David Orozco (CA Bar No. 220732)
SUSMAN GODFREY L.L.P.
1901 Avenue of the Stars, Ste. 950
Los Angeles, CA 90067-6029
Telephone: (310) 310-3100
Facsimile: (310) 789-3150
E-Mail: dorozco@susmangodfrey.com

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

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

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

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

IN RE TFT-LCD (FLAT PANEL) ANTITRUST LITIGATION This Document Relates to 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
T-MOBILE U.S.A., INC., Plaintiff, v. AU OPTRONICS CORPORATION, et al., Defendants.	**PLAINTIFF T-MOBILE U.S.A., INC.'S OPPOSITION TO SAMSUNG SDI CO., LTD. AND SAMSUNG SDI AMERICA, INC.'S MOTION TO DISMISS T-MOBILE'S CLAIMS PURSUANT TO CALIFORNIA'S CARTWRIGHT ACT AND UNFAIR COMPETITION LAW** Date: February 10, 2012 Time: 9:00 AM Location: Courtroom 10, 19th Floor 450 Golden Gate Ave. San Francisco, CA 94102

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Plaintiff T-Mobile U.S.A., Inc. ("T-Mobile") respectfully submits this memorandum of law in opposition to defendants Samsung SDI Co., Ltd.'s and Samsung SDI America, Inc.'s (together, "Samsung SDI") Motion to Dismiss T-Mobile's Claims Pursuant to California's Cartwright Act and Unfair Competition Law.

PRELIMINARY STATEMENT

Samsung SDI's motion, filed concurrently with Defendants' Joint Motion to Dismiss in Part T-Mobile's Amended Complaint, raises only one additional argument in support of the proposition that T-Mobile's claims under California's Cartwright Act and Unfair Competition Law are time-barred.[1] Implicitly acknowledging that certain of the indirect and direct purchaser class actions may have tolled the statute of limitations governing T-Mobile's claims against *other* defendants, Samsung SDI nevertheless contends that T-Mobile's claims against it are untimely because those class actions never named Samsung SDI as a defendant. Samsung's SDI's argument is without merit.

Federal courts have made clear that the filing and pendency of a class action tolls otherwise time-barred claims against defendants with actual or implied notice of those claims. Samsung SDI ignores this body of decisional law. Indeed, in its motion papers, Samsung SDI makes no effort to dispute that it had notice of T-Mobile's state-law indirect purchaser claims. Nor does Samsung SDI suggest that the passage of time in any way impaired its ability to mount a defense to those claims. Its silence speaks volumes.

Three indirect purchaser class actions tolled T-Mobile's California law claims until at least November 5, 2007, and all named Samsung Electronics Co., Ltd. ("Samsung Electronics") as a defendant. The filing of these class actions against Samsung Electronics, all of which included indirect purchasers of cellular phones as class members, was sufficient to put

[1] T-Mobile responds to Samsung SDI's other arguments in its Opposition to Defendants' Joint Motion to Dismiss In Part Amended Complaint ("T-Mobile Opp. to Jt. MTD"), dated Jan. 17, 2012, incorporated by reference herein in its entirety.

Samsung SDI on notice of T-Mobile's claims, and to toll the statute of limitations governing those claims.

Samsung SDI's argument to the contrary relies exclusively on the formalistic distinction between Samsung Electronics and Samsung SDI, and disregards the two companies' intertwined relationship and common interests. As detailed in T-Mobile's Amended Complaint for Damages and Injunctive Relief ("Amended Complaint" or "Am. Cpl."), Samsung Electronics holds a controlling interest in Samsung SDI, shared legal counsel with Samsung SDI in connection with this MDL, and coordinated its activities with Samsung SDI in respect of the marketing and sale of LCDs and LCD products during the conspiracy period. In addition, Samsung Electronics and Samsung SDI routinely held themselves out as the same company for purposes of marketing and selling LCDs and LCD products. In these circumstances, where a parent corporation is named in an earlier class action and shares counsel with its subsidiary, courts have determined that the class action provides the unnamed subsidiary with notice of the class members' claims, and tolls the statute of limitations governing those claims. Accordingly, Samsung SDI's argument that T-Mobile's claims against it were not subject to tolling should be rejected.

ARGUMENT

T-MOBILE'S CALIFORNIA LAW CLAIMS AGAINST SAMSUNG SDI WERE SUBJECT TO *AMERICAN PIPE* TOLLING AND WERE THEREFORE TIMELY

In accordance with *American Pipe & Constr. Co. v. Utah*, 414 U.S. 538 (1974), the pendency of three indirect purchaser class actions, *Audio Video Artistry v. Samsung Elecs. Co. Ltd, et al.*, No. 2:06-cv-02848-SHM-DKV (W.D. Tenn.), *Jafarian v. LG Philips LCD Co. Ltd., et al.*, No. 3:07-cv-00994-SI (N.D. Cal.), and *Minoli, et al. v. LG Philips LCD Co., et al.*, No. 06:07-cv-00235-MV-WDS (D.N.M.), which asserted claims on behalf of indirect purchasers of cellular phones under California's Cartwright Act and Unfair Competition Law, tolled the

statute of limitations governing T-Mobile's claims under those statutes between December 14, 2006 and November 5, 2007. (*See* T-Mobile Opp. to Jt. MTD at 9-12.)

Samsung SDI argues that, regardless of whether T-Mobile can avail itself of *American Pipe* tolling in pursuing claims against the other defendants, it cannot invoke that tolling doctrine in connection with its claims against Samsung SDI. According to Samsung SDI, "a class action does not toll a statute of limitations as to claims against a defendant not named in the class action." (Memorandum of Points and Authorities in Support of Samsung SDI's Motion to Dismiss T-Mobile's Claims Pursuant to California's Cartwright Act and Unfair Competition Law ("SDI Mem.") at 7.) Because none of the indirect purchaser class actions names Samsung SDI as a defendant, the filing of those actions, including against Samsung Electronics, did not operate to toll T-Mobile's claims against Samsung SDI – or so the argument goes. (*Id.*)

Given its relationship with Samsung Electronics, Samsung SDI's position is unsustainable. The key factor courts look to in determining whether to apply *American Pipe* tolling to claims against a defendant not named in a previous class action is whether that defendant had notice of the claims against it:

> Although certain federal courts have held that the tolling effect announced in *American Pipe* does not extend to defendants not included in the original class action, *such decisions are ordinarily premised on insufficient notice of the claim to additional parties which were not defendants in the initial pleading* since commencement of the suit against others was insufficient to give a nondefendant notice of the assertion of the claims against him.

Becks v. Emery-Richardson, Inc., Nos. 86-6866 & 87-1554, 1990 WL 303548, at *12 (S.D. Fla. Dec. 21, 1990) (emphasis added; citations omitted). *See also 27001 P'Ships v. BT Sec. Corp.*, No. CV 2004-7487, 2010 WL 5553366 (Ala. Cir. Ct. Jan. 14, 2010) ("The broader issue is one of notice. The 'parental' relationship is merely a vehicle or a means by which such notice is communicated between the parties.").

A number of the courts to have addressed the question of whether the filing of an earlier class action tolls claims against a defendant not named in that action have relied in their analysis on the more developed jurisprudence concerning the notice provision of Rule 15(c) of the Federal Rules of Civil Procedure.[2] Rule 15(c)(1)(c) provides that an amendment to a complaint naming a new party "relates back to the date of the original pleading when" the "party to be brought in by amendment . . . received *such notice of the action that it will not be prejudiced in defending on the merits* . . . ." (Emphasis added.) For example, in *Becks*, the court applied *American Pipe* tolling to claims against a parent corporation not named in the prior class action after determining that the parent had sufficient notice of the claims against it "under Rule 15(c) criteria." *Becks*, 1990 WL 303548, at *12; *see also P'Ships*, 2010 WL 5553366 (holding that *American Pipe* tolling applied to newly-named defendant where court concluded Rule 15(c) notice element was satisfied).

This Circuit has held that an original pleading provides sufficient notice for "relation back" purposes under Rule 15(c) when there is a "community of interest" between the originally named defendants and any newly added defendants that would "justify imputing knowledge of [an] action from" one to the other. *See G.F. Co. v. Pan Ocean Shipping Co.*, 23 F.3d 1498, 1503 (9th Cir. 1994); *see also Abels v. JBC Legal Group, P.C.*, 229 F.R.D. 152, 158 (N.D. Cal. 2005). A "community of interest" exists where "'the parties are so closely related in their business operations or other activities that the institution of an action against one serves to

[2] In applying Rule 15(c), federal courts consider some of the same interests as when they apply *American Pipe* tolling. *Compare American Pipe*, 414 U.S. at 554-55 ("The policies of ensuring essential fairness to defendants and of barring a plaintiff who 'has slept on his rights,' are satisfied when, as here, a named plaintiff who is found to be representative of a class commences a suit and thereby notifies the defendants not only of the substantive claims being brought against them, but also of the number and generic identities of the potential plaintiffs who may participate in the judgment.") (citations omitted), with *Olech v. Vill. of Willowbrook*, 138 F. Supp. 2d 1036, 1041 (N.D. Ill. 2000) ("The relation back doctrine seeks to balance the policy of facilitating resolution of claims on the merits, which is effectuated by liberally permitting amendment of pleadings, and the policy underlying statutes of limitations – to guarantee 'essential fairness' to defendants by ensuring that they receive notice of claims within a reasonable time, and thus are not impaired in their defense by evidence that is lost or diminished in its clarity because of the undue passage of time.").

provide notice of the litigation to the other.'" *G.F. Co.*, 23 F.3d at 1503 (quoting 6A CHARLES MILLER, ET AL., FED. PRAC. & PROC. § 1499 at 146 (2d ed. 1990)).

Federal courts have found a "community of interest" – and thus adequate notice – for Rule 15(c) purposes in a variety of circumstances, including where the complaint originally names a parent corporation, but not the subsidiary, as a defendant, and the original and newly-added defendant share counsel.[3] Courts have also applied *American Pipe* tolling in such circumstances. *See, e.g.*, *Becks*, 1990 WL 303548, at *12 (ruling that *American Pipe* tolling applies where newly-added defendant was the parent of two subsidiaries named as defendants in earlier class action); *City of St. Petersburg v. Dayco Prods., Inc.*, No. 06-20953-CIV, 2008 WL 5428172, at *2-3 (S.D. Fla. Dec. 30, 2008) (rejecting magistrate's recommendation to dismiss as time-barred claims against Dayco Products, LLC, which was not named as a defendant in the earlier class action, where Dayco Products, Inc. had been named as a defendant, and the defendants referred to themselves as a single entity in their filings, thereby creating an issue of fact as to whether they were the "same entity for tolling purposes"); *27001 P'Ships*, 2010 WL 5553366 (setting aside summary judgment dismissing claims against subsidiary as time-barred where parent, with whom subsidiary shared counsel, was named in earlier class action). The cases Samsung SDI relies on in support of its categorical position that *American Pipe* tolling can *never* apply to toll claims against defendants not named in the earlier class action are not to the

[3] *See, e.g.*, *G.F. Co.*, 23 F.3d at 1503 (finding "community of interest" where parties shared counsel in lawsuit); *Goodman v. Praxair, Inc.*, 494 F.3d 458, 473-74 (4th Cir. 2007) ("[P]arent and subsidiary . . . have employed the same attorneys. Their identity of interest eliminates any worry that [the subsidiary] was caught by surprise when the complaint was amended."); *U.S. v. Pickus Const. and Equip. Co.*, No. 98 C 3261, 2000 WL 190574, at *7 (N.D. Ill. Feb. 9, 2000) ("Courts generally find that substituting a subsidiary for a parent corporation does not prejudice a defendant because the subsidiary was on constructive notice of the action against the parent."); *Langford v. Fox*, No. 84 Civ. 5308, 1987 WL 6423, at *3 (S.D.N.Y. Feb. 3, 1987) ("Courts have routinely held that the notice required by Rule 15(c) can be imputed to a new defendant through his attorney who also represented the party or parties originally sued.") (citations and internal punctuation omitted); *E.I. duPont de Nemours & Co. v. Phillips Petrol. Co.*, 621 F. Supp. 310, 314 (D. Del. 1985) ("[B]ecause the parent corporation had actual notice, adding its wholly-owned subsidiary as a party defendant does not prejudice the subsidiary.").

contrary. None of Samsung SDI's authorities addresses a fact pattern in which the original and newly-added defendants were members of the same corporate family and shared counsel.[4]

Here, the relationship between Samsung Electronics (named as a defendant in *Audio Visual Artistry*, *Jafarian*, and *Minoli*, which asserted California claims on behalf of indirect purchasers of cellular phones) and Samsung SDI ensured that Samsung SDI had adequate notice of T-Mobile's state law claims against it, and therefore tolled the running of the statute of limitations in respect of those claims. As T-Mobile alleges in its Amended Complaint:

- Samsung Electronics holds a "controlling interest" in Samsung SDI Co., Ltd., which, in turn, wholly owns Samsung SDI America, Inc. (Am. Cpl. ¶¶ 62, 63.)

- Both Samsung SDI and Samsung Electronics shared the same counsel, Sheppard Mullin Richter & Hampton LLP ("Sheppard Mullin"), in the MDL until recently, when Sheppard Mullin withdrew as counsel of record for Samsung Electronics and certain other Samsung corporate affiliates. Samsung Electronics thereafter assigned its former counsel to represent the Samsung SDI defendants. (*See id.* ¶ 65.)

- In connection with the price-fixing conspiracy, "Samsung SDI coordinated its conduct and shared confidential competitive information with Samsung Electronics and its subsidiaries and affiliates," its "[e]mployees responsible for marketing and selling LCDs and LCD Products during the Conspiracy Period ignored corporate formalities and held themselves out as employees and agents of Samsung Electronics as well as Samsung SDI," such employees "used and displayed both Samsung Electronics and Samsung SDI email addresses," "Samsung SDI shared booths at LCD-related trade shows with Samsung Electronics, and both companies emphasized the 'synergies' between Samsung SDI and Samsung Electronics in marketing and selling LCDs and LCD Products during the Conspiracy Period." (*Id.* ¶ 66.)

[4] For example, in *Boone v. Citigroup, Inc.*, 416 F.3d 382, 386, 392 & n.15 (5th Cir. 2005), the Fifth Circuit held that *American Pipe* tolling did not apply to claims against employees of a company that was not named in the prior class action but was affiliated with corporations that had been named as defendants. Nonetheless, the court expressly acknowledged that plaintiffs' claims against other newly-added defendants might be tolled where those defendants were "alleged to have some form of successor or derivative or alter ego liability respecting the" originally named defendants. *Id.* at 392. *See also Wyser-Pratte*, 413 F.3d 553, 555, 567-68 (6th Cir. 2005) (tolling unavailable against corporation's auditing firm when only the corporation and two of its officers were named in original class action); *Arneil v. Ramsey*, 550 F.2d 774, 775-76, 782 n.10 (2d Cir. 1977) (no class tolling as to claims against officers and directors of a New York Stock Exchange-registered corporation where the New York Stock Exchange and American Stock Exchanges were the only defendants named in prior class action).

- The "coordination and overlap of . . . Samsung Electronics and Samsung SDI's sales and marketing function was to leave purchasers with the impression that their daily dealings were with 'Samsung' when it came to considering and purchasing LCDs and LCD Products." (*Id.* ¶ 67.)

- Finally, REDACTED (*Id.* ¶ 68.)

In light of T-Mobile's allegations,[5] Samsung SDI's perfunctory assertion that T-Mobile's claims against it are not subject to class action tolling, solely because "SDI has never been named as a defendant in any LCD class action" (SDI Mem. at 8), is without merit. *See City of St. Petersburg*, 2008 WL 5428172, at *3 (assertion that defendant "was never named as a defendant in the" earlier class action deemed an "insufficient basis on which to find that *American Pipe* tolling does not apply"). Samsung Electronics' controlling interest in Samsung SDI, sharing of counsel with Samsung SDI, and coordination with Samsung SDI in connection with the price-fixing conspiracy, as well as Samsung Electronics and Samsung SDI's holding themselves out as a unitary "Samsung" entity with respect to the marketing and sale of LCD products, established a "community of interest" between the two companies. As a result, the filing of the indirect purchaser class actions against Samsung Electronics put Samsung SDI on notice as to T-Mobile's state-law claims, and tolled the statute of limitations governing those claims. T-Mobile's later assertion of such claims against Samsung SDI was therefore timely.

[5] Although Samsung SDI may dispute these allegations concerning the nature of its relationship with Samsung Electronics, a motion to dismiss T-Mobile's state law claims as time-barred is not the appropriate vehicle for doing so. *See generally Supermail Cargo, Inc. v. U.S.*, 68 F.3d 1204, 1206-07 (9th Cir. 1995) ("A motion to dismiss based on the running of the statute of limitations period may be granted only 'if the assertions of the complaint, read with the required liberality, would not permit the plaintiff to prove that the statute was tolled.' In fact, a complaint cannot be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts that would establish the timeliness of the claim.") (citations omitted).

CONCLUSION

For the reasons stated above, T-Mobile respectfully urges the Court to deny defendants Samsung SDI Co., Ltd.'s and Samsung SDI America, Inc.'s Motion to Dismiss T-Mobile's Claims Pursuant to California's Cartwright Act and Unfair Competition Law.

Dated: January 17, 2012

Respectfully submitted,

/s/ Brooke A. M. Taylor

David Orozco (CA Bar No. 220732)
E-Mail: dorozco@susmangodfrey.com
SUSMAN GODFREY L.L.P.
1901 Avenue of the Stars, Ste. 950
Los Angeles, CA 90067-6029
Telephone: (310) 310-3100
Facsimile: (310) 789-3150

Parker C. Folse III (*pro hac vice*)
E-Mail: pfolse@susmangodfrey.com
Brooke A. M. Taylor (*pro hac vice*)
E-Mail: btaylor@susmangodfrey.com
SUSMAN GODFREY L.L.P.
1201 Third Ave, Suite 3800
Seattle, WA 98101
Telephone: (206) 516-3880
Facsimile: (206) 516-3883

Edward A. Friedman (*pro hac vice*)
E-Mail: efriedman@fklaw.com
Daniel B. Rapport (*pro hac vice*)
E-Mail: drapport@fklaw.com
Hallie B. Levin (*pro hac vice*)
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 T-Mobile U.S.A., Inc.