

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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

No. M 07-1827 SI
MDL. No. 1827

Case No. C 09-4997 SI

This Order Relates to:

AT&T Mobility LLC. v. AU Optronics Corp., et al., C 09-4997 SI

**ORDER DENYING DEFENDANT
SANYO CONSUMER ELECTRONICS'
MOTION FOR SUMMARY JUDGMENT
DISMISSING AT&T'S CLAIMS**

Defendant Sanyo Consumer Electronics' motion for summary judgment dismissing AT&T's claims is scheduled for a hearing on November 30, 2012. Pursuant to Civil Local Rule 7-1(b), the Court determines that this matter is appropriate for resolution without oral argument, and VACATES the hearing on this motion. For the reasons set forth in this order, defendant's motion is DENIED. Docket No. 5875.

Defendant moves for summary judgment on plaintiff's Sherman Act claim, contending that there is no direct evidence that Sanyo Consumer Electronics participated in the alleged price-fixing conspiracy, and that any circumstantial evidence of its participation does not tend to exclude the possibility that it acted independently. Defendant also moves for summary judgment on plaintiffs' state claims on the ground that the antitrust laws in those states are construed in accordance with federal law, and therefore that the claims fail for lack of evidence of a conspiracy.

In response, AT&T has submitted, *inter alia*, evidence showing that a Sanyo Consumer Electronics' employee exchanged pricing and other proprietary LCD panel information with other

1 defendants.¹ The Court has twice found this same evidence sufficient to defeat summary judgment. *See*
2 Docket Nos. 6929 & 7176. For the reasons stated in those prior orders, the Court finds that there are
3 triable issues of fact as to whether Sanyo Consumer Electronics participated in the alleged price-fixing
4 conspiracy, and therefore the Court DENIES defendant's motion for summary judgment

5 Defendant also contends that plaintiff's Sherman Act claim is barred under *Illinois Brick Co. v.*
6 *Illinois*, 431 U.S. 720 (1977), and *In re ATM Fee Antitrust Litigation*, 686 F.3d 741 (9th Cir. 2012). The
7 Court has addressed those arguments in a separate order ruling on defendants' joint motion for summary
8 judgment for lack of standing under *Illinois Brick* and *In re ATM Fee*. *See* Docket No. 7188.

9
10 **IT IS SO ORDERED.**

11
12 Dated: November 19, 2012



13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUSAN ILLSTON
United States District Judge

¹ Defendant subjected to much of plaintiff's evidence. The Court finds that there is sufficient
admissible evidence to defeat summary judgment, and accordingly the Court does not address
defendant's evidentiary objections. Defendant may renew its objections at the time of trial.