

1 Kathryn Parsons Hoek (CA Bar No. 219247)
 2 SUSMAN GODFREY L.L.P.
 3 1901 Avenue of the Stars, Ste. 950
 4 Los Angeles, CA 90067-6029
 Telephone: (310) 310-3100
 Facsimile: (310) 789-3150
 E-Mail: khoek@susmangodfrey.com

5
 6 Parker C. Folsie (*pro hac vice*)
 Brooke A. M. Taylor (*pro hac vice*)
 7 SUSMAN GODFREY L.L.P.
 8 1201 Third Ave., Suite 3800
 Seattle, WA 98101
 Telephone: (206) 516-3880
 9 Facsimile: (206) 516-3883
 E-Mail: pfolsie@susmangodfrey.com
 10 btaylor@susmangodfrey.com

11 *Counsel for Plaintiff T-Mobile U.S.A., Inc.*

Edward A. Friedman (*pro hac vice*)
 Daniel B. Rapport (*pro hac vice*)
 Hallie B. Levin (*pro hac vice*)
 Jason C. Rubinstein (*pro hac vice*)
 FRIEDMAN KAPLAN SEILER &
 ADELMAN LLP
 7 Times Square
 New York, NY 10036-6516
 Telephone: (212) 833-1100
 Facsimile: (212) 833-1250
 E-Mail: efriedman@fklaw.com
 drapport@fklaw.com
 hlevin@fklaw.com
 jrubinstein@fklaw.com

12
 13 **UNITED STATES DISTRICT COURT**
 14 **NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION**

15 IN RE TFT-LCD (FLAT PANEL)
 16 ANTITRUST LITIGATION

17 This Document Relates to

18 Case C 3:11-02591 SI

Master File No. C M:07-01827 SI
 Individual Case No. C 3:11-02591 SI
 MDL No. 1827

19 T-MOBILE U.S.A., INC.,

20 Plaintiff,

21 v.

22 AU OPTRONICS CORPORATION, et al.,

23 Defendants.

**PLAINTIFF T-MOBILE U.S.A., INC.'S
 MOTION FOR RECONSIDERATION OF
 THE COURT'S ORDER DISMISSING
 ITS CARTWRIGHT ACT, UNFAIR
 COMPETITION LAW, AND DONNELLY
 ACT CLAIMS**

Date: May 3, 2013
 Time: 9:00 AM
 Location: Courtroom 10, 19th Floor
 450 Golden Gate Ave.
 San Francisco, CA 94102

27 Master File No. C M:07-01827 SI
 Individual Case No. C 3:11-02591 SI
 28 MDL No. 1827

T-MOBILE'S MOTION FOR RECONSIDERATION OF
 THE COURT'S ORDER DISMISSING ITS CARTWRIGHT
 ACT, UNFAIR COMPETITION LAW, AND DONNELLY
 ACT CLAIMS

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
MEMORANDUM OF POINTS AND AUTHORITIES	1
STATEMENT OF THE ISSUES.....	1
SUMMARY OF ARGUMENT	1
BACKGROUND	1
ARGUMENT	3
I. MOTIONS FOR RECONSIDERATION ARE APPROPRIATE WHEN THERE HAS BEEN AN “INTERVENING CHANGE IN CONTROLLING LAW”	3
II. THE NINTH CIRCUIT’S DECISION IN <i>AT&T</i> IS AN INTERVENING CHANGE IN CONTROLLING LAW	3
III. THE REINSTATEMENT OF T-MOBILE’S CALIFORNIA AND NEW YORK CLAIMS WILL NOT PREJUDICE DEFENDANTS	3
CONCLUSION.....	5

TABLE OF AUTHORITIES

Page(s)

CASES

389 Orange St. Partners v. Arnold,
179 F.3d 656 (9th Cir. 1999) 1, 3

Allstate Ins. Co. v. Hague,
449 U.S. 302 (1981).....2

Am. Econ. Ins. Co. v. Reboans, Inc.,
900 F. Supp. 1246 (N.D. Cal. 1994)3

AT&T Mobility LLC v. AU Optronics Corp.,
707 F.3d 1106 (9th Cir. 2013) 1, 2, 3

STATUTES

CAL. BUS. & PROFS. CODE §§ 16720 *et seq.* 1

CAL. BUS. & PROFS. CODE §§ 17200 *et seq.* 1

N.Y. GEN. BUS. L. §§ 340 *et seq.*..... 1

PRIOR RELEVANT ORDERS

Pursuant to the Court’s April 9, 2012 Order, below is a list of the prior orders of the Court that address substantially similar arguments as those raised in this brief:

Date	Case	MDL Dkt. No.	Argument Raised
6/28/10	<i>AT&T Mobility LLC v. AU Optronics, 09-4997-SI (AT&T I)</i>	1823	Due Process
6/28/10	<i>Motorola v. AU Optronics, 09-5840-SI (“Motorola I”)</i>	1822	Due Process
6/29/10	<i>Nokia v. AU Optronics, 09-5609-SI</i>	1824	Due Process
11/12/10	<i>AT&T Mobility LLC v. AU Optronics, 09-4997-SI (AT&T II)</i>	2142	Due Process
3/24/11	<i>Florida v. AU Optronics, 10-3517-SI (Florida)</i>	2585	Due Process
3/28/11	<i>Motorola v. AU Optronics, 09-5840-SI (Motorola II)</i>	2602	Due Process
8/9/11	<i>New York v. AU Optronics, 11-00711-SI (New York)</i>	3242	Due Process
8/29/11	<i>Costco v. AU Optronics, 11-0058-SI (Costco I)</i>	3396	Due Process
11/28/11	<i>Costco v. AU Optronics, 11-0058-SI (Costco II)</i>	4195	Choice of Law
1/18/12	<i>Office Depot, Inc. v. AU Optronics, 11-2225-SI (Office Depot)</i>	4592	Due Process
1/30/12	<i>Target Corp. v. AU Optronics, 10-4945-SI (Target I)</i>	4703	Due Process
2/6/12	<i>T-Mobile U.S.A., Inc. v. AU Optronics, 11-2592-SI (T-Mobile)</i>	4786	Due Process
8/27/12	<i>Target Corp. v. AU Optronics, 10-4945 SI (Target II)</i>	6570	Due Process
9/18/12	<i>Target Corp. v. AU Optronics, 10-4945 SI (Target III)</i>	6802	Due Process
3/20/13	<i>Proview Tech. Inc. v. AU Optronics, 12-3802-SI (Proview)</i>	7661	Due Process

Master File No. C M:07-01827 SI
Individual Case No. C 3:11-02591 SI
MDL No. 1827

T-MOBILE’S MOTION FOR RECONSIDERATION OF
THE COURT’S ORDER DISMISSING ITS CARTWRIGHT
ACT, UNFAIR COMPETITION LAW, AND DONNELLY
ACT CLAIMS

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **STATEMENT OF THE ISSUES**

3 Whether T-Mobile’s claims under the California Cartwright Act, CAL. BUS. & PROFS.
4 CODE §§ 16720 *et seq.*, California Unfair Competition Law, CAL. BUS. & PROFS. CODE §§ 17200
5 *et seq.*, and New York Donnelly Act, N.Y. GEN. BUS. L. §§ 340 *et seq.*, should be reinstated in
6 light of the Court of Appeals for the Ninth Circuit’s decision in *AT&T Mobility LLC v. AU*
7 *Optronics Corp.*, 707 F.3d 1106 (9th Cir. 2013).

8 **SUMMARY OF ARGUMENT**

9 *AT&T Mobility LLC v. AU Optronics Corp.* reinstates plaintiff AT&T Mobility LLC’s
10 (“AT&T”) Cartwright Act claims “to the extent a defendant’s conspiratorial conduct is
11 sufficiently connected to California, and is not ‘slight and casual.’” 707 F.3d 1106, at 1107,
12 1113. The Ninth Circuit specified a different standard than the “place-of-purchase” standard
13 relied upon by this Court in dismissing T-Mobile’s Cartwright Act, Unfair Competition Law, and
14 Donnelly Act claims on due process grounds. (*See* Order re: Defendants’ Motions to Dismiss,
15 dated February 6, 2012, MDL Dkt. No. 4786 (the “Order”), at 3.) This “intervening change in
16 the controlling law” is a sufficient basis for this Court to reconsider its Order and to reinstate
17 T-Mobile’s Cartwright Act, Unfair Competition Law, and Donnelly Act claims. *389 Orange St.*
18 *Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999) (“[A] motion for reconsideration should
19 not be granted, absent, highly unusual circumstances, unless . . . there is an intervening change in
20 the controlling law.”).

21 **BACKGROUND**

22 In the Order, this Court dismissed T-Mobile’s Cartwright Act, Unfair Competition Law,
23 and Donnelly Act claims after ruling that “T-Mobile had failed to adequately allege that it
24 purchased LCD products in New York and California.” (Order at 3.) This Court also rejected
25 T-Mobile’s argument that T-Mobile’s significant presence in California, and its allegations that
26 defendants are subject to personal jurisdiction in California, maintained offices in California,
27 transacted business in California, and, by their own admission, committed acts in furtherance of
28 their price-fixing conspiracy in California (*see* MDL Dkt. No. 4617 at 1) were sufficient to

1 support the application of California or New York law to T-Mobile’s purchases of price-fixed
2 products.¹ Rather, in the Order, the Court cited to and relied on this Court’s earlier orders on the
3 due process issue, including its prior decision in the *AT&T* matter, and concluded that, “to invoke
4 the various state laws at issue, a plaintiff must be able to allege that the occurrence or transaction
5 giving rise to the litigation – which is plaintiff’s purchase of allegedly price-fixed goods –
6 occurred in the various states.” (Order at 3 (internal punctuation omitted).)

7 In *AT&T*, the Court of Appeals for the Ninth Circuit considered and declined to adopt the
8 “place-of-purchase” rule on which this Court relied in the Order. Indeed, in its February 14,
9 2013 opinion, the Ninth Circuit expressly stated that this Court’s “place-of-purchase” analysis
10 incorrectly “makes a single contact – the location of Plaintiffs’ injury – dispositive,” and that
11 application of such a standard would represent a return to a rigid standard long since abandoned
12 by the Supreme Court in its seminal *Allstate Ins. Co. v. Hague*, 449 U.S. 302 (1981), decision.
13 *AT&T*, 707 F.3d 1106, at 1112. Rejecting this approach, the Ninth Circuit articulated a different
14 standard for determining whether an indirect purchaser’s invocation of a given state’s laws was
15 consistent with due process. *Id.* at 1109. Specifically, the Ninth Circuit held that the “sale of
16 price-fixed goods” or “[d]efendants’ alleged agreements and conspiracies to fix LCD prices”
17 could create a nexus with a state sufficient to satisfy due process. *Id.* at 1112. Applying this
18 approach, the Ninth Circuit reversed this Court’s decision dismissing AT&T’s indirect purchaser
19 claims under California law, and held that “the Cartwright Act can be lawfully applied without
20 violating a defendant’s due process rights when more than a *de minimis* amount of that
21 defendants’ alleged conspiratorial activity leading to the sale of price-fixed goods . . . took place
22 in California.” *Id.* at 1113.

23 ¹ T-Mobile specifically adopted the factual and legal arguments advanced by AT&T in its due process appeal. *See*
24 Plaintiff T-Mobile U.S.A., Inc.’s Opposition to Defendants’ Joint Motion to Dismiss in Part Amended Complaint
25 (MDL Dkt. No. 4617) at 1-2 (“T-Mobile has asserted claims against Defendants under the Cartwright Act and
26 California Unfair Competition Law to preserve its right to pursue such claims in the event that the governing law
concerning its standing to do so changes during the pendency of this action, including as a result of the AT&T
Mobility plaintiffs’ appeal of this Court’s rulings on this question to the U.S. Court of Appeals for the Ninth
Circuit.”).

1 **ARGUMENT**

2 **I. MOTIONS FOR RECONSIDERATION ARE APPROPRIATE WHEN THERE**
3 **HAS BEEN AN “INTERVENING CHANGE IN CONTROLLING LAW”**

4 Motions for reconsideration “are committed to the discretion of the trial court.” *Am.*
5 *Econ. Ins. Co. v. Reboans, Inc.*, 900 F. Supp. 1246, 1250 (N.D. Cal. 1994) (internal citations
6 omitted). While motions for reconsideration typically “should not be granted, absent highly
7 unusual circumstances,” *389 Orange St. Partners*, 179 F.3d at 665, such a motion is appropriate
8 where, as here, “there has been an intervening change in controlling law.” *Am. Econ. Ins. Co.*,
9 900 F. Supp. at 1250 (internal citations omitted).

10 **II. THE NINTH CIRCUIT’S DECISION IN AT&T IS AN**
11 **INTERVENING CHANGE IN CONTROLLING LAW**

12 *AT&T Mobility LLC v. AU Optronics Corp.* is an intervening change in controlling law.
13 While this Court ruled that T-Mobile lacked standing to invoke California and New York law
14 because none of T-Mobile’s handset purchases occurred in California or New York, the Ninth
15 Circuit endorsed a more flexible, liberal standard, namely whether an “aggregation of contacts”
16 creates state interests such that “choice of [a state’s] law is neither arbitrary nor fundamentally
17 unfair.” *AT&T*, 707 F.3d 1106, at 1111 (internal citations omitted). As a result of the Ninth
18 Circuit’s adoption of the “aggregation of contacts” standard, the controlling law on which this
19 Court relied in dismissing T-Mobile’s claims under the Cartwright Act, Unfair Competition Law,
and Donnelly Act has changed.

20 **III. THE REINSTATEMENT OF T-MOBILE’S CALIFORNIA AND**
21 **NEW YORK CLAIMS WILL NOT PREJUDICE DEFENDANTS**

22 Under the Ninth Circuit’s holding in *AT&T*, the allegations in T-Mobile’s Amended
23 Complaint for Damages and Injunctive Relief (No. 3:11-cv-02591, Dkt. No. 55 (the “Amended
24 Complaint”) are more than sufficient to support T-Mobile’s assertion of indirect purchaser
25 claims under California and New York law. T-Mobile’s Amended Complaint details the
26 extensive nexus between defendants’ illegal conduct and California and New York. It also

1 describes the presence maintained by T-Mobile in both California and New York, as well as the
2 substantial business conducted by T-Mobile in both states during the years in which defendants
3 were conspiring to fix the prices of products containing LCD panels, including, without
4 limitation, the sale of mobile wireless handsets (which contain LCD panels) to customers at its
5 corporate-owned retail stores, through its website, and through business-to-business sales. (*See,*
6 *e.g.*, Amended Complaint ¶¶ 5-7, 26, 78, 100, 113, 163-64, 251, 289-92, 295-96, 298-99.)
7 Simply put, T-Mobile’s claims under the Cartwright Act, Unfair Competition Law, and Donnelly
8 Act do not come as any surprise to defendants. Nor will T-Mobile’s prosecution of such claims
9 prejudice defendants. Indeed, T-Mobile does not dispute that defendants should be given an
10 opportunity to complete discovery relating to its indirect purchaser claims. (*See, e.g.*, Joint Case
11 Management Conference Statement, MDL Dkt. No. 7640, at 23-25.)
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1 **CONCLUSION**

2 Based on the foregoing, T-Mobile respectfully requests that the Court grant its Motion for
3 Reconsideration, and reinstate T-Mobile’s claims under the Cartwright Act, Unfair Competition
4 Law, and Donnelly Act.

5 Dated: March 29, 2013

Respectfully submitted,

6 /s/ Jason C. Rubinstein
7 Kathryn Parsons Hoek (CA Bar No. 219247)
8 E-Mail: khoek@susmangodfrey.com
9 SUSMAN GODFREY L.L.P.
10 1901 Avenue of the Stars, Ste. 950
11 Los Angeles, CA 90067-6029
12 Telephone: (310) 310-3100
13 Facsimile: (310) 789-3150

14 Parker C. Folsie III (*pro hac vice*)
15 E-Mail: pfolsie@susmangodfrey.com
16 Brooke A. M. Taylor (*pro hac vice*)
17 E-Mail: btaylor@susmangodfrey.com
18 SUSMAN GODFREY L.L.P.
19 1201 Third Ave., Suite 3800
20 Seattle, WA 98101
21 Telephone: (206) 516-3880
22 Facsimile: (206) 516-3883

23 Edward A. Friedman (*pro hac vice*)
24 E-Mail: efriedman@fklaw.com
25 Daniel B. Rapport (*pro hac vice*)
26 E-Mail: drapport@fklaw.com
27 Hallie B. Levin (*pro hac vice*)
28 E-Mail: hlevin@fklaw.com
Jason C. Rubinstein (*pro hac vice*)
E-Mail: jrubinstein@fklaw.com
FRIEDMAN KAPLAN SEILER &
ADELMAN LLP
7 Times Square
New York, NY 10036-6516
Telephone: (212) 833-1100
Facsimile: (212) 833-1250

Counsel for Plaintiff T-Mobile U.S.A., Inc.