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STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

THE STATE OF WASHINGTON,

Plaintiff,

v.

AU OPTRONICS CORPORATION, *et al.*,

Defendants.

NO. 10-2-29164-4SEA

CONSENT DECREE AGAINST
TOSHIBA CORPORATION,
TOSHIBA AMERICA ELECTRONIC
COMPONENTS, INC., TOSHIBA
AMERICA INFORMATION
SYSTEMS, INC., AND TOSHIBA
MOBILE DISPLAY TECHNOLOGY
CO., LTD.

I. JUDGMENT SUMMARY

- A. Plaintiff: State of Washington
- B. Defendants: Toshiba Corporation
Toshiba America Electronic Components, Inc.
Toshiba America Information Systems, Inc.
Toshiba Mobile Display Technology Co., Ltd.
- C. Settlement Amount: \$950,000 (Nine hundred fifty thousand dollars)
- D. Attorneys for Plaintiff: Jonathan Mark, Sr. AAG
Bill Clark, Senior Counsel
David Kerwin, AAG
Stephen Fairchild, AAG
- E. Attorneys for Defendants: Christopher M. Curran
White & Case LLP

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II. INTRODUCTION

A. Plaintiff, State of Washington, filed its Complaint on August 11, 2010 and a First Amended Complaint on August 16, 2010, against Defendants Toshiba Corporation, Toshiba America Electronic Components, Inc., Toshiba America Information Systems, Inc., and Toshiba Mobile Display Technology Co., Ltd. (formerly known as Toshiba Matsushita Display Technology Co., Ltd. and subsequently known as Japan Display Central Inc. and now part of Japan Display Inc.) (collectively "Toshiba").

B. Plaintiff and Toshiba have engaged in extended arms-length negotiations regarding possible resolution of the claims in Plaintiff's Complaint. Plaintiff and Toshiba have now agreed on a basis for the settlement of all of Plaintiff's claims in this matter, and to the entry of this Consent Decree without trial or adjudication of any issue of fact or law.

C. Toshiba, despite its belief that it is not liable for the claims asserted by Plaintiff and that it has good defenses to those claims, has nevertheless agreed to enter into this Consent Decree to (i) avoid further expense, inconvenience, and distraction of burdensome and protracted litigation; (ii) obtain the releases contemplated by this Consent Decree; and (iii) put to rest and terminate with finality all claims that have been or could have been asserted against Toshiba by Plaintiff arising out of the facts alleged in Plaintiff's Complaint. Neither the Complaint nor anything in this Consent Decree constitutes evidence or an admission by Toshiba regarding the existence or non-existence of any issue, fact, or violation of any law alleged by Plaintiff.

D. Toshiba recognizes and states that this Consent Decree is entered into voluntarily and that no promises or threats have been made by the Washington State Attorney General's Office or any member, officer, agent, or representative thereof to induce Toshiba to enter into this Consent Decree.

1 E. Toshiba waives any right it may have to appeal from the Consent Decree and
2 from any Order adopting it, provided that no substantive changes are made to the Consent
3 Decree after it has been presented to the Court.

4 F. Toshiba agrees that it will not oppose the entry of the Consent Decree on the
5 grounds that it fails to comply with Rule 65(d) of the Rules of Civil Procedure or any rule of
6 procedure, and hereby waive any objections based thereon.

7 G. The parties agree that this Consent Decree, represents the entire agreement of
8 the parties.

9 H. The parties agree and represent that any persons signing this Consent Decree are
10 authorized to execute this Consent Decree on behalf of the parties they represent.

11 I. For purposes of this document, a signature page sent via fax or electronic mail
12 shall be treated the same as an original signature, and signatures may be affixed through
13 counterparts.

14 J. This Consent Decree shall not benefit any third party other than the Releasees
15 and it shall not be construed to provide any rights to third parties other than the Releasees.

16 K. The parties have read and understand this Consent Decree and enter into it
17 voluntarily, having been advised by undersigned counsel of the meaning and effect of each
18 provision of this Consent Decree.

19 NOW, THEREFORE, there being no just reason for delaying the resolution of the
20 claims contained in Plaintiff's Complaint, the parties agree, and it is hereby ORDERED,
21 ADJUDGED, AND DECREED, as follows:

22 **III. JURISDICTION AND VENUE**

23 The Court has jurisdiction to enter and enforce this Consent Decree. Venue is proper in
24 this Court. The Attorney General has authority to bring this action under RCW 19.86, The
25 Unfair Business Practices – Consumer Protection Act.

26 CONSENT DECREE AGAINST TOSHIBA CORPORATION, TOSHIBA AMERICA ELECTRONIC COMPONENTS, INC., TOSHIBA AMERICA INFORMATION SYSTEMS, INC., AND TOSHIBA MOBILE DISPLAY TECHNOLOGY CO., LTD.
KING COUNTY CAUSE NO. 10-2-29164-4SEA

IV. DEFINITIONS

1 A. "Action" means the action pending at King County Superior Court, docket no.
2 10-2-29164-4 SEA, and its appellate proceedings.

3 B. "Attorney General" and "Plaintiff" mean the Attorney General of the State of
4 Washington.

5 C. "Co-Conspirator" means persons, companies, and entities other than Toshiba
6 that Plaintiff asserts contracted, conspired, or agreed with Toshiba and any of the defendants in
7 restraint of trade or commerce in the manufacture or sale of LCD panels, including without
8 limitation, Chunghwa Picture Tubes, Ltd., 1127 Heping Rd., Bade City, Taoyuan, Taiwan, 334
9 R.O.C.; CMO Japan Co., Ltd., f/k/a International Display Technology, Ltd., a subsidiary of
10 Chi Mei Corporation, with its principal place of business located at Nansei Yaesu Bldg. 4F, 2-
11 2-10 Yaesu, Chuo-Ku, Tokyo 104-0028, Japan; HannStar Display Corporation, No. 480,
12 Rueiguang Road, 12th Floor, Neihu Chiu, Taipei 114, Taiwan and its wholly owned
13 subsidiary, HannSpree, a Delaware corporation having a principle place of business at 14450
14 Myford Road, Suite 100, Irvine, CA 92606; Hydis Technologies Co., Ltd., f/k/a BOE Hydis
15 Technology Co., Ltd., with its principal place of business located at San 136-1, Ami-ri, Bubal-
16 eub, Icheon-si, Gyeonggi-do 467-866, South Korea, and the co-conspirators listed in the
17 Court's March 25, 2015 Order on Undisclosed Conspirators.

18 D. "Complaint" means any and all complaints filed in this Action.

19 E. "Consumer" mean persons as defined in RCW 19.86.010(1).

20 F. "Effective Date" means the date on which this Consent Decree is entered by the
21 Court.

22 G. "LCD panel" shall refer to liquid crystal display panels including thin film
23 transistor liquid crystal display panels ("TFT-LCD panels").

24 H. "LCD products" shall refer to LCD panels and products containing LCD panels.
25

1 I. "MDL" means *In Re TFT-LCD (Flat Panel) Antitrust Litigation*, United States
2 District Court, Northern District of California (San Francisco), Master File No. C07-1827-SI,
3 MDL No. 1827.

4 J. "Released Claims" means any claim or claims that arise out of or relate to the
5 Relevant Conduct prior to the Effective Date under RCW 19.86.030, or federal, or Washington
6 statutory or common law regulating competition, unfair competition, unfair practices, price
7 discrimination, unitary pricing, consumer protection, restitution, fraud protection, common law
8 unjust enrichment, racketeering, civil conspiracy, or trade practice law, including, without
9 limitation, any and all claims, demands, actions, judgments, suits, liabilities, expenses
10 (including costs, attorneys' fees and interest), penalties, or causes of action that Releasors ever
11 had, now have, or hereafter could bring, against the Releasees (or any of them), whether in
12 law, in equity, or otherwise, based on, arising out of or relating to the Relevant Conduct,
13 including but not limited to Washington's *parens patriae* claims and all of Plaintiffs' claims
14 asserted in the Action.

15 K. "Releasees" refers to Toshiba, wherever located, and to all of their respective
16 past and present, direct and indirect, parent companies, subsidiaries, joint ventures, and
17 Affiliates (where "Affiliates" is defined as any other entity that is now or was previously
18 owned by or an owner of Toshiba, where "owned" and "owner" mean holding directly or
19 indirectly 50% or greater equity or beneficial interest); and each and all of the past, present and
20 former principals, partners, officers, directors, supervisors, employees, representatives,
21 insurers, attorneys, heirs, executors, administrators, and assigns of each of the foregoing, and
22 any predecessors or successors of any of the foregoing. "Releasees" does not include any
23 defendant named in the Complaint as of the Execution Date other than Toshiba.

1 L. "Releasers" shall refer to the State of Washington on its own behalf (including
2 its agencies and the Attorney General) and as *parens patriae* on behalf of persons residing in
3 the State as described in the Complaint.

4 M. "Relevant Conduct" means Toshiba's alleged participation in an unlawful
5 conspiracy to raise, fix, maintain, or stabilize the price of LCD products at artificially high
6 levels, to maintain the production of LCD products at artificially low levels, or other
7 anticompetitive conduct regarding LCD products including the conduct alleged in the
8 Complaint.

9 N. "Relevant Period" means the period beginning January 1, 1998 and continuing
10 through December 31, 2006.

11 **V. CERTIFICATION**

12 A. Toshiba hereby certifies to the Attorney General that it does not manufacture or
13 sell stand-alone TFT-LCD panels.

14 B. In the event that Toshiba manufactures or sells stand-alone TFT-LCD panels
15 within five (5) years from the Effective Date of this Consent Decree:

- 16 1. Within thirty days, Toshiba shall make a copy of this Consent Decree
17 available to its officers, directors, and sales managers with responsibility for
18 LCD panel sales to or in the United States and direct them to comply with
19 its terms.
- 20 2. Toshiba shall certify that it has established an antitrust compliance program,
21 and shall establish, if not already established, maintain, and update a
22 program or programs for the purpose of compliance with federal and state
23 antitrust laws, including the Sherman Act and RCW 19.86.030. Such
24 program or programs shall provide relevant compliance education to all
25 such persons regarding the legal standards imposed by the antitrust laws, the

1 remedies that might be applied in the event of violations, and their
2 obligations in the event that they observe violations of the antitrust laws.

3 3. On an annual basis, until 5 (five) years after the Effective Date, Toshiba
4 shall certify in writing to the Attorney General that it is fully compliant with
5 the provisions in this Consent Decree.

6 4. Such certifications shall set forth in detail the manner and form in which
7 they intend to comply, are complying, and have complied with the terms of
8 this Consent Decree.

9 C. Nothing in this provision or Consent Decree shall be interpreted as limiting in
10 any way Toshiba's obligation to comply to the fullest extent with federal and state antitrust
11 laws.

12 VI. MONETARY RELIEF

13 A. Within 30 days of the Effective Date, and in exchange for the full, complete,
14 and final settlement of the Released Claims as provided herein, Toshiba shall pay to the State
15 of Washington Nine Hundred Fifty Thousand United States Dollars (\$950,000 US) as payment
16 for relief pursuant to RCW 19.86.080 and .090 (the "Toshiba Settlement Fund"). Toshiba shall
17 pay the amount set forth above by wire transfer to the State of Washington, or to such other
18 recipient as the Plaintiff shall designate, who shall hold such funds for the benefit of the State
19 of Washington and its agencies and consumers that purchased LCD products. On the Effective
20 Date, Plaintiff shall provide written wire instructions that provide sufficient information for
21 Toshiba to make an international wire transfer. All funds so held shall be deemed and
22 considered to be in custody of the Superior Court of King County before which the Complaint
23 was filed, and shall remain subject to the jurisdiction of the Court, until such time as such
24 funds shall be distributed pursuant to this Consent Decree or further order of the Court.

1 B. Pursuant to RCW 19.86.080, a portion of the Toshiba Settlement Fund, the
2 amount to be determined solely by the Attorney General, shall be deposited without prior court
3 approval into the Attorney General's antitrust revolving fund. The Attorney General shall use
4 the funds for recovery of the costs and attorneys' fees incurred in investigating this matter,
5 future monitoring and enforcement of this consent decree, future enforcement of RCW 19.86,
6 or for any lawful purpose in the discharge of the Attorney General's duties at the sole
7 discretion of the Attorney General. Any remaining monies from the Toshiba Settlement Fund
8 shall be used solely to compensate, either directly or indirectly, Washington consumers
9 (including agencies of the State of Washington that purchased LCD products) allegedly
10 harmed during the Relevant Period by the conduct alleged in the Complaint, in a manner
11 approved by the Court.

12 VII. COOPERATION PROVISIONS

13 A. If Plaintiff's action against any other Defendant in the Action is not fully
14 resolved as of the Effective Date, Plaintiff and Toshiba agree to meet and confer about any
15 cooperation that Toshiba might provide.

16 B. Neither Toshiba nor Plaintiff shall file motions against the other in the Action
17 during the pendency of the Consent Decree or after the Effective Date, except for the purpose
18 of seeking entry of this Consent Decree or enforcing the terms of this Consent Decree.

19 C. Plaintiff and Toshiba shall use their best efforts to effectuate this Consent
20 Decree, including cooperating in seeking any court approvals.

21 D. Plaintiff and Toshiba agree that they will not disclose the terms of this Consent
22 Decree publicly or to any person, other than as permitted by the parties or required by law,
23 until it has been filed in Court.

24 E. The provisions in this cooperation section shall remain in effect until the
25 conclusion of the Action.

VIII. APPLICABILITY

1 A. The provisions of this Consent Decree shall apply to Toshiba, its successors and
2 assigns, its subsidiaries, directors, officers, managers, agents, and employees.

3 B. This Consent Decree does not settle or compromise any claim by the Attorney
4 General against any person or entity other than the Releasees. All rights against such other
5 persons or entities are specifically reserved by Plaintiff. The parties intend that joint and
6 several liability against defendants other than Toshiba, and any Co-conspirators, shall include
7 sales of LCD panels by Toshiba.

8 C. On the Effective Date, the Attorney General and Plaintiff shall be bound by the
9 terms of this Consent Decree.

10 D. This Consent Decree shall be governed by and interpreted according to the
11 substantive laws of the State of Washington.

12 E. Except in a proceeding to enforce this Consent Decree, pursuant to RCW
13 19.86.130, neither this Consent decree (including without limitation statements in part III
14 above) nor any and all negotiations, documents, and discussions associated with them, shall be
15 deemed or construed to be an admission by Toshiba or the Releasees of truth of any of the
16 claims or allegations contained in the Complaint, or evidence of any violation of any statute or
17 law or of any liability or wrongdoing whatsoever by Toshiba or the Releasees regarding the
18 claims or allegations contained in the Complaint, or to be an admission by Toshiba or the
19 Releasees of the truth of any of the claims or allegations contained in the Complaint or any
20 other pleading filed by Washington in any action whatsoever to prove the truth of the matters
21 alleged in the Complaint.

IX. RELEASE

22 A. Upon the Effective Date and in consideration of payment of the Settlement
23 Fund and for other valuable consideration, the Releasees shall be completely released,
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1 acquitted, and forever discharged to the fullest extent permitted by law from the Released
2 Claims.

3 B. This release includes only the Released Claims and does not include any claims
4 other than the Released Claims, including without limitation any claims arising out of product
5 liability, personal injury, warranty, or breach of contract claims, where such claims are wholly
6 unrelated to the Relevant Conduct or any of the allegations in the Action.

7 C. This Consent Decree shall not affect whatever rights the Releasors, or any of
8 them, may have (i) to seek damages or other relief from any other person or entity other than
9 Releasees with respect to any direct or indirect purchases of LCD products; or (ii) to
10 participate in or benefit from, where appropriate, any relief or other recovery as part of a
11 settlement or judgment in any action on behalf of any direct purchasers of LCD products.

12 D. Releasors shall look solely to the Toshiba Settlement Fund for settlement and
13 satisfaction against the Releasees of all Released Claims and any costs and attorneys' fees, and
14 shall have no other recovery against Toshiba or any other Releasees for the Released Claims.

15 E. This Consent Decree shall be construed and interpreted to effectuate the intent
16 of the parties, which is to provide, through this Consent Decree, for a complete resolution of
17 the Released Claims with respect to each and all of the Releasees as provided in this Consent
18 Decree.

19 **X. NOTICE REQUIREMENTS**

20 A. Where this Consent Decree requires either party to provide notice to the other,
21 such notice shall be in writing, and such notice shall be provided by electronic mail or letter by
22 overnight delivery to the undersigned counsel for the party to whom notice is being provided:

23 To the Plaintiff:

24 Jonathan A. Mark, Senior AAG
25 Antitrust Division
26 Washington State Attorney General
800 Fifth Avenue Suite 2000, MS TB14

CONSENT DECREE AGAINST TOSHIBA CORPORATION, TOSHIBA AMERICA ELECTRONIC COMPONENTS, INC., TOSHIBA AMERICA INFORMATION SYSTEMS, INC., AND TOSHIBA MOBILE DISPLAY TECHNOLOGY CO., LTD.
KING COUNTY CAUSE NO. 10-2-29164-4SEA

1 Seattle, WA 98104
2 (206) 389-2848
3 JonathanM2@atg.wa.gov

4 To Toshiba:

5 Attn: General Manager
6 Corporate Alliance and Legal Division
7 Legal Department
8 Toshiba Corporation
9 1-1 Shibaura 1-chrome
10 Minato-ku, Tokyo 105-8001, Japan

11 Legal Department
12 Toshiba America Electronic Components, Inc.
13 9740 Irvin Blvd.
14 Irvine, CA 92618-1608

15 Legal Department
16 Toshiba America Information Systems, Inc.
17 9740 Irvine, CA 92618-1608

18 With a copy to:

19 Christopher M. Curran
20 White & Case LLP
21 701 13th St. N.W.
22 Washington, D.C. 20005
23 ccurran@whitecase.com

24 XI. COMPLIANCE AND ENFORCEMENT

25 A. Under no circumstances shall this Consent Decree or the name of the State of
26 Washington, Office of the Attorney General, or any of their employees be used by Toshiba as
an endorsement or approval of Toshiba's acts, practices, or conduct of business.

B. A violation of any of the terms of Section V.B. and Section VII of this Consent
Decree shall, if proven, constitute a violation of an injunction for which civil penalties of up to
\$25,000 per violation may be sought by the Attorney General pursuant to RCW 19.86.140.

C. In the event that Plaintiff reasonably believes a breach of this Consent Decree
has occurred, and for the purpose of determining or securing compliance with this Consent
Decree, the Plaintiff shall provide written notice to counsel for Toshiba on its behalf. Toshiba

1 shall have thirty (30) days from receipt of such notice in which to cure the alleged breach to the
2 Plaintiff's satisfaction. If Toshiba cures the purported breach, the Attorney General shall not
3 seek an injunction or civil penalties under the preceding paragraph. If Plaintiff is not satisfied
4 that cure has occurred, subject to any legally recognized privilege, Plaintiff may issue a Civil
5 Investigative Demand pursuant to RCW 19.86.110(4)(c) requiring Toshiba to:

- 6 1. Produce documents related to the purported breach, and/or
- 7 2. Subject to reasonable convenience of Toshiba, and without restraint or
8 interference from them, to interview directors, officers, employees, and
9 agents of Toshiba, who may have counsel present, regarding the purported
10 breach.
- 11 3. Counsel for Toshiba shall accept service of any such CID without objection.

12 D. If the Attorney General successfully brings an action to enforce the provisions
13 of this Consent Decree, Toshiba shall reimburse the Attorney General for all reasonable costs
14 and attorneys' fees associated with bringing such enforcement action.

15 XII. RETENTION OF JURISDICTION

16 Jurisdiction is retained by the King County Superior Court for the purpose of enabling
17 any of the parties to this Consent Decree to apply to it at any time for such further orders and
18 directions as may be necessary or appropriate for the construction, implementation, or
19 modification of any of the provisions of this Consent Decree, for the enforcement of
20 compliance herewith, and for sanctions for any violations hereof.

21 XIII. EXPIRATION OF CONSENT DECREE

22 This Consent Decree shall expire five (5) years from the date it is executed. Such
23 expiration shall in no way affect the validity of the Releasers' release of claims.

XIV. CONFIDENTIALITY

1 A. Any materials produced by Toshiba under this Consent Decree shall be treated
2 in accordance with RCW 19.86.110 and any protective order in this Action. To the extent that
3 any document to be produced pursuant to this Consent Decree is subject to a protective order in
4 any relevant matter, such production will be subject to the provisions of such protective order.

5 B. If at the time information or documents are furnished by Toshiba to the Plaintiff
6 and Toshiba represents and identifies in writing the portions of any such information or
7 documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Superior
8 Court Civil Rules and Toshiba marks each pertinent page of such documents, "Confidential" or
9 "Subject to claim of protection under Rule 26(c)(7) of the Superior Court Civil Rules" and
10 describes why such documents are privileged, then the Plaintiff shall give ten (10) days' notice
11 to Toshiba prior to divulging such material in any legal proceeding.
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1 XV. APPROVAL AND JUDGMENT


2 This Consent Decree may be executed in counterparts by the Attorney General and
3 Toshiba, and a facsimile signature shall be deemed an original signature for purposes of
4 executing this Consent Decree. This Consent Decree is approved and hereby entered pursuant
5 to RCW 19.86.080. This proceeding in all other respects is hereby dismissed with prejudice
6 with respect to Toshiba.

7 It is so ORDERED this _____ day of _____ 2015

8
9 _____
10 THE HONORABLE SEAN O'DONNELL

11 ROBERT W. FERGUSON
12 Attorney General

13 DARWIN ROBERTS
14 Deputy Attorney General

15 
16 JONATHAN A. MARK, WSBA No. 38051
17 WILLIAM G. CLARK, WSBA No. 9234
18 DAVID KERWIN, WSBA No. 35162
19 STEPHEN FAIRCHILD, WSBA No. 41214
20 Attorneys for Plaintiff
21 Office of the Attorney General
22 Antitrust Division
23 800 Fifth Ave., Ste. 2000,
24 Seattle, WA 98104
25 206.389.3806

26 Agreed to, Approved for Entry, and
Notice of Presentation Waived:

27 TOSHIBA

28 By: 

29 Its: Outside Counsel of Record of express authorization

30 CONSENT DECREE AGAINST TOSHIBA CORPORATION, TOSHIBA AMERICA ELECTRONIC COMPONENTS, INC., TOSHIBA AMERICA INFORMATION SYSTEMS, INC., AND TOSHIBA MOBILE DISPLAY TECHNOLOGY CO., LTD.
KING COUNTY CAUSE NO. 10-2-29164-4SEA