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**SUPREME COURT OF THE STATE OF WASHINGTON**

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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.*

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**STATE OF WASHINGTON'S RESPONSE TO AMICUS BRIEFS**

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## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	ARGUMENT .....	3
A.	<i>Walden v. Fiori</i> Does Not Address the Stream-of-Commerce Principle and Has No Application Here .....	3
B.	Manufacturers of Components Incorporated into Finished Goods Are Subject to the Stream-of-Commerce Principle.....	9
1.	U.S. Supreme Court and Washington Case Law Shows that a Stream-of-Commerce Analysis Is Applicable to Component Manufacturers.....	9
2.	Persuasive Authority Supports the Assertion of Jurisdiction Over Component Manufacturers Who Place Products in the Stream of Commerce with the Expectation of Regular Sales in the Forum State.....	13
3.	Fairness and Foreseeability Support the Stream-of-Commerce Test .....	17
III.	CONCLUSION.....	20

## TABLE OF AUTHORITIES

### Cases

<i>AFTG-TG, LLC v. Nuvoton Tech. Corp.</i> 689 F.3d 1358 (Fed. Cir. 2012) .....	9
<i>Ainsworth v. Moffett Engineering, Ltd.</i> 716 F.3d 174 (5th Cir. 2013) .....	9
<i>Anderson v. Metro. Life Ins. Co.</i> 694 A.2d 701 (R.I. 1997) .....	16
<i>Asahi Metal Indus. Co. v. Superior Court of Calif.</i> 480 U.S. 102, 107 S. Ct. 1026, 94 L. Ed. 2d 92 (1987) .....	6-7, 9-12, 14, 19-20
<i>Burger King Corp. v. Rudzewicz</i> 471 U.S. 462, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985) .....	3, 8
<i>Dickie v. Cannondale Corp.</i> 388 Ill. App. 903, 905 N.E.2d 888, 329 Ill. Dec. 50 (2009) .....	17
<i>Dow Chem. Canada ULC v. Superior Court</i> 202 Cal. App. 4th 170, 134 Cal. Rptr. 3d 597 (2011) .....	17
<i>Execu-Tech Bus. Sys., Inc. v. New Oji Paper Co.</i> 752 So. 2d 582 (Fla. 2000) .....	7
<i>Frankenfeld v. Crompton Corp.</i> 697 N.W.2d 378 (S.D. 2005) .....	17
<i>Gardner v. SPX Corp.</i> 272 P.3d 175 (Utah Ct. App. 2012) .....	17
<i>Grange Ins. Ass'n v. State</i> 110 Wn.2d 752, 757 P.2d 933 (1988) .....	2, 8

<i>Hitt v. Nissan Motor Co.</i> 399 F. Supp. 838 (S.D. Fla. 1975) .....	7
<i>Invensense, Inc. v. STMicroelectronics, Inc.</i> No. 2:13-CV-00405-JRG, 2014 WL 105627 (E.D. Tex. Jan. 10, 2014) .....	15
<i>J. McIntyre Machinery, Ltd. v. Nicastro</i> 131 S. Ct. 2780, 180 L. Ed. 2d 765 (2011) .....	7, 9, 12, 14
<i>Juelich v. Yamazaki Mazak Optonics Corp.</i> 682 N.W.2d 565 (Minn. 2004) .....	17
<i>Lorix v. Crompton Corp.</i> 680 N.W.2d 574 (Minn. Ct. App. 2004) .....	16
<i>Omstead v. Brader Heaters, Inc.</i> 5 Wn. App. 258, 487 P.2d 234 (1971), aff'd and adopted by 80 Wn.2d 720, 497 P.2d 1310 (1972) .....	11-12
<i>Rodriguez v. Fullerton Tires Corp.</i> 115 F.3d 81 (1st Cir. 1997) .....	17
<i>Russell v. SNFA</i> 2013 IL 113909, 987 N.E.2d 778, 370 Ill. Dec. 12, cert denied, 134 S. Ct. 295 (2013) .....	5, 14-15
<i>Shalala v. Illinois Council on Long Term Care, Inc.</i> 529 U.S. 1, 120 S. Ct. 1084, 146 L. Ed. 2d 1 (2001) .....	8
<i>State v. AU Optronics Corp.</i> 180 Wn. App. 903, 328 P.3d 919 (2014) .....	5, 12
<i>State v. LG Electronics</i> 185 Wn. App. 394, 341 P.3d 346 (2015) .....	19

<i>State v. Reader's Digest Ass'n</i> 81 Wn.2d 259, 501 P.2d 290 (1972).....	19
<i>Walden v. Fiore</i> 134 S. Ct. 1115, 188 L. Ed. 2d 12 (2014).....	2-5, 7-9
<i>Willemssen v. Invacare Corp.</i> 352 Or. 191, 282 P.3d 867 (2012), <i>cert. denied</i> , 133 S. Ct. 984 (2013).....	5, 13-14
<i>World-Wide Volkswagen Corp. v. Woodson</i> 444 U.S. 286, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980).....	2, 6, 8

## I. INTRODUCTION

Defendants manufactured, sold, and distributed hundreds of millions of price-fixed CRT monitors, knowing and intending that a substantial number of these products would be sold to Washington consumers as part of a finished product, and knowing and intending to profit from these sales. These purposeful actions establish the necessary “minimum contacts” with Washington to be subject to its jurisdiction. Downplaying (or simply ignoring) these key allegations in the State’s complaint, amici U.S. Chamber of Commerce, Washington Defense Trial Lawyers, and DRI–The Voice of the Defense Bar conjure scenarios of hapless foreign manufacturers, unable to predict lawsuits brought in states where their product merely happens to wind up. But those are not the facts of this case. Here, the State alleges that the CRT monitors manufactured, sold, and distributed by defendants did not arrive in Washington by chance; defendants knew and intended that they would be sold here.

In addition to ignoring the facts the State alleges, amici also ignore the law, repeating defendants’ mistake of failing to apply the binding standard announced by the U.S. Supreme Court and confirmed by this Court. Under that standard, 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.” *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297-98, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980); accord *Grange Ins. Ass’n v. State*, 110 Wn.2d 752, 761, 757 P.2d 933 (1988). The facts here easily meet this standard.

In seeking to rely on *Walden v. Fiore*, 134 S. Ct. 1115, 188 L. Ed. 2d 12 (2014), a recent U.S. Supreme Court case that did not involve goods placed in the stream of commerce but that reaffirmed that personal jurisdiction must be based on the acts of the defendant, amici misunderstand the fundamental premise of the stream-of-commerce principle. A defendant’s exploitation of a forum’s market by placing its goods into the stream of commerce with the anticipation of regular sales in the forum state is not an exception to the requirement that the defendant must do some purposeful act connecting it with the forum. It is an example of purposeful availment. Thus, amici’s reliance on *Walden* is misplaced. Similarly, amicus Chamber of Commerce’s claims that component manufacturers are not subject to the same stream-of-commerce analysis as finished-goods manufacturers finds no support in U.S. Supreme Court or this Court’s jurisprudence, wholly denies consumers relief under the Consumer Protection Act, and would unfairly allow component manufacturers to exploit foreign markets with impunity.

This Court should affirm.

## II. ARGUMENT

### A. *Walden v. Fiori* Does Not Address the Stream-of-Commerce Principle and Has No Application Here

Amici Washington Defense Trial Lawyers and DRI—The Voice of the Defense Bar (collectively, WDTL) focus their personal jurisdiction analysis on an inapposite case, *Walden v. Fiore*, 134 S. Ct. 1115, 188 L. Ed. 2d 12 (2014). WDTL Br. at 6-13. *Walden* did not involve goods placed into the stream of commerce, did not address the stream-of-commerce theory, and has little if any relevance here. *See generally Walden*, 134 S. Ct. at 1121-26. In seeking to rely on *Walden*, WDTL misunderstands the stream-of-commerce principle, which relies on the actions of foreign manufacturers that purposefully derive benefit from a forum, and does not improperly focus instead on the residence of the plaintiff as in *Walden*. *E.g.*, *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473-74, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985) (“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” (citation omitted) (internal quotation marks omitted)). Accordingly, *Walden* is not helpful to the analysis here.

*Walden* concerned an allegation that a law enforcement officer improperly seized money while inspecting a traveler’s luggage in a



Georgia airport, and subsequently delayed return of the funds. *Walden*, 134 S. Ct. at 1119. Plaintiff maintained a residence in Nevada, and had asked that the seized funds be sent there. *Id.* In a unanimous opinion, the Court held that Nevada could not assert personal jurisdiction based solely on the plaintiff's relationship to Nevada. *Id.* at 1122-23. The Court concluded that personal jurisdiction must be based on the defendant's conduct, not the "'random, fortuitous, or attenuated' contacts he makes by interacting with other persons affiliated with the State." *Id.* at 1123 (quoting *Burger King*, 471 U.S. at 475). The Court emphasized the random and fortuitous nature of the alleged injury (lack of access to funds) occurring in Nevada: "Nevada is where respondents chose to be at a time when they desired to use the funds seized by petitioner. Respondents would have experienced this same lack of access in California, Mississippi, or wherever else they might have traveled . . . ." *Id.* at 1125.

The random, fortuitous, and attenuated nature of the defendant's contacts with the forum in *Walden* is the opposite of the facts in this case. Here, the defendants purposefully exploited Washington's market, and the harm sought to be remedied in the lawsuit is directly connected to the defendants' purposeful acts of seeking to profit from the sale of price-fixed goods in Washington. CP at 13-14 (alleging defendants intended to

have effect on import trade and commerce into and within Washington and placed goods into stream of commerce intending that they be incorporated into finished goods sold in Washington). Unlike *Walden*, the State does not assert jurisdiction based on its residence, but rather on the defendants' purposeful acts directed towards Washington. The fact that defendants' purposeful acts were also directed at other states in the United States does not make their connection to Washington "random, fortuitous, or attenuated." See, e.g., *Willemsen v. Invacare Corp.*, 352 Or. 191, 282 P.3d 867 (2012) (foreign component manufacturer subject to jurisdiction in Oregon based on nationwide sales of finished product incorporating component and regular sales in Oregon), *cert. denied*, 133 S. Ct. 984 (2013); *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), *cert denied*, 134 S. Ct. 295 (2013); see also *State v. AU Optronics Corp.*, 180 Wn. App. 903, 328 P.3d 919 (2014) (upholding jurisdiction over foreign component manufacturers where they knew their products would be sold nationwide).

In seeking to rely on *Walden*, amici fundamentally misunderstand the stream-of-commerce principle. WDTL argues that, despite allegations that defendants knew about and intended to profit from substantial and

regular sales of products to Washington, defendants' connection to Washington is "tenuous and speculative," based solely on the actions of third parties, and that no evidence shows defendants purposefully availed themselves of Washington's market. WDTL Br. at 10-12. WDTL essentially argues that the stream-of-commerce principle, at least without specific targeting of a particular state, is an exception to the requirement that a defendant purposefully avail itself of the benefits and protections of the forum state. But as explained by the U.S. Supreme Court, the stream-of-commerce principle justifies the assertion of jurisdiction because the sales anticipated by the defendant when placing its goods into the stream of commerce arise from "the efforts of the manufacturer . . . to serve, directly or indirectly, the market[.]" *World-Wide Volkswagen*, 444 U.S. at 297; *see also Asahi Metal Indus. Co. v. Superior Court of Calif.*, 480 U.S. 102, 117, 107 S. Ct. 1026, 94 L. Ed. 2d 92 (1987) (Brennan, J., concurring) ("A defendant who has placed goods in the stream of commerce benefits economically from the retail sale of the final product in the forum State, and indirectly benefits from the State's laws that regulate and facilitate commercial activity.").

Nowhere is WDTL's misapplication of the stream of commerce more evident than its near exclusive focus on where the defendants'

conspiratorial acts occurred.<sup>1</sup> See WDTL Br. at 9-11. As *Walden* itself reiterates, physical presence in the forum is not a prerequisite to jurisdiction. *Walden*, 134 S. Ct. at 1122. Indeed, if the jurisdictional focus were limited solely to where a product was manufactured, or where conspirators physically met to fix prices, there would be no stream of commerce jurisprudence at all. But even those justices with the narrowest view of what constitutes purposeful availment acknowledge that jurisdiction can be asserted over foreign manufacturers who place their goods in the stream of commerce, even where the manufacturer has no physical contacts with the state. *J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S. Ct. 2780, 2788, 180 L. Ed. 2d 765 (2011) (Kennedy, J., lead opinion) (placing goods in stream of commerce can justify jurisdiction if defendant targeted forum); *Asahi*, 480 U.S. at 112 (O'Connor, J., lead opinion) (placing product in stream of commerce can justify jurisdiction if additional conduct indicates intent to serve market). Thus, while relevant to a jurisdictional analysis, the place of manufacture or conspiratorial acts is not controlling. *Walden*, 134 S. Ct. at 1122.

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<sup>1</sup> To the extent that WDTL suggests that the stream-of-commerce principle does not apply to cases involving allegations of price-fixing because it is an intentional tort, they are mistaken. First, *Walden* itself establishes that the same “minimum contacts” due process considerations apply to intentional torts. *Walden*, 134 S. Ct. at 1123. Second, numerous cases have determined personal jurisdiction in price-fixing or other anti-competitive behaviors using a stream of commerce analysis. *E.g., Execu-Tech Bus. Sys., Inc. v. New Oji Paper Co.*, 752 So. 2d 582 (Fla. 2000); *Hitt v. Nissan Motor Co.*, 399 F. Supp. 838 (S.D. Fla. 1975).

WDTL's argument that *Walden* effectively adopts Justice O'Connor's "stream of commerce plus" test from *Asahi* is similarly misplaced. WDTL Br. at 2. As discussed above, *Walden* did not address stream-of-commerce issues, and a proper understanding of the stream-of-commerce principle is consistent with *Walden*'s holding that jurisdiction must be based on the actions of the defendant rather than the plaintiff. In addition, it is implausible that the Court would, sub silentio, adopt this substantial change in a highly contentious area of the law and in a unanimous opinion. The Court does not normally dramatically alter its authority sub silentio. *E.g.*, *Shalala v. Illinois Council on Long Term Care, Inc.*, 529 U.S. 1, 18, 120 S. Ct. 1084, 146 L. Ed. 2d 1 (2001).

As explained in the State's supplemental brief, the principle enunciated in *World-Wide Volkswagen* and restated in *Burger King* remains valid: "[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[.]" *Burger King*, 471 U.S. at 473 (first alteration in original) (quoting *World-Wide Volkswagen*, 444 U.S. at 297-98); *see also Grange Ins. Ass'n*, 110 Wn.2d

at 761 (reaffirming stream of commerce post-*Asahi*). Neither *Asahi* nor *J. McIntyre* have overruled this principle, and certainly not *Walden*.<sup>2</sup>

**B. Manufacturers of Components Incorporated into Finished Goods Are Subject to the Stream-of-Commerce Principle**

Amicus U.S. Chamber of Commerce argues that manufacturers of components, as opposed to manufacturers of finished products, are subject to a more restrictive stream-of-commerce test. *See* Chamber Br. at 2-3. Neither case law nor fairness supports such a result. Instead, the U.S. Supreme Court, this Court, and other courts have applied a stream-of-commerce analysis to component manufacturers without creating any special alterations to the analysis. And just as it is fair to subject a finished-goods manufacturer to the jurisdiction of a state whose market it knowingly exploits, so is it fair to subject a component manufacturer to such jurisdiction.

**1. U.S. Supreme Court and Washington Case Law Shows that a Stream-of-Commerce Analysis Is Applicable to Component Manufacturers**

Both the U.S. Supreme Court's and this Court's prior cases show that a stream-of-commerce analysis applies equally to manufacturers of

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<sup>2</sup> The *J. McIntyre* opinion speaks for itself in failing to change the pre-existing jurisdictional analysis. And other courts have specifically noted that *J. McIntyre* did not overrule precedent applying a stream-of-commerce analysis. *E.g.*, *Ainsworth v. Moffett Engineering, Ltd.*, 716 F.3d 174, 179 (5th Cir. 2013); *AFTG-TG, LLC v. Nuvoton Tech. Corp.*, 689 F.3d 1358, 1363 (Fed. Cir. 2012).

finished products and manufacturers of components incorporated into finished goods. In *Asahi*, the U.S. Supreme Court considered a Japanese manufacturer of tire valves that were incorporated into a tire tube by a Chinese company and ultimately incorporated into an allegedly defective motorcycle tire that caused plaintiff's injury in California. *Asahi*, 480 U.S. at 106. The Japanese manufacturer had no ties to California other than the expectation that its component part would be incorporated into finished goods and sold there. *Id.* Although the decision resulted in three separate opinions, not one suggested that the analysis should be more restrictive because the defendant manufactured component parts rather than finished goods. *Asahi*, 480 U.S. at 109-13 (O'Connor, J., lead opinion); *id.* at 116-20 (Brennan, J., concurring); *id.* at 121-22 (Stevens, J., concurring). Further demonstrating that component manufacturers do not merit a more protective rule is that five of the justices in *Asahi* would likely have found sufficient contacts for jurisdiction under the facts there. *Asahi*, 480 U.S. at 121 (Brennan, J., concurring) (concluding *Asahi* had sufficient minimum contacts); *id.* at 121-22 (Stevens, J., concurring) (declining to decide minimum contacts issue but stating "[i]n most circumstances I would be inclined to conclude that a regular course of dealing that results in

deliveries of over 100,000 units annually over a period of several years would constitute ‘purposeful availment’ even though the item delivered to the forum State was a standard product marketed throughout the world”).

Nor was the *Asahi* Court’s application of the stream of commerce analysis to a component manufacturer a novelty. As Justice Brennan noted in his concurrence, the very genesis of the U.S. Supreme Court’s stream-of-commerce doctrine can be traced to a case involving a manufacturer of component parts. *Asahi*, 480 U.S. at 120 (Brennan, J., concurring) (discussing *World-Wide Volkswagen*’s reliance on a “well-known stream-of-commerce case” that involved a component manufacturer (citing *Gray v. American Radiator & Standard Sanitary Corp.*, 22 Ill. 2d 432, 176 N.E.2d 761 (1961); *World-Wide Volkswagen*, 444 U.S. at 297-98)).

Similarly, Washington has long applied stream-of-commerce principles to component manufacturers. In an opinion later adopted in full by this Court, the Court of Appeals upheld jurisdiction over a Japanese manufacturer of piping that was incorporated into heaters sold in Washington. *Omstead v. Brader Heaters, Inc.*, 5 Wn. App. 258, 487 P.2d 234 (1971), *aff’d and adopted by* 80 Wn.2d 720, 497 P.2d 1310 (1972). The Court reasoned that a foreign manufacturer who places goods into the



international stream of commerce with the knowledge that the product would be used in the United States satisfies the “purposeful act” requirement to assert jurisdiction. *Omstead*, 5 Wn. App. at 270-71<sup>3</sup>; see also *AU Optronics*, 180 Wn. App. at 923-24 (upholding jurisdiction over defendant manufacturer of liquid crystal display (LCD) screens that were incorporated into finished products sold in Washington).

The Chamber cites no U.S. Supreme Court or Washington authority suggesting any change in the law since these cases or otherwise supporting its assertion that component manufacturers are entitled to a more protective jurisdictional analysis.<sup>4</sup> This Court should decline to adopt the Chamber’s proposed rule protecting component manufacturers.

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<sup>3</sup> In doing so, the Court specifically rejected a “mere foreseeability” standard, noting that judicial notions of fair play and substantial justice required consideration of additional factors such as the extent of direct or indirect multistate business, as well as the burden placed on the defendant. *Omstead*, 5 Wn. App. at 270-71.

<sup>4</sup> The Chamber attempts to find support for its claim that component manufacturers must be treated differently in Justice Ginsburg’s dissenting opinion in *J. McIntyre*, in which she distinguished the defendant in *Asahi* in part because it was a component manufacturer. Chamber Br. at 13. Justice Ginsburg distinguished *Asahi* not to announce a different analysis for component manufacturers nor to offer an opinion on whether the manufacturer in *Asahi* had the requisite minimum contacts, but rather to show that *Asahi* did not compel a lack of jurisdiction in *J. McIntyre*. *J. McIntyre*, 131 S. Ct. at 2803. Reliance on the few sentences distinguishing the facts of *Asahi* also ignores the thrust of Justice Ginsburg’s dissenting opinion, which was concerned with manufacturers avoiding liability by using middlemen and protecting defendants from being haled into jurisdictions solely because of random, fortuitous, or attenuated contacts. *Id.* at 2795, 2801 (citing *Burger King*, 471 U.S. at 475). Similarly, the Chamber’s attempt to attach significance to the lack of discussion of component manufacturers in Justice Breyer’s concurrence should be rejected. Chamber Br. at 13. Justice Breyer did not suggest that his analysis would change for a component manufacturer, and there is nothing remarkable about his use of finished-good manufacturers as examples since those were the facts of the case at bar. *J. McIntyre*, 131 S. Ct. at 2791-94.

**2. Persuasive Authority Supports the Assertion of Jurisdiction Over Component Manufacturers Who Place Products in the Stream of Commerce with the Expectation of Regular Sales in the Forum State**

Like defendants, the Chamber of Commerce attempts to distinguish courts in other jurisdictions that have upheld personal jurisdiction over component manufacturers with regular and anticipated sales in the forum state. Chamber Br. at 19-20. Of course, every case turns on its particular facts. But the rationale and facts of cases from other jurisdictions strongly support jurisdiction here. For example, the Chamber attempts to distinguish a recent Oregon Supreme Court decision that upheld personal jurisdiction over a foreign manufacturer of components (battery chargers) that were sold to another manufacturer who incorporated them into finished products (wheelchairs) and sold them nationwide, including in Oregon. *Willemsen*, 282 P.3d at 874. The Chamber does not dispute that *Willemsen* rejected many of defendants' and its arguments in upholding jurisdiction based solely on the defendant's sale of components to a manufacturer that sold its products nationwide, resulting in substantial sales to Oregon. *Willemsen*, 282 P.3d at 872. Instead, the Chamber attempts to distinguish *Willemsen* because the court observed that the defendant agreed to manufacture the battery chargers to the manufacturer's specifications in compliance with federal, state, and

local requirements. Chamber Br. at 19 (citing *Willemsen*, 282 P.3d at 874). Although the Chamber speculates that this might qualify as “something more” under Justice O’Connor’s *Asahi* opinion, the *Willemsen* opinion makes no such connection. Rather, the only relevance that this fact had to the court’s reasoning was that it established that the component manufacturer had reason to know that the finished product would be marketed nationwide. *Willemsen*, 282 P.3d at 874. This fact thus fails to distinguish *Willemsen* from the present case; here, it is undisputed that defendants knew that the finished products incorporating their components would be marketed nationwide, and in far greater quantities than the products in *Willemsen*. To the extent that *Willemsen* differs factually from the present case, it shows only that the facts here even more strongly support personal jurisdiction.

The Chamber of Commerce is also wrong in describing the other authorities cited by the State as “wholly inapposite.” Chamber Br. at 19. Although the Chamber is correct that the court in *Russell* ultimately determined that the facts in that case met Justice O’Connor’s “something more” test, the case is nevertheless relevant here because: (1) it rejects the argument that *J. McIntyre* adopted the “something more” test, (2) it shows that the stream-of-commerce analysis is applicable to component manufacturers, and (3) it upholds jurisdiction based on analogous

facts. *Russell*, 987 N.E.2d at 794-96. In seeking to show that the case is not analogous, the Chamber misstates key facts. The defendant did not manufacture bearings for an Illinois-based company, but rather for an Italy-based company; it did not engage in direct marketing but sold to a separate company that incorporated the manufacturer's product into a finished product, which the court found effectively made the second company the defendant's distributor; and while the defendant had a business relationship with a company in Illinois, those sales were of a different product than the one at issue in the lawsuit, and it was disputed whether the product was shipped to Illinois. *Compare* Chamber Br. at 19 with *Russell*, 987 N.E.2d at 781-82. Ultimately, the court in *Russell* found that sales of a component part to an Italian helicopter manufacturer justified jurisdiction in Illinois in part because it knew that the finished product would be marketed in the United States and world-wide. *Id.* at 795. *Russell* is not inapposite.

Similarly, the Chamber's attempt to distinguish *Invensense, Inc. v. STMicroelectronics, Inc.*, No. 2:13-CV-00405-JRG, 2014 WL 105627 (E.D. Tex. Jan. 10, 2014), on the basis that the defendant supplier had substantial design- and use-related connections with the United States (rather than a particular jurisdiction) is unavailing. Here, many if not all defendants also have connections with the United States, at a minimum

through related companies within their respective corporate families. *E.g.*, CP at 4-12 (describing various defendants' corporate relationships with U.S.-based companies).

Finally, the Chamber erroneously dismisses numerous cases disagreeing with their analysis based on the faulty premise that component manufacturers are entitled to a more protective jurisdictional analysis than finished-goods manufacturers. Chamber Br. at 19 (citing *Oswalt v. Scripto, Inc.*, 616 F.2d 191 (5th Cir. 1980); *Execu-Tech Bus. Sys., Inc. v. New Oji Paper Co.*, 752 So. 2d 582 (Fla. 2000)). As discussed above, no such distinction has been recognized by the U.S. Supreme Court or this Court. The cited cases thus remain relevant.

With regard to the cases cited by the Chamber to support its assertions that regular and anticipated sales to a forum are insufficient to establish personal jurisdiction, the State acknowledges that courts offer differing approaches, and some appear to agree with the Chamber. But the large majority of cases cited by the Chamber are distinguishable either because the opinions explicitly adopt Justice O'Connor's "something more" test, the defendants did not know that the products would be sold in the forum state, or both. *E.g.*, *Anderson v. Metro. Life Ins. Co.*, 694 A.2d 701 (R.I. 1997) (applying O'Connor *Asahi* test); *Lorix v. Crompton Corp.*, 680 N.W.2d 574, 579-81 (Minn. Ct. App. 2004) (same); *Dow Chem.*

*Canada ULC v. Superior Court*, 202 Cal. App. 4th 170, 179, 134 Cal. Rptr. 3d 597 (2011) (same); *Dickie v. Cannondale Corp.*, 388 Ill. App. 903, 907-08, 905 N.E.2d 888, 329 Ill. Dec. 50 (2009) (defendant not aware finished product sold in forum state); *Juelich v. Yamazaki Mazak Optonics Corp.*, 682 N.W.2d 565, 574 (Minn. 2004) (same); *Rodriguez v. Fullerton Tires Corp.*, 115 F.3d 81, 84-85 (1st Cir. 1997) (applying O'Connor *Asahi* test and finding defendant had no knowledge or intent for sales in forum state); *Gardner v. SPX Corp.*, 272 P.3d 175, 183-84 (Utah Ct. App. 2012) (same); *see also Frankenfeld v. Crompton Corp.*, 697 N.W.2d 378 (S.D. 2005) (defendants did not plan to use forum state for economic gain). Here, by contrast, Washington has not adopted the “something more” test, and defendants did know that their products would be sold in Washington.

In any event, as explained above and more fully in the State’s supplemental brief and the Court of Appeals opinion, the precedent of this Court and the U.S. Supreme Court establishes that jurisdiction is properly asserted here.

### **3. Fairness and Foreseeability Support the Stream-of-Commerce Test**

Amicus Chamber of Commerce argues that it would be unfair and burdensome to require component manufacturers to defend lawsuits in

states where finished products containing their products are regularly sold. Chamber Br. at 4-8. To the contrary, considerations of fairness and foreseeability weigh strongly in favor of personal jurisdiction here. The Chamber argues that applying the stream-of-commerce principle as enunciated by the Court of Appeals and other courts would be unfair because it would require suppliers—large and small—to prepare against lawsuits in any state where its product may end up, and that suppliers would not be able to prepare against such unpredictable suits. Chamber Br. at 4-8. While those arguments may be compelling in a case other than the present, they do not address the facts here. Nor do they account for the restrictions in the stream-of-commerce analysis that provide for fairness and predictability.

First, it would not be unfair, nor lead to unpredictability, for these defendants to defend this lawsuit in Washington. The State alleges—and at this stage of the proceedings the defendants do not deny—that the defendants conspired to fix prices of components of nearly ubiquitous consumer products, that the defendants knew and intended to affect the United States and Washington markets, and that the defendants knew and intended that finished products containing their price-fixed products would be sold throughout the United States, including Washington. *See generally* CP at 13-17. The defendants thus intended to and did profit from regular

and substantial sales of finished products to Washington consumers. Under these circumstances, it is neither unfair nor unforeseen that these sophisticated, large corporations defend against lawsuits in the very forum they chose to exploit. These considerations are particularly weighty when the State is acting to enforce the Consumer Protection Act. *See State v. Reader's Digest Ass'n*, 81 Wn.2d 259, 278, 501 P.2d 290 (1972) ("It is the duty of the state to protect its residents from such unfair practices. 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.").

Second, the stream-of-commerce analysis as applied by the Court of Appeals is not as limitless as the Chamber suggests. It does not justify asserting jurisdiction over suppliers of components merely because a finished product containing the component is regularly sold in the forum state. Rather, the analysis is "informed by either the purpose or the expectation of the foreign manufacturer." *State v. LG Electronics*, 185 Wn. App. 394, 418, 341 P.3d 346 (2015). As explained by Justice Brennan in his concurring opinion in *Asahi*:

The stream of commerce refers not to unpredictable currents or eddies, but to the *regular and anticipated flow of products* from manufacture to distribution to retail sale. As long as a participant in this process *is aware that the final product is being marketed in the forum State*, the possibility of a lawsuit there cannot come as a surprise. Nor



will the litigation present a burden for which there is no corresponding benefit.

*Asahi*, 480 U.S. at 117 (emphases added). The Chamber's concerns regarding fairness and foreseeability are thus misplaced.

### III. CONCLUSION

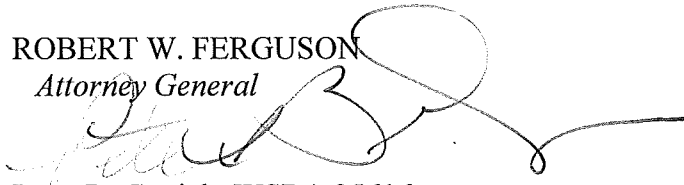
Amici's arguments rest on a misunderstanding of the stream-of-commerce principle as not requiring a purposeful act of a defendant to avail itself of the benefits and protections of the forum state. Understood properly, the stream-of-commerce analysis fully protects defendants from unanticipated or unfair assertions of personal jurisdiction, while also providing a fair opportunity for those injured by defendants seeking to exploit a forum's market through regular and anticipated sales into the state. Because defendants here knew and intended that their products would be incorporated into finished goods and sold in substantial quantities in Washington, this Court should affirm the Court of Appeals and find that the defendants are subject to Washington's jurisdiction.

RESPECTFULLY SUBMITTED this 10th day of September 2015.

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## **CERTIFICATE OF SERVICE**

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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DATED this 10th day of September 2015.

  
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