

1 9Karl D. Belgum (State Bar No. 122752)
 kbelgum@nixonpeabody.com
 2 John R. Foote (State Bar No. 99674)
 jfoote@nixonpeabody.com
 3 Blaire Z. Russell (State Bar No. 271693)
 brussell@nixonpeabody.com
 4 NIXON PEABODY LLP
 One Embarcadero Center, 18th Floor
 5 San Francisco, CA 94111-3600
 Telephone: (415) 984-8200
 6 Facsimile: (415) 984-8300

7 Attorneys for Plaintiff
 8 Eastman Kodak Company

9 **UNITED STATES DISTRICT COURT**
 10 **NORTHERN DISTRICT OF CALIFORNIA**
 11 **SAN FRANCISCO DIVISION**

13 IN RE: TFT-LCD (FLAT PANEL) ANTITRUST
 LITIGATION

CASE NO. 3:07-md-1827 SI

MDL No. 1827

15 THIS DOCUMENT RELATES TO:

16 Case No.: 10-cv-5254 SI

17 EASTMAN KODAK COMPANY,

18 Plaintiff,

19 v.

20 EPSON IMAGING DEVICES CORPORATION;
 EPSON ELECTRONICS AMERICA, INC.;
 21 TOSHIBA CORPORATION; TOSHIBA
 AMERICA ELECTRONIC COMPONENTS,
 22 INC.; TOSHIBA MOBILE DISPLAY CO.,
 LTD.; AU OPTRONICS CORPORATION; AU
 23 OPTRONICS CORPORATION AMERICA,
 INC.

24 Defendants.

**STIPULATION AND ~~PROPOSED~~ ORDER
 REGARDING PLAINTIFF EASTMAN
 KODAK COMPANY'S STATE LAW
 CLAIMS**

1 WHEREAS plaintiff Eastman Kodak Company (“Kodak”) filed a First Amended Complaint in
2 the above-captioned case against defendants Epson Imaging Devices Corporation, Epson Electronics
3 America, Inc., Toshiba Corporation, Toshiba America Electronic Components, Inc., Toshiba Mobile
4 Display Co., Ltd., Toshiba America Information Systems, Inc., AU Optronics Corporation, and AU
5 Optronics Corporation America (collectively, “Defendants”) on June 9, 2011 (“First Amended
6 Complaint”);

7 WHEREAS Kodak’s First Amended Complaint asserts a claim for relief for violation of
8 California antitrust law for all U.S. purchases (Second Claim for Relief); violation of California
9 antitrust law for California purchases (Third Claim for Relief); violation of Nevada antitrust law for
10 Nevada purchases (Fourth Claim for Relief); and violation of New York antitrust law for New York
11 purchases (Fifth Claim for Relief);

12 WHEREAS Kodak’s Second Claim for Relief was already dismissed by the Court by order
13 dated August 23, 2011 (Order Granting in Part Defendants’ Motion to Dismiss Kodak’s First
14 Amended Complaint, Case No. 3:10-cv-05452-SI, Docket No. 32), which recognized that Kodak
15 sought to preserve this claim in the event the Ninth Circuit reverses the Court’s order in the pending
16 interlocutory appeal in the AT&T action (*see* Order Granting Plaintiff AT&T Mobility’s Motion to
17 Certify Under 28 U.S.C. Section 1292(b), Case No. 3:09-cv-04997-SI, Docket No. 99);

18 WHEREAS, after the filing of Kodak’s First Amended Complaint, the Court issued two orders
19 in the Costco action that clarified the definition of an in-state purchase for Due Process purposes and
20 applied choice of law principles to decide that Washington law applied to Costco’s claims, *see In re*
21 *TFT-LCD (Flat Panel) Antitrust Litig. (Costco I)*, Nos. M 07-1827, C 11-0058 SI, 2011 WL 3809767
22 (N.D. Cal. Aug. 29, 2011); *In re TFT-LCD (Flat Panel) Antitrust Litig. (Costco II)*, Nos. M 07-1827,
23 C 11-0058 SI, 2011 WL 5922966 (N.D. Cal. Nov. 28, 2011);

24 WHEREAS, on June 22, 2012, Defendants filed a motion for summary judgment against
25 Kodak (“Motion for Summary Judgment”) arguing that partial summary judgment should be granted
26 in Defendants’ favor as to claims brought by Kodak under the laws of California and Nevada because
27 Kodak did not purchase any digital cameras in those states (Docket No. 60 in Case No. 3:10-cv-
28 05452-SI);

1 WHEREAS Kodak and Defendants agree that, in light of the Court's decisions in the Costco
2 action, Defendants' Motion for Summary Judgment is properly viewed as a choice of law motion;

3 WHEREAS Kodak and Defendants wish to resolve this matter efficiently without occupying
4 the Court's time with further briefing or hearing;

5 THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the undersigned
6 counsel, on behalf of their respective clients, that:

7 1. Kodak's Third and Fourth Claims for Relief will be dismissed with prejudice.

8 2. Kodak reserves the right to pursue its Second Claim for Relief in the event the Ninth
9 Circuit reverses the Court's order in the pending interlocutory appeal in the AT&T action.

10 3. Kodak's Fifth Claim for Relief under New York law will not be dismissed pursuant to
11 this stipulation. Kodak expressly reserves whatever rights it may have to pursue damages for any and
12 all purchases of LCD panels and products under the Fifth Claim for Relief, whether or not such
13 purchases would have been the subject of the Second, Third, or Fourth Claims for Relief.

14 4. New York law will govern all of Kodak's claims, including those based on LCD panels
15 and products negotiated and paid for from New York but shipped to California and Nevada.

16
17 DATED: July 18, 2012

18 By: /s/ Karl D. Belgum

Karl D. Belgum (CA Bar No. 122752)

19 John R. Foote (CA Bar No. 99674)

Blaire Z. Russell

20 NIXON PEABODY LLC

One Embarcadero Center, 18th Floor

21 San Francisco, CA 94111

(415) 984-8200 (Phone)

22 (415) 984.8300 (Facsimile)

23 kbelgum@nixonpeabody.com

jfoote@nixonpeabody.com

24 brussell@nixonpeabody.com

25 *Counsel for Plaintiff*

26 *Eastman Kodak Company*

27 By: /s/ Carl L. Blumenstein

Carl L. Blumenstein (CA Bar No. 124158)

28 NOSSAMAN LLP

1 50 California Street, 34th Floor
2 San Francisco, California 94111-4799
3 (415) 398-3600 (Phone)
4 (415) 398-2438 (Facsimile)
5 cblumenstein@nossaman.com

6 *Attorneys for Defendants*
7 *AU Optronics Corporation and*
8 *AU Optronics Corporation America*

9 By: /s/ Stephen P. Freccero
10 Melvin R. Goldman (Ca Bar No. 34097)
11 Stephen P. Freccero (CA Bar No. 131093)
12 Derek F. Foran (CA Bar No. 224569)
13 MORRISON & FOERSTER LLP
14 425 Market Street
15 San Francisco, CA 94105-2482
16 (415) 268-7000 (Phone)
17 (415) 268-7522 (Facsimile)
18 mgoldman@mofocom
19 sfreccero@mofocom
20 dforan@mofocom


21 *Counsel for Defendants*
22 *Epson Imaging Devices Corporation and*
23 *Epson Electronics America, Inc.*

24 By: /s/ John H. Chung
25 Christopher M. Curran (*pro hac vice*)
26 Martin M. Toto (*pro hac vice*)
27 John H. Chung (*pro hac vice*)
28 Kristen J. McAhren (*pro hac vice*)
WHITE & CASE LLP
1155 Avenue of the Americas
New York, NY 10036-2787
(212) 819-8200 (Phone)
(212) 354-8113 (Facsimile)
ccurran@whitecase.com
mtoto@whitecase.com
jchung@whitecase.com
kmcahren@whitecase.com

Counsel for Defendants
Toshiba Corporation, Toshiba America Electronic
Components, Inc., Toshiba Mobile Display Co., Ltd.
and Toshiba America Information Systems, Inc.

1 Pursuant to General Order 45, Part X-B, the filer attests that concurrence in the filing of this document
2 has been obtained from the signatories to this document.

3
4 PURSUANT TO STIPULATION, IT IS SO ORDERED.

5
6 By: 
7 Judge of the U.S. District Court, N.D. California

8
9 Date: 7/19/12