

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

|                                                         |   |                                                                                                                                                       |
|---------------------------------------------------------|---|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| In re: CATHODE RAY TUBE (CRT)<br>ANTITRUST LITIGATION   | ) | Case No. C 07-5944 SC                                                                                                                                 |
|                                                         | ) | MDL No. 1917                                                                                                                                          |
| This Document Relates to:                               | ) |                                                                                                                                                       |
| Sharp Elecs. Corp. v. Hitachi,<br>Ltd., No. 13-cv-01173 | ) | ORDER GRANTING IN PART AND<br>DENYING IN PART TECHNOLOGIES<br>DISPLAYS AMERICAS, LLC'S MOTION<br>TO DISMISS SHARP'S FIRST<br><u>AMENDED COMPLAINT</u> |

**I. INTRODUCTION**

Now before the Court is Defendant Technologies Displays Americas, LLC's ("TDA" or "Defendant") motion to dismiss Sharp's<sup>1</sup> first amended complaint. ECF Nos. 2234 ("MTD"), 2030 ("FAC") (filed under seal). The matter is fully briefed, ECF Nos. 2280 ("Opp'n"), 2318 ("Reply"), and appropriate for decision without oral argument, per Civil Local Rule 7-1(b). As explained below, the Court GRANTS in part and DENIES in part the motion.

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<sup>1</sup> "Sharp" collectively includes Sharp Electronics Corporation ("SEC") and Sharp Electronics Manufacturing Company of America, Inc. ("SEMA").

1 **II. BACKGROUND**

2 The parties are familiar with this case's facts. Accordingly,  
3 the Court will only summarize some of the facts that are relevant  
4 to the instant motion

5 The underlying antitrust conspiracy in this MDL -- to fix  
6 prices of cathode ray tubes ("CRTs"), including color picture tubes  
7 ("CPTs"), and products containing CRTs ("CRT Products") -- is  
8 alleged to have lasted between March 1, 1995 and December 2007 (the  
9 "Relevant Period"). The plaintiffs in all of this MDL's cases  
10 contend that the defendants kept the conspiracy secret, in order to  
11 avoid putting the plaintiffs (and anyone else) on notice. But on  
12 November 8, 2007, the European Commission ("EC") issued a press  
13 release stating that its officials had raided several unnamed CRT  
14 manufacturers. Shortly thereafter, other countries' law  
15 enforcement agencies conducted similar raids, and within a few  
16 weeks, Defendants Panasonic, Samsung SDI, and Philips all  
17 acknowledged that they were under investigation.

18 Sharp filed an individual complaint on March 15, 2013, opting  
19 out of the putative DPP class. Sharp's complaint asserts claims  
20 under Section 1 of the Sherman Act, 15 U.S.C. et seq.; the  
21 California Cartwright Act, Cal. Bus. & Prof. Code § 16700 et seq.;  
22 the California UCL, Cal. Bus. & Prof. Code § 17200 et seq.; New  
23 York's Donnelly Act, N.Y. Gen. Bus. L. § 340 et seq.; the New York  
24 UCL, N.Y. Gen. Bus. L. § 349 et seq.; the New Jersey Antitrust Act,  
25 N.J. Stat. § 56:9-1 et seq.; and the Tennessee Antitrust Act, Tenn.  
26 Code Ann. § 47-25-101 et seq.

27 Sharp's complaint alleges the following facts about TDA  
28 specifically, and the Court takes them as true at this time.

1 Before 2005, TDA was known as "Thomson Displays America" and was a  
2 subsidiary of Defendant Thomson Consumer Electronics, Inc.  
3 ("Thomson Consumer"). FAC ¶ 72. In 2005, Videocon Industries,  
4 Inc. ("Videocon") acquired the CRT business of Defendants Thomson  
5 Consumer and Thomson SA (collectively "Thomson"), though Thomson SA  
6 allegedly maintained at least a 10 percent ownership stake in  
7 Videocon during the conspiracy period. Id. 197. Thomson is  
8 alleged to have been involved in the conspiracy between 1999 and  
9 Videocon's acquisition of the Thomson CRT business in 2005. Id. ¶  
10 199. Between 2005 and 2007, Videocon participated in several  
11 conspiracy-related meetings, continuing Thomson's practice, though  
12 Sharp alleges that Thomson remained involved in the conspiracy  
13 through Videocon and TDA. Id. ¶¶ 198.

14 TDA was responsible for Videocon's sales and marketing of CRT  
15 Products in North America, and Sharp alleges on information and  
16 belief that Videocon dominated or controlled TDA's policies and  
17 affairs, and directed TDA's pricing of CRT Products. Id. ¶ 199.  
18 Sealed facts indicate that at least two former Thomson employees  
19 who had previously attended conspiracy meetings then began working  
20 for TDA, while Videocon continued to participate in conspiratorial  
21 information sharing and meetings. Id. Under Videocon's direction,  
22 TDA and its Mexican subsidiary and co-conspirator Technologies  
23 Displays Mexicana distributed CRTs to direct purchasers, ensuring  
24 that the prices for those products did not undercut the pricing  
25 agreements reached at the conspiratorial meetings. Id. ¶ 200.

26 All of Sharp's claims are subject to four-year statutes of  
27 limitations, except the New York UCL and the Tennessee Antitrust  
28 Act, which have three-year statutes of limitations. TDA now moves

1 to dismiss Sharp's FAC.

2  
3 **III. LEGAL STANDARD**

4 A motion to dismiss under Federal Rule of Civil Procedure  
5 12(b)(6) "tests the legal sufficiency of a claim." Navarro v.  
6 Block, 250 F.3d 729, 732 (9th Cir. 2001). "Dismissal can be based  
7 on the lack of a cognizable legal theory or the absence of  
8 sufficient facts alleged under a cognizable legal theory."  
9 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.  
10 1988). "When there are well-pleaded factual allegations, a court  
11 should assume their veracity and then determine whether they  
12 plausibly give rise to an entitlement to relief." Ashcroft v.  
13 Iqbal, 556 U.S. 662, 664 (2009). However, "the tenet that a court  
14 must accept as true all of the allegations contained in a complaint  
15 is inapplicable to legal conclusions. Threadbare recitals of the  
16 elements of a cause of action, supported by mere conclusory  
17 statements, do not suffice." Id. at 678 (citing Bell Atl. Corp. v.  
18 Twombly, 550 U.S. 544, 555 (2007)). The allegations made in a  
19 complaint must be both "sufficiently detailed to give fair notice  
20 to the opposing party of the nature of the claim so that the party  
21 may effectively defend against it" and "sufficiently plausible"  
22 such that "it is not unfair to require the opposing party to be  
23 subjected to the expense of discovery." Starr v. Baca, 652 F.3d  
24 1202, 1216 (9th Cir. 2011).

25 Claims sounding in fraud are subject to the heightened  
26 pleading requirements of Federal Rule of Civil Procedure 9(b),  
27 which requires that a plaintiff alleging fraud "must state with  
28 particularity the circumstances constituting fraud." See Kearns v.

1 Ford Motor Co., 567 F.3d 1120, 1124 (9th Cir. 2009). "To satisfy  
2 Rule 9(b), a pleading must identify the who, what, when, where, and  
3 how of the misconduct charged, as well as what is false or  
4 misleading about [the purportedly fraudulent] statement, and why it  
5 is false." United States ex rel Cafasso v. Gen. Dynamics C4 Sys.,  
6 Inc., 637 F.3d 1047, 1055 (9th Cir. 2011) (internal quotation marks  
7 and citations omitted).

8  
9 **IV. DISCUSSION**

10 **A. Whether Sharp Adequately Pled a Claim Against TDA**

11 TDA argues that Sharp's complaint is purely speculative and  
12 insufficient to meet Rule 8's plausibility standard. MTD at 3.  
13 According to TDA, Sharp fails to plead enough detail about TDA's  
14 alleged involvement in the conspiracy, despite having the benefit  
15 of the Court's prior order on Sharp's pleading in a different case.  
16 Id. (citing ECF No. 1960 ("Order Granting Thomson MTD")). TDA  
17 contends that Sharp never alleges what TDA agreed to do, or did, in  
18 furtherance of the alleged conspiracy, such as attending specific  
19 meetings. Further, TDA states that alleging a parent-subsidiary  
20 relationship, without more, is not enough to make TDA liable for  
21 the torts of any of its affiliates -- mere corporate status is  
22 insufficient. Finally, TDA argues that its sale of CRTs does not  
23 automatically make it a co-conspirator, nor does it show that TDA  
24 was at any of the alleged conspiratorial meetings. All of these,  
25 TDA claims, render Sharp's allegations implausible.

26 Rule 8 demands "more than an unadorned, the-defendant-  
27 unlawfully-harmed-me accusation." Iqbal, 556 U.S. at 678. But the  
28 Court finds that Sharp has alleged enough specifics as to TDA to

1 warrant its pleadings surviving a motion to dismiss, particularly  
2 given the Court's frequent statements that plaintiffs in complex,  
3 multinational antitrust cases do not have to plead detailed,  
4 defendant-by-defendant allegations -- they only have to make  
5 allegations plausibly suggesting that each defendant participated  
6 in the conspiracy. See In re Cathode Ray Tube (CRT) Antitrust  
7 Litig., 738 F. Supp. 2d 1011, 1019 (N.D. Cal. 2010); In re TFT-LCD  
8 (Flat Panel) Antitrust Litig., 599 F. Supp. 2d 1179, 1184-85 (N.D.  
9 Cal. 2009). The Court has dismissed claims against certain  
10 defendants in this action because plaintiffs had essentially copied  
11 other pleadings and, in responsive briefs to motions to dismiss,  
12 defended their allegations' paucity of facts by comparing their  
13 complaints to the much-older pleadings the Court had held  
14 sufficient to survive a Rule 12(b)(6) motion, instead of referring  
15 to their own pleadings. See Sept. 26 Order at 5.

16 That reasoning still stands, but the Court does not find that  
17 Sharp has slipped below the pleading requirements set by Rule 8.  
18 Sharp's complaint does not set out elaborate fact pleading that  
19 explains every step Sharp contends TDA to have taken, but it does  
20 not have to go that far. In complex antitrust litigation, motive  
21 and intent play leading roles, and the proof is largely in the  
22 alleged conspirators' hands. Poller v. Columbia Broad. Sys., Inc.,  
23 368 U.S. 464, 473 (1962). Accordingly, pleadings must be  
24 plausible, but they do not have to be in the form of precisely  
25 detailed, defendant-by-defendant allegations. In re CRT, 738 F.  
26 Supp. 2d at 1017.

27 Sharp has pled that this particular conspiracy is structured  
28 in such a way that its allegations about TDA's business and

1 behavior make sense in terms of adequately stating TDA's  
2 involvement and putting it on notice of Sharp's claims against it.  
3 Sharp does not plead dates on which TDA is alleged to have attended  
4 conspiratorial meetings, but Sharp does plead that Videocon, which  
5 allegedly did attend those meetings, dominated and controlled TDA,  
6 and that executives who attended price-fixing meetings worked for  
7 Videocon and TDA. These pleadings are sufficient. And while Sharp  
8 has apparently obtained written discovery responses from TDA, no  
9 depositions have been taken and only a "small number of documents"  
10 have been provided. See Opp'n at 11 n.4. TDA is very new to this  
11 litigation and has not been involved in any capacity, unlike, for  
12 example, the Thomson Defendants. This puts Sharp's pleadings in a  
13 different posture, though the pleadings that are on the record rise  
14 above being mere labels and conclusions.

15 **B. Statutes of Limitation**

16 The doctrine of fraudulent concealment focuses on actions that  
17 a defendant took to prevent a plaintiff from learning of grounds  
18 for filing a suit. See Lukovsky v. City & Cnty. of S.F., 535 F.3d  
19 1044, 1051 (9th Cir. 2008). To invoke the doctrine, plaintiffs  
20 must allege facts demonstrating that they could not have discovered  
21 the alleged violations by exercising reasonable diligence.

22 Rosenfeld v. JPMorgan Chase Bank N.A., 732 F. Supp. 2d 952, 964  
23 (N.D. Cal. 2010); see also Hubbard v. Fid. Fed. Bank, 91 F.3d 75,  
24 79 (9th Cir. 1996). A fraudulent concealment claim must be alleged  
25 with particularity under Rule 9(b). Noll v. eBay, Inc., 282 F.R.D.  
26 462, 468 (N.D. Cal. 2012).

27 TDA notes that one of Sharp's earlier briefs concedes that  
28 Sharp can only assert fraudulent concealment through November 2007.

1 MTD at 8 n.4 (citing ECF No. 2194). However, TDA contends that  
2 even if Sharp could plead concealment, the ground for tolling would  
3 be inapplicable because Sharp's complaint was filed outside the  
4 limitations periods even if its claims were tolled through November  
5 2007. Id. Sharp views this statement as TDA's conceding that  
6 Sharp's allegations show fraudulent concealment through November  
7 2007, Opp'n at 15, though TDA maintains that Sharp's complaint  
8 simply lacks any facts supporting fraudulent concealment on TDA's  
9 part, Reply at 5.

10 The Court finds that Sharp's complaint has sufficiently pled  
11 fraudulent concealment until November 14, 2007, the latest date  
12 this Court has held to provide actual or inquiry notice to the  
13 DAPs. See In re Cathode Ray Tube (CRT) Antitrust Litig., No. C-07-  
14 5944, 2013 WL 4505701, at \*3 (N.D. Cal. Aug. 21, 2013); see also In  
15 re Rubber Chems. Antitrust Litig., 504 F. Supp. 2d 777, 789 (N.D.  
16 Cal. 2007) ("[I]t is generally inappropriate to resolve the fact-  
17 intensive allegations of fraudulent concealment at the motion to  
18 dismiss stage, particularly where the proof relating to the extent  
19 of the fraudulent concealment is alleged to be largely in the hands  
20 of the alleged conspirators."). This renders their claims time-  
21 barred unless they are able to invoke a tolling doctrine or some  
22 equivalent that would cover the time period from November 14, 2007  
23 to the filing of the present complaint.

24 To overcome this deficiency, Sharp asserts (1) tolling based  
25 on American Pipe and similar class-action tolling doctrines, and  
26 (2) the pendency of criminal proceedings and investigations against  
27 several Defendants and co-conspirators.

28 ///

1           i.        American Pipe Tolling

2        American Pipe held that commencement of a class action  
3 suspends the statute of limitation as to all putative members of  
4 the class up to and until class certification is denied or the  
5 plaintiff opts out of the class. 414 U.S. at 554; Williams v.  
6 Boeing Co., 517 F.3d 1120, 1136 (9th Cir. 2008); Emp'rs-Teamsters  
7 Local Nos. 175 & 505 Pension Trust Fund v. Anchor Capital Advisors,  
8 498 F.3d 920, 925 (9th Cir. 2007). "Tolling is fair in such a case  
9 because when the complaint is filed defendants have notice of the  
10 'substantive claims being brought against them.'" Williams, 517  
11 F.3d at 1136 (quoting Crown, Cork & Seal Co. v. Parker, 462 U.S.  
12 345, 352-53 (1983)).

13       TDA was not a defendant in any of the previously filed cases.  
14 This alone is enough for the Court to hold American Pipe tolling  
15 inapplicable in this case. See Biotech. Value Fund, L.P. v. Celera  
16 Corp., -- F. Supp. 2d --, 2013 WL 6731900, at \*8 (N.D. Cal. Dec.  
17 20, 2013) (not applying American Pipe to a defendant not named in  
18 any putative class action); Tech Data Corp. v. AU Optronics Corp.,  
19 No. 07-MD-1827, 2012 WL 3236065, at \*5 (N.D. Cal. Aug. 6, 2012)  
20 (same). Sharp argues that the Court should apply American Pipe  
21 tolling anyway, because there is "at least a fact question as to  
22 whether TDA was on notice of the claims sufficient to trigger  
23 American Pipe tolling." Opp'n at 21. Sharp cites no binding law  
24 to support its point. The Court does not find Sharp's arguments  
25 convincing. There is no authority behind the contention that the  
26 Court could or should apply American Pipe to toll claims against a  
27  
28

1 party not named as a defendant in any case that could toll an  
2 action.<sup>2</sup>

3           ii.       Governmental Action

4                   a.   New York

5       Sharp argues that the federal government's actions on the CRT  
6 conspiracy toll the statute of limitations for its Donnelly Act  
7 claims, beginning with the DOJ's criminal actions against CRT  
8 conspirators in February 2009. Sharp Opp'n at 11-12. They base  
9 this argument not on federal antitrust tolling provisions, but on  
10 the Donnelly Act's own tolling provision, which tolls Donnelly Act  
11 limitations periods pending federal antitrust proceedings:

12           Whenever any civil or criminal proceeding is instituted  
13 by the federal government to prevent, restrain, or  
14 punish violations of the federal antitrust laws, the  
15 running of the period of limitations in respect of every  
16 right of action arising under sections three hundred  
17 forty, three hundred forty-two and three hundred forty-  
two-a of this article, based in whole or in part on any  
matter complained of in the federal proceeding, shall be  
suspended during the pendency of said proceeding and for  
one year thereafter . . . .

18 N.Y. Gen. Bus. Law § 342-c. Sharp further notes that, elsewhere in  
19 this litigation, Defendants have conceded that Donnelly Act claims  
20 are tolled due to pending federal investigations. Opp'n at 12  
21 (citing ECF No. 1422 ("Defs. Joint Reply ISO MTD DAP Claims")).

22       Defendants contend that their earlier motion was directed  
23 toward other DAPs, whose complaints were filed in November 2011.  
24 Reply at 15. They also argue that the New York tolling provision  
25 does not save Sharp's claim. Id. at 14-15. According to  
26 Defendants, tolling under that statute commences only as of the

27       

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<sup>2</sup> Even if American Pipe applied, as explained in the concurrently  
28 filed Order on Defendants' Joint Motion to Dismiss, it would not  
toll any of Sharp's state law claims.

1 date an indictment was filed, and lasts through the pendency of  
2 prosecution. Id. at 15 (citing Hinds Cnty., Miss. v. Wachovia Bank  
3 N.A., 885 F. Supp. 2d 617, 628 (S.D.N.Y. 2012) (applying tolling  
4 under the federal provision, not Section 342-c); Dungan v. Morgan  
5 Drive-Away, Inc., 570 F.2d 867, 871 (9th Cir. 1978) (same)).

6 Defendants claim that because Sharp has alleged nothing as to the  
7 duration of any criminal proceedings, except fifty-five days  
8 between March 18, 2011 and May 12, 2011 when two defendants entered  
9 plea agreements, there is no way for Sharp to account for the  
10 period between November 2007 and March 2013. Id.

11 The Court is not convinced by Defendants' argument. The Court  
12 finds that § 16(i) tolling applies based on the open indictments in  
13 this case. For 15 U.S.C. § 16(i) to apply, a plaintiff must show  
14 by a "comparison of the two complaints on their face[s]" that there  
15 is a significant overlap between the two actions, such "that the  
16 matters complained of in the government suit bear a real relation  
17 to the private plaintiff's claim for relief." Leh v. Gen. Petro.  
18 Grp., 382 U.S. 54, 59 (1965). The Court finds accordingly here:  
19 the conspiracy is the same, many of the actors are the same, and  
20 the cases will share many facts. They overlap significantly, and  
21 the government's cases bear real relations to Sharp's case. Id.

22 First, one criminal matter, pending between March 18, 2011  
23 until its closure in August 30, 2012, tolls claims under § 16(i)  
24 for that time period plus a year. Further, based on J.M. Dungan v.  
25 Morgan Drive-Away, Inc., 570 F.2d 867 (9th Cir. 1978), tolling  
26 under § 16(i) begins at least at the indictment stage, though the  
27 Court notes that Dungan had the benefit of at least one completed  
28 criminal case. However, the Ninth Circuit's holding was in fact

1 based on the theory that the return of a grand jury indictment fits  
2 the statutory language of § 16(i) more comfortably than empanelling  
3 alone would, since the purpose of an indictment is the prevention,  
4 restraint, or punishment of antitrust violations. In this case,  
5 the open indictments Sharp references remain pending, and the Court  
6 finds Dungan instructive here: tolling under § 16(i) may begin at  
7 least with the return of an indictment, and absent facts or law  
8 indicating that the Court cannot apply tolling because not much has  
9 happened in those cases, the Court finds that under current  
10 precedent tolling will apply from February 10, 2009 to the present  
11 as to Sharp's Donnelly Act claims.

12  
13 **V. CONCLUSION**

14 As explained above, Sharp's state law claims are DISMISSED  
15 WITH PREJUDICE, with the exception of Sharp's Donnelly Act claims.  
16 All federal claims are undisturbed.

17  
18 IT IS SO ORDERED.

19  
20 Dated: March 13, 2014



21 UNITED STATES DISTRICT JUDGE  
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