

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into by and between Chunghwa Picture Tubes, Ltd. ("Chunghwa") on the one hand, and the Attorney General of California ("Attorney General"), on behalf of the State of California and its state agencies, its political subdivisions and public agencies (including the Class of Government Entities as defined below), and as *parens patriae* on behalf of natural persons (collectively the "State"), on the other hand.

WHEREAS, the Attorney General alleges that Chunghwa participated in an unlawful conspiracy to raise, fix, maintain, or stabilize the price of thin film transistor liquid display ("TFT-LCD") panels at artificially high levels, and to restrict output of TFT-LCD panels in violation of the California Cartwright Act, the California Unfair Competition Law, and/or the doctrine of unjust enrichment; and

WHEREAS, the Attorney General is currently prosecuting such claims in the action entitled *State of California, et al. v. AU Optronics Corporation, et al.*, Case No. CGC-10-504651 (Sup. Ct. Cal. Filed Oct. 15, 2010), in which Chunghwa is identified as an alleged co-conspirator (the "Related Action") and in the action to be filed against Chunghwa following execution of this Agreement (the "Chunghwa Complaint"); and

WHEREAS, the Attorney General is conducting an investigation into the facts and the law regarding Chunghwa's participation in an unlawful price fixing conspiracy of TFT-LCD panels and has determined that her claims are valid, but nevertheless believes that resolving her claims against Chunghwa according to the terms set forth below are in the best interest of the State; and

WHEREAS, Chunghwa, despite the belief that it is not liable for any claims arising from allegations that it participated in an unlawful price fixing conspiracy of TFT-LCD panels, and that it has good defenses thereto, has nevertheless agreed to enter into this Agreement to avoid

further expense, inconvenience, and the distraction of burdensome and protracted litigation, and to obtain the releases, orders, and judgment contemplated by this Agreement, and to put to rest with finality all claims that have been or could have been asserted against Chunghwa Releasees, as defined below, based on the allegations of the Related Action or the Chunghwa Complaint, as more particularly set out below;

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, it is agreed by and among the undersigned that the relevant claims be settled, compromised, and dismissed on the merits with prejudice as to Chunghwa Releasees and except as hereinafter provided, without costs as to the Attorney General, Chunghwa, and Chunghwa Releasees, subject to the approval of the Court, on the following terms and conditions, and incorporating the preceding clauses:

A. Definitions

1. "Chunghwa Releasees" refers to Chunghwa, and to all of its respective past and present, direct and indirect, parents, subsidiaries, and/or affiliates; the predecessors, successors and assigns of Chunghwa; and each and all of the present and former principals, partners, officers, directors, supervisors, employees, representatives, insurers, attorneys, heirs, executors, administrators, and assigns of Chunghwa.

2. "Class of Government Entities" refers to all political subdivisions and public agencies in California (i.e., counties, cities, K-12 school districts, and utilities), the University of California, and the State Bar of California that have purchased LCD panels and/or LCD products during the Relevant Period. Excluded from this definition are all state agencies that either constitute an arm of the State of California under the Eleventh Amendment of the U.S. Constitution or are not otherwise treated under California law as being autonomous from the State of California itself.

3. The "MDL" refers to the Multidistrict Litigation entitled *In Re TFT-LCD (Flat Panel) Antitrust Litigation*, Master File No. C07-1827 SI, MDL No. 1827, which includes direct and indirect purchaser class actions, and related actions, currently pending in the Northern District of California, United States District Court.

4. "Releasor" refers to the State.

5. "Relevant Conduct" refers to Chunghwa's alleged participation in an unlawful conspiracy to raise, fix, maintain, or stabilize the price of LCD panels at artificially high levels and maintain the quantities of LCD panels at artificially low levels during the Relevant Period.

6. "Relevant Period" refers to the period beginning January 1, 1996, and continuing through December 31, 2006.

7. The "Settlement Fund" refers to the \$300,000.00 payment to be made by Chunghwa pursuant to this Agreement.

8. The "Chunghwa Complaint" refers to the complaint attached hereto as Exhibit A to be filed following the execution of this Agreement.

9. "Released Claims" refers to any claims arising from the Relevant Conduct, including those arising under any federal or state antitrust, unfair competition, unfair practices, price discrimination, unitary pricing, or trade practice law.

B. Approval of this Agreement and Dismissal of Claims Against Chunghwa.

10. The Attorney General and Chunghwa (the "Settling Parties"), and the Settling Parties' counsel, shall use their best efforts to effectuate this Agreement and its purpose, including cooperating in seeking any necessary court approvals, and staying any litigation filed after the execution of this agreement and shall jointly secure the prompt, complete, and final dismissal with prejudice of the Chunghwa Complaint as to Chunghwa Releasees, but not as to any party that is not a Chunghwa Releasee. The Settling Parties agree to take whatever further steps, if any, may be reasonably necessary in this regard. For example, for purposes of this

agreement only, Chunghwa agrees to accept service of the Chunghwa Complaint, and related summons, through its undersigned attorneys.

11. The Settling Parties shall jointly seek any orders and final judgment necessary to effectuate this Agreement, the text of which the Settling Parties shall agree upon. The terms of such orders and final judgment will include, at a minimum, the substance of the following provisions:

- a. the Chunghwa Complaint be dismissed with prejudice and, except as provided for in this Agreement, without recovery of costs to any party to that Complaint except as set forth in this agreement;
- b. reserving exclusive jurisdiction over this settlement and this Agreement, including the administration and consummation of this settlement, to the Superior Court of the State of California, County of San Francisco;
- c. Chunghwa shall pay to the Attorney General, for the benefit of the State, a Settlement Fund amount of \$300,000, which may be used for any of the following purposes, subject to applicable legal limitations:
 - 1) Reimbursement of the State's attorneys' fees and expenses;
 - 2) Compensation for damages suffered by the State for, *inter alia*, harm to the general California economy caused by the Relevant Conduct;
 - 3) Deposit into an antitrust or consumer protection account (e.g., revolving account, trust account, special fund) for use in accordance with the laws governing such an account;
 - 4) Antitrust or consumer protection enforcement by the Attorney General.
- d. enjoining and restraining Chunghwa for a period of ten years from the date of execution of this Agreement, from engaging in price fixing, market allocation, and/or bid rigging with respect to the sale of any TFT-LCD panels or product for delivery in the

United States, which constitute horizontal conduct that are *per se* violations of Sections 16700 *et seq.* of the Cartwright Act, including participating in meetings, conversations, and communications with other TFT-LCD panel manufacturers (other than among affiliated entities) in the United States and elsewhere to discuss the prices or production of TFT-LCD panels to be sold to original equipment manufacturers of personal computers, televisions, and other LCD products ("OEM customers") and exchanging information on sales of TFT-LCD panels to OEM customers, for the purpose of monitoring and enforcing adherence to unlawfully agreed-upon prices;

e. requiring Chunghwa to establish, if not already established, and maintain a program to provide relevant antitrust compliance education to Chunghwa's officers and employees with responsibility for pricing and sales of TFT-LCD panels in and to the United States regarding the legal standards imposed by federal and state antitrust laws. Chunghwa shall have ninety (90) days from final approval of this Agreement to establish this program if one has not already been established. For three (3) years from that date, on an annual basis, Chunghwa shall certify in writing to the Attorney General that it is fully compliant with the provisions of this paragraph by describing the nature of the program it has implemented or is maintaining pursuant to this sub-paragraph. The Attorney General is required to provide notice to Chunghwa that the certification is due thirty (30) days prior to the deadline for its submission. Nothing in this provision shall affect a waiver of any privileges otherwise applicable to the content of any antitrust compliance training;

f. Chunghwa shall provide cooperation to the Attorney General as described in paragraph 18 of this Agreement; and

g. certifying solely for purposes of this Agreement the Class of Government Entities.

12. This Agreement shall become final when (i) the Court has entered an order and final judgment that dismisses the Chunghwa Complaint with prejudice as to Chunghwa against the State and (ii) the time for appeal or to seek permission to appeal has expired, or (iii) if appealed, approval of this Agreement and the order and final judgment dismissing the Chunghwa Complaint with prejudice as to Chunghwa have been affirmed in their entirety by the court of

last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review. This Agreement shall be deemed executed as of the later date of signature by either party. As of the date of execution of this Agreement, the Settling Parties shall be bound by the terms of this Agreement and this Agreement shall not be rescinded except in accordance with paragraphs 26 or 27 of this Agreement.

13. Neither this Agreement (whether or not it should become final) nor the resulting final judgment, nor any and all negotiations, documents, and discussions associated with such negotiation, shall be deemed or construed to be an admission by, or form the basis of an estoppel by a third party against, Chunghwa or any of the Chunghwa Releasees, or evidence of any violation of any statute or law or of any liability or wrongdoing whatsoever by Chunghwa or any of the Chunghwa Releasees, or of the truth of any of the claims or allegations contained in any complaint or any other pleading filed by the Attorney General in any action, and evidence thereof shall not be discoverable, or used directly or indirectly, in any way, in any other action or proceeding. Neither this Agreement, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any action taken to carry out this Agreement by the Attorney General or Chunghwa shall be referred to, offered into evidence, or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to enforce this Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law. This provision shall not apply to cooperation or materials received by the Attorney General pursuant to paragraph 18 herein.

C. Release, Discharge, and Covenant Not to Sue.

14. In addition to the effect of any final judgment entered in accordance with this Agreement, upon this Agreement becoming final as set out in paragraph 12 of this Agreement, and in consideration of payment of the Settlement Fund as specified in paragraphs 7 and 19 through 25 of this Agreement, and for other valuable consideration, the Chunghwa Releasees

shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits, causes of action for the Released Claims, that Releasor ever had, now has, or hereafter can, shall, or may have.

15. In addition to the provisions of paragraph 14 of this Agreement, Releasor hereby expressly waives and releases, upon this Agreement becoming final, any and all provisions, rights, and benefits conferred by § 1542 of the California Civil Code which states:

CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR;

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code. Each Releasor may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims which are the subject matter of the provisions of paragraph 14 of this Agreement, but each Releasor hereby expressly waives and fully, finally, and forever settles and releases, upon this Agreement becoming final, any known or unknown, suspected or unsuspected, contingent or non-contingent claim with respect to the subject matter of the provisions of paragraph 14 of this Agreement, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

16. The release, discharge, and covenant not to sue set forth in paragraph 14 of this Agreement does not include claims by the Releasor other than the Released Claims, including without limitation any claims as to other time periods outside of the Relevant Period and/or claims, such as those solely arising out of product liability, breach of warranty, or breach of contract claims in the ordinary course of business.

17. The Attorney General agrees and covenants that it will not challenge final approval of Chunghwa's settlements with the indirect purchaser plaintiffs (the "IPPs") or the

direct purchaser plaintiffs (the "DPPs") in the MDL, except that the Attorney General may weigh in on any proposal or decision in the MDL pertaining to the allocation or distribution of the IPP or DPP settlements' funds to natural persons in California either directly or via *cypres*. If either the IPP or DPP classes in the MDL are decertified, or the Chunghwa settlements with the IPP or DPP classes in the MDL are not made final, the Attorney General reserves the right to pursue her *parens patriae* claims in state or federal court to recover damages to California natural persons. Such aforementioned claims are only released by the Releasor contingent upon the IPP and DPP classes in the MDL being made final.

D. Chunghwa Cooperation

18. Chunghwa agrees to cooperate with the Attorney General by:

- a. Promptly providing a full accounting to the Attorney General of all facts known to Chunghwa that are relevant to the Relevant Conduct, the Related Action, the Chunghwa Complaint and/or the MDL;
- b. Producing to the Attorney General relevant documents (including English translations) that will be treated as investigative materials pursuant to California Government Code section 6254(f) sufficient to evidence any collusive meetings among LCD panel makers and how any alleged conspiracy was formed, implemented, and enforced, to the extent known by Chunghwa, including documents relating to sales, pricing, capacity, production, damages and liability;
- c. Meeting and conferring in good faith about making the appropriate current employees available for deposition and trial according to a reasonable schedule, including making available at a mutually agreed-upon time and place for deposition such key employees as are reasonably identified by the Attorney General;
- d. Making available other appropriate employees in the United States in person as reasonably practical, by video conference, or by such other means as the

Settling Parties may agree to, for such interviews and affidavits as reasonably required by the Attorney General;

e. Coordinating the production of any Chunghwa employees for purposes of depositions and interviews with any other plaintiffs in the MDL or related actions (e.g., including but not limited to, any other states) in order to avoid duplication to the extent reasonably possible. The Attorney General likewise agrees to coordinate in good faith with any other plaintiffs in the MDL or related actions (e.g., including but not limited to, any other states) in order to avoid such duplication;

f. Upon request, providing the last-known contact information for any potentially relevant former employees; and

g. Producing at trial in person, by deposition, or by affidavit, whichever is legally necessary, representatives to establish for admission into evidence the amount of their respective relevant sales and to testify as to the genuineness, status as business records, and authenticity of documents. Any cooperation by Chunghwa pursuant to this paragraph 18 will be consistent with its continuing obligations to the United States Department of Justice.

E. Settlement Fund

19. Subject to the provisions hereof, and in full, complete and final settlement of the Chunghwa Complaint as provided herein, Chunghwa shall pay a Settlement Fund in the amount of \$300,000 in United States funds by wire transfer, within thirty (30) days of the date of a Court order preliminarily approving the settlement and the certification of the proposed settlement class, to the Attorney General, for the benefit of the State. Chunghwa shall have no responsibility for, and no right in, nor authority over, the allocation of the Settlement Fund as provided herein. The Attorney General will provide wire instructions to Chunghwa within three (3) business days after the effective date of this Agreement.

20. Chunghwa agrees that any costs incurred by the Attorney General in providing any notice of the proposed settlement and in claims administration may be paid from the Settlement Fund, which amounts shall not be recoverable by Chunghwa in the event that this settlement does not become final. After this Agreement becomes final within the meaning of paragraph 12, all court ordered disbursements, including attorneys' fees and litigation costs, may be made from the Settlement Fund.

21. Releasor shall look solely to the Settlement Fund for settlement and satisfaction against Chunghwa Releasees of all Released Claims, and shall have no other recovery against Chunghwa or any other Chunghwa Releasee.

22. The Attorney General shall be responsible for distribution of the Settlement Fund in accordance with California state law and orders of the Court. In no event shall any Chunghwa Releasee have any responsibility, financial obligation, or liability whatsoever with respect to the distribution or administration of the Settlement Fund, including but not limited to the costs and expenses of such distribution and administration.

23. The Chunghwa Releasees shall not be liable for any costs, fees, or expenses of the State, or its attorneys, experts, advisers, agents, or representatives, but all such costs, fees, and expenses shall be paid out of the Settlement Fund.

24. After this Agreement becomes final within the meaning of paragraph 12, the Settlement Fund shall be distributed in accordance with plans for direct distributions, *cy pres*, or as otherwise permitted by law, all to be submitted at the appropriate time by the Attorney General and approved by the Court. Neither Chunghwa nor any other Chunghwa Releasee under this Agreement shall have any responsibility for, or interest in, or liability whatsoever with respect to, or shall file any opposition to, the proposed or actual plan(s) for distribution of the Settlement Fund by the Attorney General and/or any other person or entity who may assert some claim to the Settlement Fund.

25. It is contemplated that the State's counsel may seek attorneys' fees award(s) and reimbursement of costs and expenses (including expert witness fees and expenses) in whole or in part from the Settlement Fund. The State reserves all rights regarding the propriety of any request for or award of attorneys' fees or reimbursement of costs. Chunghwa shall take no position on any application for attorneys' fees or reimbursement of costs. Subject to the foregoing reservation of rights, and subject to Court approval, any amounts awarded or distributed by the Court to the Attorney General as a fee award and reimbursement of costs may be used for any of the following purposes, within the limits of applicable law:

- (a) Reimbursement of attorneys' fees and expenses incurred in the prosecution of the Related Action and Chunghwa Complaint;
- (b) Deposit into a state antitrust or consumer protection account (e.g., revolving account, trust account) for use in accordance with the laws governing the account;
- (c) Deposit into a fund exclusively dedicated to assisting the State of California to defray the costs of experts, economists and consultants in multistate antitrust investigations and litigations; or
- (d) Antitrust or consumer protection enforcement by the Attorney General.

F. Rescission if this Agreement is Not Approved or Final Judgment is Not Entered.

26. If the Court refuses to approve this Agreement or any material part thereof, or if such approval is materially modified or set aside on appeal, or if the Court does not enter the final judgment provided for in paragraph 12 of this Agreement, or if the Court enters the final judgment and appellate review is sought, and on such review, such final judgment is not affirmed in its entirety, then Chunghwa and the Attorney General shall each, in their sole discretion, have the option to rescind this Agreement in its entirety. Written notice of the exercise of any such right to rescind shall be made by email and overnight courier and by filing a copy of such notice with the Court no later than the twentieth day from the day on which the Settling Parties receive

such notice from the Court. A modification or reversal on appeal of any amount of the fees for counsel for the State shall not be deemed a modification of all or a part of the terms of this Agreement or such final judgment.

27. In the event that this Agreement does not become final, then this Agreement shall be of no force or effect (except for this paragraph and paragraph 13) and any and all parts of the Settlement Fund, including all interest earned on such accounts, shall be returned forthwith to Chunghwa less only disbursements made in accordance with this Agreement. The Settling Parties expressly reserve all of their rights if this Agreement does not become final.

28. This Agreement shall be construed and interpreted to effectuate the intent of the Settling Parties, which is to provide, through this Agreement, for a complete resolution of the relevant claims with respect to each Chunghwa Releasee as provided in this Agreement.

29. The Settling Parties contemplate and agree that, prior to final approval of the Agreement as provided for in paragraph 12 of this Agreement, appropriate notice shall be given to the Class of Government Entities (1) of this Agreement and the Chunghwa Complaint; (2) of a hearing at which the Court will consider the approval of this Agreement; and (3) that members of any proposed Class of Government Entities may opt out of that class.

G. Miscellaneous

30. This Agreement does not settle or compromise any claim by the Attorney General against any defendant or alleged co-conspirator other than Chunghwa and Chunghwa Releasees. All rights against such other defendant or alleged co-conspirator are specifically reserved by the Attorney General. The Settling Parties intend that joint and several liability against defendants other than the Chunghwa Releasees shall include the volume of TFT-LCD panel sales of Chunghwa during the Relevant Period.

31. Neither this Agreement, nor any act performed or document executed pursuant to, or in furtherance of this Agreement is, or may be deemed to be, or may be used as an admission

of, or evidence of, (i) the validity of any claim or defense; or (ii) the appropriateness or inappropriateness of any class or other representational capacity whether contemporaneously with this Agreement or at any time in the future.

32. Except as otherwise set forth herein, this Agreement shall not affect whatever rights Releasor may have (i) to participate in or benefit from, where appropriate, any relief or other recovery as part of a settlement or judgment in any action on behalf of any direct or indirect purchasers of TFT-LCD panels; (ii) to participate in or benefit from any relief or recovery as part of a judgment or settlement in any actions against any other party named as a defendant (other than Chunghwa or any Chunghwa Releasee); or (iii) to assert any product liability, breach of warranty, breach of contract, or other claims in the ordinary course of business.

33. The Superior Court of California County of San Francisco shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement or the applicability of this Agreement that cannot be resolved by negotiation and agreement by the Settling Parties. This Agreement shall be construed according to the laws of the State of California without regard to its choice of law or conflict of laws principles.

34. This Agreement constitutes the entire, complete, and integrated agreement between the Settling Parties pertaining to the settlement of the Chunghwa Complaint against Chunghwa, and supersedes all prior and contemporaneous undertakings of the Settling Parties in connection herewith. This Agreement may not be modified or amended, except in writing executed by the Settling Parties and approved by the Court.

35. This Agreement may be executed in counterparts by the Attorney General and Chunghwa, and an email or facsimile signature shall be deemed an original signature for purposes of executing this Agreement.

36. Neither the Attorney General nor Chunghwa shall be considered to be the drafters of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafters of this Agreement.

37. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience only and do not constitute part of this Agreement.

38. Where this Agreement requires either Settling Party to provide notice or any other communication or document to the other, such notice shall be in writing, and such notice, communication, or document shall be provided by email, facsimile or letter by overnight delivery to the undersigned counsel of record for the party to whom notice is being provided.

39. Each Settling Party and their counsel agree to do anything reasonably necessary to effectuate the performance of, and uphold the validity and enforceability of, this Agreement.

40. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement on behalf of the Settling Parties he or she represents, subject to Court approval.

41. Chunghwa agrees that any persons signing this Settlement Agreement on its behalf is authorized by Chunghwa to do so.

42. Chunghwa hereby waives any and all of its rights:

a) to appeal any order or final judgment arising out of and consistent with the terms of this Agreement; and

b) unless this Agreement does not become final within the meaning of paragraph 12, to remove to federal court the Chunghwa Complaint under jurisdiction that includes, but is not limited to, the Class Action Fairness Act of 2005 ("CAFA").

CHUNGHWA PICTURE TUBES, LTD.

Dated: 8/11/11

By: Joel S. Sanders

Joel S. Sanders

Gibson, Dunn & Crutcher LLP

555 Mission Street, Suite 3000

San Francisco, CA 94105-2933

Attorneys for Chungghwa Picture Tubes, Ltd.

KAMALA D. HARRIS

Attorney General of California

Dated: 8/15/11

By: Adam Miller

Adam Miller

Deputy Attorney General

Office of the Attorney General of California

455 Golden Gate Ave., Suite 11000

San Francisco, CA 94102

Tel: (415) 703-5551

Fax: (415) 703-5480

email: adam.miller@doj.ca.gov

Attorneys for State of California et al.

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