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

17 In re: TFT-LCD (FLAT PANEL)
 ANTITRUST LITIGATION
 18
 19 This Document Relates to: 3:11-cv-02591-SI
 20
 21 T-MOBILE U.S.A., INC.,
 Plaintiffs,
 22
 vs.
 23
 24 AU OPTRONICS CORPORATION, et al.,
 Defendants.
 25
 26
 27
 28

Master Docket No. M:07-cv-1827-SI
 (Case No. 3:11-cv-02591-SI)
**SAMSUNG SDI CO., LTD. AND
 SAMSUNG SDI AMERICA, INC.'S:**
**(1) NOTICE OF MOTION AND MOTION
 TO DISMISS T-MOBILE'S CLAIMS
 PURSUANT TO CALIFORNIA'S
 CARTWRIGHT ACT AND UNFAIR
 COMPETITION LAW; AND**
**(2) JOINDER IN DEFENDANTS' JOINT
 MOTION TO DISMISS COMPLAINT**
 Date: October 28, 2011
 Time: 9:00 a.m.
 Ctrm: 10
 Judge: Hon. Susan Illston

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1 **NOTICE OF MOTION AND MOTION**

2 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

3 PLEASE TAKE NOTICE that on October 28, 2011, at 9:00 a.m. or as soon thereafter as
4 this matter may be heard, in the Courtroom of the Honorable Susan Illston, United States District
5 Judge of the Northern District of California located at 450 Golden Gate Avenue, San Francisco,
6 California, defendants Samsung SDI Co., Ltd. and Samsung SDI America, Inc. (together, "SDI")
7 will, and hereby do, move this Court, pursuant to Rule 12(b)(6) of the Federal Rules of Civil
8 Procedure, for an order dismissing plaintiff T-Mobile U.S.A., Inc. ("T-Mobile")'s claims against
9 SDI as stated in T-Mobile's Complaint for Damages and Injunctive Relief ("Complaint"), for the
10 reasons stated in Defendants' Joint Notice of Motion and Motion to Dismiss Complaint ("Joint
11 Motion to Dismiss"), Docket No. 3592. In addition, SDI separately moves this Court, pursuant to
12 Rule 12(b)(6) of the Federal Rules of Civil Procedure, for an order dismissing as time-barred
13 T-Mobile's claims against SDI pursuant to California's Cartwright Act, Cal. Bus. & Prof. Code
14 § 16720, et seq., and Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, et seq. ("UCL").
15 This motion is based upon this Notice of Motion and accompanying Memorandum of Points and
16 Authorities, the Joint Motion to Dismiss, the complete files in these actions, argument of counsel,
17 and such other matters as the Court may consider.

18 **STATEMENT OF THE ISSUE**

19 1. Whether T-Mobile's claims for relief SDI pursuant to California's Cartwright Act,
20 Cal. Bus. & Prof. Code § 16720, et seq., and Unfair Competition Law, Cal. Bus. & Prof. Code
21 § 17200, et seq., are time-barred by the applicable statutes of limitation.

22 2. Whether T-Mobile's Complaint should be dismissed as to SDI for all the reasons set
23 forth in Defendants' Joint Motion to Dismiss.

24 **MEMORANDUM OF POINTS AND AUTHORITIES**

25 **I. INTRODUCTION**

26 SDI joins in all arguments asserted by defendants in the concurrently filed Joint Motion to
27 Dismiss, including all arguments based on statutes of limitation. SDI files this separate motion to
28 dismiss because, unlike most (if not all) other defendants, it was not named as a defendant in the

1 class action cases filed in the associated multi-district litigation. Those class actions therefore
2 cannot toll any statute of limitations as to any claim against SDI, even if such tolling were pled.
3 T-Mobile's Cartwright Act and UCL claims thus fail as to SDI for this additional reason, on top of
4 each of the grounds for dismissal of the Complaint set forth in the Joint Motion to Dismiss.

5 **II. ARGUMENT**

6 **A. T-Mobile's Claims Under California's Cartwright Act And Unfair**
7 **Competition Law Are Barred By Four-Year Statutes Of Limitation.**

8 T-Mobile's claims against SDI pursuant to California's Cartwright Act, Cal. Bus. & Prof.
9 Code § 16720, et seq., and Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, et seq.
10 ("UCL"), are time-barred because they were commenced more than four years after any such
11 claim accrued. The Cartwright Act's statute of limitations states that "[a]ny civil action to enforce
12 any cause of action for a violation of this chapter shall be commenced within four years after the
13 cause of action accrued." Cal. Bus. & Prof. Code § 16750.1. Similarly, the UCL's statute of
14 limitations states that "[a]ny action to enforce any cause of action pursuant to this chapter shall be
15 commenced within four years after the cause of action accrued." Cal. Bus. & Prof. Code § 17208.
16 T-Mobile's claims are premised on its alleged purchases of mobile wireless handsets between 1996
17 and 2006. *See, e.g.*, Compl. ¶ 1. T-Mobile alleges that prices for these handsets were affected by
18 an alleged price-fixing conspiracy, which allegedly continued until December 2006. *See, e.g.*,
19 Compl. ¶¶ 2, 3, 21, 187, 198. Thus T-Mobile's claims accrued, at the latest, in December 2006.
20 Barring application of any tolling doctrine, the claims are time-barred and should be dismissed.

21 **B. T-Mobile's Cartwright Act And UCL Claims Cannot Be Saved By Allegations**
22 **Of Fraudulent Concealment Or Any Tolling Doctrine.**

23 SDI anticipates that T-Mobile will argue that its claims are immune to any statute of
24 limitations challenges by virtue of the doctrines of fraudulent concealment, class-action tolling
25 and/or government-action tolling. As described in the concurrently filed Joint Motion to Dismiss,
26 plaintiffs have failed to plead facts sufficient to invoke the latter two doctrines. But even if the
27 Court were to consider the merits of these tolling doctrines, none save T-Mobile's Cartwright Act
28 or UCL claims against SDI.

1 1. Fraudulent Concealment

2 T-Mobile's allegations of fraudulent concealment cannot rescue its claims pursuant to the
3 Cartwright Act and UCL. First, the statute of limitations on a UCL claim begins to run on the date
4 the cause of action accrued, and not on the date of discovery. *See Salenga v. Mitsubishi Motors*
5 *Credit of America, Inc.*, 183 Cal.App.4th 986, 996 (Cal. App. 2010) ("discovery rule" does not
6 apply to UCL claims); *Karl Storz Endoscopy-America, Inc. v. Surgical Technologies, Inc.*, 285
7 F.3d 848, 857 (9th Cir. 2002) (statute of limitations on UCL claim "began to run on the date the
8 cause of action accrued, not on the date of discovery.").

9 Second, to the extent T-Mobile's knowledge is relevant, for example as with T-Mobile's
10 claim under the Cartwright Act, T-Mobile affirmatively alleges that the U.S. Department of
11 Justice's investigation of the alleged conspiracy became public in December 2006. Compl. ¶¶ 123,
12 184. T-Mobile further alleges that on December 12, 2006, "news reports indicated that in addition
13 to LG Display, defendants Samsung, Sharp, and AU Optronics were also under investigation." *Id.*
14 ¶ 124. T-Mobile acknowledges that any alleged fraudulent concealment had ended at the time of
15 these announcements. *Id.* ¶ 184. Under California law, "[t]he fraudulent concealment doctrine
16 does not come into play, whatever the lengths to which a defendant has gone to conceal the
17 wrongs, if a plaintiff is on notice of a potential claim." *Snapp & Associate Ins. Serv., Inc. v.*
18 *Malcolm Bruce Burlingame Robertson*, 96 Cal.App.4th 884, 890-91 (2002) (internal quotations
19 omitted). Because T-Mobile was on notice of a potential claim by December 2006, its attempt to
20 assert Cartwright Act and UCL claims more than four years later is time-barred.

21 2. Class-Action Tolling

22 The LCD class actions do not toll the applicable statutes of limitation on T-Mobile's claims
23 against SDI, for the simple reason that SDI was never named as a defendant in those class actions.
24 In announcing the class-tolling principle, the U.S. Supreme Court stated that tolling does not
25 thwart the purpose of statutes of limitation, nor deprive defendants of essential fairness, only
26 because the class action itself notifies the class defendants of the claims against them during the
27 limitations period. *See, e.g., American Pipe and Construction Co. v. Utah*, 414 U.S. 538, 555
28 (1974) (class action provides defendants named therein with "the essential information necessary

1 to determine both the subject matter and size of the prospective litigation" during the limitation
2 period); *see also Crown, Cork & Seal Co., Inc. v. Parker*, 462 U.S. 345, 352-353 (1983). For this
3 reason, a group of concurring justices explicitly cautioned district courts not to toll the statute of
4 limitations for claims that are "different [from] or peripheral [to]" the class action claims. *Id.* at
5 354-55 (Powell, J., concurring) ("Claims as to which the defendant was not fairly placed on notice
6 by the class suit are not protected under *American Pipe* and are barred by the statute of
7 limitations.").

8 Accordingly, a class action does not toll a statute of limitations as to future claims against a
9 defendant who was not named in the class action. *See, e.g., Boone v. Citigroup, Inc.*, 416 F.3d
10 382, 392 (5th Cir. 2005) ("it is facially obvious" that pendency of a class action does not toll
11 statute of limitations as to defendants not named in class action); *Wyser-Pratte Management Co. v.*
12 *Telxon Corp.*, 413 F.3d 553, 567-68 (6th Cir. 2005) (plaintiff may not rely on class action tolling
13 to suspend statute of limitations on claims against defendant, where defendant was not named in
14 class action); *Arneil v. Ramsey*, 550 F.2d 774, 782 n.10 (2d Cir. 1977) ("nothing in *American Pipe*
15 suggests that the statute be suspended from running in favor of a person not named as a defendant
16 in the class suit, and we decline so to extend the rule."), *reversed on other grounds as stated in In*
17 *re Worldcom Securities*, 496 F.3d 245, 254 n.6 (2d Cir. 2007).

18 SDI has never been named as a defendant in the LCD class actions. *See* Dkt. Nos. 267,
19 303, 366, 367, 746, 748, 874, 1407 (consolidated direct and indirect purchaser class complaints).
20 Such class actions thus did not toll the statutes of limitation on T-Mobile's claims against SDI.

21 3. Government Action Tolling

22 SDI anticipates that T-Mobile may argue that the limitations statutes governing its
23 Cartwright Act or UCL claims are tolled pursuant to 15 U.S.C. § 16(i). That statute reads, in
24 pertinent part:

25 Whenever any civil or criminal proceeding is instituted by the
26 United States to prevent, restrain, or punish violations of any of the
27 antitrust laws, but not including an action under section 15a of this
28 title, ***the running of the statute of limitations in respect to every private or State right of action arising under said laws*** and based in whole or in part on any matter complained of in said proceeding shall be suspended during the pendency thereof and for one year thereafter . . .

