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SUPREME COURT OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON,

Respondent,

v.

LG ELECTRONICS, INC.; KONINKLIJKE PHILIPS ELECTRONICS
N.V. A/K/A ROYAL PHILIPS ELECTRONICS N.V.; 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.; PANASONIC CORPORATION F/K/A
MATSUSHITA ELECTRIC INDUSTRIAL CO., LTD.; HITACHI
DISPLAYS, LTD. (N/K/A JAPAN DISPLAY INC.); HITACHI
ELECTRONIC DEVICES (USA), INC.; HITACHI ASIA, LTD.,

Petitioners.

STATE OF WASHINGTON'S SUPPLEMENTAL BRIEF

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I. INTRODUCTION

Defendants participated in a massive conspiracy to fix prices of cathode ray tubes (CRTs), which were essential components in most televisions and computer monitors sold during the conspiracy. Defendants sold hundreds of millions of price-fixed CRTs for integration into these finished products, knowing and intending that they would be sold in Washington. By placing their goods in the stream of commerce with the expectation that they would profit from the regular and anticipated flow of goods into Washington, these defendants established the "minimum contacts" necessary to be subject to personal jurisdiction here. *See, e.g., World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297-98, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980) (a "State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State").

Traditional notions of fair play and substantial justice also support finding jurisdiction in Washington, as evidenced by many factors relevant under the case law: (1) it is fair and reasonable to hold these defendants accountable in the very forums that their conspiracy was designed to exploit; (2) there is no alternative forum for injured Washington citizens to obtain relief from the harm of purchasing these price-fixed products; (3) it

would be highly inconvenient, if not impossible, for injured citizens to bring their lawsuit in the defendants' home countries; and (4) it would present little inconvenience for these large and sophisticated, multi-national corporations to defend this lawsuit in Washington. This Court should affirm the well-reasoned Court of Appeals opinion.

II. STATEMENT OF THE ISSUES

- A. The U.S. Supreme Court and this Court have held that a forum State does not exceed its powers under the due process clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State. Considering this standard, may Washington assert personal jurisdiction over corporations that conspired to fix prices of components integrated into nearly ubiquitous consumer products, caused Washington consumers to pay inflated prices for products including those components, and sold hundreds of millions of their components knowing and intending that the finished goods would be distributed nationally and into Washington?
- B. When considering a CR 12(b)(2) motion prior to discovery, should the trial court treat allegations in the complaint as verities?

III. STATEMENT OF THE CASE

A. Defendants Conspired to Fix Prices of Cathode Ray Tubes

Defendants are manufacturers, distributors, or marketers of cathode ray tubes (CRTs) and related companies. *See* CP at 2. A CRT is a display technology used in televisions, computer monitors, and other specialized applications such as ATMs. CP at 3, 13. During the time period relevant to this lawsuit, 1995 to 2007, CRTs were the dominant

technology used for manufacturing televisions and computer monitors. CP at 15. North America was the largest market for such products, accounting for nearly half of the global market. *E.g.*, CP at 24 (North America accounted for 28 million CRT monitors of 57.8 million worldwide).

The dominance of CRT technology in nearly ubiquitous consumer products resulted in the sale of hundreds of millions of CRT units to North America during the relevant time period, and billions of dollars in revenue to defendants. CP at 24. In 1995 alone, 28 million CRTs were sold in North America. Each of the defendants sold CRTs into the stream of commerce with the knowledge, intent, and expectation that they would be incorporated into products sold to consumers in substantial quantities throughout the United States, including in Washington.¹ CP at 13-14.

The production of CRTs was controlled by a handful of companies. In 2004, four companies together held a collective 78 percent share of the global CRT market.² This tight control over production, combined with other market characteristics, enabled companies to conspire to fix prices of CRTs. CP at 15. From 1995 to 2007 (the

¹ One defendant, Koninklijke Philips Electronics N.V., claims that it is merely a holding company and did not manufacture or sell anything. Pet. Review at 17. Even accepting at face value everything in its declarations, Koninklijke Philips Electronics does not challenge that it participated in the conspiracy or that it manages the high-level strategic decisions for the Philips group of companies, which themselves manufactured, sold, and distributed CRTs and finished products into Washington. CP at 105.

² Those were Samsung, LG Philips Displays, MTPD, and Chunghwa. CP at 15.

“Conspiracy Period”), the defendants did so, conspiring to fix prices of CRTs, knowing and intending that the price-fixed products would be incorporated into finished products sold in substantial quantities in Washington. CP at 15-17. Although defendants submitted declarations attesting to their alleged lack of connection to Washington, none contradict the allegations that they conspired to fix prices of CRTs, that the CRTs were incorporated into finished products sold in substantial quantities in Washington, and that the defendants knew and expected that the CRTs would be incorporated into consumer goods sold in substantial quantities in Washington. The defendants thus expected and intended to profit from the regular sale of price-fixed products in Washington.

B. The Washington Attorney General’s Action

Defendants’ illegal price-fixing of CRTs caused innumerable Washington residents to suffer damages and harmed the state’s economy. The Attorney General filed this lawsuit in response, pursuant to the anti-trust provisions of the state Consumer Protection Act, RCW 19.86.030. The suit seeks restitution and injunctive relief on behalf of persons residing in the state, damages on behalf of state agencies that purchased price-fixed products, and civil penalties pursuant to RCW 19.86.140. CP at 27-28. Although other lawsuits have been filed against the conspiring defendants, no other lawsuit includes restitution for

Washington residents who bought consumer products containing CRT components.

Prior to any discovery, defendants filed motions to dismiss the State's lawsuit for lack of personal jurisdiction, attaching declarations. CP at 29-110. The trial court granted defendants' motion to dismiss, and the Court of Appeals reversed, concluding, "because a product manufactured by these foreign corporations was sold—as an integrated component part of retail consumer goods—into Washington in high volume over a period of years, the corporations 'purposefully' established 'minimum contacts' in Washington." *State v. LG Electronics, Inc.*, 185 Wn. App. 394, 399, 341 P.3d 346 (2015).

IV. ARGUMENT AND AUTHORITY

The U.S. Supreme Court and this Court have long held that a state does not offend due process by asserting jurisdiction over foreign defendants that place goods into the stream of commerce with the expectation that they will be purchased in the forum state. Defendants, whose conduct falls well within this established standard, seek to rely on plurality opinions of the U.S. Supreme Court. But those opinions do not overrule precedent establishing the stream of commerce principle, and, in any event, they are factually distinguishable from the situation here, where millions of defendants' products were sold in Washington. Moreover, the

additional considerations of fair play and substantial justice strongly support jurisdiction here. This Court should affirm.

A. Defendants Purposefully Availed Themselves of the Washington Market, Satisfying the “Minimum Contacts” Test

Washington courts have personal jurisdiction over a foreign corporation when (1) a state long-arm statute confers jurisdiction; and (2) imposing jurisdiction does not violate constitutional principles. *Grange Ins. Ass’n v. State*, 110 Wn.2d 752, 756, 757 P.2d 933 (1988). Here, defendants do not contest that RCW 19.86.180 confers jurisdiction, arguing only that imposing jurisdiction violates due process.³ Courts require three elements for personal jurisdiction to satisfy due process: (1) that purposeful “minimum contacts” exist between the defendant and the forum state; (2) that the plaintiff’s injuries arise out of or relate to those contacts; and (3) that the forum state’s assumption of jurisdiction not offend traditional notions of fair play and substantial justice. *Grange*, 110 Wn.2d at 758 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472-78, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985)).

A manufacturer purposefully avails itself of a forum when the sale

³ RCW 19.86.160 states: “Personal service of any process in an action under this chapter may be made upon any person outside the state if such person has engaged in conduct in violation of this chapter which has had the impact in this state which this chapter reprehends. . . .” The defendants’ participation in a price-fixing conspiracy constitutes a violation of the Act’s prohibition on restraints of trade, and there is no dispute that the price-fixing had an impact in this state. *See* RCW 19.86.030 (prohibiting every contract, combination, or conspiracy in restraint of trade).

of its product there is “not simply an isolated occurrence, but arises from the efforts of the manufacturer . . . to serve, directly *or indirectly*, the market[.]” *World-Wide Volkswagen*, 444 U.S. at 297 (emphasis added). Thus, a manufacturer purposefully avails itself of a forum state where it delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum state. *Id.* at 297-98.

The stream of commerce principle, as enunciated in *World-Wide Volkswagen*, does not allow jurisdiction based upon mere foreseeability that a product may end up in the forum state, but rather the defendant’s conduct and connection with the state must be such that it should reasonably anticipate being haled into court there. *Id.* at 297. In explaining this distinction, the Court reasoned that while an “isolated occurrence” may not cause a defendant to reasonably anticipate being haled into court, “[t]he forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.” *Id.* at 297-98.

This stream of commerce principle has never been overturned. In fact, five years later, in a 6-2 opinion, the U.S. Supreme Court confirmed this analysis, repeating the same language and also reasoning that “where individuals ‘purposefully derive benefit’ from their interstate activities, it

may well be unfair to allow them to escape having to account in other States for consequences that arise proximately from such activities” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473-74, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985) (citation omitted). The Court again distinguished between delivering products into the stream of commerce with the expectation that they will be purchased in the forum state, which supported jurisdiction, and “random,” “fortuitous,” or “attenuated” contacts, which did not. *Id.* at 475-76.

In a unanimous opinion, this Court reaffirmed the stream of commerce principle. *Grange*, 110 Wn.2d at 761; *see also State v. AU Optronics Corp.*, 180 Wn. App. 903, 328 P.3d 919 (2014) (upholding personal jurisdiction where defendants allegedly fixed prices of component LCD screens incorporated into products regularly sold into Washington). As stated in *Grange*, “purposeful minimum contacts are established when an out-of-state manufacturer places its products in the stream of interstate commerce, because under those circumstances it is fair to charge the manufacturer with knowledge that its conduct might have consequences in another state.” *Grange*, 110 Wn.2d at 761.

Here, the defendants’ conduct falls well within the “minimum contacts” required to assert personal jurisdiction. Defendants’ CRTs were placed into the international stream of commerce by incorporating them

into countless televisions, computer monitors, and other devices that were intentionally and purposefully marketed throughout the United States—in each and every state. Defendants’ calculated efforts to target as wide a market as possible, including through their indirect sales into Washington, are precisely the level of contacts sufficient for the exercise of jurisdiction under *World-Wide Volkswagen* and *Burger King*.

B. Subsequent U.S. Supreme Court Authority Confirms that Personal Jurisdiction Was Properly Asserted Here

Defendants do not argue that jurisdiction is improper under the holdings in *World-Wide Volkswagen*, *Burger King*, and *Grange* that the forum State does not exceed its powers under the due process clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State. Nor could they. Instead, they argue that subsequent U.S. Supreme Court opinions have changed the law. But in doing so, they rely on minority opinions and a misunderstanding of controlling opinions. A fair reading of those cases shows that asserting jurisdiction here does not offend due process.

1. Asahi Did Not Overturn the Stream of Commerce Principle from *World-Wide Volkswagen* and *Burger King*

Two years after the *Burger King* opinion, the U.S. Supreme Court again addressed the requirements of personal jurisdiction, issuing a

fragmented decision. Justice O'Connor wrote for a four-justice minority that placing a product into the stream of commerce was not sufficient to establish personal jurisdiction even if the defendant knew that the product "may or will" enter the forum state. *Asahi Metal Indus. Co., Ltd. v. Superior Court of California*, 480 U.S. 102, 112, 107 S. Ct. 1026, 94 L. Ed. 2d 92 (1987). Instead, "something more" was required, such as forum-specific design or marketing. *Id.* at 111. Of course, as a minority opinion, it could not overturn *World-Wide Volkswagen* or *Burger King*. Justice Brennan also wrote for four justices, explaining that the stream of commerce justification for asserting personal jurisdiction "refers not to unpredictable currents or eddies, but to the regular and anticipated flow of products from manufacture to distribution to retail sale." *Id.* at 117. Thus, Justice Brennan would find purposeful availment of a forum where the defendant was aware that the final product was being marketed in the forum State, without the necessity of "something more." *Id.* at 111. Justice Stevens wrote a separate opinion declining to conclusively address the stream of commerce principle. *Id.* at 121. Nevertheless, he suggested that a regular flow of products to the forum state could satisfy the purposeful availment requirement, noting that the analysis would depend on "the volume, the value, and the hazardous character of the components." *Asahi*, 480 U.S. at 122. This Court later acknowledged the O'Connor/Brennan

split from *Asahi*, and observed that its own precedent rejected the O'Connor "something more" rule. *Grange*, 110 Wn.2d at 761.⁴

2. The *J. McIntyre* Decision Does Not Alter the Jurisdictional Analysis

Defendants rely most heavily on the U.S. Supreme Court's most recent decision on personal jurisdiction, *J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S. Ct. 2780, 180 L. Ed. 2d 765 (2011). Contrary to their claim, *J. McIntyre* did not change personal jurisdiction analysis and, if anything, strengthens Washington's assertion of personal jurisdiction here.

In *J. McIntyre*, a plurality of the Court found that New Jersey lacked personal jurisdiction over a British manufacturer who did "not have a single contact with New Jersey short of the machine in question ending up in this state." *Id.* at 2790 (lead opinion) (internal quotation marks omitted). Unlike the present case, in which defendants manufactured hundreds of millions of products to be incorporated into consumer goods it knew and intended would be regularly sold in Washington in vast quantities, there was no regular flow of products to New Jersey, and the

⁴ Even Justice O'Connor's "something more" test does not necessarily preclude jurisdiction here. For example, Justice O'Connor cited with approval several cases with similar facts to the present case that upheld jurisdiction where foreign corporations employed or controlled the distribution system that brought the product to the forum state or manufactured a component for a finished product designed for a United States and European market. *Ashahi*, 480 U.S. at 112-13 (citing *Rockwell Int'l Corp. v. Costruzioni Aeronautiche Giovanni Agusta*, 553 F. Supp. 328 (E.D. Pa. 1982); *Hicks v. Kawasaki Heavy Indus.*, 452 F. Supp. 130 (M.D. Pa. 1978)).

machine ending up there was a single, isolated sale. *Id.* at 2792 (Breyer, J., concurring). *J. McIntyre* is thus factually distinguishable from this case.

Moreover, the lead opinion did not alter the holdings of *World-Wide Volkswagen* or *Burger King* because it did not receive five votes. Instead, Justice Breyer's concurring opinion is the only controlling precedent to emerge from the case. See *Marks v. United States*, 430 U.S. 188, 193, 97 S. Ct. 990, 51 L. Ed. 2d 260 (1977) (holding of the Court is position taken by Justices who concurred in the judgment on the narrowest grounds); *Willemssen v. Invacare Corp.*, 352 Or. 191, 200-01, 282 P.3d 867 (2012) (Justice Breyer's opinion controls under *Marks*), *cert. denied*, 133 S. Ct. 984 (2013). Justice Breyer, joined by Justice Alito, explicitly stated that he was not announcing a new rule but instead relied solely on prior precedent, holding that placing products in the stream of commerce is not sufficient to establish minimum contacts where doing so results in only a single, isolated sale in the forum state. *J. McIntyre*, 131 S. Ct. at 2792. Although defendants argue that Justice Breyer in effect adopted the "something more" test from Justice O'Connor's opinion in *Asahi*, Justice Breyer emphatically did not choose sides in the Brennan/O'Connor split from *Asahi*. Instead, Justice Breyer concluded that under either *Asahi* opinion, personal jurisdiction would not be appropriate based on a single, isolated sale. *J. McIntyre*, 131 S. Ct. at 2792 ("Here, the relevant facts

found by the New Jersey Supreme Court show no ‘regular . . . flow’ or ‘regular course’ of sales in New Jersey; and there is no ‘something more’” (First alteration in original.)). Justice Breyer rejected the lead opinion’s approach, which would have required specific targeting of New Jersey. *Id.* at 2793. Thus, defendants’ claim that Justice Breyer’s concurring opinion requires specific targeting of a state is flatly contradicted by his opinion. *J. McIntyre* does no more than reiterate the status quo, and does not support defendants here.

Although Justice Breyer’s opinion in *J. McIntyre* did not change the status quo regarding personal jurisdiction, his rationale supports asserting personal jurisdiction here. As the Court of Appeals recognized, Justice Breyer’s contrasting of asserting jurisdiction over a small manufacturer who engages a national distributor (which might be unfair) with a large manufacturer that specifically seeks or expects sales in every state (which would be fair) strongly suggests that he would agree with the assertion of personal jurisdiction here. *LG Electronics*, 185 Wn. App. at 418 (quoting *J. McIntyre*, 131 S. Ct. at 2793-94). Thus, if *J. McIntyre* stands for anything other than that a single, isolated sale by an intermediary to the forum state does not support personal jurisdiction, it supports jurisdiction here, where sales to Washington were not isolated, random, or fortuitous.

C. Persuasive Authority Supports the Assertion of Personal Jurisdiction

Holdings from other jurisdictions addressing analogous facts show that asserting personal jurisdiction here complies with due process. In a recent case issued after *J. McIntyre*, the Oregon Supreme Court rejected many of the arguments defendants make here in upholding jurisdiction over a Taiwanese manufacturer that sold battery chargers to an Ohio company for incorporation into wheelchairs. *Willemsen*, 352 Or. at 194. The Taiwanese company did not itself market or distribute its products beyond Ohio, but the Ohio company sold the wheelchairs nationwide, including 1,102 wheelchairs sold in Oregon over a two-year period. *Id.* at 196. In upholding personal jurisdiction, the court rejected the Taiwanese company's reliance on *J. McIntyre* to argue that it had not targeted Oregon and thus lacked sufficient minimum contacts. *Id.* at 207. The court reasoned that the sale of over 1,000 wheelchairs containing the component constituted a regular course of sales into Oregon and established a "relationship between 'the defendant, the *forum*, and the litigation,' [such that] it is fair, in light of the defendant's contacts *with [this] forum*, to subject the defendant to suit [h]ere." *Id.* (alterations in original) (quoting *J. McIntyre*, 131 S. Ct. at 2792 (Breyer, J., concurring)). Other courts both before and after *J. McIntyre* agree. *E.g.*, *Russell v. SNFA*, 2013 IL 113909,

987 N.E.2d 778, 370 Ill. Dec. 12; (French manufacturer of component part knew distributor marketed products worldwide); *Invensense, Inc. v. STMicroelectronics, Inc.*, No. 2:13-CV-00405-JRG, 2014 WL 105627, at *5 (E.D. Tex. Jan 1, 2014) (unpublished) (component manufacturer “obviously knew that the products it was helping to design would reach customers all over the world, including the [forum state]”); *Oswalt v. Scripto, Inc.*, 616 F.2d 191, 199-200 (5th Cir. 1980) (Japanese manufacturer delivered products to distributor who sold to customer with national retail outlets); *Execu-Tech Bus. Sys., Inc. v. New Oji Paper Co. Ltd.*, 752 So. 2d 582 (Fla. 2000) (Japanese paper manufacturer alleged to have fixed prices even though defendant sold only to Japanese distributors).

Here, defendants’ contacts with Washington are far more substantial than in *Willemssen*, and their scope of operations and infiltration into each state’s market dwarfs that of the battery manufacturer there. Defendants sold hundreds of millions of CRTs directly and indirectly—often using companies within their own corporate families to market and distribute the products—in a coordinated effort to place their price-fixed components as widely as possible throughout the United States. They knew and intended that their CRTs would be incorporated into products sold in massive quantities throughout the United States, including

Washington, showing an anticipated and regular flow of sales here. Thus, as in *Willemssen*, assertion of personal jurisdiction is proper.

Defendants may rely on cases from other jurisdictions, as they did at the Court of Appeals, that found no personal jurisdiction in various circumstances. Resp't Br. at 34-35. None of those cases address the factual situation here, with defendant manufacturers conspiring to fix prices of a component of nearly ubiquitous consumer products that are certain to regularly reach the forum state in significant quantities and cause harm. And many of those cases either have adopted Justice O'Connor's "something more" test that this Court rejected in *Grange* or rely on a misreading of *J. McIntyre*. E.g., *In re Auto. Parts Antitrust Litig.*, Nos. 2:12-CV-00102, 2:12-CV-00103, 2013 WL 2456611, at *4-5 (E.D. Mich. June 6, 2013) (unpublished) (relying on minority opinion in *J. McIntyre* and concluding that defendant did not target United States); *Lorix v. Crompton Corp.*, 680 N.W.2d 574, 580 (Minn. Ct. App. 2004) (applying "something more" requirement and concluding that supplier did not expect product to be sold in forum state).

D. Asserting Personal Jurisdiction Over Defendants Comports with Traditional Notions of Fair Play and Substantial Justice

The final inquiry for this Court is whether the assertion of jurisdiction would offend traditional notions of fair play and substantial

justice. *Grange*, 110 Wn.2d at 758. In weighing this standard, courts consider: (1) the quality, nature, and extent of the activity in the forum state; (2) the relative convenience of the parties; (3) the benefits and protections of the laws of the forum state afforded the respective parties; and (4) the basic equities of the situation. *Id.* All of these factors overwhelmingly favor the exercise of jurisdiction.

Defendants targeted each state in the United States for exploitation of their price-fixing conspiracy, selling hundreds of millions of CRTs that were incorporated into televisions, computers, and other devices. The presence of millions of CRTs in Washington was not the result of chance or the random acts of third parties, but a fundamental attribute of these defendants' businesses. Given the volume of sales and the knowledge and intent of the harmful nature of each sale, the quality, nature, and extent of defendants' activity weighs in favor of jurisdiction.

The relative convenience of the parties also weighs heavily in favor of jurisdiction. The inconvenience for large, multi-national corporations of defending a lawsuit in the forum they voluntarily exploited pales in comparison to the likely insurmountable barriers faced by consumers or the Attorney General in bringing suit in these defendants' home countries. *Cf. Bean Dredging Corp. v. Dredge Tech. Corp.*, 744 F.2d 1081 (5th Cir. 1984) (noting the "magnitude" of defendant's

operations mitigated burden concerns).

Finally, basic equities and the benefits and protections of the laws of the forum state weigh heavily in favor of jurisdiction. Washington law provides a remedy in this case for consumers, as indirect purchasers of the price-fixed goods, that does not exist under federal law.⁵ Thus, without the current enforcement action, consumers in Washington are wholly denied the opportunity to obtain economic relief for defendants' violations. This would not only preclude relief for Washington citizens injured by defendants' conspiracy, but would provide a roadmap for large, multi-national corporations to harm future Washington citizens with impunity. *Cf. State v. Reader's Digest Ass'n, Inc.*, 81 Wn.2d 259, 278, 501 P.2d 290 (1972) ("If our courts are not open, the state will be without a remedy in any court and the Consumer Protection Act will be rendered useless."); *Omstead v. Brader Heaters, Inc.*, 5 Wn. App. 258, 272, 487 P.2d 234 (1971) ("With the breakdown in international commercial barriers, and the resulting fact that a substantial portion of goods sold to American consumers today is manufactured in foreign lands, we would be striking a serious blow at consumer protection if we did not recognize such

⁵ Washington's Consumer Protection Act allows lawsuits by the Attorney General on behalf of indirect purchasers of price-fixed goods, but federal law does not. RCW 19.86.080(3); *Blewett v. Abbott Labs.*, 86 Wn. App. 782, 788-90, 938 P.2d 842 (1997).

jurisdiction.”), *aff'd and adopted* by 80 Wn.2d 720, 722, 497 P.2d 1310 (1972). And as alluded to in U.S. Supreme Court opinions, it would be unfair to allow a defendant to profit from regular and voluminous sales to a forum state yet avoid being haled into court there. *E.g.*, *Burger King*, 471 U.S. at 473-74; *J. McIntyre*, 131 S. Ct. at 2793 (Breyer, J., concurring). It would be particularly unfair here, where defendants profited by engaging in an unlawful conspiracy to fix prices of goods present in nearly every household in Washington. Equity favors jurisdiction here.

E. The State Need Only Make A Prima Facie Showing of Jurisdiction

In their petition, defendants also claim that Washington's long-standing refusal to apply summary judgment standards to a motion to dismiss that occurs before discovery violates due process. This Court need not decide this issue, because defendants' declarations do not contradict the allegations in the complaint that establish personal jurisdiction.⁶ Specifically, the declarations do not deny that the defendants participated in a price-fixing conspiracy; that they manufactured, distributed, or marketed CRTs; that the price-fixing injured Washington consumers; that

⁶ As noted above, the one possible exception involves defendant Koninklijke Philips Electronics N.V., which submitted a declaration that may contradict the allegation that it manufactured, sold, and distributed CRTs. But it does not challenge that it participated in the conspiracy that profited from substantial numbers of price-fixed CRTs incorporated into products sold to Washington, and agrees that it manages the high-level strategic decisions within the Philips group of companies, which did manufacture, sell, and distribute CRTs and even finished products into Washington. CP at 105.

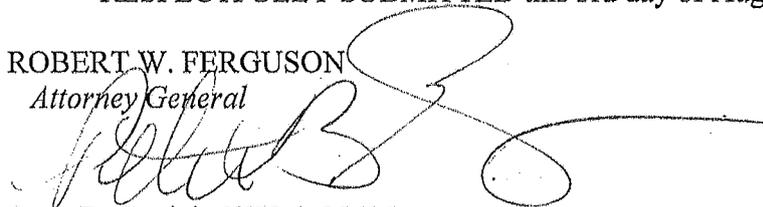
they placed their products into the international stream of commerce; and that they anticipated, knew, and intended that the CRT products would be distributed to Washington in substantial numbers. Thus, uncontradicted allegations in the complaint establish that personal jurisdiction is proper, and this Court need not address this issue. In any event, the Court of Appeals correctly interpreted this Court's procedural rules and precedent in holding that the allegations in the complaint must be treated as true for purposes of a motion to dismiss pursuant to CR 12(b)(2). *LG Electronics*, 185 Wn. App. at 406.

V. CONCLUSION

Defendants purposefully availed themselves of Washington's market by profiting from the sale of millions of products containing the component they manufactured, distributed, or marketed. The regular and anticipated flow of their products into Washington justifies the assertion of personal jurisdiction. This Court should affirm the Court of Appeals.

RESPECTFULLY SUBMITTED this 3rd day of August 2015.

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I certify, under penalty of perjury under the laws of the state of Washington, that on this date I have caused a true and correct copy of the State Of Washington's Supplemental Brief and this Certificate Of Service to be served on the following via e-mail:

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State of Washington Cause No. 91391-9
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