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8					
9	UNITED STATES DISTRICT COURT				
10	FOR THE NORTHERN DISTRICT OF CALIFORNIA				
11	(SAN FRANCISCO DIVISION)				
12					
13	IN RE: TFT-LCD (FLAT PANEL)	CASE NO. 3: 07-md-1827 SI MDL NO. 1827			
14	ANTITRUST LITIGATION				
15 16		PARTIAL	AY'S MOTION FOR SUMMARY JUDGMENT ON		
1	This Document Relates To:	WITHDRA	AWAL		
17	ALL INDIRECT PURCHASER CLASS	Date: Time:	September 23, 2011 9:00 a.m.		
18	ACTIONS	Dept.:	Courtroom 10, 19 <sup>th</sup> Floor		
19		Judge:	Hon. Susan Illston		
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	LG DISPLAY'S MOTION FOR PARTIAL SUMMARY Case No. 3: 07-md-1827 SI	JUDGMENT ON	WITHDRAWAL		
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## NOTICE OF MOTION AND MOTION FOR PARTIAL SUMMARY JUDGMENT

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 23, 2011, at 9:00 a.m. or as soon thereafter as the matter may be heard in Courtroom 10, 19th Floor, 450 Golden Gate Avenue, San Francisco, California, before the Honorable Susan Illston, defendants LG Display Co., Ltd. and LG Display America, Inc. (collectively, "LG Display") will and hereby do move the Court, under Rule 56(a) of the Federal Rules of Civil Procedure, for an Order granting partial summary judgment, holding that LG Display does not have joint or several liability for any actions of the alleged conspiracy on or after July 13, 2006, and dismissing all claims against it based upon purchases on and after July 13, 2006.

This motion is based upon this Notice and Motion, the following Memorandum of Points and Authorities, argument of counsel, and such other matters as the Court may consider.

### **ISSUES PRESENTED**

2.

# MEMORANDUM OF POINTS AND AUTHORITIES

#### . PRELIMINARY STATEMENT

LG DISPLAY'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON WITHDRAWAL Case No. 3: 07-md-1827 SI

1 2 3 4 5 Plaintiffs indiscriminately allege that all defendants, including LG Display, 6 engaged in the conspiracy through December 31, 2006, the end of the class period. Indirect Purchaser Plaintiffs' Third Consolidated Amended Complaint ¶ 1, ECF No. 2694 (Apr. 29, 8 2011) ("TAC"); Order Granting Indirect Purchaser Plaintiffs' Motion for Class Certification 6, ECF No. 1642 (Mar. 28, 2010) ("Class Certification Order"). 11 By withdrawing, LG Display removed itself from 12 the alleged conspiracy and from liability for the later actions of the conspiracy and for any 13 purchases made thereafter from LG Display or any codefendants. Therefore, the Court should 14 enter partial summary judgment holding that LG Display is not liable under either individual or 15 joint and several liability for any later actions of alleged conspirators and for any claims based upon purchases on or after July 13, 2006. 17 П. STATEMENT OF FACTS 18 The Court is already familiar with this case and the overall nature of the LCD 19 panel industry. See, e.g., In re TFT-LCD (Flat Panel) Antitrust Litig., 586 F. Supp. 2d 1109, 20 1113-14 (N.D. Cal. 2008); Defs.' Joint Opp'n to Direct Purchaser Pls.' Mot. for Class 21 Certification 3-16, ECF No. 1112 (filed July 1, 2009); Defs. Opp'n To Indirect Purchaser Pls.' 22 Mot. For Class Certification 4-7, ECF No. 1176 (Aug. 10, 2009). This brief discusses only 23 those additional facts relevant to LG Display's withdrawal from the alleged conspiracy. 24 25 26 27 28



fact in dispute and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P.

56(c). The party moving for summary judgment bears the initial burden of showing that there

are no genuine issues of material fact. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48

(1986); Stearns Co. v. United States, 34 Fed. Cl. 264, 273 (1995). Where the moving party has

met its burden, the nonmoving party is required to go beyond the pleadings and, by affidavits,

depositions, answers to interrogatories, or admissions, designate specific facts showing that

there is a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986).

the material facts. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586

evidence is merely colorable or is not significantly probative, summary judgment may be

that a genuine issue of material fact exists, the court must grant summary judgment for the

Withdrawal Negates the Element of Agreement in a

Conspiracy and Severs Liability.

(1986). There must be sufficient evidence with which the fact finder could reasonably find for

the nonmoving party if summary judgment is to be denied. Anderson, 477 U.S. at 250. "If the

granted." Id. at 249-250 (internal citations omitted). Where, as here, the plaintiff cannot show

The law on withdrawal from a conspiracy is clear and long-standing. A

conspirator who withdraws from a conspiracy is no longer liable for the later actions or effects

Summary judgment is appropriate when there are no genuine issues of material

The nonmoving party must do more than just show that there is some doubt as to

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#### III. STANDARD FOR SUMMARY JUDGMENT

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IV. ARGUMENT

A.

defendants.

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of the conspiracy. Withdrawal negates the element of agreement required to maintain a

conspiracy claim. United States v. Lothian, 976 F.2d 1257, 1261 (9th Cir. 1992); see also 1 United States v. Greenfield, 44 F.3d 1141, 1150 (2d Cir. 1995) ("A conspiracy exists when persons combine and agree .... A defendant withdraws from a conspiracy when he or she 3 abandons the combination and agreement."). A defendant withdraws from a conspiracy when it 4 "either disavow[s] the unlawful goal of the conspiracy, affirmatively act[s] to defeat the 5 purpose of the conspiracy, or take[s] definite, decisive, and positive steps to show that the 6 [defendant's] disassociation from the conspiracy is sufficient." Lothian, 976 F.2d at 1261 7 (internal citation omitted); see also United States v. Finestone, 816 F.2d 583, 589 (11th Cir. 8 1987) (To establish withdrawal, defendant "must prove that he undertook affirmative steps, 9 inconsistent with the objects of the conspiracy, to disavow or to defeat the conspiratorial 10 objectives, and either communicated those acts in a manner reasonably calculated to reach his 11 co-conspirators or disclosed the illegal scheme to law enforcement authorities"). Once a 12 defendant makes a prima facie showing that it took an affirmative step to withdraw, it is 13 plaintiff's burden to rebut the showing with evidence sufficient to support a finding that 14 defendant did not withdraw. Lothian, 976 F.2d at 1263; cf. Krause v. Perryman, 827 F.2d 346, 15 351 (8th Cir. 1987) (affirming dismissal of securities law and civil RICO claims against 16 defendant because defendant had established withdrawal from the alleged conspiracy while 17 plaintiffs had failed to present "any evidence sufficient to create a triable issue of fact on their 18 claim that [defendant] had not withdrawn"). 19

The defendant's affirmative act of withdrawal does not need to destroy the conspiracy to be effective. As the Second Circuit has explained: "The point of such 'affirmative evidence' requirements, though, is not to compel a conspirator to inform on his or

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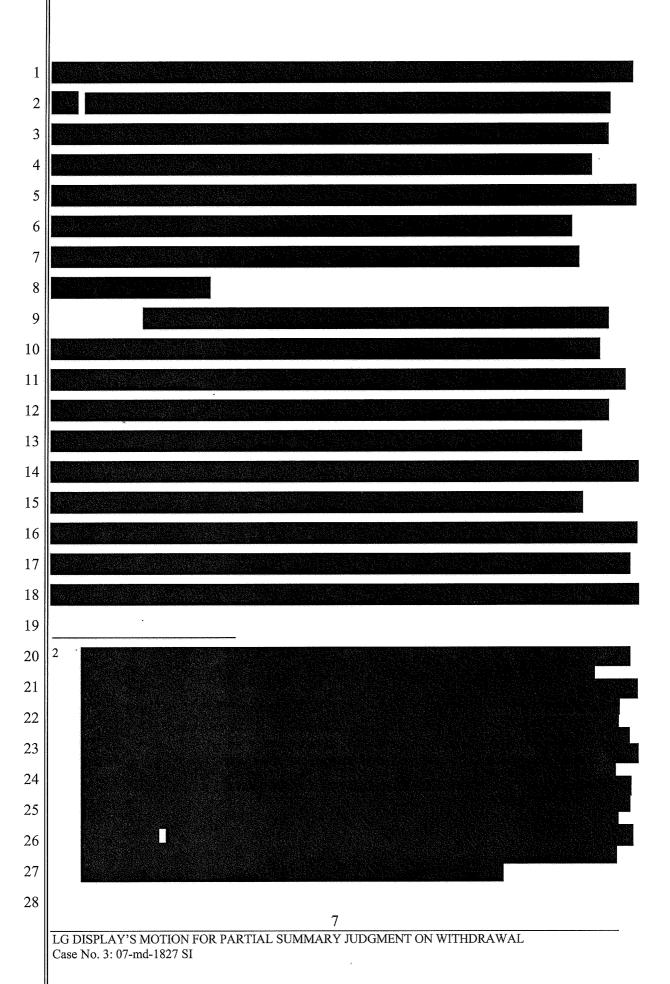
A conspiracy consists of two elements: the defendants' agreement to accomplish an illegal objective and an overt act on the part of some member of the conspiracy toward achieving that objective. *Lothian*, 976 F.2d at 1261 (citing *United States v. Loya*, 807 F.2d 1483, 1493 (9th Cir. 1987) (internal quotation omitted)); see also *United States v. Cont'l Group*, 603 F.2d 444, 462 (3d Cir. 1979) ("[C]onspiracy cases actually involve two types of intent, the intent to agree and the intent to effectuate the object of the agreement . . . . [T]he government must prove that the defendants agreed to effectuate an illegal purpose, [e].g., to fix prices.").

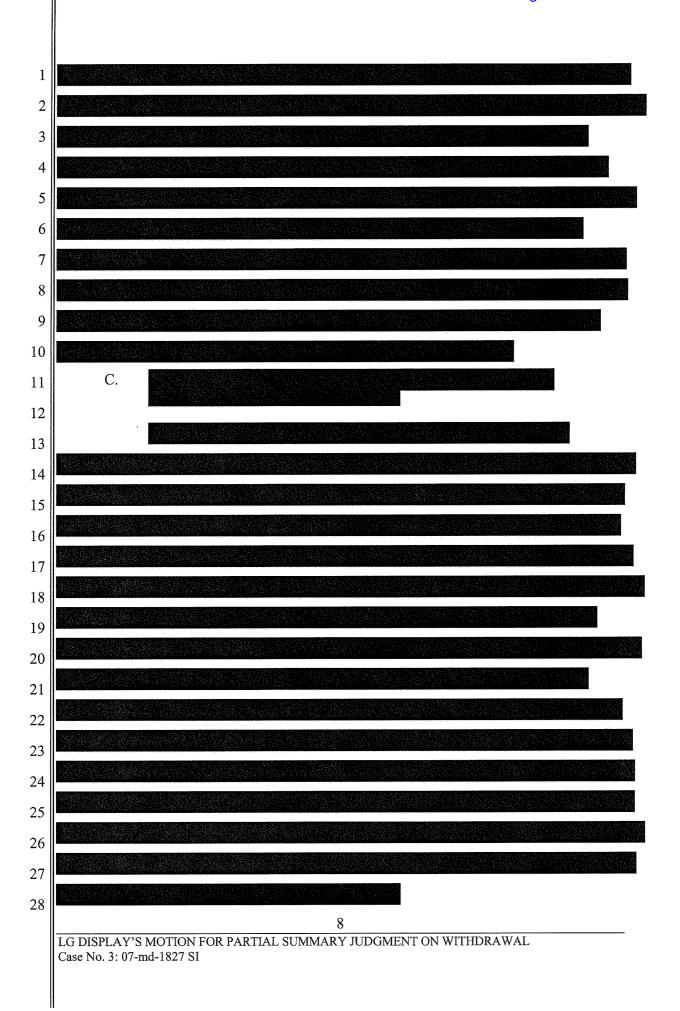
rather to make sure that a withdrawal did occur and is not simply being invented *ex post*."

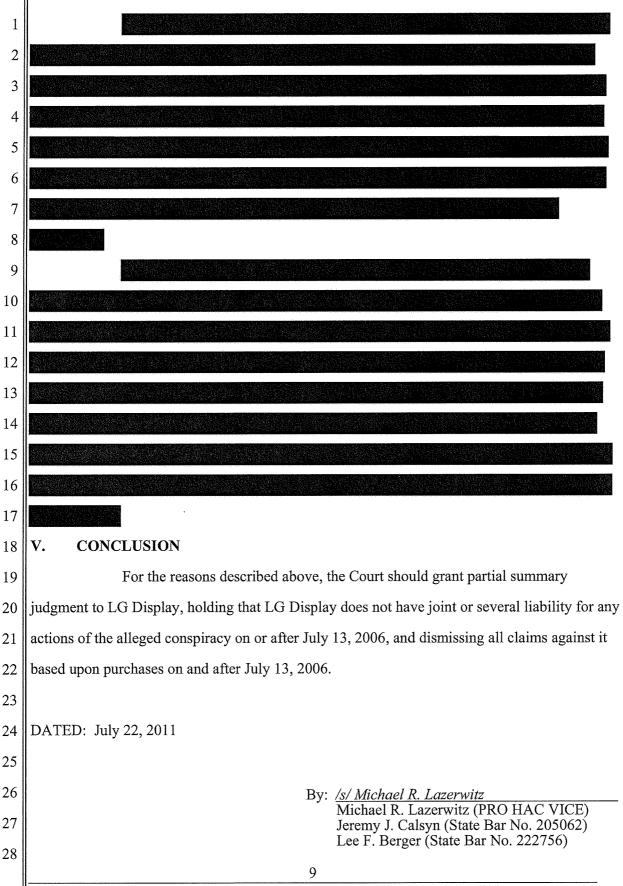
Greenfield, 44 F.3d at 1150. In Greenfield, the Second Circuit held that a district court, which credited a defendant's evidence of an affirmative act, was wrong to hold that this act was not enough to constitute withdrawal even though the conspiracy continued on without him. *Id*.

her co-conspirators or to warn-off possible victims, admirable as those actions might be. It is

By withdrawing, the defendant severs its joint-and-several liability for the acts of co-conspirators committed after its withdrawal. *Lothian*, 976 F.2d at 1262. The defendant "terminate[s its] liability for the continuing illegal acts of a conspiracy that [it] had joined" by effectively withdrawing, either through "report[ing] the conspiracy to the authorities or announc[ing] [its] withdrawal to [its] coconspirators." *In re Brand Name Prescription Drugs Antitrust Litig.*, 123 F.3d 599, 616 (7th Cir. 1997) (citing *United States v. U. S. Gypsum Co.*, 438 U.S. 422, 463-65 (1978)); *see also Hyde v. United States*, 225 U.S. 347, 371 (1912) (agreeing with jury instruction, which instructed in part that if defendant had "disclosed all he knew about the matter [to the authorities] ... nothing that could have been done by the others after that could affect him at all").







LG DISPLAY'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON WITHDRAWAL Case No. 3: 07-md-1827 SI

# Case3:07-md-01827-SI Document3170 Filed07/22/11 Page12 of 12 CLEARY GOTTLIEB STEEN & HAMILTON LLP One Liberty Plaza New York, NY 10006 (212) 225-2000 (Phone) (212) 225-3999 (Facsimile) mlazerwitz@cgsh.com Counsel for defendants LG Display Co., Ltd. and LG Display America, Inc. LG DISPLAY'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON WITHDRAWAL Case No. 3: 07-md-1827 SI