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

17 In re: TFT-LCD (FLAT PANEL)  
 ANTITRUST LITIGATION  
 18  
 19 This Document Relates to: 3:11-cv-02591-SI  
 20  
 21 T-MOBILE U.S.A., INC.,  
 Plaintiffs,  
 22  
 vs.  
 23 AU OPTRONICS CORPORATION, et al.,  
 24 Defendants.  
 25

Master Docket No. M:07-cv-1827-SI  
 (Case No. 3:11-cv-02591-SI)  
**SAMSUNG SDI CO., LTD. AND  
 SAMSUNG SDI AMERICA, INC.'S  
 REPLY IN SUPPORT OF MOTION TO  
 DISMISS T-MOBILE'S CLAIMS  
 PURSUANT TO CALIFORNIA'S  
 CARTWRIGHT ACT AND UNFAIR  
 COMPETITION LAW**  
 Date: February 10, 2012  
 Time: 9:00 a.m.  
 Ctrm: 10  
 Judge: Hon. Susan Illston

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1 **I. INTRODUCTION**

2 Defendants Samsung SDI Co., Ltd. and Samsung SDI America, Inc. (together, "SDI") join  
3 in the concurrently filed Reply in Support of Defendants' Joint Motion to Dismiss in Part  
4 Amended Complaint ("Joint Reply") (MDL Dkt. No. 4727). SDI files this separate reply brief in  
5 support of an argument unique to its circumstance: because SDI was not named as a defendant in  
6 any LCD class action, those actions cannot toll the statutes of limitation on Plaintiff T-Mobile  
7 U.S.A., Inc. ("Plaintiff")'s claims against SDI pursuant to California's Cartwright Act and Unfair  
8 Competition Law ("UCL"). Plaintiff disagrees, citing three class-action complaints<sup>1</sup> that it claims  
9 toll the limitations statutes. Although none of these complaints name SDI, either as a defendant or  
10 otherwise, Plaintiff nonetheless argues that they should toll the limitations statutes because they  
11 name as a defendant Samsung Electronics Co., Ltd. ("SEC"). Plaintiff argues that SEC and SDI  
12 are sufficiently related that the class actions filed against SEC notified SDI of the claims Plaintiff  
13 asserts here.

14 Plaintiff's argument fails, for several reasons. First, as a threshold matter, the three  
15 complaints upon which Plaintiff relies are not properly before the Court, because Plaintiff failed to  
16 request judicial notice of these complaints. Second, even if the Court considers the complaints,  
17 the named plaintiffs lack standing to assert claims under California's Cartwright Act and UCL.  
18 For this reason, this Court has already held that the AVA complaint does not toll the statute of  
19 limitation on Cartwright Act and UCL claims; the analysis is the same for the *Jafarian* and *Minoli*  
20 complaints. Third, these complaints cannot toll the statutes of limitation against SDI because they  
21 do not name SDI as a defendant. Plaintiff proposes to radically expand the scope of the class-  
22 action tolling doctrine, such that it would apply to defendants not previously named in the class  
23 action. But Plaintiff fails to provide support for its proposed new rule. Numerous courts,  
24 including this Court, have held that a class action does not toll a statute of limitations on a later  
25

26 <sup>1</sup> The three complaints are *Audio Video Artistry v. Samsung Elecs. Co. Ltd.*, No. 2:06-02848-  
27 SHM-DKV (W.D. Tenn. filed Dec. 14, 2006) ("AVA Compl."); *Jafarian v. LG Philips LCD Co.*  
28 *Ltd.*, No. 3:07-cv-00994-SI (N.D. Cal. filed Feb. 16, 2007) ("*Jafarian* Compl."); and *Minoli v. LG*  
*Philips LCD Co.*, No. 06:07-cv-00235-MV-WDS (D.N.M.) ("*Minoli* Compl." filed March 9,  
2007). Opp. at 2.

1 claim against a defendant not named in the class action, even where the two entities are related  
2 corporations. The case law Plaintiff cites to argue for a different result is either inapposite or was  
3 later vacated. Fourth, and finally, even under Plaintiff's proposed expanded tolling rules, there is  
4 simply no reason to believe that SDI actually knew of the *AVA*, *Jafarian* or *Minoli* class actions, or  
5 that those actions would have alerted SDI that it would someday face the claims that Plaintiff  
6 asserts here. In fact, SDI received no such notice.

7 The Court should decline Plaintiff's invitation to expand the class-action tolling doctrine;  
8 find that the *AVA*, *Jafarian* and *Minoli* complaints do not toll the statutes of limitation on  
9 Plaintiff's Cartwright Act and UCL claims against SDI; and dismiss those claims as time-barred.

## 10 **II. ARGUMENT**

### 11 **A. The *AVA*, *Jafarian* and *Minoli* Complaints Do Not Toll The Statutes Of** 12 **Limitation On Plaintiff's California Claims Against SDI.**

#### 13 1. The Court Should Not Consider the *AVA*, *Jafarian* or *Minoli* Complaints 14 Because Those Complaints Are Not Properly Before The Court.

15 Plaintiff's tolling argument relies heavily on its description of the *AVA*, *Jafarian* and  
16 *Minoli* complaints. But those complaints are not properly before the Court. As Plaintiff  
17 acknowledges, a court hearing a motion to dismiss may consider only matters subject to judicial  
18 notice and allegations in the complaint. Opp. at 7 n.5; see also *Lee v. City of Los Angeles*, 250  
19 F.3d 668, 688 (9th Cir. 2001) ("[W]hen the legal sufficiency of a complaint's allegations is tested  
20 by a motion under Rule 12(b)(6), [r]eview is limited to the complaint."). Plaintiff did not request  
21 judicial notice of the three complaints it relies upon. While Plaintiff's Amended Complaint  
22 ("FAC") cites the *AVA* and *Minoli* (but not the *Jafarian*) actions, it does so in passing, with none  
23 of the factual detail that Plaintiff relies upon to support its tolling argument. See FAC ¶ 279. For  
24 example, Plaintiff argues that the *AVA*, *Jafarian* and *Minoli* complaints all named Samsung  
25 Electronics Co. as a defendant, and "included indirect purchasers of cellular phones as class  
26 members." Opp. at 1. But the FAC alleges none of these details. See FAC ¶ 279. The Court  
27 should disregard Plaintiff's attempt to supplement its pleadings with additional facts. Plaintiff's  
28 tolling argument, which relies on these facts, therefore fails, and Plaintiff's California claims



1 claims. *In re: TFT-LCD (Flat Panel) Antitrust Litig., Office Depot, Inc. v. AU Optronics Corp.*,  
2 MDL No. M 07-1827 SI, No. C 11-2225 SI, 2012 WL 149632, at \*3 (N.D. Cal. Jan. 18, 2012).  
3 The same analysis applies to the *Jafarian* and *Minoli* complaints, filed by Florida and New  
4 Mexico residents, respectively. Plaintiffs in all three cases lacked standing to bring either UCL or  
5 Cartwright Act claims. Their complaints therefore do not toll the statutes of limitation on  
6 Plaintiff's California claims.

7 3. The AVA, Jafarian and Minoli Actions Did Not Toll The Statutes Of  
8 Limitation On Plaintiff's California Claims Against SDI Because SDI Was  
9 Not A Defendant In Any Of Those Cases.

10 The three indirect purchaser complaints that Plaintiff cites do not toll the statutes of  
11 limitation on Plaintiff's California claims for an additional reason: SDI was not named as a  
12 defendant in any of those cases. A class action does not toll a statute of limitations as to claims  
13 against a defendant not named in the class action. *See* Mot. at 7-8. Plaintiff nonetheless argues  
14 that class-action tolling is available here because the *AVA*, *Jafarian* and *Minoli* complaints name  
15 SEC as a defendant, and Plaintiff argues that SDI is allegedly sufficiently related to SEC that the  
16 earlier class actions notified SDI of T-Mobile's claims. Plaintiff's proposed expansion of the class-  
17 action tolling rule is against the weight of authority, including several recent orders from this  
18 Court.

19 In a seminal case regarding class-action tolling, a group of concurring U.S. Supreme Court  
20 justices cautioned district courts against the sort of "abuse" of the class-action tolling doctrine that  
21 Plaintiff here urges. *See Crown, Cork & Seal Co., Inc. v. Parker*, 462 U.S. 345, 354 (1983)  
22 (Powell, J., concurring). In particular, the justices cautioned that courts should not toll the statute  
23 of limitations for claims that are "different [from] or peripheral [to]" the class action claims. *Id.*;  
24 *see also id.* at 345 ("It is important to make certain, however, that *American Pipe* is not abused by  
25 the assertion of claims that differ from those raised in the original class suit.").

26 Heeding this instruction, many courts have held that a class action does not toll a  
27  
28

1 limitations statute against a defendant who is not named as a defendant in the class action.<sup>2</sup>  
2 Several cases have further held that an earlier class action does not toll a statute of limitation on a  
3 later claim against a related corporate entity. *See, e.g., Shriners Hospitals*, 2007 WL 2801494, at  
4 \*4 (class action naming Qwest Communications International, Inc. does not toll limitations statute  
5 as to later claim against Qwest Capital Funding). Indeed, this Court has recently and repeatedly  
6 reached the same conclusion. *See, e.g., In re: TFT-LCD (Flat Panel) Antitrust Litig., Interbond*  
7 *Corp. of America v. AU Optronics Corp.*, MDL No. M 07-1827 SI, No. C 11-3763 SI, 2012 WL  
8 149637, at \*3 (N.D. Cal. Jan. 18, 2012) ("*Interbond Order*") ("tolling is limited to those  
9 defendants ... identified in the class action complaints" such as defendant Sharp Corp., but not  
10 newly added defendants such as Sharp Electronics Corp.); Order Granting In Part Defendants'  
11 Motions To Dismiss, *In re: TFT-LCD (Flat Panel) Antitrust Litig., P.C. Richard & Son Long*  
12 *Island Corp.*, MDL No. M 07-1827 SI, No. C 11-4119 SI, at 6 (MDL Dkt. No. 4601 filed Jan. 18,  
13 2012) ("*PC Richard Order*") ("tolling is limited to the defendants ... identified in the *Lauricella*  
14 class actions complaint" such as Hitachi Ltd., but not newly added defendants such as Hitachi  
15 Electronics Devices (USA)); *In re: TFT-LCD (Flat Panel) Antitrust Litig., Electrograph Systems,*  
16 *Inc. v. NEC Corp.*, MDL No. M 07-1827 SI, No. C 11-3342 SI, 2012 WL 149528, at \*4 (N. D.  
17 Cal. Jan. 18, 2012) (plaintiff's claims were "only tolled to the extent NEC entities were named as  
18 defendants or coconspirators in the class actions.").

19 Despite the unambiguous language in these cases, Plaintiff argues that the *American Pipe*  
20 tolling doctrine should be extended to apply to corporations that are related to defendants in the

21 \_\_\_\_\_  
22 <sup>2</sup> *See* Mot. at 7-8 (citing cases); *see also Footbridge Limited Trust v. Countrywide Fin. Corp.*, 770  
23 F.Supp.2d 618, 624 n.1 (S.D.N.Y. 2011) ("*American Pipe* tolling does not extend to persons not  
24 named as defendants in the prior class action."); *Shriners Hospitals for Children v. Qwest*  
25 *Communications Int'l Inc.*, No. 04-cv-00781-REB-KLM, 2007 WL 2801494, at \*4 (D. Colo.  
26 Sept. 24, 2007) ("For the purpose of applying the *American Pipe* toll, a party who is not named as  
27 a defendant in the class action cannot be seen as having been notified of the claims against it in the  
28 class action."); *Prieto v. John Hancock Mutual Life Ins. Co.*, 132 F.Supp.2d 506, 519 (N.D. Tex.  
2001) (class-action tolling "clearly does not extend to defendants who were not parties to the class  
action suit."); *Anderson v. Cornejo*, No. 97 C 7556, 1999 WL 258501, at \*4 (N.D. Ill. April 21,  
1999) ("the tolling rule of *Crown, Cork* does not apply to persons who were not previously named  
as defendants in a plaintiff class action."); *Mott v. R.G. Dickinson and Co.*, No. 92-1450-PFK,  
1993 WL 63445, at \*5 (D.Kan. Feb. 24, 1993) ("If this legal tolling applied to claims against  
defendants other than those named in the initial class complaint, it would violate the purpose of  
the limitations period.").

1 earlier class action. Plaintiff cites three cases that it claims support its argument. One of these is  
2 inapposite, as it analyzes a situation in which the class-action defendant and the differently named  
3 defendant in the later suit were actually "a single entity." *City of St. Petersburg v. Dayco Prods.,*  
4 *Inc.*, No. 06-20953-CIV, 2008 WL 5428172, at \*3 (S.D. Fla. Dec. 30, 2008). The second is a  
5 decision from an Alabama state trial court, that does endorse Plaintiff's proposed expansion of the  
6 class-action tolling doctrine. *27001 P'ships v. BT Secs. Corp.*, No. CV 2004-7487 JLB, 2010 WL  
7 5553366 (Ala. Cir. Ct. Jan. 14, 2010). Shortly after issuing that opinion, however, the court  
8 ordered supplemental briefing on the tolling issue, vacated its earlier opinion, and granted  
9 defendant summary judgment on limitations grounds. *27001 P'ships v. BT Secs. Corp.*, No. CV  
10 2004-7487 JLB, 2010 WL 5553364 (Ala. Cir. Ct. Feb. 8, 2010) (plaintiff's claims not subject to  
11 *American Pipe* tolling because defendant was not named in the earlier class action). The court  
12 found just one case that supported plaintiffs' proposed expansion of the *American Pipe* rule to  
13 include related corporate defendants not named in the original class action. *Id.* at 3.

14 That case was *Becks v. Emery-Richardson, Inc.*, the third authority that Plaintiff here cites.  
15 Nos. 86-6866 & 87-1554, 1990 WL 303548 (S.D. Fla. Dec. 21, 1990). As noted by Alabama  
16 court in *27001 P'ships*, *Becks* stands alone in holding that a class action may toll a statute of  
17 limitation for a defendant not named in the class action. It is thus clearly against the weight of  
18 authority cited above. *27001 P'ships*, 2010 WL 5553364 at 3 (declining to follow *Becks* because  
19 expansion of *American Pipe* tolling rules "is a step best left to an appropriate appellate court").  
20 That case is also distinguishable, because defendant in *Becks*, unlike SDI, did not dispute that it  
21 received notice of the complaint, and did not claim that it would suffer prejudice if added to the  
22 litigation. *Becks*, 1990 WL 303548, at \*12.

23 The remainder of the cases cited by Plaintiff are simply inapposite, as they analyze  
24 whether an amended complaint "relates back" to the date of an earlier complaint in the same case,  
25 under Federal Rule of Civil Procedure 15(c). Plaintiff here does not argue that its complaint  
26 "relates back" to an earlier complaint that it filed. Plaintiff instead seeks to bootstrap the more  
27 liberal "relation back" rules into the *American Pipe* tolling analysis, premised on a single stray  
28 reference in the *Becks* case. Having just completed a "relation back" analysis for a true Rule 15(c)

1 scenario – in which plaintiff sought to amend its earlier complaint to add a defendant – the *Becks*  
2 court referred to the "Rule 15(c) criteria" in the context of its tolling analysis. *Becks*, 1990 WL  
3 303548, at \*11. This passing remark is an insufficient basis to import the federal rules and case  
4 law governing "relation back" scenarios into tolling analyses.

5 Even under Plaintiff's proposed expansion of the *American Pipe* tolling doctrine, its  
6 argument fails, for two reasons. First, Plaintiff argues that SEC and SDI are sufficiently related  
7 that a class action filed against the former would notify the latter that it also faces litigation. *Opp.*  
8 at 5. This argument is premised on Plaintiff's allegation that SEC "holds a controlling interest in"  
9 SDI. FAC ¶ 62. The allegation is incorrect, but even accepting it as true for purposes of this  
10 motion, it does not support Plaintiff's argument because it says nothing about the relationship  
11 between the two companies at the relevant time. The *AVA* and *Minoli* actions were filed in 2006  
12 and 2007. FAC ¶ 279. The FAC says nothing about the relationship between SDI and SEC at that  
13 time, and therefore offers no reason why the court could impute timely notice to SDI.

14 Second, even if the Court were to assume that SDI learned of the *AVA*, *Jafarian* and *Minoli*  
15 complaints when they were filed (which it did not), nothing in those complaints would notify SDI  
16 of a potential claim against it, as opposed to other Samsung entities. Plaintiff here argues that this  
17 is the case. *See Opp.* at 7 ("the filing of the indirect purchaser class actions against Samsung  
18 Electronics put Samsung SDI on notice as to T-Mobile's state-law claims ...."). But Plaintiff cites  
19 nothing in the complaints that would support such a leap. The *AVA*, *Jafarian* and *Minoli*  
20 complaints do not mention SDI. They appear to allege a conspiracy to fix the price of TFT-LCD  
21 panels, a product that SDI did not manufacture. *AVA* Compl. ¶ 2; *Jafarian* Compl. ¶ 1; *Minoli*  
22 Compl. ¶ 2. In short, nothing in these complaints would notify SDI that it should anticipate  
23 Plaintiff's claim.

24 4. SDI Did Not Receive Notice Of T-Mobile's Claim, And Would Suffer  
25 Prejudice If Forced To Defend That Claim At This Late Date.

26 Plaintiff argues that SDI's failure to state that it lacked notice of Plaintiff's state law claims,  
27 and its failure to assert that it would be prejudiced in mounting a defense to those claims, "speaks  
28 volumes." *Opp.* at 1. For the avoidance of doubt, let the record be clear: SDI did not receive

1 timely notice of Plaintiff's California claims, whether via the *AVA*, *Minoli* or *Jafarian* complaints  
2 or otherwise. As a result, SDI would be severely prejudiced if forced to litigate these stale claims  
3 now. Had SDI received timely notice, it could have taken steps to preserve documents and other  
4 evidence that might have aided its defense. SDI also might have been able to arrange for  
5 testimony from witnesses who, due to the passage of time, are no longer available. Because SDI  
6 received no notice of Plaintiff's claims, it was unable to take these steps. *Cf. Crown, Cork and*  
7 *Seal*, 462 U.S. at 353 (tolling "creates no potential for unfair surprise" because "[t]he defendant  
8 will be aware of the need to preserve evidence and witnesses respecting the claims of all the  
9 members of the class.").

10 **B. The Limitations Statute On Plaintiff's California Claims Against SDI Were**  
11 **Not Tolloed, But If The Court Disagrees, Any Tolling Should Be Limited To**  
12 **Claims Related To TFT-LCD Purchases In December 2002 Or Later.**

13 Based on the foregoing, SDI maintains that the *AVA*, *Jafarian* and *Minoli* complaints did  
14 not toll the limitations statute on Plaintiff's California claims against SDI. However, if the Court  
15 were to find otherwise, any tolling should be limited to the products and time periods at issue in  
16 those complaints. Such limitation would be consistent with established law. *See In re Vertrue*  
17 *Mktg. & Sales Practices Litig.*, 712 F.Supp. 2d 703, 718-19 (N.D. Ohio 2010) (collecting cases  
18 holding that tolling is inapplicable to claims that were not asserted in prior class actions); *Mass*  
19 *Bricklayers & Masons Funds v. Deutsche Alt-A Securities*, 273 F.R.D. 363, 366 (E.D.N.Y. 2001)  
20 (claims arising outside of the class period in earlier class action complaints held not tolled under  
21 *American Pipe*). Moreover, the limitation would be consistent with the Court's recent orders. *See,*  
22 *e.g., P.C. Richard* Order at 6 ("tolling is limited to the defendants, products, and conspiracy period  
23 identified in the ... class actions complaint."); *Interbond* Order, 2012 WL 149637 at \*35 ("tolling  
24 is limited to those defendants, products, and conspiracy periods identified in the class action  
25 complaints [plaintiff] relies upon.").

26 Here, the complaints that Plaintiff relies upon only seek relief for purchases made in  
27 December 2002 and thereafter. *See AVA* Compl. ¶ 19; *Jafarian* Compl. ¶ 19; *Minoli* Compl. ¶ 39.  
28 In addition, the complaints only seek relief for purchases of thin-film transistor LCD, as opposed

