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

16	IN RE: TFT-LCD (FLAT PANEL) ANTITRUST)	Master Docket No. 3:07-md-1827 SI
17	LITIGATION)	(Case No. 3:11-cv-02591 SI)
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18	This Document Relates To:)	
19	Individual Case No. 3:11-CV-02591 SI)	SANYO CONSUMER ELECTRONICS,
20	T-MOBILE U.S.A., INC.,)	CO., LTD.’S JOINDER TO
21	Plaintiff,)	DEFENDANTS’ JOINT NOTICE OF
22	v.)	MOTION AND MOTION TO DISMISS
22	AU OPTRONICS CORPORATION; et al.,)	T-MOBILE’S COMPLAINT
23	Defendants.)	Date: October 28, 2011
24)	Time: 9:00 a.m.
)	Courtroom: 10, 19 th Floor
)	Judge: Hon. Susan Illston

25 SANYO Consumer Electronics Co., Ltd. (“SANYO Consumer Electronics”) joins in
 26 Defendants’ Joint Notice of Motion and Motion to Dismiss Plaintiff T-Mobile U.S.A., Inc.’s (“T-
 27 Mobile”) Complaint and additionally moves pursuant to 12(b)(6) of the Federal Rules of Civil

1 Procedure (“FRCP”) for dismissal of T-Mobile’s claims against SANYO Consumer Electronics
 2 for failure to state a claim upon which relief can be granted.

3 **I. T-MOBILE’S CONCLUSORY ALLEGATIONS WITH REGARD TO**
 4 **SANYO CONSUMER ELECTRONICS ARE NOT SUFFICIENT**
 5 **TO STATE A CLAIM FOR RELIEF**

6 Under FRCP 12(b)(6), a district court must dismiss a complaint if it fails to state a claim
 7 upon which relief can be granted. Defendant prevails on a motion if the plaintiff fails to allege
 8 “enough facts to state a claim to relief that is plausible on its face.” *See In re: TFT-LCD (Flat*
 9 *Panel) Antitrust Litigation*, MDL No. 1827, 2010 U.S. Dist. LEXIS 64930, at *8, (N.D. Cal. June
 10 29, 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The “‘facial
 11 plausibility’” standard requires the plaintiff to allege facts that add up to “‘more than a sheer
 12 possibility that a defendant has acted unlawfully.’” *Id.* (citing *Ashcroft v. Iqbal*, 129 S. Ct. 1937,
 13 1949 (2009)). A plaintiff must allege facts sufficient to “raise a right to relief above the
 14 speculative level.” *Twombly*, 550 U.S. at 555. “[T]he tenet that a court must accept as true all of
 15 the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals
 16 of the elements of a cause of action, supported by mere conclusory statements, do not suffice.”
 17 *Iqbal*, 129 S. Ct. at 1949 (citing *Twombly*, 550 U.S. at 555). “[A] Section 1 claim ‘requires a
 18 complaint with enough factual matter (taken as true) to suggest that an agreement was made.’” *In*
 19 *re Transpacific Passenger Air Transp. Antitrust Litig.*, No. C 07-05634 CRB, 2011 U.S. Dist.
 20 LEXIS 49853, at *39 (N.D. Cal., May 9, 2011) (citing *Twombly*, 550 U.S. at 556).

21 Numerous cases make clear that a complaint must allege facts establishing *each*
 22 *defendant’s* participation and specific role in the alleged conspiracy in order to satisfy *Twombly*.
 23 *See, e.g., In re: TFT-LCD (Flat Panel) Antitrust Litigation*, 586 F. Supp. 2d 1109, 1117 (N.D.
 24 Cal. 2008) (“[G]eneral allegations as to all defendants, to ‘Japanese defendants,’ or to a single
 25 corporate entity such as ‘Hitachi’ is insufficient to put specific defendants on notice of the
 26 claims against them.”); *Total Benefits Planning Agency, Inc. v. Anthem Blue Cross & Blue Shield*,
 27 552 F. 3d 430, 436 (6th Cir. 2008) (“Generic pleading, alleging misconduct against defendants
 28 without specifics as to the role each played in the alleged conspiracy, was specifically rejected by

1 Twombly.”); *Lubic v. Fid. Nat. Fin., Inc.*, No. C08-0401 MJP, 2009 U.S. Dist. LEXIS 62092, at
 2 *14-15 (W.D. Wash. July 20, 2009) (“A complaint must allege that each individual defendant
 3 joined the conspiracy and played some role in it because, at the heart of an antitrust conspiracy is
 4 an agreement and a conscious decision by each defendant to join it.”) (citations omitted). T-
 5 Mobile’s allegations relating to SANYO Consumer Electronics fail completely in this regard.

6 The allegations against SANYO Consumer Electronics are contained in only two
 7 paragraphs out of the over 200 paragraph Complaint. None of these allegations pass muster under
 8 *Twombly* and *Iqbal* and none are sufficient to describe SANYO Consumer Electronics’ purported
 9 role in any conspiracy or how it participated. First, paragraph 64 merely alleges that SANYO
 10 Consumer Electronics is a Japanese company that previously operated as a subsidiary of Sanyo
 11 Electric Co., Ltd. and sold and distributed LCD Products. Compl. ¶ 64.¹ Then T-Mobile alleges
 12 in paragraph 114, without sufficient detail, that “Sanyo Consumer participated in at least one
 13 bilateral meeting through an agent during the Conspiracy Period, and agreed on prices and supply
 14 levels for LCD Panels and LCD Products.” Compl. ¶ 114. These allegations fail to describe
 15 SANYO Consumer Electronics’ alleged role in a conspiracy. T-Mobile provides no information
 16 regarding the time, place, and persons involved in the allegedly illicit “bilateral meetings”
 17 mentioned in paragraph 114.

18 Even assuming that T-Mobile had provided the identity of SANYO Consumer Electronics’
 19 “agent,” the allegation would still be a legal conclusion and insufficient under *Twombly* and *Iqbal*
 20 because T-Mobile has not alleged facts establishing an agency relationship. *Arch Specialty Ins.*
 21 *Co. v. Skandia Const. Services, Inc.*, Case No. 10cv1764-BTM (BLM), 2011 U.S. Dist. LEXIS
 22 80609, *5-6 (S.D. Cal. July 25, 2011) (“threadbare” assertion that someone is acting as an agent is
 23 insufficient to establish agency status); *Buchanan v. Neighbors Van Lines, et al.*, CV 1-6206 (PSG

24 ¹ T-Mobile impermissibly lumps allegations against each defendant with its respective corporate
 25 affiliates. See Compl. ¶ 139. Subsidiaries such as SANYO Consumer Electronics, however, are
 26 not generally liable for the actions of an affiliate. See, e.g., *Gering v. Fraunhofer USA, Inc.*, No.
 27 05-73458, 2009 WL 2877414, at *3-4 (E.D. Mich. Sept. 3, 2009) (attempts to hold a subsidiary
 28 liable for actions of a parent was a “novel” legal theory for which the court found no support).
 Only in “extraordinary cases” will courts “pierce the corporate veil and disregard the corporate
 entity.” *Transition Healthcare Assocs., Inc. v. Tri-State Health Investors, LLC*, 306 F. App’x 273,
 280 (6th Cir. 2009).

1 (RCx), 2010 U.S. Dist. LEXIS 130511, at *7-8 (C.D. Cal. November 29, 2010) (“The only
 2 allegations made by Plaintiff -- that ‘at all relevant times each of the Defendants was the agent,
 3 employee, representative, co-conspirator, affiliate, alter ego and/or successor-in-interest of each of
 4 them, and of each other, and has, in such capacity or capacities, participated in the acts or conduct
 5 alleged’ in the Complaint, Compl. ¶ 5 -- are nothing more than legal conclusions of the type
 6 prohibited by *Iqbal* and *Twombly*.”); *Imagineline, Inc. v. CafePress.com, Inc.*, CV 10-9794 PSG
 7 (MANx), 2011 U.S. Dist. LEXIS 39828, at *12-13 (C.D. Cal April 6, 2011) (allegations that each
 8 defendant was the agent of the other is nothing more than a legal conclusion).²

9 T-Mobile’s allegations against SANYO Consumer Electronics in the Complaint are
 10 precisely the type proscribed by courts. As recognized in *In re Hawaiian & Guamanian Cabotage*
 11 *Antitrust Litigation*, “a distinguishing factor” in the viability of the antitrust complaint analyzed
 12 under *Twombly* “has been the inclusion of specific allegations concerning time, place, and person
 13 versus general allusions to ‘secret meetings,’ ‘communications,’ or ‘agreements.’” 647 F. Supp.
 14 2d 1250, 1256-1257 (W.D. Wash. 2009) (citations omitted); *see also In re Elevator Antitrust*
 15 *Litig.*, 502 F. 3d 47, 50-51 (2d Cir. 2007). T-Mobile’s allegations are simply conclusory
 16 allegations that SANYO Consumer Electronics “agreed on prices and supply levels for LCD
 17 Panels.” Compl. ¶ 114. Legal conclusions *masquerading as factual allegations* have been
 18 soundly rejected under *Twombly*. *In re Travel Agent Comm’n Antitrust Litig.*, 583 F. 3d 896, 905
 19 (6th Cir. Ohio 2009) (“[P]laintiffs[’] use [of] the word ‘agreement,’ . . . is nothing more than a
 20 legal conclusion ‘masquerading’ as a factual allegation. The Supreme Court rejected a similar

21 ² *In accord, Arias v. Capital One, N.A.*, C 10-1123 MHP, 2011 U.S. Dist. LEXIS 21936, at *11-
 22 12, (N.D. Cal. March 4, 2011) (plaintiffs failed to allege material facts to substantiate their legal
 23 conclusion that the defendants were agents of each other); *Wehlage v. EmpRes Healthcare, Inc., et*
 24 *al.*, No. C 10-05839 CW, 2011 U.S. Dist. LEXIS 56064, *12 (N.D. Cal., May 25, 2011) (mere
 25 allegation of agency is insufficient to meet the pleading burden under *Iqbal*); *Castaneda v. Saxon*
 26 *Mortg. Servs.*, No. Civ. 2:09-01124, 2010 U.S. Dist. LEXIS 17235, *18 (E.D. Cal. Feb. 26, 2010)
 27 (insufficient facts to suggest an agency relationship); *Air Atlanta Aero Eng’g Ltd. v. SP Aircraft*
 28 *owner I, LLC*, 637 F. Supp. 2d 185, 198-199 (S.D.N.Y. 2009) (plaintiff “must allege facts that, if
 true, would support the legal conclusion that an agency relationship exists”) (citing *In re*
Amaranth Natural Gas Commodities Litig., 587 F. Supp. 2d 513, 546 (S.D.N.Y. 2008)); *Bolton v.*
Fed. Home Loan Mortg. Corp., CV 2:10cv171-WHA, 2010 U.S. Dist. LEXIS 84498, at *10-12,
 (WO) (M.D. ALA. August 17, 2010) (complaint failed to plead any facts that plausibly support a
 conclusion of an agency relationship); *Edwards v. Prime, Inc.*, 602 F. 3d 1276, 1300-01 (11th Cir.
 2010) (recitals of the elements of a cause of action do not suffice).

1 argument in *Twombly*, holding that ‘a few stray statements speaking directly of agreement . . . are
2 merely legal conclusions resting on prior allegations.’”) (citations omitted); *Total Benefits*
3 *Planning Agency, Inc. v. Anthem Blue Cross & Blue Shield*, 552 F. 3d 430, 436 (6th Cir. 2008).

4 This Court, moreover, has previously dismissed such bare allegations. *See In re: TFT-*
5 *LCD (Flat Panel) Antitrust Litigation*, MDL No. 1827, 2010 U.S. Dist. LEXIS 64930, at *20-25,
6 (N.D. Cal. June 29, 2010) (granting PENAC’s motion to dismiss). There, the *Nokia* complaint
7 alleged that PENAC “is a wholly owned subsidiary of Philips International B.V., which in turn is a
8 wholly-owned subsidiary of Royal Philips Electronics N.V.” *Id.* at *20. It further alleged that the
9 Royal Philips Electronics N.V. is a Dutch holding company incorporated in the Netherlands, and
10 that it is a co-conspirator in the alleged price-fixing conspiracy. *Id.* The only specific allegations
11 against PENAC stated that “Nokia purchased LCDs from Royal Philips Electronics N.V. and
12 [PENAC] themselves or via their subsidiaries. [PENAC] also manufactured, sold, and/or
13 distributed LCDs to other purchasers through the United States and elsewhere during the
14 Conspiracy Period. [PENAC] participated in the conspiracy through the actions of its officers,
15 employees and representatives acting with actual or apparent authority.” *Id.* at *21. The
16 complaint further alleged that “Philips” acknowledged receiving a Statement of Objections from
17 the European Commission concerning its alleged participation in a conspiracy. *Id.*

18 This Court held that the complaint fell short of alleging PENAC’s role in the alleged
19 conspiracy and granted its motion to dismiss. *Id.* at 24. *Twombly* requires “more than labels and
20 conclusions,” and that the complaint must contain “enough factual matter (taken as true) to
21 suggest that an agreement was made.” *Twombly*, 550 U.S. at 555, 556; *see also Kendall v. VISA*
22 *U.S.A., Inc.*, 518 F. 3d 1042, 1047 (9th Cir. 2008) (citing *Twombly* for the proposition that “an
23 allegation of parallel conduct and a bare assertion of conspiracy will not suffice” to plead an
24 antitrust violation).

25 Just like PENAC, the specific references in the complaint to SANYO Consumer
26 Electronics’ actions do not allege anticompetitive conduct – there are no material facts alleging
27 **how** SANYO Consumer Electronics participated in the conspiracy. *See, supra, In re: TFT-LCD*

1 (*Flat Panel*) *Antitrust Litigation*, 2010 U.S. Dist. LEXIS 64930, at *23-24 (“There is nothing in
2 paragraph 53 or elsewhere alleging *how* PENAC participated in the conspiracy.”) (emphasis in
3 original).

4 In *In re TFT-LCD Antitrust Litig.*, 599 F. Supp. 2d 1179, 1184 (N.D. Cal., 2009), this
5 Court found that the “amended consolidated complaints more than adequately allege the
6 involvement of each defendant and put defendants on notice of the claims against them.” *Id.*
7 None of the factors the Court found in those allegations are presented in T-Mobile’s complaint
8 against SANYO Consumer Electronics. There, the Court cited “numerous illicit conspiratorial
9 communications between and among defendants.” *Id.* In reviewing the T-Mobile complaint, there
10 are no such communications alleged that name SANYO Consumer Electronics. The Complaint
11 contains no allegations that SANYO Consumer Electronics was part of the “early conspiracy” (*see*
12 Compl. ¶ 92-94) or that it was a member of, or present at activities of, industry trade associations.
13 Compl. ¶ 90. The Court also cited to the “facts of the guilty pleas entered.” 599 F. Supp. 2d at
14 1184. It is undisputed that SANYO Consumer Electronics entered no plea, and no indictment has
15 been forthcoming.³ Compl. ¶¶ 123-136. The Court then discussed the allegations as to the
16 “crystal” meetings attended by three general levels of employees at defendants’ corporations. 599
17 F. Supp. at 1184. It is undisputed that SANYO Consumer Electronics employees never attended
18 any “crystal,” “CEO,” “Commercial,” or “Working Level” meetings.” Compl. ¶¶ 95-107.

19 Accordingly, T-Mobile has failed to make sufficient and adequate factual allegations
20 against SANYO Consumer Electronics to state a claim and thus its complaint should be dismissed
21 under FRCP 12(b)(6).

22 III. CONCLUSION

23 Because the T-Mobile has failed to allege facts establishing SANYO Consumer
24 Electronics’ participation and specific role in the alleged conspiracy, SANYO Consumer

25 ³ Naturally, T-Mobile’s allegation of certain defendants’ involvement in criminal proceedings does
26 not establish SANYO Consumer Electronics’ involvement in the alleged conspiracy, in the
27 absence of specific factual allegations. *See, e.g., In re Mun. Derivatives Antitrust Litig.*, 620 F.
28 Supp. 2d 499, 515 (S.D.N.Y. 2009) (holding that one defendant’s participation in the DOJ
leniency program “is not sufficient to state a claim against the [defendants] who are not the subject
of specific allegations”).

1 Electronics respectfully requests that this Court dismiss T-Mobile's complaint.

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3 DATED: September 15, 2011

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Respectfully submitted,

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DAVIS WRIGHT TREMAINE LLP

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By: /s/ Allison A. Davis

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Allison A. Davis

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Attorneys for SANYO Consumer Electronics Co., Ltd

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