

1 David Orozco (CA Bar No. 220732)
 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: dorozco@susmangodfrey.com

5
 6 Parker C. Folse (*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: pfolse@susmangodfrey.com
 10 btaylor@susmangodfrey.com

11 *Counsel for 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

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

14
 15 IN RE TFT-LCD (FLAT PANEL)
 ANTITRUST LITIGATION

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

16
 17 This Document Relates to
 Case C 3:11-02591 SI

18 T-MOBILE U.S.A., INC.,
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 20 Plaintiff,
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 22 v.
 23 AU OPTRONICS CORPORATION, et al.,
 24
 25 Defendants.

**T-MOBILE U.S.A., INC.’S
 OPPOSITION TO SANYO
 CONSUMER ELECTRONICS CO.,
 LTD.’S MOTION TO DISMISS
 T-MOBILE’S AMENDED
 COMPLAINT**

Date: February 3, 2012
 Time: 9:00 AM
 Location: Courtroom 10, 19th Floor
 450 Golden Gate Ave.
 San Francisco, CA 94102

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 28 Master File No. C M:07-01827 SI
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OPPOSITION TO SANYO CONSUMER
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1 Plaintiff T-Mobile U.S.A., Inc. (“T-Mobile”) respectfully submits this
2 memorandum of law in opposition to Sanyo Consumer Electronics Co., Ltd.’s (“Sanyo”) motion
3 to dismiss T-Mobile’s amended complaint.

4 **PRELIMINARY STATEMENT**

5 Sanyo’s Motion to Dismiss T-Mobile’s Amended Complaint (“Am. Cpl.”) is
6 largely a retread of arguments that this Court has rejected on numerous occasions. Sanyo argues
7 that T-Mobile’s allegations against it are not sufficiently specific under the Supreme Court’s
8 decision in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), because they do not specifically
9 allege facts particular to each defendant. (See, e.g., Memorandum of Points and Authorities in
10 Support of Sanyo’s Motion to Dismiss T-Mobile’s Amended Complaint (“Sanyo Br.”) at 2-3.)
11 This Court has already rejected this argument several times in related cases in this MDL. Sanyo
12 offers no reason for why this Court should rule any differently here. Therefore, T-Mobile
13 respectfully requests that the Court deny Sanyo’s motion in its entirety.

14 **ARGUMENT**

15 **T-MOBILE HAS ALLEGED LEGALLY SUFFICIENT**
16 **FEDERAL ANTITRUST CLAIMS AGAINST SANYO**

17 As this Court has noted, “Federal Rule of Civil Procedure 8 requires that a
18 complaint contain a short and plain statement of the claim showing that the pleader is entitled to
19 relief.” *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 599 F. Supp. 2d 1179, 1183 (N.D. Cal.
20 2009) (citation and internal punctuation omitted). Thus, while “[t]he complaint must contain
21 sufficient factual allegations ‘to raise a right to relief above the speculative level’ . . . neither
22 *Twombly* nor the Court’s prior order requires elaborate fact pleading.” *Id.* at 1184.¹ And of
23

24 ¹ See also *U.S. Audio & Copy Corp. v. Philips Bus. Sys. Inc.*, Nos. C-81-4236 & C-82-3205, 1983 WL
25 1818, at *2 (N.D. Cal. Apr. 25, 1983) (denying motion for summary judgment in antitrust case on ground
26 that “[o]nce PBSI creates a material issue of fact as to the existence of a conspiracy to restrain trade, it
27 need produce only slight evidence to show that Audio was a member of the conspiracy”); *United States v.*
Little, 753 F.2d 1420, 1448 (9th Cir. 1984) (“Once the conspiracy was established, only slight evidence
was required to establish [defendant’s] connection with the conspiracy.”).

1 course, in considering a motion to dismiss, a court must accept all allegations in the complaint as
2 true, and draw all reasonable inferences in favor of the plaintiff. *NL Indus., Inc. v. Kaplan*, 792
3 F.2d 896, 898 (9th Cir. 1986); *Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987).

4 Applying these standards, this Court has consistently rejected attempts by
5 Defendants to dismiss complaints on the ground that the plaintiffs have failed to adequately
6 allege each defendant's role in the alleged conspiracy. Defendants argued years ago that the
7 class complaints should be dismissed because: (1) they "lump together the twenty-six named
8 defendants" in "corporate family groups;" (2) their allegations that "'each employee[] or agent[]'
9 of any corporate [d]efendant [is] the . . . representative of every entity in that [d]efendant's
10 putative corporate family" are conclusory and do not suffice to "implicat[e] each of the entities
11 in [a] corporate family;" and (3) they "make[] the conclusory assertion that an agency
12 relationship existed as to all members of a . . . corporate family" (*See Joint Mot. to Dismiss*
13 *Direct Purchaser Pls.' First Am. Consol. Compl.*, Jan. 9, 2009, Dkt. No. 779, at 9-12.)² This
14 Court rejected the Defendants' argument, holding that:

15 [T]he amended consolidated complaints more than adequately
16 allege the involvement of each defendant and put defendants on
17 notice of the claims against them. Contrary to defendants'
18 suggestion, neither *Twombly* nor the Court's prior order requires
19 elaborate fact pleading The amended complaints add detail
20 about numerous illicit conspiratorial communications between and
21 among defendants, and facts of the guilty pleas entered by four
22 defendants The complaints contain additional specific
23 information about the group and bilateral meetings by which the
24 alleged price-fixing conspiracy was effectuated The
25 complaint[s] also allege[] which types of meetings the defendants
26 and coconspirators participated in, and in some instances include[]
27 more detail such as the year of a meeting and other meeting
28 participants.

26 ² Unless otherwise noted, all "Dkt. No." references concern filings made in *In re TFT-LCD (Flat Panel)*
27 *Antitrust Litigation*, MDL No. 1827, Master File No. M:07-01827 SI.

1 *In re TFT-LCD Antitrust Litig.*, 599 F. Supp. 2d at 1184 (citations omitted). The Court then
2 rejected the Defendants’ contention that the class complaints “do not differentiate between
3 related corporate entities,” pointing to allegations that: (1) “the conspiracy was implemented by
4 subsidiaries and distributors within a corporate family;” (2) “individual participants entered into
5 agreements on behalf of, and reported these meetings and discussions to, their respective
6 corporate families;” and (3) “individual participants in conspiratorial meetings and discussions
7 did not always know the corporate affiliation of their counterparts, nor did they distinguish
8 between the entities within a corporate family.” *Id.* at 1184-85 (citations omitted).

9 Recently, the Court has reasserted its holding in connection with similar
10 challenges made in related litigations. Thus, in *Target Corp. v. AU Optronics Corp. et al.*, the
11 Court noted its earlier holding in the class cases, and held,

12 [Target’s First Amended Complaint was similarly sufficient
13 because it] alleges that the alleged conspiracy was organized at the
14 highest level of the defendant organizations and carried out by both
15 executives and subordinate employees. FAC at ¶104. It alleges
16 that the conspiracy was implemented by subsidiaries and
17 distributors within a corporate family, and that “individual
18 participants entered into agreements on behalf of, and reported
19 these meetings and discussions to, their respective corporate
20 families.” FAC at ¶156. Target also alleges that “the individual
21 participants in conspiratorial meetings and discussions did not
22 always know the corporate affiliation of their counterparts, nor did
23 they distinguish between the entities within a corporate family.”
24 FAC at ¶156. In addition, Target’s FAC contains a detailed
25 description of actions taken in furtherance of the conspiracy both
26 by defendants and their American subsidiaries. *See* FAC at ¶¶103-
27 124, 125-34.

28 Dkt. No. 3362 (Aug. 24, 2011), at 4 (citations omitted).³

 T-Mobile’s Amended Complaint contains essentially the same allegations
regarding the Defendants. (*Compare* Target FAC (Dkt. No. 2783, May 18, 2011) ¶ 104 with

³ (*See also* Dkt. Nos. 3346 at 3-4 (Aug. 23, 2011); 3359 at 7-8 (Aug. 24, 2011); 3396 at 8-9 (Aug 29, 2011); 3590 at 3-4 (Sept. 15, 2011); and 4145 at 1-2 (Nov. 15, 2011).)

1 T-Mobile Am Cpl. ¶ 100; Target FAC ¶ 156 with T-Mobile Am. Cpl. ¶ 190; and Target FAC
2 ¶¶ 103-134 with T-Mobile Am. Cpl. ¶¶ 100-156.) T-Mobile also specifically alleges both
3 Sanyo’s direct and imputed participation in the price-fixing conspiracy in the same detail that
4 this Court held to be sufficient in its prior decisions. Specifically, T-Mobile alleges that: ·

- 5 • “Prior to 2004, co-conspirator Sanyo Electric Co., Ltd., owned and
6 operated Sanyo Consumer Electronics Co., Ltd. In 2004, Seiko Epson
7 Corporation and Sanyo Electric Co., Ltd. (including its subsidiary Sanyo
8 Consumer Electronics Co., Ltd.) formed a joint venture company, Sanyo
9 Epson Imaging Devices Corporation. This joint venture was formed from
10 a combination of Seiko Epson’s D-TFD LCD and STN LCD businesses
11 and Sanyo’s LTPS TFT LCD and amorphous silicon TFT LCD
12 businesses. After the Conspiracy Period, Sanyo Epson Imaging Devices
13 Corporation became Epson Imaging Devices Corporation, also a
14 defendant. During the Conspiracy Period, Sanyo Consumer Electronics
15 Co., Ltd. manufactured, sold, and/or distributed LCD Panels and/or LCD
16 Products throughout the United States and elsewhere.” (Am. Cpl. ¶ 70.)
- 17 • “Defendant Sanyo Consumer Electronics Co., Ltd. . . . participated in the
18 conspiracy through the actions of its officers, employees, and
19 representatives acting with actual or apparent authority.” (Am. Cpl. ¶ 71.)

- 20 • **REDACTED**

- 21 • **REDACTED**

- 22 • **REDACTED**

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- [REDACTED]
- [REDACTED]

Sanyo ignores the Court’s many previous rulings on what constitutes adequate pleading under *Twombly* and instead devotes much of its motion to disputing the veracity of the individual allegations against it – a task that is obviously irrelevant at this stage of the case. For instance, Sanyo argues that the allegation in paragraph 108 of T-Mobile’s Amended Complaint “could also be interpreted as legitimate, legal conduct” (Sanyo Br. at 4), and that the conduct alleged in paragraph 125 of the Amended Complaint “can be a legitimate, legal practice” (Sanyo Br. at 5). The fact that Sanyo contests these facts merely highlights the factual issues that will need to be developed through discovery and tested at trial. Now is not the time to test the facts underlying T-Mobile’s allegations. At the pleading stage, all facts are construed in the light most favorable to the plaintiff and are taken as true for purposes of a motion to dismiss. *NL Indus.*, 792 F.2d at 898; *Usher*, 828 F.2d at 561. Thus, the only question before the Court is whether T-Mobile has alleged sufficient facts to meet the pleading standards under Rule 8 and *Twombly*. As this Court has repeatedly held, the types of allegations that T-Mobile makes are more than sufficient to meet those standards.

1 **CONCLUSION**

2 For the reasons stated above, T-Mobile respectfully urges the Court to deny
3 Sanyo’s motion in its entirety.

4 Dated: January 17, 2012

Respectfully submitted,

5 /s/ Brooke A. M. Taylor
6 David Orozco (CA Bar No. 220732)
7 E-Mail: dorozco@susmangodfrey.com
8 SUSMAN GODFREY L.L.P.
9 1901 Avenue of the Stars, Ste. 950
10 Los Angeles, CA 90067-6029
11 Telephone: (310) 310-3100
12 Facsimile: (310) 789-3150

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

22 Edward A. Friedman (*pro hac vice*)
23 E-Mail: efriedman@fklaw.com
24 Daniel B. Rapport (*pro hac vice*)
25 E-Mail: drapport@fklaw.com
26 Hallie B. Levin (*pro hac vice*)
27 E-Mail: hlevin@fklaw.com
28 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 T-Mobile U.S.A., Inc.