

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: CATHODE RAY TUBE (CRT))	MDL No. 1917
ANTITRUST LITIGATION)	
)	Case No. C-07-5944-SC
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This Order Relates To:)	ORDER DENYING BEIJING-
)	MATSUSHITA COLOR CRT CO.'S
)	<u>MOTION TO DISMISS</u>
<u>Best Buy Co., Inc. v. Hitachi</u>)	
<u>Ltd., No. 11-cv-05513-SC;</u>)	
)	
<u>Costco v. Hitachi Ltd., No. 11-cv-</u>)	
<u>06397-SC;</u>)	
)	
<u>Target Corp. v. Chunghwa, No. 11-</u>)	
<u>cv-05514-SC;</u>)	
)	
<u>Tech Data v. Hitachi, Ltd., No.</u>)	
<u>13-cv-00157-SC.</u>)	
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I. INTRODUCTION

Now before the Court is Defendant Beijing-Matsushita Color CRT Company's ("Defendant" or "BMCC") motion to dismiss certain Direct Action Plaintiffs' ("Plaintiffs" or "DAPs") complaints for lack of personal jurisdiction.¹ ECF No. 2118 ("MTD"). The motion is fully

¹ The complaints in question are filed under seal in Best Buy Co.

1 briefed. ECF Nos. 2239-4 ("Opp'n") (filed under seal), 2363
 2 ("Reply").² Finding this matter suitable for disposition without
 3 oral argument, Civ. L.R. 7-1(b), the Court DENIES the motion.

4
 5 **II. BACKGROUND**

6 Defendant is a Chinese company with its principal place of
 7 business in Beijing, China. See Target SAC ¶ 38; Best Buy FAC ¶
 8 44; Sears Compl. ¶ 40; Tech Data FAC ¶ 46. During the time
 9 relevant to the Complaints, Defendant was a joint venture, and its
 10 shareholders included MT Picture Display Co. Ltd. ("MTPD"), a
 11 subsidiary of Defendant Panasonic Corporation ("Panasonic"), which
 12 owned 50 percent of Defendant. Id. Three Chinese companies owned
 13 the remainder. See id. Plaintiffs allege that MTPD controlled
 14 Defendant, classified it as a business unit, monitored its
 15 activities, and assigned its directors responsibility over
 16 Defendant. ECF No. 2339-5 ("Loh Decl.") Ex. D at 6, 11, 12, 17,
 17 18, 27, 37, 38 (filed under seal). Originally, MTPD was formed as
 18 a joint venture between Defendants Panasonic and Toshiba, with

19 v. Hitachi, Ltd., No. 3:11-cv-05513-SC; Costco v. Hitachi, Ltd.,
 20 No. 3:11-cv-06397-SC; Target Corp. v. Chunghwa, No. 3:aa-cv-05513-
 21 SC; and Tech Data v. Hitachi, Ltd., No. 3:13-cv-00157-SC. The
 22 Court refers to the complaints according to each plaintiff's name,
 but the relevant pleadings are variously in their first or second
 amended stages. The parties refer to the pleadings in this way, so
 the Court follows suit.

23 ² Defendant also asks the Court to take judicial notice of a
 24 California Superior Court case quashing a summons for Defendant on
 25 personal jurisdiction grounds. ECF Nos. 2372 ("RJN"), 2372-1
 26 ("Quash Order"). Plaintiffs object. ECF No. 2376. The Court
 27 GRANTS Defendant's motion under Federal Rule of Evidence 201,
 because the Quash Order is a state court decision, but the Court
 28 otherwise finds the Quash Order unconvincing: it is an unpublished
 California court decision; it was based on different facts and
 arguments; and it evaluated Defendant's contacts with California
 alone, not with the United States (which is the proper forum to
 consider for this case's purposes).

1 Panasonic owning 64.5 of MTPD and Toshiba owning the remaining
2 35.5, but Panasonic purchased Toshiba's share on March 30, 2007,
3 making MTPD Panasonic's wholly owned subsidiary. Best Buy FAC ¶
4 43; Tech Data FAC ¶ 45; Target SAC ¶ 37. Panasonic personnel moved
5 interchangeably through Defendant, MTPD, and related entities.

6 Plaintiffs allege that between at least 1998 and 2007,
7 Defendant conspired to fix prices of CRTs ultimately sold in the
8 United States. See Best Buy FAC ¶¶ 1, 4, 14, 44; Tech Data FAC ¶¶
9 1, 4, 15, 46; Target SAC ¶¶ 1, 3, 14, 38. This included attending
10 meetings with co-conspirators regarding the prices of CRTs sold to
11 corporate affiliates, which manufactured finished CRT Products like
12 televisions and computer monitors for sale in the United States.
13 See Best Buy FAC ¶¶ 116-30, 146; Tech Data FAC ¶¶ 121-34, 142;
14 Target SAC ¶¶ 109-24, 140. The co-conspirators allegedly ensured
15 that all original equipment manufacturers ("OEMs"), including their
16 affiliates, paid supracompetitive prices for CRTs around the world,
17 including in the United States. See Best Buy FAC ¶ 127; Tech Data
18 FAC ¶ 132; Target SAC ¶ 120.

19 Defendant allegedly participated in price-fixing meetings in
20 China between 1998 and 2007. See, e.g., Loh Decl. Ex. E ("Samsung
21 Interrogs.") at 29-85 (summarizing Defendant Samsung SDI's price-
22 fixing meetings with alleged co-conspirators, including Defendant);
23 id. Ex. F ("Yang Depo.") 402:3-22 (stating that Defendant and other
24 alleged co-conspirators conducted meetings in China); id. Ex. G
25 ("Lu Depo.") 238:2-23 (same); id. Ex. O (meeting notes from a
26 discussion among alleged co-conspirators, including Defendant,
27 regarding CRT marketing information, including sales to United
28 States customers like Wal-Mart, Circuit City, and Sears). The

1 alleged co-conspirators coordinated pricing decisions in relation
2 to United States market conditions, and discussed CRT prices in
3 U.S. dollars. Id. Ex. H ("Mar. 9, 2001 Notes") at CHU00029193E
4 (noting that Defendant Orion, as well as other unnamed customers,
5 would see an increase in orders as the United States market's high
6 season drew closer), CHU00029194E (stating that though Defendant
7 did not attend that meeting, another party was responsible for
8 delivering price increase news to Defendant so that producers would
9 not confuse customers by providing lower prices); id. Ex. I ("Aug.
10 23, 1999 Notes") at CHU00029179.02E (confirming that Defendant had
11 raised CRT prices from USD 29.50 to USD 30.50 following
12 communications with another alleged co-conspirator).

13 Importantly for this particular case, Defendant asserts that
14 it never sold any CRTs or CRT Products to United States customers -
15 - rather, it sold the majority of its CRTs to customers in China.
16 ECF No. 2118-1 ("Kinoshita Decl.") ¶¶ 21-23. It sold certain CRTs
17 to Defendant Panasonic, which then sold them in the United States,
18 but Defendant avers that it had no control over or responsibility
19 for Panasonic's volume or pricing decisions. Id. Certain
20 deposition testimony states, however, that Defendant sold CRTs to
21 AKEI, which the witness states was a New Jersey-based Matsushita
22 affiliate. Loh Decl. Ex. K ("Liu Depo.") 423:17-424:11. Further,
23 Panasonic and Defendant exchanged frequent emails regarding Chinese
24 television makers' sales to the United States. See Loh Decl. Ex. L
25 ("Jun. 13, 2002 Email"). Defendant supplied this information to
26 Panasonic, which included certain Chinese manufacturers' sales to
27 Best Buy and the American military, among others. Loh Decl. Ex. M
28 ("Sept. 11, 2003 Email"). Other emails concern discussions among

1 Defendant, Panasonic, and MTPD about price and volume increases to
2 the United States. Loh Decl. Ex. N ("Sept. 11, 2006 Email").

3 Plaintiffs sued Defendant under federal and state antitrust
4 and competition laws, based on their allegations that Defendant
5 fixed prices on CRTs that it or its affiliates sold in the United
6 States. Defendant moves to dismiss, arguing that the Court lacks
7 either general or specific jurisdiction over it, and that some
8 Plaintiffs' service on Defendant was improper, owing to what
9 Defendant claims is the Court's error in prior orders concerning
10 methods of serving foreign defendants.

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12 **III. LEGAL STANDARD**

13 **A. Jurisdiction - Rule 12(b)(2)**

14 Under Rule 12(b)(2) of the Federal Rules of Civil Procedure,
15 defendants may move to dismiss for lack of personal jurisdiction.
16 The Court may consider evidence presented in affidavits and
17 declarations determining personal jurisdiction. Doe v. Unocal
18 Corp., 248 F.3d 915, 922 (9th Cir. 2001). Plaintiff bears the
19 burden of showing that the Court has personal jurisdiction over
20 Defendants. See Pebble Beach Co. v. Caddy, 453 F.3d 1151, 1154
21 (9th Cir. 2006). "[T]his demonstration requires that the plaintiff
22 make only a prima facie showing of jurisdictional facts to
23 withstand the motion to dismiss." Id. (quotations omitted).
24 "[T]he court resolves all disputed facts in favor of the plaintiff
25" Id. (quotations omitted). "The plaintiff cannot simply
26 rest on the bare allegations of its complaint, but uncontroverted
27 allegations in the complaint must be taken as true." Mavrix Photo,
28 Inc. v. Brand Techs., Inc., 647 F.3d 1218, 1223 (9th Cir. 2011)

1 (quotations and citations omitted). The Court may not assume the
2 truth of allegations that are contradicted by affidavit. Data
3 Disc, Inc. v. Sys. Tech. Assocs., Inc., 557 F.2d 1280, 1284 (9th
4 Cir. 1977).

5 Courts may exercise personal jurisdiction over a defendant
6 only if (1) a statute confers jurisdiction and (2) exercising
7 jurisdiction would comport with constitutional due process. See
8 Action Embroidery Corp. v. Atlantic Embroidery, Inc., 368 F.3d
9 1174, 1177 (9th Cir. 2004). Since the federal Clayton Act, 15
10 U.S.C. § 22, fulfills the statutory requirement for jurisdiction in
11 this case, the question on this motion is whether exercising
12 jurisdiction would comport with due process. For a court to
13 exercise personal jurisdiction over a non-resident defendant
14 consistent with due process, the defendant must have "certain
15 minimum contacts" with the relevant forum "such that the
16 maintenance of the suit does not offend 'traditional notions of
17 fair play and substantial justice.'" Int'l Shoe Co. v. Washington,
18 326 U.S. 310, 316 (1945) (quoting Milliken v. Meyer, 311 U.S. 457,
19 463 (1940)). If a defendant has sufficient minimum contacts,
20 personal jurisdiction may be founded on either general jurisdiction
21 or specific jurisdiction. Panavision Int'l, L.P. v. Toeppen, 141
22 F.3d 1316, 1320 (9th Cir. 1998). The relevant forum for this
23 case's minimum contacts analysis is the United States. Go-Video,
24 Inc. v. Akai Elec. Co. Ltd., 885 F.2d 1406, 1415-16 (9th Cir.
25 1989).

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1 **IV. DISCUSSION**2 **A. Waiver**

3 Plaintiffs first argue that Defendant waived its personal
4 jurisdiction defense. As a general rule, if a party files a
5 responsive pleading or makes a Rule 12 motion but does not raise
6 personal jurisdiction as a defense, the party waives the right to
7 raise personal jurisdiction later. See Fed. R. Civ. P. 12(h);
8 Parker v. United States, 110 F.3d 678, 682 (9th Cir. 1997).
9 Plaintiffs cite to some of Defendant's earlier MDL filings, in
10 other plaintiffs' cases, to support their contention that Defendant
11 has waived its personal jurisdiction argument in this case by not
12 raising it in other cases. See Opp'n at 11 (citing various
13 filings). Plaintiffs argue that because their complaints are
14 essentially the same as the other plaintiffs' were, and Defendant
15 is represented by the same counsel, Defendant must have waived its
16 personal jurisdiction defense in this case by not raising it in
17 previous, separate cases. Id. at 11-12 (citing In re Polyester
18 Staple Antitrust Litig., No. 3:03-CV-1516, 2008 WL 906331, at *16-
19 18 (W.D.N.C. Apr. 1, 2008)). Plaintiffs also contend that simply
20 by being part of this litigation for over five years, Defendant has
21 waived its personal jurisdiction defense by implication.

22 Plaintiffs are correct about the basic law of Rule 12 and
23 waiver, but they are wrong about how it works in this particular
24 instance. The Ninth Circuit has held that even if actions are
25 closely related -- as when different plaintiffs sue the same
26 defendant in different cases but based on the same facts --
27 defendants do not waive their personal jurisdiction defense by
28 raising it only in a later action, so long as the defendant is not

1 independently seeking affirmative relief in the same court
2 concerning the same transaction or occurrence. Dow Chem. Co. v.
3 Calderon, 422 F.3d 827, 835-36 (9th Cir. 2005); see also Fahmy v.
4 Jay-Z, No. CV 07-5715 CAS (PJWx), 2008 WL 4792383, at *4 (C.D. Cal.
5 Oct. 29, 2008) (citing Calderon). In this case, even though
6 Defendant has been haled into court by numerous plaintiffs
7 regarding the same alleged activity, Defendant has not
8 affirmatively decided to seek relief on its own, thereby consenting
9 to the jurisdiction of this Court. See Calderon, 422 F.3d at 836.

10 Defendant has not therefore waived its personal jurisdiction
11 defense in Plaintiffs' cases. In answering some of the earlier
12 pleadings, Defendant expressly reserved its right to raise a
13 personal jurisdiction later, and it has never otherwise waived that
14 right in these particular cases. See MTD at 7 n.12 (citing
15 responsive pleadings). Plaintiffs' separate argument that
16 Defendant waived its personal jurisdiction defense in these cases
17 by participating in this MDL for years is wrong for the same
18 reasons stated above, and because it is based on one non-binding,
19 out-of-circuit case. In the Ninth Circuit, Defendant is free to
20 change its litigation strategy in these Plaintiffs' cases even if
21 it took a separate course in other cases.

22 **B. Service**

23 Defendant argues that the Best Buy, Costco, Sears, and Target
24 complaints were not properly served on it, because it is a Chinese
25 corporation and, under Rule 4, the complaints should have been
26 served to its foreign process agent.³ Instead, per court order,

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28 ³ Plaintiffs argue that Defendant waived this defense, but the
Court rejects this argument for the same reasons the Court rejected
Plaintiffs' personal jurisdiction waiver argument.

1 those plaintiffs served Defendant by mail at the Washington, D.C.
2 office of Defendant's counsel. Defendant contends that the Court's
3 order and Plaintiffs' service contravene Rule 4, the Hague
4 Convention,⁴ Ninth Circuit precedent, and Defendant's due process
5 rights.

6 On June 27, 2012, the Court issued an Order permitting some of
7 the DAPs to serve Defendant by mail at its D.C. counsel's offices
8 under Rule 4(f)(3), which provides for service on a defendant in a
9 foreign country "by other means not prohibited by international
10 agreement as the Court orders." ECF No. 1241 ("Service Order").
11 This Rule's purpose is to require a process by which a defendant
12 gets actual notice of claims against it, and an opportunity to be
13 heard. Id. at 2 (citing Rio Props., Inc. v. Rio Int'l Interlink,
14 284 F.3d 1007, 1016 (9th Cir. 2002)).

15 Defendant argues, first, that the Service Order is facially
16 deficient because Rule 4(f) empowers courts to authorize service of
17 process "at a place not within any judicial district of the United
18 States," but the Service Order specifically permits service in
19 Washington D.C., which is obviously within a United States judicial
20 district. Neither the Ninth Circuit nor any lower court has taken
21 up Defendant's interpretation, likely because the court orders
22 generally crafted under Rule 4(f)(3) require transmission of
23 service papers to a foreign defendant via a domestic conduit like a
24 law firm or agent -- ultimately, the foreign individual is served
25 and thereby provided notice outside a United States judicial

26 _____
27 ⁴ In this case, the "Hague Convention" is short for the Hague
28 Convention on the Service Abroad of Judicial and Extrajudicial
Documents in Civil or Commercial Matters, Nov. 15, 1965, 20 U.S.T.
361.

1 district, in accordance with Rule 4's plain language. Rio, 284
2 F.3d at 1016 ("Applying th[e] proper construction of Rule 4(f)(3) .
3 . . . , trial courts have authorized a wide variety of alternative
4 methods of service including . . . delivery to defendant's
5 attorney."); Richmond Techs., Inc. v. Aumtech Bus. Solutions, No.
6 11-CV-02460-LHK, 2011 WL 2607158, at *12-13 (N.D. Cal. July 1,
7 2011) (discussing service on a foreign defendant via domestic
8 counsel under Rule 4(f)(3)). There is no contradiction here.

9 Second, Defendant argues that, contrary to Rule 4(f)(3),
10 service on Defendant is "prohibited by international agreement"
11 because although China is a signatory to the Hague Convention, it
12 objected to Article 10 of the Convention, which allows for service
13 "by postal channels" or through judicial officers, official, or
14 other persons in the state of destination provided that the
15 signatory does not object. MTD at 24. Defendant contends that
16 because China objected to Article 10, service on Defendant can only
17 be effected through the Chinese Central Authority in Beijing. Id.
18 Defendant therefore claims that the Service Order "contradicts
19 clear dicta" from Rio, is inconsistent with Rule 4(f)(3), and
20 violates the Hague Convention. Defendant is wrong on each point.
21 While Rio did involve a non-signatory country, its reasoning is
22 still applicable so long as service on Defendant is court-directed
23 and not prohibited by an international agreement. See In re LDK
24 Solar Secs. Litig., No. C-07-05182 WHA, 2008 WL 2415186, at *3
25 (N.D. Cal. June 12, 2008). In this case, as in In re LDK Solar,
26 Plaintiffs did not seek to effect service by Chinese postal
27 channels: Defendant was served through its counsel's Washington,
28 D.C. office. Id. The Hague Convention does not prohibit this, and

1 as this Court has noted, it is a common method of service under
2 Rule 4(f)(3). Richmond Techs., 2011 WL 2607158, at *13; In re LDK
3 Solar, 2008 Wl 2415186, at *3.

4 Finally, the Court finds that this method of service was
5 reasonably calculated to apprise Defendant of the pendency of the
6 action and afford it an opportunity to be heard. Rio, 284 F.3d at
7 1016-17 (citing Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S.
8 306, 314 (1950)). Defendant obviously has notice of the action,
9 and Freshfields is skillfully representing its interests. The
10 Court therefore finds that service effected under the Service Order
11 comports with due process. The Court accordingly rejects
12 Defendant's argument that it was improperly served in this case.

13 **C. Personal Jurisdiction**

14 There are two forms of personal jurisdiction: "specific" and
15 "general." "A court may exercise specific jurisdiction where the
16 cause of action arises out of or has a substantial connection to
17 the defendant's contacts with the forum." Glencore Grain Rotterdam
18 B.V. v. Shivnath Rai Harnarain Co., 284 F.3d 1114, 1123 (9th Cir.
19 2002) (citing Hanson v. Denckla, 357 U.S. 235, 251 (1958)).
20 "Alternatively, a defendant whose contacts are substantial,
21 continuous, and systematic is subject to a court's general
22 jurisdiction even if the suit concerns matters not arising out of
23 his contact with the forum." Id. (citing Helicopteros Nacionales
24 de Colombia, S.A. v. Hall, 466 U.S. 408, 415 n.9 (1984)).
25 Plaintiffs do not argue that the Court has general jurisdiction
26 over Defendant. They only argue that the Court should exercise
27 specific jurisdiction.

28

1 Courts may exercise specific personal jurisdiction depending
2 on "the nature and quality of the defendant's contacts in relation
3 to the cause of action." Data Disc, 557 F.2d at 1287. The Ninth
4 Circuit applies a three-prong test when analyzing a claim of
5 specific jurisdiction:

6
7 (1) The non-resident defendant must purposefully
8 direct his activities or consummate some transaction
9 with the forum or resident thereof; or perform some
10 act by which he purposefully avails himself of the
11 privilege of conducting activities in the forum,
12 thereby invoking the benefits and protections of its
13 laws;

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15 (2) the claim must be one which arises out of or
16 relates to the defendant's forum-related activities;
17 and

18
19 (3) the exercise of jurisdiction must comport with
20 fair play and substantial justice, i.e. it must be
21 reasonable.

22
23 Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 802 (9th
24 Cir. 2004). The plaintiff bears the burden of satisfying the first
25 two prongs, and if he or she fails to satisfy either, specific
26 jurisdiction is not established. Sher v. Johnson, 911 F.2d 1357,
27 1361 (9th Cir. 1990). If the plaintiff satisfies these prongs, the
28 burden shifts to the defendant "to present a compelling case" that
the exercise of jurisdiction would not be reasonable. Burger King
Corp. v. Rudzewicz, 471 U.S. 462, 477 (1985).

Plaintiffs argue that the Court has specific jurisdiction over
Defendant because (1) Defendant purposefully directed its CRT
conspiracy activity at the United States, or purposefully availed
itself of U.S. laws and markets; and (2) Plaintiffs' claims arise
out of Defendant's conspiracy activity in the United States.
Plaintiffs also contend that exercising personal jurisdiction over

1 Defendant would be reasonable. Defendant opposes all of these
2 points.

3 The Ninth Circuit applies a three-part test for purposeful
4 direction: "the defendant allegedly must have (1) committed an
5 intentional act, (2) expressly aimed at the forum state, (3)
6 causing harm that the defendant knows is likely to be suffered in
7 the forum state." Id. When considering the first prong,
8 "something more than mere foreseeability" of an effect in the forum
9 state is necessary. Schwarzenegger, 374 F.3d at 805 (internal
10 citation and quotation omitted). And as the Ninth Circuit has
11 warned, "the foreign-acts-with-forum-effects jurisdictional
12 principle must be applied with caution, particularly in an
13 international context." Kramer Motors, Inc. v. British Leyland,
14 Ltd., 628 F.2d 1175, 1178 (9th Cir. 1980) (internal quotations and
15 citations omitted). The parties do not argue the first prong here
16 -- that Defendant committed some intentional act -- but they do
17 dispute whether Sharp has established that Defendant purposefully
18 directed activities at the United States and that Sharp's claims
19 against Defendant arose out of, or result from, Defendant's forum-
20 related activities.

21 An antitrust defendant "expressly aims" an intentional act at
22 a forum state when its allegedly anticompetitive behavior is
23 targeted at a resident of the forum, or at the forum itself. See
24 In re W. States Wholesale Natural Gas Antitrust Litig., 715 F.3d
25 716, 743 (9th Cir. 2013). Defendant provides a declaration that it
26 contends controverts all of Plaintiffs' allegations of purposeful
27 direction. See generally Kinoshita Decl. That declaration, from a
28 former employer of Defendant who now works for Panasonic,

1 establishes that Defendant had its principal place of business in
2 China; never manufactured CRTs outside China; was never registered
3 or licensed to do business in the United States; never held
4 property in the United States; never operated offices, plants, or
5 warehouses in the United States; never had shipping addresses,
6 phone listings, or bank accounts in the United States; never paid
7 property or income tax in the United States; never had employees
8 located in the United States; never solicited business in the
9 United States or hosted an English-language website; never had a
10 registered agent for process in the United States; never maintained
11 inventory in the United States; never sold CRTs or CPTs in the
12 United States; and shipped and sold the majority of its CRTs to
13 Chinese customers. Id. ¶¶ 7-23. It also asserts that none of
14 Plaintiff's evidence suggests any inference that Defendant directed
15 its conduct toward the United States, and avers that even though
16 Panasonic bought CRTs from Defendant in China and sold them (or
17 incorporated them into products sold in) the United States,
18 Defendant had no control over the CRTs after they left its
19 possession. See MTD at 14-15. Defendant therefore concludes that
20 Plaintiff fails to make an uncontroverted, prima facie case for
21 purposeful direction or availment. Id. at 17-18.

22 Neither Defendant's motion nor its reply brief responds to the
23 more detailed facts that Plaintiff provides in support of its
24 argument for specific jurisdiction. As described above, supra
25 Section II, Plaintiffs provide specific evidence supporting their
26 allegations that Defendant, on its own and with co-conspirators,
27 fixed CRT prices abroad and ensured that United States customers
28 paid supracompetitive prices. Defendant specifically shared CRT

1 marketing information, including sales to United States customers
2 like Wal-Mart, Circuit City, and Sears, with co-conspirators,
3 including Samsung Defendants. See Loh Decl. Ex. O. The alleged
4 co-conspirators coordinated pricing decisions in relation to United
5 States market conditions, and discussed CRT prices in U.S. dollars.
6 Mar. 9, 2001 Notes at CHU00029194E (stating that though Defendant
7 did not attend that meeting, another party was responsible for
8 delivering price increase news to Defendant so that producers would
9 not confuse customers by providing lower prices); Aug. 23, 1999
10 Notes at CHU00029179.02E (confirming that Defendant had raised CRT
11 prices from USD 29.50 to USD 30.50 following communications with
12 another alleged co-conspirator).

13 Further, deposition testimony never controverted by Defendant
14 states specifically that Defendant sold CRTs to AKEI, which the
15 witness states was a New Jersey-based Matsushita affiliate that
16 sold televisions in the United States. Liu Depo. 423:17-424:11.
17 Regardless of whether Defendant coordinated sales with Panasonic,
18 direct sales to a United States business would suffice to show
19 purposeful direction of anticompetitive activity to the United
20 States. As to the relationship between Panasonic and Defendant,
21 Defendant claims that any information it shared with Panasonic was
22 publicly available customs information about products not
23 manufactured by Defendant, and that the fact that a Panasonic
24 employee, Mr. Kinoshita, shared his CRT-related travel and meeting
25 schedule with Defendant is irrelevant. See Reply at 3-4 (citing
26 Loh Decl. Exs. L-N). The Court rejects Defendant's arguments.
27 Ownership or control over Panasonic would be one thing, but in this
28 case, Plaintiffs allege that Defendant specifically coordinated

1 with Panasonic such that the prices of products ultimately sold by
2 Panasonic would be inflated due to the price-fixed CRTs they
3 contained. Defendant does not have to direct Panasonic's activity
4 in order for this to count as purposeful direction: it is enough
5 for Defendant to have known that Panasonic was going to sell these
6 goods in the United States, which evidence shows Defendant indeed
7 knew. This is all sufficient to show purposeful direction.

8 Regarding the last prong of specific jurisdiction analysis,
9 Plaintiffs must make a prima facie showing that Defendant's United
10 States-directed actions were a "but-for" cause of their claims.
11 Bancroft & Masters, Inc. v. Augusta Nat., Inc., 223 F.3d 1082, 1088
12 (9th Cir. 2000); Unocal, 248 F.3d at 924. This "but-for" test
13 requires "some nexus between the cause of action and the
14 defendant's activities in the forum." Shute v. Carnival Cruise
15 Lines, 897 F.2d 377, 387 (9th Cir. 1988), overruled on other
16 grounds, 499 U.S. 585 (1991). The Court finds that Plaintiffs
17 establish this by pleading that they paid artificially high prices
18 for CRT Products, directly as a result of Defendant's activities.

19 The Court finds that Sharp has met the standard for specific
20 jurisdiction. The next issue is whether exercising jurisdiction
21 would be reasonable. Defendant argues that it would not be. In
22 determining whether the exercise of jurisdiction over a foreign
23 defendant would be reasonable, the Court must consider seven
24 factors:

25 (1) the extent of the defendant's purposeful
26 interjection into the forum state, (2) the burden on the
27 defendant in defending in the forum, (3) the extent of
28 the conflict with the sovereignty of the defendant's
state, (4) the forum state's interest in adjudicating
the dispute, (5) the most efficient judicial resolution
of the controversy, (6) the importance of the forum to

1 the plaintiff's interest in convenient and effective relief, and (7) the existence of an alternative forum.

2 Bancroft & Masters, 223 F.3d at 1088 (citing Burger King, 471 U.S.
3 at 476-77). It is Defendant's burden to demonstrate
4 unreasonableness. Id. at 1088.

5 Defendant argues exercising jurisdiction over it would be
6 unreasonable given the burden it would bear to defend itself, its
7 lack of contacts with the United States, its limited involvement in
8 the alleged conspiratorial activity, and the existing Defendants'
9 joint and several liability.

10 First, the Court agrees that Defendant's burden would be
11 substantial, but the inconvenience for Defendant must be so great
12 as to constitute a deprivation of due process, which is not the
13 case here. See Panavision, 141 F.3d at 1323.

14 Second, costliness and evidentiary complexity are simply parts
15 of modern, multinational litigation, especially when the claims at
16 issue concern an international price-fixing conspiracy. Defendant
17 contends that the Court should be unwilling to find that serious
18 burdens on it, a foreign defendant, are outweighed by "minimal
19 interests on the part of the plaintiff or the forum State," MTD at
20 20 (quoting Asahi Metal Indus. Co. v. Super. Ct., 480 U.S. 102, 115
21 (1987)), but this case is not like Asahi: there, the plaintiff was
22 a Taiwanese corporation and the defendant was Japanese, and the
23 only question left in the case was an indemnification claim,
24 leaving California with little interest in adjudicating the matter
25 and plaintiff with no interest in litigating the case in
26 California. Id. at 114. Here, the DAPs are American corporations
27 alleging to have been harmed by purchasing price-fixed goods from
28

1 Defendant and other alleged co-conspirators. These are not minimal
2 interests.

3 Third, Defendant contends that because it is a Chinese
4 citizen, China's sovereignty creates a high barrier to finding
5 reasonableness in this forum. MTD at 20 (citing Glencore Grain,
6 284 F.3d at 1126). Defendant also cites the Supreme Court's recent
7 reversal of the Ninth Circuit in Daimler AG v. Bauman, 134 S. Ct.
8 746, 761 (2014), in which the Supreme Court stated that the Ninth
9 Circuit should have paid more heed to the risks of international
10 comity given its expansive holding on general jurisdiction. The
11 Supreme Court's concern was based on due process's requirement of
12 "fair play and substantial justice." Id. (citing Int'l Shoe, 326
13 U.S. at 316). Critically, in Glencore Grain, the court found no
14 conduct directed to or related to a United States forum because the
15 contracts giving rise to that case's dispute were negotiated
16 abroad, involved only foreign companies, and required performance
17 in a foreign country. 284 F.3d at 1124. In the present case, as
18 noted above, Defendant specifically directed price-fixing activity
19 toward and into the United States. Even though much of the alleged
20 conspiracy-related activity occurred abroad, just as it did with
21 many other Defendants, the end target and end result was the United
22 States. Further, the Court does not find general jurisdiction in
23 this case: only specific jurisdiction is at issue, which lessens
24 the concerns of comity raised in Daimler AG. This case is to some
25 degree international in character, which would weigh in Defendant's
26 favor, see Amoco Egypt Oil Co. v. Leonis Nav. Co., Inc., 1 F.3d
27 848, 852 (9th Cir. 1993), but in this case the Court finds that
28 Defendant's United States-oriented activity plus the narrower

1 jurisdictional basis of specific jurisdiction mitigates that
2 concern.

3 Fourth, Defendant contends that United States federal courts
4 have no significant interest in adjudicating claims against it.
5 MTD at 20 (citing Leonis, 1 F.3d at 852). Not so. Plaintiffs are
6 United States citizens who allege that they were harmed by
7 Defendant, which directed its activities toward the United States.
8 That gives United States federal courts an interest in hearing this
9 case. Burger King, 471 U.S. at 473.

10 Fifth and sixth, Defendant argues that adjudication against it
11 in this forum is not necessary to grant Plaintiffs complete relief,
12 since all Defendants would be jointly and severally liable for any
13 alleged harm resulting in Defendant's anticompetitive activities.
14 Further, Defendant asserts that injunctive relief would be merely
15 symbolic because the alleged conspiracy ended more than six years
16 ago, and Defendant ceased manufacturing CRTs before that. MTD at
17 20-21. The Court disagrees: these factors ask the Court to
18 consider the most efficient judicial resolution of the controversy
19 and the importance of the forum to the plaintiff's interest in
20 convenient and effective relief, and in this case, since the Court
21 has handled the MDL for years, the efficiency, effectiveness, and
22 convenience of this matter's resolution are best served by keeping
23 the case in this forum, regardless of the ultimate remedy (if any)
24 granted to Plaintiffs. While some evidence and many witnesses
25 related to Defendant may be abroad, the same is true of most
26 parties in this case, and a combination of modern technology and
27 coordination among the parties has so far ensured that evidentiary

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1 matters are handled efficiently. See Reply at 10-11 (expressing
2 concern about the location of witnesses and evidence).

3 Finally, concerning the existence of an alternative forum,
4 Defendant contends that while Plaintiffs' allegations support no
5 damages claims anywhere, the locus of Defendant's activity in China
6 suggests that Plaintiffs could sue Defendant there, where private
7 antitrust actions are permitted and where any judgment obtained
8 against Defendant would need to be enforced anyway. MTD at 20-21;
9 Reply at 10-11. Plaintiffs note that China has a shorter
10 limitations period, Opp'n at 21 (citing In re World War II Era
11 Japanese Forced Labor Litig., 164 F. Supp. 2d 1160, 1182 (N.D. Cal.
12 2001) (discussing statutes of limitation in China)), which weighs
13 against finding China an adequate alternative forum. Defendant
14 contends that since Plaintiffs have had notice of potential claims
15 since at least November 2007, they have no excuse for not bringing
16 their case in China within the limitations period. Reply at 10-11.
17 The Court does not find Defendant's argument compelling. It is not
18 clear, based solely on this statute of limitations dispute, whether
19 China has the same tolling rules as the United States, and given
20 the significance of those doctrines to this case (especially where
21 fraudulent concealment is concerned), the Court is in no position
22 to find China an adequate alternative forum. This factor counts
23 toward neither party.

24 The Court finds, under the circumstances described above, that
25 exercising specific jurisdiction over Defendant for the purposes of
26 this case would be reasonable.

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V. CONCLUSION

As explained above, the Court DENIES Defendant Beijing-Matsushita Color CRT Company's motion to dismiss the various Direct Action Plaintiffs' complaints.

IT IS SO ORDERED.

Dated: March 13, 2014



UNITED STATES DISTRICT JUDGE

United States District Court
For the Northern District of California