

United States District Court  
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: TFT-LCD (FLAT PANEL) ANTITRUST  
LITIGATION  
\_\_\_\_\_ /

No. M 07-1827 SI  
MDL No. 1827

This Order Relates To:

No. C 11-6686 SI

STATE OF OKLAHOMA,

Plaintiff,

v.

AU OPTRONICS CORPORATION, *et al.*,

Defendants.  
\_\_\_\_\_ /

**ORDER GRANTING IN PART AND  
DENYING IN PART DEFENDANTS'  
MOTION TO DISMISS**

Currently before the Court is defendants' motion to dismiss Oklahoma's amended complaint. Pursuant to Civil Local Rule 7-1(b), the Court found this matter suitable for disposition without oral argument. Having considered the parties' papers, and for good cause appearing, the Court hereby GRANTS IN PART and DENIES IN PART defendants' joint motion.

**BACKGROUND**

On December 28, 2011, the State of Oklahoma filed a complaint alleging violations of the Sherman Act, 15 U.S.C. § 1, Oklahoma's Antitrust Reform Act ("OARA"), 79 O.S. § 201, and asserting a state law claim for unjust enrichment. Oklahoma seeks damages for "LCD products that were sold at high prices that were illegally fixed by [defendants'] conspiracy." First Amended Complaint ("FAC"), Master Docket No. 5438, at ¶ 6. Oklahoma's Sherman Act and OARA claims are based on its own direct purchases of TFT-LCD panels from defendants or their co-conspirators. *See* FAC at ¶ 17. Oklahoma also asserts Sherman Act and OARA claims on behalf of Original Equipment Manufactures ("OEMs") and other direct purchasers who allegedly assigned some of their direct

1 purchaser claims to Oklahoma. *Id.*

2 Defendants now move to dismiss the OARA claim based on Oklahoma’s own direct purchases  
3 of TFT-LCD panels, and the Sherman Act and OARA claims based on Oklahoma’s assignors’ direct  
4 purchases of TFT-LCD panels. Defendants also move to dismiss Oklahoma’s unjust enrichment claim.

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6 **LEGAL STANDARD**

7 Under Federal Rule of Civil Procedure 12(b)(6), a district court must dismiss a complaint that  
8 fails to state a claim upon which relief may be granted. To survive a Rule 12(b)(6) motion to dismiss,  
9 the plaintiff must allege “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl.*  
10 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007). This “facial plausibility” standard requires the plaintiff  
11 to allege facts that add up to “more than a sheer possibility that a defendant has acted unlawfully.”  
12 *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). While courts do not require “heightened fact pleading  
13 of specifics,” a plaintiff must allege facts sufficient to “raise a right to relief above the speculative  
14 level.” *Twombly*, 550 U.S. at 544, 555.

15 In deciding whether the plaintiff has stated a claim upon which relief may be granted, the Court  
16 must assume that the plaintiff’s allegations are true and must draw all reasonable inferences in the  
17 plaintiff’s favor. *See Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). However, the  
18 Court is not required to accept as true “allegations that are merely conclusory, unwarranted deductions  
19 of fact, or unreasonable inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008).

20  
21 **DISCUSSION**

22 Defendants’ motion seeks dismissal of Oklahoma’s complaint on four grounds.<sup>1</sup> First,  
23 defendants contend that Oklahoma’s assigned Sherman Act and OARA claims are barred by the direct  
24 purchaser plaintiff (“DPP”) settlements; second, they contend that Oklahoma’s OARA claims are barred  
25 by the statute of limitations; third, they contend that Oklahoma’s claim for unjust enrichment is barred  
26 by the statute of limitations; and, finally, they contend that Oklahoma has failed to adequately allege

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<sup>1</sup>Defendants are not seeking dismissal of Oklahoma’s Sherman Act claims based on Oklahoma’s own direct purchases of TFT-LCD panels from defendants. *See Motion at 1, fn. 1.*

1 that its assigned OARA claims are based on purchases of LCD panels in Oklahoma.<sup>2</sup>

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3 **I. Effect of DPP Settlements on Oklahoma’s Assigned Claims**

4 Defendants contend that Oklahoma’s assigned Sherman Act and OARA claims are barred  
5 because Oklahoma failed to opt out of the DPP class. Motion at 3. Defendants highlight Oklahoma’s  
6 allegations that it was assigned “the right to pursue ‘direct purchaser’ claims,” pursuant to procurement  
7 contracts with certain direct purchasers between 1996 and 2006, and for purposes of pursuing those  
8 claims, “the State stands in the shoes of the OEMs and other direct and indirect purchasers of price-  
9 fixed TFT-LCD products and panels.” *Id.* at 3-4 (citing FAC at ¶¶ 2, 140-44). Defendants claim that  
10 Oklahoma—an “assimilated” member of the DPP panel class—was required to file an opt out request  
11 if it wished to exclude its assigned claims from the class. *See id.* at 5. Because it failed to do so by the  
12 opt-out deadline, defendants argue, Oklahoma’s assigned claims remain part of the DPP panel class and  
13 the class settlements “bar and enjoin [Oklahoma] from bringing their own suit[] to prosecute the same  
14 claims.” *Id.*

15 The Court finds defendants’ argument unpersuasive. The DPP panel class explicitly excluded  
16 state and governmental entities.

17 [Panel Class:] All persons and entities who, between January 1, 1999  
18 and December 31, 2006, directly purchased a TFT-LCD panel in the  
19 United States from any defendant or any subsidiary thereof, or any  
20 named affiliate or any named co-conspirator. Specifically excluded from  
21 the Class are defendants; the officers, directors, or employees of any  
22 defendant; the parent companies and subsidiaries of any defendant; the  
23 legal representatives and heirs or assigns of any defendant; and the  
24 named affiliates and co-conspirators. *Also excluded are any federal,  
25 state or local governmental entities, any judicial officer presiding over  
26 this action and the members of his/her immediate family and judicial  
27 staff, and any juror assigned to this action.*

23 Order Granting In Part and Denying In Part Direct Purchaser Plaintiffs’ Motion for Class Certification,  
24 Master Docket No. 1641, at 34-35 (March 28, 2010) (emphasis added), as amended by Order Clarifying  
25 Order Certifying Direct Purchaser Classes Re: Geographic Scope and Class Representative, Master

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27 <sup>2</sup>Defendants also seek to dismiss Oklahoma’s FAC to the extent Oklahoma brings unjust  
28 enrichment claims based on its indirect purchases. In its opposition brief, Oklahoma represents that it  
is “not presently seeking recovery for any indirect purchases under the Sherman Act, OARA or  
applicable state law (unjust enrichment).” *See Opp’n* at 22.

1 Docket No. 1883, at 1 (July 16, 2010). The DPP settlement agreements explicitly exclude state and  
2 governmental entities as well. *See, e.g.*, DPP Motion for Final Approval of Settlement, Master Docket  
3 No. 2394, at 5-6 (Feb. 3, 2011) (reciting DPP class definitions); Order Granting Final Approval of  
4 Settlement and Entering Final Judgment of Dismissal With Prejudice, Master Docket No. 2475 (Feb.  
5 18, 2011). While Oklahoma may have been assigned claims once belonging to members of the DPP  
6 class, it was never a class member. The Court therefore finds that Oklahoma had no obligation to opt  
7 out of the class and is not bound by the DPP class settlements. Accordingly, the Court DENIES  
8 defendants' motion to dismiss Oklahoma's Sherman Act and OARA claims based on its failure to opt  
9 out of the DPP class.

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11 **II. Timeliness of Oklahoma's OARA Claims**

12 Defendants next argue that Oklahoma's assigned and direct OARA claims are untimely.  
13 Oklahoma filed suit on December 28, 2011, more than four years after the DOJ's December 11, 2006  
14 announcement of its investigation into the conspiracy.<sup>3</sup> Since the OARA provides that any action to  
15 recover damages is barred "unless commenced within four (4) years after the claim accrued or was  
16 discovered, whichever is later," 79 Okla. Stat. § 205(c), defendants insist that Oklahoma's OARA  
17 claims are barred by the statute of limitations and must be dismissed.

18 Oklahoma contends that its OARA claims did not accrue in December 2006 because it had not  
19 "discovered its claims at that time." *See* Opp'n at 11. Instead, Oklahoma alleges to have "discover[ed]  
20 the existence of the claims" at some later point, "within the applicable statute of limitations." FAC at  
21 ¶ 113.

22 The state of Oklahoma did not discover the existence of the claims  
23 alleged in this Complaint until within the applicable statute of limitations  
24 period. Further, the State of Oklahoma has exercised due diligence to  
learn of its legal rights and claims, and despite such diligence, uncovered  
the existence of the violations alleged below within the applicable statute

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26 <sup>3</sup>This Court has treated a plaintiff's allegations of fraudulent concealment as sufficient, as a  
27 pleading matter, to toll the statute of limitations until the DOJ announced its investigation on December  
28 11, 2006. *See* Order Granting in Part and Denying in Part Defendants' Motions to Dismiss Complaints,  
Master Docket No. 666, at 27-28 (August 25, 2008); *see also* Order Denying Defendants' Joint Motion  
for Partial Summary Judgment based on the Florida Statute of Limitations, Master Docket No. 3628  
(September 20, 2011).

1 of limitations period. The scope and extent of the Defendants'  
2 conspiracy remained unknown for years even after governmental  
3 investigations began. The State of Oklahoma exercised due diligence by  
4 promptly investigating the facts giving rise to the claims asserted herein  
5 upon having reasonable suspicion of the existence of the Defendants'  
6 conspiracy to the extent permitted by law.

7 *Id.* Although the “was discovered” language in the OARA has not been interpreted by its state courts,  
8 Oklahoma relies on a state supreme court decision that “adopted the discovery rule for certain tort  
9 claims.” Opp’n at 9 (citing *Woods v. Prestwick House, Inc.*, 247 P.3d 1183, 1186 (Okla. 2011)).  
10 Oklahoma argues that the discovery rule applies to its OARA claims and operates to toll those claims  
11 since, “[p]ursuant to Oklahoma authority, the DOJ’s disclosure of an investigation does not constitute  
12 ‘discovery’ of the State’s antitrust claim.” *See id.* at 11.

13 The Court agrees with Oklahoma. The plain language of the OARA provides that the statute of  
14 limitations does not begin running until the “claim accrued *or was discovered*, whichever is later.” 79  
15 Okla. Stat. § 205(c) (emphasis added); *see also Lumber2, Inc. v. Illinois Tool Works, Inc.*, 261 P.3d  
16 1143, 1146 (Okla. 2011) (“The words of a statute will be given a plain and ordinary meaning, unless  
17 it is contrary to the purpose and intent of the statute considered as a whole.”) (internal citations omitted).  
18 The discovery rule “tolls the limitations period until a plaintiff learns of an injury and, thorough prudent  
19 investigation, can obtain sufficient facts to state a cause of action.” *Woods*, 247 P.3d at 1186. The  
20 Court finds that Oklahoma has pled, as a factual matter, that it learned of its antitrust injuries at some  
21 point after the DOJ’s announcement, but within the statute of limitations. *See* FAC ¶ 113. It would be  
22 premature, at the pleading stage, to determine whether the date upon which Oklahoma learned of its  
23 injury did, in fact, fall within the applicable limitations period. Accordingly, the Court DENIES  
24 defendants’ motion to dismiss Oklahoma’s OARA claims on statute of limitations grounds. These issues  
25 may, of course, be addressed on a fuller factual record at a later stage.

### 26 **III. Timeliness of Oklahoma’s Unjust Enrichment Claim**

27 Defendants also assert that Oklahoma’s claim for unjust enrichment has a two-year statute of  
28 limitations and should thus be dismissed as untimely. Oklahoma contends that the statute of limitations  
“does not apply to the State of Oklahoma suing in its sovereign capacity.” Opp’n at 20. The Court has

1 previously ruled that plaintiffs in this MDL are required to “specifically identify every basis they intend  
2 to rely on to establish tolling of the statutes of limitations.” Order Granting Defendants’ Joint Motion  
3 to Dismiss (Tweeter), Master Docket No. 4867, at 3 (Feb. 23, 2012). Oklahoma has not done so.  
4 Having pled no basis for tolling of its unjust enrichment claim, the Court GRANTS defendants’ motion  
5 to dismiss Oklahoma’s unjust enrichment claim, with leave to amend.  
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7 **IV. Adequacy of Oklahoma’s Assigned OARA Claim**

8 Finally, defendants contend that Oklahoma’s assigned OARA claim, as pled, runs afoul of the  
9 Court’s prior Due Process orders. In particular, defendants argue that Oklahoma does not adequately  
10 allege that the assignors of its OARA claims purchased LCD panels in Oklahoma. The Court disagrees  
11 with defendants. The FAC alleges that “[s]ome, or all of [the assignors’ purchases of LCD panels] took  
12 place in Oklahoma.” FAC at ¶ 157. These alleged facts justify applying Oklahoma law. *See, e.g.,*  
13 Order Granting Defendants’ Joint Motion to Dismiss, Master Docket No. 1822, at 12 (June 28, 2010)  
14 (“[I]n order to invoke the various state laws at issue, [plaintiff] must be able to allege that ‘the  
15 occurrence or transaction giving rise to the litigation – which is [plaintiff’s] purchase of allegedly price-  
16 fixed goods – occurred in the various states.”). Accordingly, the Court DENIES defendants motion to  
17 dismiss Oklahoma’s assigned OARA claim.  
18

19 **CONCLUSION**

20 For the foregoing reasons and for good cause shown, the Court hereby GRANTS IN PART and  
21 DENIES IN PART defendants’ motion to dismiss. Docket No. 6134 in 07-1827; Docket No. 26 in 11-  
22 6686.

23 **IT IS SO ORDERED.**

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25 Dated: September 12, 2012

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28 SUSAN ILLSTON  
United States District Judge