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THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

COSTCO WHOLESALE CORP.,

Plaintiff,

v.

AU OPTRONICS CORP., et al.,

Defendants.

No. 2:13-cv-01207-RAJ

STIPULATION AND ORDER
REGARDING AWARD OF ATTORNEYS'
FEES AND COSTS TO PLAINTIFF
COSTCO WHOLESALE CORPORATION

The court GRANTS the parties' stipulation (Dkt. # 691) regarding attorney fees, and commends them for their efforts in reaching a resolution of this issue.

STIPULATION

WHEREAS, on October 23, 2014, a jury verdict was rendered on behalf of Plaintiff Costco Wholesale Corporation ("Costco") in the United States District Court for the Western District of Washington in the above-captioned action (this "Action");

WHEREAS, based on the jury's October 23, 2014 verdict and the Court's June 4, 2015 order, the Court entered judgment in this Action for Plaintiff Costco and against Defendants LG Display Co., Ltd. and LG Display America, Inc. (collectively "LGD") and AU Optronics Corporation and AU Optronics Corporation America (collectively "AUO") for \$61,971,040 on June 4, 2015;

1 WHEREAS, based on the June 4, 2015 judgment, Costco has asserted that it is entitled to
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3 recover the costs of suit, including reasonable attorneys' fees, from LGD and AUO under
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5 Section 4 of the Clayton Act, 15 U.S.C. § 15 and the Washington Consumer Protection Act,
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7 RCW 19.86, and intends to file motions for fees and costs under Federal Rule of Civil Procedure
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9 54(d)(1) & (2);

10 WHEREAS, LGD and AUO dispute Costco's claimed fees and costs;

11 WHEREAS, LGD and AUO have filed post-judgment motions pursuant to Federal Rules
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13 of Civil Procedure 50 and 59 and all parties anticipate that further attorneys' fees and costs will
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15 be incurred in connection with those motions and subsequent proceedings;
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18 WHEREAS, Costco, LGD and AUO have met and conferred in an attempt to reach a
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20 compromise agreement on the amount of fees and costs through and including June 12, 2015,
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22 that should be awarded to Costco pursuant to the June 4, 2015 judgment;
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25 WHEREAS, to avoid unnecessarily burdening this Court with additional motions under
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27 Fed. R. Civ. P. 54(d)(1) & (2), and to resolve their differences over the matters set forth above
28
29 without admitting or agreeing to the contentions advanced by any other party, Costco, LGD, and
30
31 AUO have agreed to a compromise as set forth herein;

32 NOW THEREFORE, the parties hereby stipulate as follows:

33 1. Costco, LGD, and AUO stipulate and agree that, as a result of the June 4, 2015
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35 judgment, Costco shall be awarded the sum of \$10,000,000 United States dollars ("Stipulated
36
37 Amount") to resolve its claims for attorneys' fees and costs incurred through and including
38
39 June 12, 2015.
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42 2. In executing this stipulation, Costco releases LGD and AUO from any and all
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44 claims of any sort for attorneys' fees and/or costs incurred prior to and including June 12, 2015,
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46 in and arising from this Action or relating to the alleged price fixing of LCD products that was
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48 the subject of this Action and MDL No. 1827 ("Release"). The Release shall cease to have
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1 effect in the circumstances set forth in Paragraph 3. Costco retains all claims arising from fees
2 and costs it incurs in this Action after June 12, 2015.
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5 3. In the event that (i) a new trial is granted in whole or in part, (ii) a judgment as a
6 matter of law is granted in whole or in part in favor of LGD or AUO, or (iii) the June 4, 2015
7 judgment is modified or reversed in whole or in part by any court on appeal, the parties agree as
8 follows:
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12 (a) The compromise memorialized in this stipulation shall be abrogated and this
13 stipulation shall not be binding on Costco, LGD, or AUO, with the exception of Paragraphs 4
14 and 5 below.
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18 (b) The Release shall be of no force and effect and Costco, AUO and LGD shall
19 thereafter be entitled to bring any motions on Costco's fees and costs within 45 days of either (i)
20 the order or decision; (ii) receipt of any remand from a court of appeal by the District Court; or
21 (iii) the parties' retention of a neutral under Paragraph 4, whichever is later, and to make any
22 claims, arguments and contentions, regarding Costco's attorneys' fees and costs incurred on or
23 before June 12, 2015, as could have been made had the stipulation never been executed.
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27 (c) The above-identified District Court shall determine on remand or otherwise what,
28 if any, amounts of costs and attorneys' fees should be awarded to Costco after briefing from the
29 parties on a timeline determined by the District Court. Nothing in this stipulation shall limit the
30 scope or amount of fees and costs that may be requested, nor the evidence or contentions that
31 may be submitted in support of or in opposition to such a request.
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35 (d) The bond to be posted by LGD and AUO based on the Court's June 16, 2015
36 order (Dkt. 687) and the parties' stipulation (Dkt. 686) includes appropriate security for the
37 Stipulated Amount. In the event that Costco has received any payment of attorneys' fees or costs
38 from LGD or AUO, Costco shall within 45 days of any order or decision under Paragraph
39 3(i)-(iii) reimburse LGD and AUO the full amount of the attorneys' fees and costs paid.
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1 4. In the event the District Court lacks jurisdiction to award fees and/or costs
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3 following a decision by a court of appeal or otherwise under Paragraph 3(c), the parties stipulate
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5 and agree that the amount, if any, of fees and costs to be awarded to Costco shall be decided in
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7 binding arbitration by a mutually acceptable neutral at JAMS. The arbitrator may not award any
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9 fees or costs to Costco that could not have been awarded by the District Court in the first
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11 instance had the stipulation never been executed.

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13 5. This stipulation shall have no bearing on any supplemental claims by Costco for
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15 fees and costs incurred after June 12, 2015, shall not affect Costco's right to submit a cost
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17 memorandum or motions seeking such post-June 12, 2015 fees or costs, contains no agreement
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19 concerning those supplemental fees or costs, and shall not be relied upon by any party in any
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21 proceeding regarding the entitlement to or proper amount of fees and costs incurred after said
22
23 date.

24
25 6. This agreement is null and void in the event the Court does not accept the
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27 stipulation as agreed by the parties, in which case Costco shall have until 14 days after the Court
28
29 issues a final decision on all post-judgment motions to file motions for attorneys' fees and costs
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31 under Fed. R. Civ. P. 54(d)(1) & (2) and Local Civil Rule 54(d).

32
33 IT IS SO STIPULATED.

34
35
36 Dated: July 14, 2015

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12 Corp. and AU Optronics Corporation America
13

14 **ORDER**

15
16 This matter comes before the Court on a stipulation between and among Costco, LGD
17 and AUO to an amount of fees and costs that are to be awarded to Costco under Section 4 of the
18 Clayton Act, 15 U.S.C § 15, and the Washington Consumer Protection Act, RCW 19.86, and as a
19 result of the judgment entered in this Action on June 4, 2015 for Costco and against Defendants
20 LGD and AUO for \$61,971,040. The Court understands this stipulation to be a compromise
21 agreement among the parties with regard to fees and costs claimed by Costco for the period prior
22 to and including June 12, 2015.
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30 As a result of the June 4, 2015 judgment, and pursuant to the foregoing stipulation, the
31 Court hereby ORDERS:
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34 1. With respect to the fees and costs incurred prior to and including June 12, 2015,
35 Costco is entitled to recover the costs of suit, including reasonable attorneys' fees, in the amount
36 of \$10,000,000 United States dollars from remaining defendants LG Display Co., Ltd. and LG
37 Display America, Inc. (collectively "LGD") and AU Optronics Corporation and AU Optronics
38 Corporation America (collectively "AUO") under Section 4 of the Clayton Act, 15 U.S.C. § 15
39 and the Washington Consumer Protection Act, RCW 19.86.
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46 2. The Court accepts the other terms of the stipulation.
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48 3. Costco may file motions for supplemental fees and costs incurred after June 12,
49 2015, consistent with this Court's July 7, 2015 Order (Dkt. No. 690).
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1 4. The Court will enter an amended judgment that incorporates the stipulated
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3 amount of Costco's fees and costs prior to and including June 12, 2015 of \$10,000,000 at the
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5 time it issues its order regarding any fee award and costs for the period after June 12, 2015,
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7 whether that order results from further stipulation or proceedings before a Special Master.

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9 5. Pursuant to the Court's June 16, 2015 Order (Dkt. No. 687) entered upon the
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11 stipulation of the parties (Dkt. No. 686), no execution shall be made on this award of attorneys'
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13 fees and costs and no further bond shall be required.

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16 DATED July 16, 2015

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The Honorable Richard A. Jones
United States District Court Judge