactured price-fixed displays which third parties incorporated into finished goods that were purchased by consumers at inflated price, and in neither case did a manufacturer sell directly into Washington. *See* 2014 WL 1779256, at *3-4; Compl. ¶ 46. Defendants in this case sold millions of price-fixed cathode ray tubes (CRTs) and reaped billions of dollars in annual profits. Compl. ¶ 90. Similarly, in *AU Optronics*, LG Display (LG) flooded millions of dollars' worth of products containing price-fixed liquid crystal displays (LCDs) into Washington. 2014 WL 1779256, at *24. In both cases, the volume of sales made the arrival of illegally priced display products in Washington inevitable and entirely foreseeable.

2. Under *AU Optronics*, Defendants' Sales Establish Purposefulness

In *AU Optronics*, this Court, relying on Justice Breyer's concurrence in *J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S. Ct. 2780, 180 L. Ed. 2d 765 (2011), held that a "regular . . . course" or "regular flow" of in-state sales was sufficient evidence of purposefulness by a foreign manufacturer—even absent "something more," such as special state-related design or advertising. 2014 WL 1779256, at *19-24 (citing *J. McIntyre*, 131 S. Ct. at 2792 (Breyer, J., concurring in the judgment)). This Court

concluded that LG's "[s]ales to Washington consumers were not isolated; rather, they indicated a 'regular . . . flow' or 'regular course' of sales in Washington." 2014 WL 1779256, at *24. Consequently, this Court found that LG acted purposefully and was subject to personal jurisdiction. *Id.* at *24-25.

Defendants' indirect sales to Washington consumers mirror LG's in *AU Optronics*. The large volume of CRT products that flooded into Washington was certainly a 'regular . . . flow' or 'regular course' of sales." 2014 WL 1779256, at *24. As a result, Defendants' contact with Washington State was purposeful and personal jurisdiction is appropriate.

B. This Action Arises From Defendants' Illegal Activities

In *AU Optronics*, this Court found that the State's claim arose from LG's contacts with Washington because consumers were injured by paying inflated prices as a result of LG's price fixing. 2014 WL 1779256, at *25. The identical nature of these cases compels the same finding here.

C. Jurisdiction Comports with Traditional Notions of Fair Play and Substantial Justice

Courts deciding whether the assertion of jurisdiction comports with traditional notions of fair play and substantial justice, consider (1) the quality, nature, and extent of the activity in the forum; (2) the relative convenience of the parties; (3) the benefits and protections of the laws of the forum state afforded the parties; and (4) the basic equities of the

situation. *Grange*, 110 Wn.2d at 758. This Court addressed all four factors in *AU Optronics*, concluding that concern for otherwise remediless consumers and the danger of insulating foreign manufacturers from the reach of antitrust laws outweighed any inconvenience to these types of out-of-state defendants. 2014 WL 1779256, at *26-29. Though this case presents some trivial differences concerning the parties' convenience, those differences are immaterial and jurisdiction is unaffected.

In *AU Optronics*, LG argued that litigating in a state where it “had no offices, employees, or other resources” presented a significant burden. 2014 WL 1779256, at *27. In response, this Court considered LG’s contacts with Washington—such as business trips to Washington and a master purchase agreement which “suggested [LG’s] familiarity with applicable laws”—and concluded that requiring LG to litigate in Washington “would not pose an *unfair* burden.” *Id.* (emphasis added).

Defendants here also have comparable ties to Washington. For example, Defendants Panasonic Corp. and LG Electronics, Inc. both control wholly owned subsidiaries registered in Washington. (Compl. ¶¶ 10, 30). These subsidiaries likewise suggest “familiarity with applicable laws.”

Ultimately, compelling interests can “justify even the serious burdens placed on the alien defendant.” *Asahi Metal Indus. Co., Ltd. v.*


Superior Court of Cal., Solano County, 480 U.S. 102, 114, 107 S. Ct. 1026, 94 L. Ed. 2d 92 (1987). This Court's concerns in *AU Optronics*—the lack of alternative recourse for Washington consumers and the fear of shielding foreign companies from the reach of Washington's laws—outweigh the burden of litigation. 2014 WL 1779256, at *27-29. Given the congruence of these cases, *AU Optronics* stands squarely for the fairness of jurisdiction here.

III. CONCLUSION

State v. AU Optronics is dispositive to this case. Defendants had purposeful contact with Washington, sending a regular flow of price-fixed CRT products into the state and causing Washington consumers to pay inflated prices. Fairness also gives rise to jurisdiction, in large part so that Washington consumers are not victimized by foreign corporations and left without recourse. The State respectfully requests that this Court reverse the trial court's orders granting Defendants' motions to dismiss, and reinstate Defendants as parties to this action. Oral argument on this issue is not necessary.

RESPECTFULLY SUBMITTED this 29th day of July, 2014.

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CERTIFICATE OF SERVICE

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

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