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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

This Order Relates To:

No. C 10-4945 SI

TARGET CORPORATION, *et al.*,

Plaintiffs,

v.

AU OPTRONICS CORPORATION, *et al.*,

Defendants.

**ORDER GRANTING SAMSUNG SDI'S
AND SANYO CONSUMER
ELECTRONICS' MOTION TO DISMISS
SECOND AMENDED COMPLAINT**

Now before the Court is a motion to dismiss the second amended complaint (“SAC”) of plaintiffs Target Corporation; Sears, Roebuck and Co.; Kmart Corporation; Old Comp Inc.; Good Guys, Inc.; Radioshack Corporation; and Newegg Inc. (collectively, “Target”). Having considered the arguments presented in the moving papers, the Court hereby GRANTS defendants’ motion.

BACKGROUND

Target filed this antitrust action in 2010, seeking to “recover the damages [it] incurred as a result of a long-running conspiracy by manufacturers of liquid crystal display panels (‘LCD Panels’).” *See* SAC at ¶1. On September 7, 2011, this Court granted Target leave to file a SAC. The SAC alleges that “[d]efendants and their co-conspirators formed an international cartel illegally to restrict competition in the United States in the market for LCD Panels.” *Id.* at ¶3. The SAC includes claims under the Sherman Act, 15 U.S.C. § 1, and claims under the antitrust and unfair competition laws of California,

1 Arizona, Florida, Illinois, Iowa, Kansas, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska,
2 Nevada, New Mexico, New York, North Carolina, Tennessee, and Wisconsin. SAC at ¶¶231-68.

3 Target's SAC named as defendants, for the first time, Samsung SDI Co., Ltd., Samsung SDI
4 America, Inc. (collectively, "SDI"), and Sanyo Consumer Electronics Co., Ltd. ("Sanyo"). On
5 November 18, 2011, SDI and Sanyo filed this motion to dismiss Target's SAC. The motion makes two
6 arguments: first, that the majority of Target's state-law claims against SDI and Sanyo are untimely; and
7 second, that Target state-law claims must be dismissed to the extent they are based upon out-of-state
8 purchases.

10 LEGAL STANDARD

11 Under Federal Rule of Civil Procedure 12(b)(6), a district court must dismiss a complaint that
12 fails to state a claim upon which relief may be granted. To survive a Rule 12(b)(6) motion to dismiss,
13 the plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl.*
14 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007). This "facial plausibility" standard requires the plaintiff
15 to allege facts that add up to "more than a sheer possibility that a defendant has acted unlawfully."
16 *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). While courts do not require "heightened fact pleading
17 of specifics," a plaintiff must allege facts sufficient to "raise a right to relief above the speculative
18 level." *Twombly*, 550 U.S. at 544, 555.

19 In deciding whether the plaintiff has stated a claim upon which relief may be granted, the Court
20 must assume that the plaintiff's allegations are true and must draw all reasonable inferences in the
21 plaintiff's favor. *See Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). However, the
22 Court is not required to accept as true "allegations that are merely conclusory, unwarranted deductions
23 of fact, or unreasonable inferences." *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008).

25 DISCUSSION

26 As mentioned above, defendants' motion challenges only two aspects of Target's complaint:
27 (1) the timeliness of Target's state-law claims; and (2) Target's ability to bring state-law claims based
28 upon purchases that occurred outside of that state.

1 **I. Timeliness of Target’s Claims**

2 Defendants seek dismissal of the majority of Target’s state-law claims, specifically those claims
3 brought under the laws of Arizona, California, Florida, Iowa, Kansas, Massachusetts, Minnesota,
4 Mississippi, Nebraska, Nevada, New Mexico, North Carolina, and Tennessee. Defendants contend, and
5 Target does not dispute, that these jurisdictions impose three-¹ or four-² year statutes of limitations on
6 Target’s claims. Because Target first sought to file suit against SDI and Sanyo on August 5, 2011,³
7 more than four years after the DOJ’s December 2006 announcement of its investigation into the antitrust
8 conspiracy,⁴ defendants argue that these claims are untimely.

9 In response to defendants’ argument, Target raises two grounds on which it claims it is entitled
10 to tolling. First, in a short paragraph, it contends that “the filing of government actions by certain state
11 attorneys general against Samsung SDI and Sanyo” tolled the applicable statutes of limitations. *Oppo*.
12 at 8. Target, however, has not provided any support for this contention. It has not established that such
13 actions exist, nor has it identified which state claims this tolling would affect. Accordingly, the Court
14 finds that Target has not met its burden of showing that it is entitled to governmental-action tolling. *See*
15 *generally Hinton v. Pacific Enterprises*, 5 F.3d 391, 395 (9th Cir. 1993) (“The burden of alleging facts
16 which would give rise to tolling falls upon the plaintiff.”).

17 Target’s primary argument is that it is entitled to tolling based upon defendants’ fraudulent
18 concealment of the conspiracy. This Court has allowed plaintiffs in this MDL to rely on fraudulent
19 concealment to toll the statute of limitations until the DOJ publicly disclosed its investigation into the
20 conspiracy in December 2006. Target claims that it is entitled to additional tolling because the identities
21

22 ¹*See* Kansas Stat. Ann. § 60-512; Miss. Code § 15-1-49(1); Tenn. Code § 28-3-105.

23 ²*See* Ariz. Rev. Stat. § 44-1410(B); Cal. Bus. & Prof. Code §§ 16750.1, 17208; Fla. Stat.
24 § 95.11(3)(f); Iowa Code § 553.16(2); Mass. Gen. L. Ch. 260 § 5A; Minn. Stat. § 325D.64(1); Neb. Rev.
Stat. § 25-206; Nevada Rev. Stat. § 598A.220(2); N.M. Stat. § 57-1-12(B); N.C. Gen. Stat. § 75-16.2.

25 ³*See* Notice of Motion and Motion for Leave to File a Third Amended Complaint, Master Docket
26 No. 3233 (August 5, 2011).

27 ⁴Based on allegations of fraudulent concealment, this Court has treated the December 2006
28 disclosure of the DOJ’s investigation into the antitrust conspiracy as the date the relevant statutes of
limitations began to run. *See* Order Granting in Part and Denying in Part Defendants’ Motions to
Dismiss Complaints, Master Docket No. 666, at 27-28 (August 25, 2008).

1 of all conspiracy participants were never disclosed. For example, Target contends that “the 2006 public
2 announcement concerning government investigations into anticompetitive activity of *other* co-
3 conspirators – not SDI or Sanyo – was not sufficient to put Plaintiffs on notice, nor to lead the Plaintiffs
4 to discover, the existence of Plaintiffs’ claims against these Defendants.” *Oppo.* at 3-4. It asserts that
5 the laws of each of the above states permit further tolling until it learned of SDI’s and Sanyo’s role in
6 the conspiracy.

7 The Court has reviewed the cases cited in Target’s opposition brief. None of those cases clearly
8 supports the proposition that fraudulent concealment tolls the statute of limitations until the identity of
9 the wrongdoer is known. Instead, they generally stand for the proposition that fraudulent concealment
10 tolls the statute of limitations until the plaintiff is put on notice of his claim. *See, e.g. Estate of*
11 *Kirschenbaum v. Kirschenbaum*, 793 P.2d 1102, 1105 (Ariz. App.1989) (holding that inquiry notice of
12 cause of action is sufficient to defeat fraudulent concealment); *Snapp & Assocs. Ins. Servs., Inc. v.*
13 *Malcolm Bruce Burlingame Robertson*, 96 Cal. App.4th 884, 891 (2002) (“A plaintiff is under a duty
14 to reasonably investigate, and a suspicion of wrongdoing, coupled with a knowledge of the harm and
15 its cause, commences the limitations period.”).

16 It is conceivable, however, that a defendant’s efforts to conceal its identity as the source of a
17 plaintiff’s injury would, in some circumstances, warrant tolling based upon fraudulent concealment.
18 Even assuming this to be the case, fraudulent concealment would still not apply here. Target’s
19 fraudulent concealment allegations are based on the theory that defendants concealed the existence of
20 the conspiracy. It has not alleged fraudulent concealment on the theory that defendants concealed their
21 identities. Thus, when the conspiracy became publicly known in December 2006, any wrongful conduct
22 on the part of the defendants stopped having its effect, removing the basis for plaintiff’s tolling. To the
23 extent Target could not determine SDI and Sanyo’s role in the conspiracy after December 2006, it was
24 not attributable to their fraud.⁵ *See, e.g., Vasek v. Warren Grain & Seed Co.*, 353 N.W.2d 175, 177

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26 ⁵It is difficult to accept Target’s contention that it could not have learned of SDI’s and Sanyo’s
27 alleged roles in the conspiracy within the relevant limitations periods. Sanyo was first named as a
28 defendant in the third amended direct-purchaser plaintiff complaint, which was filed on December 2,
2009. SDI was named as a defendant in the Nokia direct-action case on July 23, 2010. Yet Target did
not attempt to add these defendants until August 5, 2011, more than a year later.

1 (Minn. App. 1984) (“Even if fraudulent concealment continues to toll the statute . . . , it only does so
2 during the time that the defendant by its fraud prevents the plaintiff from discovering his cause of
3 action.”).

4 Target’s SAC includes no allegations that SDI or Sanyo took any affirmative steps to conceal
5 their role in the conspiracy after the conspiracy became publicly known. Accordingly, the Court holds
6 that fraudulent concealment does not toll the statute of limitations past December 2006. If Target seeks
7 tolling based upon fraudulent concealment after that date, it must allege specific acts of concealment
8 by each individual defendant.

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10 **II. State-Law Claims**

11 Defendants also move to dismiss Target’s SAC to the extent its state-law claims are based upon
12 out-of-state purchases. The parties appear to be in agreement on this point; with the exception of its
13 California claims, Target represents that its state-law claims are not based upon purchases made outside
14 of the relevant state. Although Target seeks to recover for all of its purchases under California law, it
15 recognizes this Court’s holdings that only the place of purchase may be used. *See, e.g.*, Order Granting
16 Defendants’ Joint Motion to Dismiss and Granting Plaintiffs Leave to Amend, Master Docket No. 1823,
17 at 4-5 (June 28, 2010). Accordingly, the Court GRANTS defendants’ motion to dismiss on this issue.

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19 **III. Leave to Amend**

20 Target has requested that this Court allow it to amend its complaint so it can cure any
21 deficiencies in its SAC. Target has not, however, made any showing to the Court that there is any basis
22 for amendment. In the absence of such a showing, Target’s request for leave to amend is DENIED.

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CONCLUSION

For the foregoing reasons and for good cause shown, the Court hereby GRANTS defendants' motion to dismiss plaintiffs' second amended complaint. Docket No. 103 in 10-4945; Docket No. 4162 in 07-1827.

IT IS SO ORDERED.

Dated: January 30, 2012



SUSAN ILLSTON
United States District Judge