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12		
13	UNITED STATES	DISTRICT COURT
14	NORTHERN DISTR	ICT OF CALIFORNIA
15	SAN FRANCI	SCO DIVISION
16		
17	In re: TFT-LCD (FLAT PANEL) ANTITRUST LITIGATION	Master Docket No. M:07-cv-1827-SI
18		(Case No. 3:11-cv-02591-SI)
19	This Document Relates to: 3:11-cv-02591-SI	SAMSUNG SDI CO., LTD. AND SAMSUNG SDI AMERICA, INC.'S:
20	T-MOBILE U.S.A., INC.,	(1) NOTICE OF MOTION AND MOTION
21	Plaintiffs,	TO DISMISS T-MOBILE'S CLAIMS PURSUANT TO CALIFORNIA'S
22	vs.	CARTWRIGHT ACT AND UNFAIR COMPETITION LAW; AND
23	AU OPTRONICS CORPORATION, et al.,	(2) JOINDER IN DEFENDANTS' JOINT
24	Defendants.	MOTION TO DISMISS IN PART AMENDED COMPLAINT
25		
26		Date: February 10, 2012 Time: 9:00 a.m.
27		Ctrm: 10 Judge: Hon. Susan Illston
28		
	Case No. 3:11-cv-02591-SI	SDI'S MOTION TO DISMISS T-MOBILE'S CALIFORNIA CLAIMS AND JOINDER IN DEFENDANTS' JOINT OTION TO DISMISS IN PART AMENDED COMPLAINT Dockets.Justia.c

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1	NOTICE OF MOTION AND MOTION	
$\frac{1}{2}$	TO ALL PARTIES AND THEIR COUNSEL OF RECORD:	
3	PLEASE TAKE NOTICE that on February 10, 2012, at 9:00 a.m. or as soon thereafter as	
	this matter may be heard, in the Courtroom of the Honorable Susan Illston, United States District	
4		
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 partially dismissing plaintiff T-Mobile U.S.A., Inc. ("Plaintiff")'s claims	
9	against SDI as stated in T-Mobile's Amended Complaint for Damages and Injunctive Relief	
10	("FAC"), for the reasons stated in Defendants' Joint Notice of Motion and Motion to Dismiss in	
11	Part Amended Complaint ("Joint Motion to Dismiss"), MDL Docket No. 4322. In addition, SDI	
12	separately moves this Court, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, for	
13	an order dismissing as time-barred Plaintiff's claims against SDI pursuant to California's	
14	Cartwright Act, Cal. Bus. & Prof. Code § 16720, et seq., and Unfair Competition Law, Cal. Bus.	
15	& Prof. Code § 17200, et seq. ("UCL"). This motion is based upon this Notice of Motion and	
16	accompanying Memorandum of Points and Authorities, the Joint Motion to Dismiss, the complete	
17	files in these actions, argument of counsel, and such other matters as the Court may consider.	
18	STATEMENT OF THE ISSUES	
19	1. Whether Plaintiff's claims for relief against SDI pursuant to California's Cartwright	
20	Act, Cal. Bus. & Prof. Code § 16720, et seq., and Unfair Competition Law, Cal. Bus. & Prof.	
21	Code § 17200, et seq., as stated in the FAC, are barred by the applicable statutes of limitation.	
22	2. Whether Plaintiff's FAC should be dismissed as to SDI for the reasons set forth in	
23	Defendants' Joint Motion to Dismiss.	
24	MEMORANDUM OF POINTS AND AUTHORITIES	
25	I. <u>INTRODUCTION</u>	
26	SDI joins in all arguments asserted by defendants in the concurrently filed Joint Motion to	
27	Dismiss. SDI files this separate motion to dismiss because, unlike most (if not all) other	
28	defendants, it was not named as a defendant in the class action cases filed in the associated multi-	
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district litigation. Those class actions therefore cannot toll any statute of limitations as to any 1 2 claim against SDI. Plaintiff's Cartwright Act and UCL claims are governed by four-year statutes 3 of limitation. Yet Plaintiff did not file suit until April 2011, more than four years after widespread 4 publicity of the alleged antitrust conspiracy. As this Court has held, this public announcement 5 started the clock running on the limitations period. Although the FAC invokes a host of tolling provisions, none of them save Plaintiff's time-barred claims against SDI. Because Plaintiff waited 6 7 more than four years to file its Cartwright Act and UCL claims against SDI, these claims should 8 be dismissed.

9

II. BACKGROUND AND ALLEGATIONS OF THE COMPLAINT

10 Plaintiff is a business that purchased and sold mobile wireless handsets containing LCD 11 panels. FAC ¶ 1. Plaintiff claims that it acquired or received stock of other companies that also purchased mobile wireless handsets containing LCD panels. Id. ¶ 23. Plaintiff alleges that, from 12 13 January 1, 1996 to December 11, 2006, defendants conspired to fix the price of the LCD panels in 14 those handsets. Id. ¶ 2, 21, 281. As a result, Plaintiff claims that it was injured by paying 15 artificially high prices for the handsets that it purchased from January 1, 1996 to December 11, 2006. Id. ¶¶ 8, 21, 24. Plaintiff seeks relief under Section One of the Sherman Act; sections 4 and 16 17 16 of the Clayton Act; California's Cartwright Act, Cal. Bus. & Prof. Code §§ 16720, et seq.; 18 California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, et seq.; and New York's 19 Donnelly Act, N.Y. Gen. Bus. Law §§ 340, et seq.

20 According to the FAC, the alleged conspiracy was publicly revealed in December 2006, 21 when the U.S. Department of Justice ("DOJ") and antitrust authorities in Japan, South Korea and 22 the European Union "revealed the existence of a comprehensive investigation into anti-23 competitive activity among LCD Panel manufacturers." Id. ¶ 174. At least one defendant 24 disclosed in a public filing with the Securities and Exchange Commission that the DOJ had 25 subpoenaed its office in connection with the investigation. Id. Media outlets also reported the alleged conspiracy in December 2006, indicating that the government investigation targeted 26 27 Samsung, Sharp and AU Optronics. Id. ¶ 175. Through all of these public reports, Plaintiff was 28 notified in December 2006 of the existence of the alleged LCD conspiracy. Id. ¶ 274.

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SAMSUNG SDI'S MOTION TO DISMISS T-MOBILE'S CALIFORNIA CLAIMS AND JOINDER IN DEFENDANTS' JOINT MOTION TO DISMISS IN PART AMENDED COMPLAINT

1	Plaintiff filed its original complaint in the U.S. District Court for the Western District of
2	Washington on April 18, 2011. Complaint for Damages and Injunctive Relief, No. 3:11-cv-02591
3	(filed April 18, 2011). The action was transferred to this Court for purposes of coordination of
4	pre-trial proceedings. Defendants jointly moved to dismiss that complaint on September 15, 2011.
5	MDL Dkt. No. 3592. SDI joined in that motion, and separately moved to dismiss Plaintiff's
6	claims under California law based on the applicable statutes of limitation. MDL Dkt. No. 3602.
7	On October 3, 2011, the parties filed a stipulation allowing Plaintiff to file the FAC, and setting a
8	timetable for defendants to respond. MDL Dkt. No. 3779. Plaintiff filed its FAC on November 7,
9	2011.
10	III. <u>ARGUMENT</u>
11	A. <u>Plaintiff's Claims Against SDI Under California's Cartwright Act And Unfair</u>
12	Competition Law Are Barred By Four-Year Statutes Of Limitation.
13	1. <u>The Court may properly dismiss claims pursuant to Rule 12(b)(6) when</u>
14	the complaint reveals the claims to be time-barred.
15	A court may properly dismiss a claim pursuant to Federal Rule of Civil Procedure 12(b)(6)
16	when the complaint itself discloses an absolute defense or bar to recovery. Weisbuch v. County of
17	Los Angeles, 119 F.3d 778, 783 n.1 (9th Cir. 1997). In particular, a motion to dismiss is a proper
18	vehicle to dismiss claims where the facts and dates alleged in the complaint indicate that the claim
19	is barred by the statute of limitations. Jablon v. Dean Witter & Co., 614 F.2d 677, 682 (9th Cir.
20	1980) ("If the running of the statute is apparent on the face of the complaint, the defense may be
21	raised by a motion to dismiss."). When a federal court exercises supplemental jurisdiction over a
22	state law claim, the district court follows state law in deciding the substantive issues before the
23	court. Crowe v. Wiltel Comm. Sys., 103 F.3d 897, 899 (9th Cir. 1996). Accordingly, where a
24	statute of limitations could bar recovery in a state court, the district court applies the same statute
25	of limitations as the state court would apply. See Guaranty Trust Co. of New York v. York, 326
26	U.S. 99, 110 (1945).
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	W02-WEST:5TMC1\404196579.3 Case No. 3:11-cv-02591-SI SAMSUNG SDI'S MOTION TO DISMISS T-MOBILE'S CALIFORNIA CLAIMS AND JOINDER IN DEFENDANTS' JOINT MOTION TO DISMISS IN PART AMENDED COMPLAINT

2. <u>Plaintiff's Cartwright Act and UCL claims against SDI are time-barred</u> because they were commenced more than four years after any such claim accrued.

4 Both the Cartwright Act and the UCL have four-year statutes of limitation. Cal. Bus. & 5 Prof. Code §§ 16750.1, 17208. A cause of action for an antitrust violation generally accrues when 6 the plaintiff suffers injury. When a plaintiff alleges an ongoing price-fixing conspiracy, a new 7 cause of action arises from each resulting injury. Zenith Radio Corp. v. Hazeltine Research, Inc., 401 U.S. 321, 338 (1971) ("In the context of a continuing conspiracy to violate the antitrust laws 8 9 ... each time a plaintiff is injured by an act of the defendants a cause of action accrues to him to recover the damages caused by that act.").¹ Accordingly, Plaintiff here accrued new alleged 10 claims with each purchase. Those claims expired serially, four years after each purchase. See, 11 12 e.g., E.W. French & Sons v. General Portland, Inc., 885 F.2d 1392, 1396 (9th Cir. 1989) (plaintiff 13 alleging price-fixing conspiracy may recover only for claims that accrued four years before the 14 complaint was filed and thereafter); Hanson v. Shell Oil Co., 541 F.2d 1352, 1361 (9th Cir. 1976) 15 ("a plaintiff may recover for acts violative of the antitrust laws committed prior to the statute of limitations date, but ... he may only recover those damages for such acts which accrued and 16 17 became ascertainable within the period of the statute.").

Plaintiff first sued SDI on April 18, 2011. Therefore, all of Plaintiff's claims against SDI
under the Cartwright Act and UCL based on purchases made before April 18, 2007 are untimely.
But Plaintiff does not claim any injury as late as April 2007. Indeed, Plaintiff claims only that it
was injured by purchases made within the "Conspiracy Period," which ended in December 2006. *See, e.g.*, FAC ¶¶ 21, 22, 24, 27, 296. Therefore, absent application of some tolling principle, all
of Plaintiff's claims against SDI under the Cartwright Act and the UCL are untimely.

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- 28 California courts applying the Cartwright Act look to federal antitrust law for guidance. *See, e.g., Chicago Title Ins. Co. v. Great Western Fin. Corp.*, 69 Cal. 2d 305, 315 (Cal. 1968).

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3.

<u>Plaintiff's Cartwright Act and UCL claims against SDI cannot be saved by</u> <u>allegations of fraudulent concealment or any tolling doctrine.</u>

Plaintiff alleges that a variety of tolling doctrines save its claims from the statutes of
limitation, including fraudulent concealment, class-action tolling, government-action tolling,
continuing conspiracy, and equitable estoppel. FAC ¶¶ 274-279. As described below, none of
these doctrines save Plaintiff's Cartwright Act or UCL claims against SDI.

7

a. <u>Fraudulent concealment</u>

8 Plaintiff's fraudulent concealment allegations cannot rescue its time-barred claims, because 9 the FAC itself reveals that Plaintiff knew or should have known of these claims more than four 10 years before it filed suit. Under California law, fraudulent concealment ceases to toll the statute of 11 limitations when plaintiff discovers, or in the exercise of reasonable diligence should have 12 discovered, its claim. Bernson v. Browning-Ferris Indus., 7 Cal.4th 926, 931 (1994); see also 13 Snapp & Associates Insurance Services, Inc. v. Malcolm Bruce Burlingame Robertson, 96 14 Cal.App.4th 884, 890-91 (2002) ("The fraudulent concealment doctrine does not come into play, 15 whatever the lengths to which a defendant has gone to conceal the wrongs, if a plaintiff is on notice of a potential claim.") (internal quotations omitted); Jolly v. Eli Lilly & Co., 44 Cal.3d 16 17 1103, 1111 (1998) (plaintiff "need not be aware of the specific 'facts' necessary to establish the 18 claim"; statute of limitations begins to run once plaintiff has a "suspicion of wrongdoing").

19 Here, the FAC itself shows definitively that Plaintiff was on notice of its claim more than 20 four years before it filed suit. Plaintiff affirmatively alleges that the U.S. Department of Justice's 21 investigation of the alleged conspiracy became public in December 2006. FAC ¶¶ 174, 175, 274. 22 The FAC describes the December 2006 public announcement by "authorities in Japan, South 23 Korea, the European Union, and the United States" concerning "a comprehensive investigation into anti-competitive activity among LCD Panel manufacturers." Id. ¶ 174. The FAC also 24 25 describes defendant LG Display's December 11, 2006 public filing with the Securities and Exchange Commission, which revealed that the company had been visited by South Korean and 26 Japanese Fair Trade Commission officials, and had received a subpoena from the Department of 27 28 Justice. Id. Plaintiff also admits that "news reports" as early as December 12, 2006 revealed that

SAMSUNG SDI'S MOTION TO DISMISS T-MOBILE'S CALIFORNIA CLAIMS AND JOINDER IN DEFENDANTS' JOINT MOTION TO DISMISS IN PART AMENDED COMPLAINT

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"defendants Samsung, Sharp, and AU Optronics were also under investigation." *Id.* ¶ 175. Soon
 after these public revelations, civil plaintiffs began filing lawsuits against many of the same
 defendants sued herein. FAC ¶ 279.

4 If there is any doubt that these public announcements notified Plaintiff of the claims it 5 seeks to assert, Plaintiff itself affirmatively alleges as much. FAC ¶ 274 ("T-Mobile did not 6 discover and could not have discovered, through the exercise of reasonable diligence, the 7 existence of the conspiracy alleged herein until after December of 2006, when the existence of the 8 investigations by the DOJ and other antitrust regulators became public"). Thus, the FAC itself 9 alleges that Plaintiff had discovered the conspiracy, or at a minimum should had discovered it 10 using reasonable diligence, in December 2006. Any fraudulent concealment, and thus any tolling, 11 ended by that date – more than four years before Plaintiff sued SDI.

12 This Court recently examined very similar allegations of fraudulent concealment in the 13 MetroPCS Wireless case, and concluded that the statute of limitations on a state antitrust claim 14 began to run when "the DOJ disclosed its investigation on December 11, 2006." In re TFT-LCD 15 (Flat Panel) Antitrust Litig., Nos. M 07-1827 SI, C 11-0829 SI, 2011 U.S. Dist. LEXIS 124164, at *23-*25 (N.D. Cal. Oct. 26, 2011). The Court held that, absent some further tolling, plaintiffs' 16 17 claims were time-barred. Id. The Court ultimately found that plaintiffs' claims were saved by a 18 tolling provision peculiar to Illinois law, and not applicable to Plaintiff's UCL and Cartwright Act 19 claims. Id. at *26. The same analysis, applied here, dictates that Plaintiff's time-barred claims are 20 not saved by its fraudulent concealment allegations.

21 Even if the Court were to conclude (contrary to its prior order in *MetroPCS* and Plaintiff's 22 own allegations) that the December 2006 public revelation of government antitrust investigations 23 somehow did not give Plaintiff sufficient notice to start the limitations period, Plaintiff's 24 fraudulent concealment allegations would still fail because it has not adequately pleaded that it 25 diligently pursued its claims after receiving notice. California requires a plaintiff seeking to toll a 26 statute of limitations on grounds of fraudulent concealment to allege that they diligently tried to 27 discover the facts underlying their claim. *Snapp*, 96 Cal.App.4th at 890. But Plaintiff here makes 28 no such allegation. Plaintiff alleges that it "could not have discovered, through the exercise of

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SAMSUNG SDI'S MOTION TO DISMISS T-MOBILE'S CALIFORNIA CLAIMS AND JOINDER IN DEFENDANTS' JOINT MOTION TO DISMISS IN PART AMENDED COMPLAINT reasonable diligence, the existence of the conspiracy alleged herein until after December of 2006
" FAC ¶ 274. Yet Plaintiff does not allege that it diligently pursued its claims after this point,
 and thus cannot rely on the fraudulent concealment doctrine to toll the statute of limitations after
 that date. *See, e.g., E-Fab, Inc. v. Accountants, Inc. Servs.*, 153 Cal.App.4th 1308, 1319 (Cal. Ct.
 App. 2007) ("[t]he burden is on the plaintiff to show diligence, and conclusory allegations will not
 withstand demurrer") (quotation omitted).

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b. <u>Class-action tolling</u>

8 The LCD class actions do not toll the applicable statutes of limitation on Plaintiff's claims 9 against SDI, for the simple reason that SDI was never named as a defendant in those class actions. 10 In announcing the class-tolling principle, the U.S. Supreme Court stated that tolling does not thwart 11 the purpose of statutes of limitation, nor deprive defendants of essential fairness, only because the class action itself notifies the class defendants of the claims against them during the limitations 12 13 period. See, e.g., American Pipe and Construction Co. v. Utah, 414 U.S. 538, 555 (1974) (class 14 action provides defendants named therein with "the essential information necessary to determine 15 both the subject matter and size of the prospective litigation" during the limitation period); see also Crown, Cork & Seal Co., Inc. v. Parker, 462 U.S. 345, 352-353 (1983). For this reason, a group of 16 17 concurring justices explicitly cautioned district courts not to toll the statute of limitations for claims 18 that are "different [from] or peripheral [to]" the class action claims. *Id.* at 354-55 (Powell, J., 19 concurring) ("Claims as to which the defendant was not fairly placed on notice by the class suit are 20 not protected under *American Pipe* and are barred by the statute of limitations.").

21 Accordingly, a class action does not toll a statute of limitations as to claims against a 22 defendant not named in the class action. See, e.g., Boone v. Citigroup, Inc., 416 F.3d 382, 392 23 (5th Cir. 2005) ("it is facially obvious" that pendency of a class action does not toll statute of 24 limitations as to defendants not named in class action); Wyser-Pratte Management Co. v. Telxon 25 Corp., 413 F.3d 553, 567-68 (6th Cir. 2005) (plaintiff may not rely on class action tolling to suspend statute of limitations on claims against defendant, where defendant was not named in 26 class action); Arneil v. Ramsey, 550 F.2d 774, 782 n.10 (2d Cir. 1977) ("nothing in American Pipe 27 28 suggests that the statute be suspended from running in favor of a person not named as a defendant

-7-SAMSUNG SDI'S MOTION TO DISMISS T-MOBILE'S CALIFORNIA CLAIMS AND JOINDER IN DEFENDANTS' JOINT MOTION TO DISMISS IN PART AMENDED COMPLAINT

1	in the class suit, and we decline so to extend the rule."), reversed on other grounds as stated in
2	In re Worldcom Securities, 496 F.3d 245, 254 n.6 (2d Cir. 2007).
3	SDI has never been named as a defendant in any LCD class action. See MDL Dkt. Nos.
4	267, 303, 366, 367, 746, 748, 874, 1407 (consolidated direct and indirect purchaser class
5	complaints). Such class actions thus did not toll the statutes of limitation on Plaintiff's claims
6	against SDI.
7	c. <u>Government-action tolling</u>
8	Plaintiff alleges that the applicable statutes of limitation "have also been tolled as a result
9	of the criminal informations and guilty pleas " FAC ¶ 276. But Plaintiff's Cartwright Act and
10	UCL claims are not rescued by any such government action. Plaintiff's allegation is an apparent
11	reference to a federal Clayton Act provision that reads, in pertinent part:
12	Whenever any civil or criminal proceeding is instituted by the United States to prevent, restrain, or punish violations of any of the
13	antitrust laws, but not including an action under section 15a of this
14	
15	whole or in part on any matter complained of in said proceeding shall be suspended during the pendency thereof and for one year thereafter
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17	15 U.S.C. § 16(i) (emphasis added). The statute thus provides for tolling only as to rights of action
18	"arising under" the "antitrust laws." The term "antitrust laws," as used in the Clayton Act, is
19	defined to mean a specific list of federal antitrust statutes, and does not encompass the UCL or
20	Cartwright Act. 15 U.S.C. § 12; See Nashville Milk Co. v. Carnation Co., 355 U.S. 373, 376
21	(1958) ("the definition contained in [Section] 1 of the Clayton Act is exclusive"; that a statute not
22	listed therein "may be colloquially described as an 'antitrust' statute" is "of no moment."); Pool
23	Water Prods. v. Olin Corp., 258 F.3d 1024, 1031 n.4 (9th Cir. 2001); In re Petroleum Prods.
24	Antitrust Litig., 782 F.Supp. 481, 484 (C.D. Cal. 1991). Because these claims do not "arise under"
25	the "antitrust laws," they cannot benefit from the government tolling provision of 15 U.S.C. § 16(i).
26	d. <u>Continuing conspiracy</u>
27	Plaintiff alleges that defendants' conduct constitutes a "continuing tort, and therefore the
28	statute of limitations cannot accrue until the last act of defendants' violative conduct." FAC ¶ 278.
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	W02-WEST:5TMC1\404196579.3 SAMSUNG SDI'S MOTION TO DISMISS T-MOBILE'S CALIFORNIA

This paragraph appears to be an attempt to invoke the continuing violation doctrine, or "last overt 1 2 act" rule, under which a defendant may be held liable for actions that take place outside the 3 limitations period if those actions are sufficiently linked to unlawful conduct within the limitations period. Even if this doctrine applied to Plaintiff's California claims (which it does not), it would 4 5 not rescue them from the statutes of limitation, because the FAC alleges no overt act later than December 2006. Indeed, the FAC defines the "Conspiracy Period" as ending in 2006. FAC ¶¶ 1, 6 7 21. The FAC alleges conduct by defendants only within that "Conspiracy Period." See, e.g., FAC 8 ¶ 2, 6, 8, 22-77, 92-95, 97, 105-120, 122. Plaintiff filed suit more than four years after the latest 9 "violative conduct" alleged in the FAC, and thus its claims under the Cartwright Act and UCL are 10time-barred even under its own articulation of the rule.

11 Moreover, Plaintiff is wrong as a matter of law. Neither the Cartwright Act nor the UCL are governed by the "last overt act" rule. While the Cartwright Act does contain a "last overt act" 12 13 rule, it is reserved for criminal actions. Cal. Bus. & Prof. Code § 16755 ("Any action pursuant to 14 this section may be commenced at any time within four years after the commission of the last act 15 comprising a part of any violation."). In contrast, the civil statute is not based on the last overt act. Cal. Bus. & Prof. Code § 16750.1 ("Any civil action to enforce any cause of action for a violation 16 17 of this chapter shall be commenced within four years after the cause of action accrued."). It is a 18 fundamental rule of statutory construction that "[w]hen the legislature uses materially different 19 language in statutory provisions addressing the same subject or related subjects, the normal 20 inference is that the Legislature intended a difference in meaning." People ex rel. Lockyer v. R.J. 21 Reynolds Tobacco Co., 37 Cal. 4th 707, 717 (2006); see also Ariz. Elec. Power Co-op. v. United 22 States, 816 F.2d 1366, 1375 (9th Cir. 1987) ("When Congress includes a specific term in one 23 section of a statute but omits it in another section of the same Act, it should not be implied where 24 it is excluded."). The only reasonable conclusion is that the "last overt act" rule does not apply to 25 civil Cartwright Act claims. Indeed, the only decision that has ever addressed the issue so held. 26 See In re Microsoft Corp. Antitrust Litig., No. MDL 1332, Civ. JFM-04-3705, 2005 WL 906364, 27 at *3 (D. Md. Apr. 18, 2005) (granting motion to dismiss based on statute of limitations). 28 Similarly, the "last overt act" rule does not apply to a cause of action under the UCL. Snapp, 96

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1 Cal.App.4th at 890-891.²

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e. <u>Equitable estoppel</u>

3 Plaintiff alleges that "as a result of defendants' fraudulent concealment of the Conspiracy, 4 defendants are equitably estopped from asserting statutes of limitation defense [sic]." FAC ¶ 277. 5 But Plaintiff alleges no new facts to support the theory. As described above, Plaintiff's fraudulent concealment allegations fail because the FAC shows that Plaintiff was on notice of its claim by 6 7 December 2006. See pp. 5-7, supra. These same allegations fare no better when labeled "equitable 8 estoppel." See Javor v. Taggart, 98 Cal.App.4th 795, 804 (2002) (affirming order sustaining 9 demurrer; equitable estoppel does not apply where plaintiff was aware of the alleged wrong); 10 Kunstman v. Mirizzi, 234 Cal.App.2d 753, 758 (1965) (affirming order sustaining demurrer; 11 equitable estoppel does not apply where the complaint reveals plaintiff had notice of its claim). 12 Moreover, the facts alleged in the FAC simply do not fit Plaintiff's equitable estoppel theory. Equitable estoppel applies when a plaintiff is aware of its claim during the statutory 13 14 period, but is lulled into inaction by a defendant's misrepresentations. To invoke the doctrine, a 15 compliant must allege facts showing that: the defendant misrepresented the necessity of bringing a timely suit; plaintiff reasonably relied on the misrepresentation and refrained from bringing a 16 17 timely action; the representation proved false after the limitations period has expired; and plaintiff 18 proceeded diligently once the truth is discovered. Lantzy v. Centex Homes, 31 Cal.4th 363, 384-19 385 & n.18 (2003) (complaint fails to allege basis for estoppel because it is "devoid of any 20 indication that defendants' conduct actually and reasonably induced plaintiffs to forbear suing ...") (emphasis omitted).³ The FAC alleges nothing of the sort. It identifies no false statement by SDI 21 22

- 27 disclose facts relied upon"; complaint fails to allege estoppel because it "contains no facts about being misled or detrimental reliance."); *Gamboa v. Atchison, Topeka & Santa Fe Railway Co.*, 20
- 28 Cal.App.3d 61, 66 (1971) (complaint failed to allege "that defendant induced plaintiff not to file his lawsuit.").

 ² This issue is currently pending before the California Supreme Court. Aryeh v. Canon Business Solutions, Inc., 185 Cal.App.4th 1159 (2010), review granted Oct. 20, 2010, S184929. Until a decision is rendered in Aryeh, the Court of Appeals opinion in Snapp controls on this point.

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 &</sup>lt;sup>3</sup> See also Jarvor, 98 Cal.App.4th at 804 (2002) (complaint failed to allege equitable estoppel because it lacked allegation that plaintiff relied on any "statement or action by [defendant] in deciding when to file suit."); *Chalmers v. County of Los Angeles*, 175 Cal.App.3d 461, 467 (1985) ("the elements of estoppel must be especially pleaded in the complaint with sufficient accuracy to

whatsoever, let alone a statement that persuaded Plaintiff to delay in filing its suit after it became
 aware of its claim. Plaintiff's estoppel theory thus fails for two reasons: The FAC fails to allege
 any facts supporting the theory, and it affirmatively negates the theory by alleging that Plaintiff
 had notice of its claim more than four years before it filed suit.

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4. <u>None of the Court's prior rulings regarding statutes of limitation help</u> <u>Plaintiff here.</u>

7 Most of the Court's prior opinions concerning statutes of limitation do not address the 8 situation present here, where a Plaintiff has affirmatively pleaded that it discovered its alleged 9 conspiracy outside the limitations period. For example, the Court recently denied SDI's motion to 10 dismiss Motorola's claim for breach of contract on statute-of-limitations grounds. In re TFT-LCD 11 (Flat Panel) Antitrust Litig., Nos. M 07-1827 SI, C 09-5840 SI, 2011 U.S. Dist. LEXIS 131812 12 (N.D. Cal. Nov. 14, 2011). In that order, the Court relied on a provision particular to the Illinois 13 Commercial Code, which provides that alleged fraudulent concealment extends the statute of 14 limitations to five years after the plaintiff discovers its cause of action. Id. at *6-*7. The Court 15 found that Motorola's claim was timely, because it had sued within five years of November 2006 – the date that Motorola alleged that it learned of the government investigations. *Id.* Applied to this 16 17 case, that same analysis would dictate that the Court dismiss Plaintiff's Cartwright Act and UCL 18 claims, because those claims carry four-year statutes of limitations, they do not contain provisions 19 similar to the Illinois statute, and Plaintiff did not sue SDI until more than four years after it 20 learned of the government investigations. 21

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1	Neither can Plaintiff rely on any of the Court's earlier orders on limitations issues. Those	
2	orders generally rejected defendants' arguments that plaintiffs failed to properly allege fraudulent	
3	concealment, and therefore could not avail themselves of the doctrine. See, e.g., In re TFT-LCD	
4	Antitrust Litig., 586 F.Supp.2d 1109, 1119-1120 (N.D. Cal. 2008). SDI does not challenge	
5	Plaintiff's allegations, but rather accepts them as true for purposes of this motion. This includes	
6	Plaintiff's allegations that it discovered the alleged conspiracy in December 2006. As discussed	
7	supra, when confronted with similar allegations in the MetroPCS case, the Court held that the	
8	statute of limitations began to run on the date the DOJ investigation became public. In re TFT-	
9	LCD (Flat Panel) Antitrust Litig., Nos. M 07-1827 SI, C 11-0829 SI, 2011 U.S. Dist. LEXIS	
10	124164, at *23-*25 (N.D. Cal. Oct. 26, 2011); p. 9, supra. Plaintiff here waited more than four	
11	years after this key date to sue SDI; and its Cartwright Act and UCL claims are thus time-barred.	
12	B. <u>SDI Joins In Defendants' Joint Motion To Dismiss.</u>	
13	In addition, SDI hereby joins in Defendants' Joint Motion to Dismiss in PartAmended	
14	Complaint, filed concurrently.	
15	IV. <u>CONCLUSION</u>	
16	For the foregoing reasons, Plaintiff's claims against SDI pursuant to the Cartwright Act and	
17	UCL should be dismissed. In addition, for all the reasons stated in Defendants' Joint Motion to	
18	Dismiss, Plaintiff's Amended Complaint should be dismissed in its entirety as to SDI.	
19	Dated:December 12, 2011SHEPPARD, MULLIN, RICHTER & HAMPTON LLP	
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22	By <u>/s/ Tyler M. Cunningham</u> TYLER M. CUNNINGHAM	
23		
24	Attorneys for Defendants SAMSUNG SDI CO., LTD. and	
25	SAMSUNG SDI AMERICA, INC.	
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