

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Christopher T. Micheletti  
**ZELLE LLP**  
44 Montgomery St., Suite 3400  
San Francisco, CA 94104  
Telephone: (415) 693-0700  
Facsimile: (415) 693-0770  
cmicheletti@zellelaw.com

Victoria Sims  
**CUNEO GILBERT & LADUCA, LLP**  
4725 Wisconsin Avenue, NW, Suite 200  
Washington, DC 20016  
Telephone: (202) 789-3960  
Facsimile: (202) 789-1813  
vicky@cuneolaw.com

William V. Reiss  
**ROBINS KAPLAN LLP**  
1325 Avenue of the Americas, Suite 2601  
New York, NY 10019  
Telephone: (212) 980-7400  
Facsimile: (212) 980-7499  
wreiss@robinskaplan.com

Shawn M. Raiter  
**LARSON • KING, LLP**  
30 East Seventh Street, Suite 2800  
Saint Paul, MN 55101  
Telephone: (651) 312-6518  
Facsimile: (651) 789-4818  
sraiter@larsonking.com

*Interim Co-Lead Class Counsel for the  
End-User Plaintiffs*

*Interim Co-Lead Class Counsel for the  
Reseller Plaintiffs*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

IN RE: HARD DRIVE SUSPENSION  
ASSEMBLIES ANTITRUST  
LITIGATION

Case No. 19-md-02918-MMC  
MDL No. 2918

This Document Relates to:  
ALL END-USER AND RESELLER  
ACTIONS

**INDIRECT PURCHASER PLAINTIFFS’  
OPPOSITION TO DEFENDANTS’ MOTION  
FOR PARTIAL SUMMARY JUDGMENT  
REGARDING FOREIGN COMMERCE**

Date: January 13, 2023  
Time: 9:00 AM  
Crtrm: 7, 19th Floor  
Before: Hon. Maxine M. Chesney

**REDACTED VERSION**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF CONTENTS**

Page(s)

TABLE OF AUTHORITIES ..... iii

GLOSSARY.....vii

STATEMENT OF ISSUES TO BE DECIDED ..... 1

INTRODUCTION ..... 1

STATEMENT OF FACTS .....2

    I. Nature of the SA Market.....2

    II. Defendants’ Conspiracy Targeted the U.S. Market.....4

ARGUMENT .....8

    I. APPLICABLE LEGAL STANDARDS .....8

    II. THE FTAIA DOES NOT BAR IPPS’ CLAIMS .....8

        A. Defendants’ Arguments are Contrary to Ninth Circuit Precedent.....9

        B. IPPs’ Claims Arise from Import Commerce.....10

        C. The Domestic Effects of the Conspiracy Give Rise to IPPs’ Claims .....13

            1. Defendants’ Anticompetitive Conduct Had a Direct Effect on U.S. Commerce.....14

            2. Defendants’ Anticompetitive Conduct Had a Substantial Effect on U.S. Commerce .....16

            3. IPPs’ Claims Arise from the Domestic Effect of Defendants’ Anticompetitive Conduct.....18

    III. THE DORMANT COMMERCE CLAUSE HAS NO APPLICATION HERE.....19

    IV. IPPS’ CLAIMS DO NOT EXCEED THE SCOPE OF THE STATE STATUTES.....23

    V. CONCLUSION .....25

**TABLE OF AUTHORITIES**

|  | <b>Page(s)</b> |
|--|----------------|
| <b>Cases</b>   |                |
| <i>Anderson v. Liberty Lobby, Inc.</i> ,<br>477 U.S. 242 (1986).....   | 8              |
| <i>Ass'n des Eleveurs de Canards et d'Oies du Quebec v. Bonta</i> ,<br>33 F.4th 1107 (9th Cir. 2022) .....   | 21             |
| <i>Ass'n des Eleveurs de Canards et d'Oies du Quebec v. Harris</i> ,<br>729 F.3d 937 (9th Cir. 2013).....  | 20             |
| <i>Ass'n for Medicines v. Frosh</i> ,<br>887 F.3d 664 (4th Cir. 2018).....   | 20, 22         |
| <i>Barclays Bank PLC v. Franchise Tax Bd.</i> ,<br>512 U.S. 298 (1994).....  | 22             |
| <i>Biocad JSC v. F. Hoffmann-La Roche</i> ,<br>942 F.3d 88 (2d. Cir. 2019).....  | 15             |
| <i>California v. ARC America Corp.</i> ,<br>490 U.S. 93 (1989).....  | 19, 21         |
| <i>Costco Wholesale Corp. v. AU Optronics Corp.</i> ,<br>No. C13-1207RAJ, 2014 WL 4718358 (W.D. Wash. Sept. 22, 2014).....   | 10, 15         |
| <i>Exxon Corp. v. Governor of Maryland</i> ,<br>437 U.S. 117 (1978).....   | 21             |
| <i>F. Hoffmann-LaRoche Ltd, v. Empagran</i> ,<br>542 U.S. 155 (2004).....  | 1, 8, 21       |
| <i>Global Reinsurance Corp. U.S. Branch v. Equitas Ltd.</i> ,<br>18 N.Y.3d 722 (2012) .....  | 20             |
| <i>Healy v. The Beer Inst.</i> ,<br>491 U.S. 324 (1989).....   | 20             |
| <i>Illinois Brick Co., v. Illinois</i> ,<br>431 U.S. 720 (1977).....   | 17, 24         |
| <i>IMS Health Inc. v. Mills</i> ,<br>616 F.3d 7 (1st Cir. 2010), cert. granted, judgment vacated sub nom. <i>IMS Health, Inc. v. Schneider</i> , 564 U.S. 1051, 131 S. Ct. 3091, 180 L. Ed. 2d 911 (2011)..... | 20             |

1 *In re Air Cargo Shipping Servs. Antitrust Litig.*,  
 2 No. MD 06-1775JGVVP, 2008 WL 5958061 (E.D.N.Y. Sept. 26, 2008) *report*  
 3 *and recommendation adopted in part*, 2009 WL 3443405 (E.D.N.Y. Aug. 21,  
 2009) *aff'd*, 697 F.3.d 154 (2d Cir. 2012) ..... 10

4 *In re Brand Name Prescription Drugs Antitrust Litig.*,  
 5 123 F.3d 599 (7th Cir. 1997) (Posner, J.) *abrogated on other grounds by Rivet*  
 6 *v. Regions Bank of La.*, 522 U.S. 470 (1988)..... 22, 23

7 *In re Capacitors Antitrust Litig. (No. III)*,  
 8 No. 17-md-02801, 2018 WL 4558265 (N.D. Cal. Sept. 20, 2018)..... 10, 13

9 *In re Cathode Ray Tube (CRT) Antitrust Litig.*,  
 10 No. C-07-5944, 2016 WL 5725008 (N.D. Cal. Sept. 30, 2016) ..... 10, 15-16, 18

11 *In re Lorazepam & Clorazepate Antitrust Litig.*,  
 12 295 F. Supp. 2d 30 (D.D.C. 2003) ..... 23

13 *In re Optical Disk Drive Antitrust Litig.*,  
 14 10-md-2143 RS, 2016 WL 467444 (N.D. Cal. Feb. 8, 2016)..... 19

15 *In re Optical Disk Drive Antitrust Litig.*,  
 16 No. 10-md-2143-RS, 2017 WL 11513316 (N.D. Cal. Dec. 18, 2017) ..... 10, 13, 15

17 *In re TFT-LCD (Flat Panel) Antitrust Litig.*,  
 18 822 F.Supp.2d 953 (N.D. Cal. 2011) ..... 9, 11, 14, 15

19 *In re TFT-LCD (Flat Panel) Antitrust Litig.*,  
 20 No. M 07-1827 SI, 267 F.R.D. 583 (N.D. Cal. 2010), *amended in part*, 2011  
 21 WL 3268649 (N.D. Cal. July 28, 2011)..... 19

22 *In re TFT-LCD (Flat Panel) Antitrust Litig., Nokia Corp. et al. v. AU Optronics*  
 23 *Corp.*,  
 24 Nos. M 07-1827 SI, No. C 09-5609 SI, 2012 WL 3763616 (N.D. Cal. Aug. 29,  
 2012) ..... 10

25 *In re Vitamin C Antitrust Litig., Animal Science Prods., Inc. v. Hebei Welcome*  
 26 *Pharm Co.*,  
 27 904 F. Supp.2. 310 (E.D.N.Y. 2012)..... 11

28 *Japan Line, Ltd. v. Los Angeles Cnty.*,  
 441 U.S. 434 (1979)..... 20

*K-S Pharmacies, Inc. v. Am. Home Prods. Corp.*,  
 962 F.2d 728 (7th Cir. 1992) (Easterbrook, J.) ..... 23

*Knevelbaard Dairies v. Kraft Foods, Inc.*,  
 232 F.3d 979 (9th Cir. 2000)..... 19

|    |   |        |
|----|---|--------|
| 1  | <i>Leegin Creative Leather Prod., Inc. v. PSKS, Inc.</i> ,                            |        |
| 2  | 551 U.S. 877 (2007).....  | 24, 25 |
| 3  | <i>Longaker v. Bos. Sci. Corp.</i> ,  |        |
| 4  | 872 F. Supp. 2d 816 (D. Minn. 2012), <i>aff'd</i> , 715 F.3d 658 (8th Cir. 2013)..... | 20     |
| 5  | <i>McBurney v. Young</i> ,  |        |
| 6  | 569 U.S. 221 (2013).....  | 20     |
| 7  | <i>Minn-Chem, Inc. v. Agrium, Inc.</i> ,  |        |
| 8  | 683 F.3d 845 (7th Cir. 2012).....   | 18     |
| 9  | <i>Motorola Mobility LLC v. AU Optronics Corp.</i> ,                                  |        |
| 10 | 775 F.3d 816 (7th Cir. 2015).....   | 17-18  |
| 11 | <i>Nat'l Ass'n of Optometrists &amp; Opticians v. Harris</i> ,                        |        |
| 12 | 682 F.3d 1144 (9th Cir. 2012).....  | 21     |
| 13 | <i>Nat'l Collegiate Athletic Ass'n v. Bd. of Regents of Univ. of Oklahoma</i> ,       |        |
| 14 | 468 U.S. 85 (1984).....   | 24     |
| 15 | <i>Nissan Fire &amp; Marine Ins. Co. v. Fritz Companies, Inc.</i> ,                   |        |
| 16 | 210 F.3d 1099 (9th Cir. 2000).....  | 8      |
| 17 | <i>NLRB v. Jones &amp; Laughlin Steel Corp.</i> ,                                     |        |
| 18 | 301 U.S. 1 (1937).....  | 22     |
| 19 | <i>Pharm. Research &amp; Mfrs. of Am. v. Walsh</i> ,                                  |        |
| 20 | 538 U.S. 644 (2003).....  | 20     |
| 21 | <i>Prevent DEV GmbH v. Adient PLC</i> ,   |        |
| 22 | No. 20-cv-13137, 2021 WL 5585917 (E.D. Mich. Nov. 30, 2021).....                      | 18     |
| 23 | <i>Proview Technology Inc., et al. v. AU Optronics Corp, et. Al.</i> ,                |        |
| 24 | C 12-3802 (N.D. Cal. Sept. 25, 2014).....   | 11     |
| 25 | <i>S.-Cent. Timber Dev., Inc. v. Wunnicke</i> ,                                       |        |
| 26 | 467 U.S. 82 (1984).....   | 20     |
| 27 | <i>Sam Francis Found. v. Christies, Inc.</i> ,  |        |
| 28 | 784 F.3d 1320 (9th Cir. 2015).....  | 21     |
|    | <i>Shields v. Fed'n Internationale de Natation</i> ,                                  |        |
|    | 419 F. Supp. 3d 1188 (N.D. Cal. 2019).....  | 13     |
|    | <i>United Phosphorus, Ltd. v. Angus Chem. Co.</i> ,                                   |        |
|    | 131 F. Supp. 2d 1003 (N.D. Ill. 2001).....  | 18     |
|    | <i>United States v. Anderson</i> ,  |        |
|    | 326 F.3d 1319 (11th Cir. 2003).....   | 13     |

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.