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8

9 UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
11 (SAN FRANCISCO DIVISION)
12

13 IN RE: TFT-LCD (FLAT PANEL)
14 ANTITRUST LITIGATION

CASE NO. 3: 07-md-1827 SI
MDL NO. 1827

**LG DISPLAY'S MOTION FOR
PARTIAL SUMMARY JUDGMENT ON
WITHDRAWAL**

17 This Document Relates To:

18 ALL INDIRECT PURCHASER CLASS
19 ACTIONS
20

Date: September 23, 2011
Time: 9:00 a.m.
Dept.: Courtroom 10, 19th Floor
Judge: Hon. Susan Illston
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NOTICE OF MOTION AND MOTION FOR PARTIAL SUMMARY JUDGMENT

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 23, 2011, at 9:00 a.m. or as soon thereafter as the matter may be heard in Courtroom 10, 19th Floor, 450 Golden Gate Avenue, San Francisco, California, before the Honorable Susan Illston, defendants LG Display Co., Ltd. and LG Display America, Inc. (collectively, "LG Display") will and hereby do move the Court, under Rule 56(a) of the Federal Rules of Civil Procedure, for an Order granting partial summary judgment, holding that LG Display does not have joint or several liability for any actions of the alleged conspiracy on or after July 13, 2006, and dismissing all claims against it based upon purchases on and after July 13, 2006.

This motion is based upon this Notice and Motion, the following Memorandum of Points and Authorities, argument of counsel, and such other matters as the Court may consider.

ISSUES PRESENTED

1. [REDACTED]

2. [REDACTED]

MEMORANDUM OF POINTS AND AUTHORITIES

I. PRELIMINARY STATEMENT

[REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED] Plaintiffs indiscriminately allege that all defendants, including LG Display,
7 engaged in the conspiracy through December 31, 2006, the end of the class period. Indirect
8 Purchaser Plaintiffs' Third Consolidated Amended Complaint ¶ 1, ECF No. 2694 (Apr. 29,
9 2011) ("TAC"); Order Granting Indirect Purchaser Plaintiffs' Motion for Class Certification 6,
10 ECF No. 1642 (Mar. 28, 2010) ("Class Certification Order").

11 [REDACTED]
12 [REDACTED] By withdrawing, LG Display removed itself from
13 the alleged conspiracy and from liability for the later actions of the conspiracy and for any
14 purchases made thereafter from LG Display or any codefendants. Therefore, the Court should
15 enter partial summary judgment holding that LG Display is not liable under either individual or
16 joint and several liability for any later actions of alleged conspirators and for any claims based
17 upon purchases on or after July 13, 2006.

18 **II. STATEMENT OF FACTS**

19 The Court is already familiar with this case and the overall nature of the LCD
20 panel industry. *See, e.g., In re TFT-LCD (Flat Panel) Antitrust Litig.*, 586 F. Supp. 2d 1109,
21 1113-14 (N.D. Cal. 2008); Defs.' Joint Opp'n to Direct Purchaser Pls.' Mot. for Class
22 Certification 3-16, ECF No. 1112 (filed July 1, 2009); Defs. Opp'n To Indirect Purchaser Pls.'
23 Mot. For Class Certification 4-7, ECF No. 1176 (Aug. 10, 2009). This brief discusses only
24 those additional facts relevant to LG Display's withdrawal from the alleged conspiracy.

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4 **III. STANDARD FOR SUMMARY JUDGMENT**

5 Summary judgment is appropriate when there are no genuine issues of material
6 fact in dispute and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P.
7 56(c). The party moving for summary judgment bears the initial burden of showing that there
8 are no genuine issues of material fact. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48
9 (1986); *Stearns Co. v. United States*, 34 Fed. Cl. 264, 273 (1995). Where the moving party has
10 met its burden, the nonmoving party is required to go beyond the pleadings and, by affidavits,
11 depositions, answers to interrogatories, or admissions, designate specific facts showing that
12 there is a genuine issue for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986).

13 The nonmoving party must do more than just show that there is some doubt as to
14 the material facts. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586
15 (1986). There must be sufficient evidence with which the fact finder could reasonably find for
16 the nonmoving party if summary judgment is to be denied. *Anderson*, 477 U.S. at 250. "If the
17 evidence is merely colorable or is not significantly probative, summary judgment may be
18 granted." *Id.* at 249-250 (internal citations omitted). Where, as here, the plaintiff cannot show
19 that a genuine issue of material fact exists, the court must grant summary judgment for the
20 defendants.

21 **IV. ARGUMENT**

22 **A. Withdrawal Negates the Element of Agreement in a**
23 **Conspiracy and Severs Liability.**

24 The law on withdrawal from a conspiracy is clear and long-standing. A
25 conspirator who withdraws from a conspiracy is no longer liable for the later actions or effects
26 of the conspiracy. Withdrawal negates the element of agreement required to maintain a
27
28

conspiracy claim.¹ *United States v. Lothian*, 976 F.2d 1257, 1261 (9th Cir. 1992); *see also* *United States v. Greenfield*, 44 F.3d 1141, 1150 (2d Cir. 1995) (“A conspiracy exists when persons combine and agree A defendant withdraws from a conspiracy when he or she abandons the combination and agreement.”). A defendant withdraws from a conspiracy when it “either disavow[s] the unlawful goal of the conspiracy, affirmatively act[s] to defeat the purpose of the conspiracy, or take[s] definite, decisive, and positive steps to show that the [defendant’s] disassociation from the conspiracy is sufficient.” *Lothian*, 976 F.2d at 1261 (internal citation omitted); *see also* *United States v. Finestone*, 816 F.2d 583, 589 (11th Cir. 1987) (To establish withdrawal, defendant “must prove that he undertook affirmative steps, inconsistent with the objects of the conspiracy, to disavow or to defeat the conspiratorial objectives, *and* either communicated those acts in a manner reasonably calculated to reach his co-conspirators or disclosed the illegal scheme to law enforcement authorities”). Once a defendant makes a *prima facie* showing that it took an affirmative step to withdraw, it is plaintiff’s burden to rebut the showing with evidence sufficient to support a finding that defendant did not withdraw. *Lothian*, 976 F.2d at 1263; *cf. Krause v. Perryman*, 827 F.2d 346, 351 (8th Cir. 1987) (affirming dismissal of securities law and civil RICO claims against defendant because defendant had established withdrawal from the alleged conspiracy while plaintiffs had failed to present “any evidence sufficient to create a triable issue of fact on their claim that [defendant] had not withdrawn”).

The defendant’s affirmative act of withdrawal does not need to destroy the conspiracy to be effective. As the Second Circuit has explained: “The point of such ‘affirmative evidence’ requirements, though, is not to compel a conspirator to inform on his or

¹ A conspiracy consists of two elements: the defendants’ agreement to accomplish an illegal objective and an overt act on the part of some member of the conspiracy toward achieving that objective. *Lothian*, 976 F.2d at 1261 (citing *United States v. Loya*, 807 F.2d 1483, 1493 (9th Cir. 1987) (internal quotation omitted)); *see also* *United States v. Cont’l Group*, 603 F.2d 444, 462 (3d Cir. 1979) (“[C]onspiracy cases actually involve two types of intent, the intent to agree and the intent to effectuate the object of the agreement [T]he government must prove that the defendants agreed to effectuate an illegal purpose, [e].g., to fix prices.”).

1 her co-conspirators or to warn-off possible victims, admirable as those actions might be. It is
2 rather to make sure that a withdrawal did occur and is not simply being invented *ex post*.”
3 *Greenfield*, 44 F.3d at 1150. In *Greenfield*, the Second Circuit held that a district court, which
4 credited a defendant’s evidence of an affirmative act, was wrong to hold that this act was not
5 enough to constitute withdrawal even though the conspiracy continued on without him. *Id.*

6 By withdrawing, the defendant severs its joint-and-several liability for the acts of
7 co-conspirators committed after its withdrawal. *Lothian*, 976 F.2d at 1262. The defendant
8 “terminate[s its] liability for the continuing illegal acts of a conspiracy that [it] had joined” by
9 effectively withdrawing, either through “report[ing] the conspiracy to the authorities or
10 announc[ing] [its] withdrawal to [its] coconspirators.” *In re Brand Name Prescription Drugs*
11 *Antitrust Litig.*, 123 F.3d 599, 616 (7th Cir. 1997) (citing *United States v. U. S. Gypsum Co.*,
12 438 U.S. 422, 463-65 (1978)); *see also Hyde v. United States*, 225 U.S. 347, 371 (1912)
13 (agreeing with jury instruction, which instructed in part that if defendant had “disclosed all he
14 knew about the matter [to the authorities] ... nothing that could have been done by the others
15 after that could affect him at all”).

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18 **V. CONCLUSION**

19 For the reasons described above, the Court should grant partial summary
20 judgment to LG Display, holding that LG Display does not have joint or several liability for any
21 actions of the alleged conspiracy on or after July 13, 2006, and dismissing all claims against it
22 based upon purchases on and after July 13, 2006.

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24 DATED: July 22, 2011

25
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