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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
 LITIGATION)
 17) (Case No. 3:11-cv-02591 SI)
 _____)
 18 This Document Relates To:)
 Individual Case No. 3:11-CV-02591 SI) SANYO CONSUMER ELECTRONICS,
 19) CO., LTD.’S JOINDER TO
 T-MOBILE U.S.A., INC.,) DEFENDANTS’ REPLY IN SUPPORT
 20) OF JOINT MOTION TO DISMISS T-
 Plaintiff,) MOBILE’S AMENDED COMPLAINT
 21)
 v.)
 22 AU OPTRONICS CORPORATION; et al.,) Date: February 10, 2012
) Time: 9:00 a.m.
 23 Defendants.) Courtroom: 10, 19th Floor
) Judge: Hon. Susan Illston
 24)

25 A plaintiff must allege a *plausible* – not possible – conspiracy. *Bell Atl. Corp. v. Twombly*,
 26 550 U.S. 544, 570 (2007). SANYO Consumer Electronics Co., Ltd. (“SANYO Consumer
 27 Electronics”) respectfully submits that the allegations of T-Mobile U.S.A, Inc.’s (“T-Mobile”)
 28

1 Amended Complaint (“Complaint”) do not meet the facial plausibility standard established under
2 *Twombly*. Allegations that are conclusory and consistent with innocent behavior – precisely the
3 type alleged by T-Mobile¹ – are insufficient to meet this standard.

4 In order to overcome the plausibility threshold, T-Mobile must allege enough *factual*
5 *matter* to suggest that an agreement was made. *In re Transpacific Passenger Air Transportation*
6 *Antitrust Litigation*, No. C 07-05634 CRB, 2011 U.S. Dist. LEXIS 49853 at *39 (N.D. Cal., May
7 9, 2011) (citing *Twombly*, 550 U.S. at 556). A statement alleging that a defendant “agreed to fix
8 prices” is a legal conclusion and not sufficient. *See Iqbal*, 129 S. Ct. at 1949 (citing *Twombly*, 550
9 U.S. at 555) (“[T]he tenet that a court must accept as true all of the allegations contained in a
10 complaint is inapplicable to legal conclusions.”); *In re Travel Agent Comm’n Antitrust Litig.*, 583
11 F. 3d 896, 905 (6th Cir. Ohio 2009) (“[P]laintiffs use the word ‘agreement,’ . . . [which] is nothing
12 more than a legal conclusion ‘masquerading’ as a factual allegation.”).

13 Numerous other courts, including the 9th Circuit, agree. *See, e.g., Kendall v. Visa U.S.A.,*
14 *Inc.*, 518 F.3d 1042, 1048 (9th Cir. 2008) (an antitrust complaint must “answer the basic questions:
15 who, did what, to whom (or with whom), where, and when?”); *In re Hawaiian & Guamanian*
16 *Cabotage Antitrust Litig.*, 647 F. Supp. 2d 1250, 1256-1257 (W.D. Wash. 2009) (recognizing that
17 “[a] distinguishing factor” in an antitrust complaint’s viability analyzed under *Twombly* “has been
18 the inclusion of specific allegations concerning time, place, and person versus general allusions to
19 ‘secret meetings,’ ‘communications,’ or ‘agreements’”) (citations omitted); *In re Elevator* 502 F.
20 3d 47, 50-51 (2d Cir. 2007) (concluding complaint was “nothing more than a list of theoretical
21 possibilities, which one could postulate without knowing any facts whatever” and that “[s]uch
22 conclusory allegations of agreement at some unidentified point do[] not supply facts adequate to
23 show illegality”).

24 T-Mobile’s Complaint only mentions SANYO Consumer Electronics in a few paragraphs.
25 Nearly half of them are insufficient under *Twombly* simply due to their conclusory nature and

26 ¹ SANYO Consumer Electronics describes in its opening brief precisely how each of T-Mobile
27 allegations against SANYO Consumer Electronics are either conclusory in nature or consistent
28 with innocent behavior. This is *not* the “group pleading” argument that T-Mobile discusses in its
opposition. Opp. at 2-3.

1 failure to allege sufficient factual matter, as described in detail in SANYO Consumer Electronics’
2 opening brief. *See* Compl. ¶ 107 (alleging that the parties “engaged in illegal bilateral
3 communications”); ¶ 125 (alleging an agreement to “fix prices”); ¶ 126 (alleging sharing of
4 “competitive information”). T-Mobile does not even address the conclusory nature of these
5 allegations in its Opposition. The other half of the allegations, as specified below, do not even
6 allege any anticompetitive behavior.

7 Plaintiff’s allegations must allege anticompetitive behavior that ***cannot alternatively be***
8 ***explained as innocent behavior.*** *Twombly*, 550 U.S. at 567 (“but here we have an obvious
9 alternative explanation”); *Iqbal*, 129 S. Ct. at 1950 (noting when discussing *Twombly* “the Court
10 nevertheless concluded that it did not plausibly suggest an illicit accord because it was . . .
11 compatible with . . . lawful . . . behavior.”); *Krehl v. Baskin-Robbins Ice Cream Co.*, 664 F.2d
12 1348, 1357-58 (9th Cir. 1982) (finding that 12 communications over seven years concerning
13 prices was “idle shop talk” and did not establish an unlawful conspiracy); *In re Travel Agent*
14 *Comm’n Antitrust Litig.*, 583 F. 3d 896, 911 (6th Cir. 2009) (“Moreover, a mere opportunity to
15 conspire does not, standing alone, plausibly suggest an illegal agreement because American’s and
16 Continental’s presence at such trade meetings is more likely explained by their lawful, free-market
17 behavior.”); *In re Travel Agent Comm’n Antitrust Litig.*, 2007 U.S. Dist. LEXIS 79918, at *35
18 (N.D. Ohio Oct. 29, 2007) (“[T]he exchange of price data and other information among
19 competitors does not invariably have anticompetitive effects; indeed such practices can in
20 certain circumstances increase economic efficiency and render markets more, rather than less,
21 competitive”); *In re Citric Acid Litig.*, 191 F.3d 1090, 1103 (9th Cir. 1999) (finding no evidence of
22 conspiracy despite competitor communications and meetings); *Amey, Inc. v. Gulf Abstract & Title,*
23 *Inc.*, 758 F.2d 1486, 1505 (11th Cir. 1985) (finding that “there is nothing unlawful about
24 competitors meeting and exchanging price information”); *In re Graphics Processing Units*
25 *Antitrust Litig.*, 527 F. Supp. 2d 1011, 1023 (N.D. Cal. 2007) (“[a]ttendance at industry trade
26 shows and events is presumed legitimate and is not a basis from which to infer a conspiracy,
27 without more.”).

28 T-Mobile’s remaining allegations against SANYO Consumer Electronics can alternatively

1 be explained as innocent business practice, as described in SANYO Consumer Electronics’
2 opening brief. *See* Compl. ¶ 108 (alleging gaining a “better understanding of market situation”); ¶
3 125 (alleging a seller and potential customer discussing prices); ¶ 159 (alleging behavior of
4 “confirming bids”). This in addition to the fact that SANYO Consumer Electronics was not
5 indicted, not involved in the trade associations or the crystal meetings leaves no support for T-
6 Mobile’s conspiracy claim. *See* Compl. ¶¶ 101, 113, 174-190.

7 Notably, T-Mobile offers nothing to contradict these alternative explanations of innocent
8 business behavior. Instead, T-Mobile naively suggests that “all facts are construed in the light
9 most favorable to the plaintiff.” *Opp.* at 5. But as described above, this Court must scrutinize the
10 specific allegations, and determine whether they can be explained as ordinary business practice.
11 *Iqbal*, 129 S. Ct. at 1950. T-Mobile also asserts that “[n]ow is not the time to test the facts
12 underlying T-Mobile’s allegations.” *Opp.* at 5. Yet SANYO Consumer Electronics is not asking
13 the Court to do this; rather it is asking the Court to review the allegations for alternative
14 explanations as it is required to do under *Twombly*.

15 Because T-Mobile’s allegations against SANYO Consumer Electronics are conclusory and
16 consistent with innocent behavior, SANYO Consumer Electronics requests that this Court grant its
17 Motion to Dismiss. The heart of T-Mobile’s Complaint is directed to *other defendants’* guilty
18 pleas and allegations of involvement in crystal meetings, “early conspiracy,” and trade
19 associations. *See* Compl. ¶¶ 101, 113, 174-190. None of this concerns SANYO Consumer
20 Electronics. T-Mobile has simply not met its burden in providing specifics as to the role that
21 SANYO Consumer Electronics played in the alleged conspiracy. Because there are no factual
22 allegations that implicate SANYO Consumer Electronics in any price fixing conspiracy, T-
23 Mobile’s complaint fails to state a claim for antitrust conspiracy. Furthermore, dismissal supports
24 the policy goals of *Twombly* and Rule 12(b)(6), which require Courts to act as a gatekeeper in part
25 to increase judicial efficiency. *See, e.g.,* Arthur R. Miller, *From Conley to Twombly to Iqbal: A*
26 *Double Play on the Federal Rules of Civil Procedure*, 60 *Duke L. J.* 1 (2010) (“[T]he Supreme
27 Court [in *Iqbal* and *Twombly*] favored increasingly early case disposition in the name of
28 efficiency, economy, and avoidance of abusive and meritless lawsuits.”).

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Respectfully submitted,

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