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# [***In re Optical Disk Drive Antitrust Litig.***](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5R71-1WK1-F04C-T4RJ-00000-00&context=)

United States District Court for the Northern District of California, San Francisco Division

December 18, 2017, Decided; December 18, 2017, Filed

Case No.10-md-02143-RS; Case Nos. 3:15-cv-03248-RS; 3:15-cv-06325-RS

**Reporter**

2017 U.S. Dist. LEXIS 209282 \*

IN RE OPTICAL DISK DRIVE ***ANTITRUST*** LITIGATION. This Document Relates to: Siegel v. Sony Corporation, et al., Case No. 3:15-cv-03248-RS, Kravitz v. Sony Corporation, et al., Case No. 3:15-cv-06325-RS

**Subsequent History:** Motion denied by [*In re Optical Disk Drive* ***Antitrust*** *Litig., 2017 U.S. Dist. LEXIS 209283 (N.D. Cal., Dec. 18, 2017)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5R71-1WK1-F04C-T4RK-00000-00&context=)

**Prior History:** [*Ingram Micro Inc. v. LG Elecs., Inc. (In re Optical Disk Drive Prods.* ***Antitrust*** *Litig.), 2017 U.S. Dist. LEXIS 142497 (N.D. Cal., Aug. 24, 2017)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5PD7-P2G1-F04C-T1PT-00000-00&context=)

**Core Terms**

conspiracy, Products, summary judgment, causation, genuine issue of material fact, incorporating, Defendants', overcharge, ***Antitrust***, nonmoving, damages, moving party, prices

**Counsel:** **[\*1]**For Alfred H. Siegel, as Trustee for the Circuit City Stores, Inc. Liquidating Trust, Plaintiff (3:15-cv-03248-RS): Jonathan Mark Weiss, Michael Lloyd Tuchin, Klee Tuchin Bogdanoff Stern LLP, Los Angeles, CA; Larry Gabriel, Michael W. Davis, Steven Todd Gubner, Brutzkus Gubner, Woodland Hills, CA; Robert J. Pfister, Klee, Tuchin, Bogdanoff & Stern LLP, Los Angeles, CA.

For Toshiba Corporation, Toshiba America Information Systems, Inc, Toshiba Samsung Storage Technology Corp., Toshiba Samsung Storage Technology Korea Corporation, Defendants (3:15-cv-03248-RS, 3:15-cv-06325-RS): Belinda S Lee, LEAD ATTORNEY, Andrew M. Bertolli, Brendan Andrew McShane, Latham & Watkins LLP, San Francisco, CA; Elizabeth Hays Yandell, Latham and Watkins LLP, San Francisco, CA.

For Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., Defendants (3:15-cv-03248-RS, 3:15-cv-06325-RS): Ian T Simmons, LEAD ATTORNEY, O'Melveny & Myers LLP, Washington, DC.

For Peter Kravitz, as Trustee for the RSH Liquidating Trust, Plaintiff (3:15-cv-06325-RS): Robert J. Pfister, LEAD ATTORNEY, David Marc Stern, Klee, Tuchin, Bogdanoff & Stern LLP, Los Angeles, CA; Jason Benjamin Komorsky, Michael W. Davis, Steven Todd**[\*2]** Gubner, Brutzkus Gubner, Woodland Hills, CA; Jonathan Mark Weiss, Klee Tuchin Bogdanoff & Stern LLP, Los Angeles, CA; Michael Lloyd Tuchin, Klee Tuchin Bogdanoff Stern LLP, Los Angeles, CA.

For CMP Consulting Services, Inc., Plaintiff (3:10-md-02143-RS): Dianne M. Nast, LEAD ATTORNEY, NastLaw LLC, Philadelphia, PA; Christopher T. Heffelfinger, Berman Tabacco, San Francisco, CA; Joseph R. Saveri, Joseph Saveri Law Firm, Inc., San Francisco, CA; Kevin Bruce Love, Hanzman Criden & Love, P.A., South Miami, FL; Laurence D. King, Linda M. Fong, Kaplan Fox & Kilsheimer LLP, San Francisco, CA; Michael E. Criden, Criden & Love P.A., South Miami, FL; Steven Noel Williams, Cotchett Pitre & McCarthy LLP, Burlingame, CA.

For KI, Inc., Plaintiff (3:10-md-02143-RS): Dianne M. Nast, LEAD ATTORNEY, NastLaw LLC, Philadelphia, PA; Jonathan Whitcomb, Siserio Martin O'Connor & Castiglioni LLP, Stamford, CT; Joseph R. Saveri, Joseph Saveri Law Firm, Inc., San Francisco, CA; Laurence D. King, Linda M. Fong, Kaplan Fox & Kilsheimer LLP, San Francisco, CA; Robert N. Kaplan, Kaplan Fox & Kilsheimer LLP, New York, NY.

For Lieff, Cabraser, Heimann & Bernstein, LLP, Plaintiff (3:10-md-02143-RS): Dianne M. Nast, LEAD**[\*3]** ATTORNEY, NastLaw LLC, Philadelphia, PA; Sarah Robin London, Lieff Cabraser Heimann & Bernstein LLP, San Francisco, Ca.

For Rokas Beresniovas, Plaintiff (3:10-md-02143-RS): Dianne M. Nast, LEAD ATTORNEY, NastLaw LLC, Philadelphia, PA; Rosemary M. Rivas, Levi & Korsinsky LLP, San Francisco, CA.

For Patrick Keyes, Plaintiff (3:10-md-02143-RS): Dianne M. Nast, LEAD ATTORNEY, NastLaw LLC, Philadelphia, PA; Christopher T. Heffelfinger, Berman Tabacco, San Francisco, CA; Joseph R. Saveri, Joseph Saveri Law Firm, Inc., San Francisco, CA.

For Prisco Electronic Company, Inc., Plaintiff (3:10-md-02143-RS): Dianne M. Nast, LEAD ATTORNEY, NastLaw LLC, Philadelphia, PA; Adam John Zapala, Davis Cowell & Bowe LLP, San Francisco, CA; Aron K. Liang, Minami Tamaki LLP, San Francisco, CA; Cadio R. Zirpoli, Guido Saveri, Richard Alexander Saveri, Saveri & Saveri, Inc., San Francisco, CA; Gene Woo Kim, Cotchett, Pitre and McCarthy, LLP, Burlingame, CA; Joseph M. Alioto, Sr., Theresa Driscoll Moore, Alioto Law Firm, San Francisco, CA; Joseph W. Cotchett, Steven Noel Williams, Cotchett Pitre & McCarthy LLP, Burlingame, CA; Joseph R. Saveri, Joseph Saveri Law Firm, Inc., San Francisco, CA.

For Heather Tremblay,**[\*4]** Plaintiff (3:10-md-02143-RS): Dianne M. Nast, LEAD ATTORNEY, NastLaw LLC, Philadelphia, PA; Lee Albert, Glancy Prongay & Murray LLP, New York, NY; Susan Gilah Kupfer, Glancy Prongay & Murray LLP, Berkeley, CA; Sylvia M. Sokol, Scott+Scott, Attorneys at Law, LLP, New York, NY.

For Technology Depot of La Mesa, Plaintiff (3:10-md-02143-RS): Dianne M. Nast, LEAD ATTORNEY, NastLaw LLC, Philadelphia, PA; Sylvia M. Sokol, Scott+Scott, Attorneys at Law, LLP, New York, NY.

For Christopher Johnson, Larson Group, Plaintiffs (3:10-md-02143-RS): Dianne M. Nast, LEAD ATTORNEY, NastLaw LLC, Philadelphia, PA; Elizabeth Cheryl Pritzker, LEAD ATTORNEY, Pritzker Levine LLP, Oakland, CA.

For Matthew Slavin, Plaintiff (3:10-md-02143-RS): Dianne M. Nast, LEAD ATTORNEY, NastLaw LLC, Philadelphia, PA; Arthur Nash Bailey, Jr., Christopher L. Lebsock, Michael Paul Lehmann, Stephanie Yunjin Cho, Hausfeld LLP, San Francisco, CA; Christopher T. Heffelfinger, Berman Tabacco, San Francisco, CA; Eugene A. Spector, Spector Roseman & Kodroff, PC, Philadelphia, PA; Jeffrey Lawrence Spector, William G. Caldes, SPECTOR ROSEMAN & KODROFF, P.C., Philadelphia, PA; Joseph R. Saveri, Joseph Saveri Law Firm, Inc., San Francisco,**[\*5]** CA; Michael D. Hausfeld, Hausfeld LLP, Washington, DC; Robert G. Eisler, Grant & Eisenhofer P.A., Wilmington, DE.

For Warren S. Herman, Plaintiff (3:10-md-02143-RS): Dianne M. Nast, LEAD ATTORNEY, NastLaw LLC, Philadelphia, PA; Christopher T. Heffelfinger, Berman Tabacco, San Francisco, CA; Joseph R. Saveri, Joseph Saveri Law Firm, Inc., San Francisco, CA; Lawrence Walner, The Walner Law Firm LLC, Chicago, IL; Richard Alexander Saveri, Saveri & Saveri, Inc., San Francisco, CA.

For David Carney, Jr., Plaintiff (3:10-md-02143-RS): Dianne M. Nast, LEAD ATTORNEY, NastLaw LLC, Philadelphia, PA; Elizabeth Cheryl Pritzker, Pritzker Levine LLP, Oakland, CA.

For L.E. Hoover Co., Plaintiff (3:10-md-02143-RS): Dianne M. Nast, LEAD ATTORNEY, NastLaw LLC, Philadelphia, PA; Elizabeth R. Odette, LEAD ATTORNEY, Lockridge Grindal Nauen P.L.L.P., Minneapolis, MN; W. Joseph Bruckner, LEAD ATTORNEY, Lockridge Grindal Nauen P.L.L.P, Minneapolis, MN; Clinton Paul Walker, Damrell Nelson Schrimp Pallios Pache, Modesto, CA.

For JLK Systems Group, Inc., Plaintiff (3:10-md-02143-RS): David Paul Germaine, LEAD ATTORNEY, PRO HAC VICE, Vanek Vickers & Masini PC, Chicago, IL; Dianne M. Nast, LEAD ATTORNEY, NastLaw LLC,**[\*6]** Philadelphia, PA; John Paul Bjork, Joseph M Vanek, LEAD ATTORNEYS, Vanek Vickers Masini PC, Chicago, IL; Richard Alexander Saveri, LEAD ATTORNEY, Cadio R. Zirpoli, Guido Saveri, Saveri & Saveri, Inc., San Francisco, CA; Allan Steyer, Donald Scott Macrae, Jill Michelle Manning, Steyer Lowenthal Boodrookas Alvarez & Smith LLP, San Francisco, CA; Arthur Nash Bailey, Jr., Christopher L. Lebsock, Michael Paul Lehmann, Stephanie Yunjin Cho, Hausfeld LLP, San Francisco, CA; Bruce Lee Simon, Pearson Simon & Warshaw, LLP, San Francisco, CA; Christopher T. Heffelfinger, Berman Tabacco, San Francisco, CA; Douglas A. Millen, PRO HAC VICE, Freed Kanner London & Millen LLC, Bannockburn, IL; Joseph R. Saveri, Joseph Saveri Law Firm, Inc., San Francisco, CA; Michael D. Hausfeld, Hausfeld LLP, Washington, DC; Patrick Howard, Saltz Mongeluzzi Barrett & Bendesky, Philadelphia, PA; Robert W Biederman, Steyer Lowenthal, et al., San Francisco, CA; Robert G. Eisler, Grant & Eisenhofer P.A., Wilmington, DE; Simon Bahne Paris, Saltz Mongeluzzi Barrett and Bendesky, Philadelphia, PA; Steven Noel Williams, Cotchett Pitre & McCarthy LLP, Burlingame, CA; Travis Luke Manfredi, Saveri and Saveri Inc, San Francisco,**[\*7]** CA.

For Univisions-Crimson Holding Inc., Plaintiff (3:10-md-02143-RS): Dianne M. Nast, LEAD ATTORNEY, NastLaw LLC, Philadelphia, PA; Christopher T. Heffelfinger, Joseph J. Tabacco, Jr., Todd Anthony Seaver, Berman Tabacco, San Francisco, CA; Daniel Bushell, Marc Jeffrey Greenspon, Berman DeValerio, Palm Beach Gardens, FL; Joseph R. Saveri, Joseph Saveri Law Firm, Inc., San Francisco, CA; Manuel Juan Dominguez, Cohen Milstein Sellers & Toll, Palm Beach Gardens, FL; Matthew W Ruan, Berman DeValerio, San Francisco, CA.

For Diana Saed, Plaintiff (3:10-md-02143-RS): Dianne M. Nast, LEAD ATTORNEY, NastLaw LLC, Philadelphia, PA; Susan Gilah Kupfer, Glancy Prongay & Murray LLP, Berkeley, CA.

For Amber Nikkel, on behalf of herself and all others similarly situated, Plaintiff (3:10-md-02143-RS): Dianne M. Nast, LEAD ATTORNEY, NastLaw LLC, Philadelphia, PA; Adam J. Levitt, DiCello Levitt & Casey LLC, Chicago, IL; Christopher T. Heffelfinger, Berman Tabacco, San Francisco, CA; Francis M. Gregorek, Rachele R. Rickert, Wolf Haldenstein Adler Freeman & Herz LLP, San Diego, CA; Michael D Yanovsky, Wolf Haldenstein Adler Freeman Herz LLC, Chicago, IL.

For Ann Carney, Plaintiff (3:10-md-02143-RS): Dianne**[\*8]** M. Nast, LEAD ATTORNEY, NastLaw LLC, Philadelphia, PA; Craig C. Corbitt, Zelle LLP, San Francisco, CA; Francis Onofrei Scarpulla, Law Offices of Francis O. Scarpulla, San Francisco, CA; Qianwei Fu, Zelle LLP, San Francisco, CA.

For Don Cheung, Plaintiff (3:10-md-02143-RS): Dianne M. Nast, LEAD ATTORNEY, NastLaw LLC, Philadelphia, PA; Amy Harrington, Law Office of Amy Harrington, San Francisco, CA; Julio J Ramos, Law Offices of Julio J. Ramos, San Francisco, CA.

For Tina Corse, Plaintiff (3:10-md-02143-RS): Dianne M. Nast, LEAD ATTORNEY, NastLaw LLC, Philadelphia, PA; John Dmitry Bogdanov, Cooper & Kirkham, P.C., San Francisco, CA.

For Alec Berezin, Plaintiff (3:10-md-02143-RS): Brendan Patrick Glackin, LEAD ATTORNEY, Lieff, Cabraser, Heimann & Bernstein LLP, San Francisco, CA; Dianne M. Nast, LEAD ATTORNEY, NastLaw LLC, Philadelphia, PA; Eric B. Fastiff, LEAD ATTORNEY, Lieff Cabraser Heimann & Bernstein LLP, San Francisco, CA; Joseph R. Saveri, LEAD ATTORNEY, Joseph Saveri Law Firm, Inc., San Francisco, CA; Joel Cary Meredith, Meredith & Associates, Philadelphia, PA; Marc Anthony Pilotin, U.S. Department of Labor, Office of the Solicitor, San Francisco, CA; Steven J. Greenfogel, Lite**[\*9]** DePalma Greenburg, LLC, Philadelphia, PA.

For The Stereo Shop, Plaintiff (3:10-md-02143-RS): Brendan Patrick Glackin, LEAD ATTORNEY, Lieff, Cabraser, Heimann & Bernstein LLP, San Francisco, CA; Dianne M. Nast, LEAD ATTORNEY, NastLaw LLC, Philadelphia, PA; Eric B. Fastiff, LEAD ATTORNEY, Lieff Cabraser Heimann & Bernstein LLP, San Francisco, CA; Joseph R. Saveri, LEAD ATTORNEY, Joseph Saveri Law Firm, Inc., San Francisco, CA; Christopher T. Heffelfinger, Berman Tabacco, San Francisco, CA; Daniel E. Gustafson, PRO HAC VICE, Gustafson Gluek PLLC, Minneapolis, MN; Jason S. Kilene, Gustafson Gluek PLLC, Minneapolis, MN; Marc Anthony Pilotin, U.S. Department of Labor, Office of the Solicitor, San Francisco, CA.

For Bay Area Systems, LLC, Plaintiff (3:10-md-02143-RS): Dianne M. Nast, LEAD ATTORNEY, NastLaw LLC, Philadelphia, PA; Brad Yamauchi, Minami Tamaki LLP, San Francisco, CA; Derek G. Howard, Derek G. Howard Law Firm, Inc., Mill Valley, CA; Jack Wing Lee, Minami Tamaki LLP, San Francisco, CA.

For Aaron Wagner, Plaintiff (3:10-md-02143-RS): Dianne M. Nast, LEAD ATTORNEY, NastLaw LLC, Philadelphia, PA; George W. Sampson, Hagens Berman Sobol Shapiro LLP, Seattle, WA; Jeff D Friedman, Hagens**[\*10]** Berman Sobol Shapiro LLP, Berkeley, CA; Robert William Finnerty, Girardi Keese, Los Angeles, CA; Shana E. Scarlett, Hagens Berman Sobol Shapiro LLP, Berkeley, CA; Steve W. Berman, PRO HAC VICE, Hagens Berman Sobol Shapiro LLP, Seattle, WA.

For Mr. Cullen Byrne, Plaintiff (3:10-md-02143-RS): Dianne M. Nast, LEAD ATTORNEY, NastLaw LLC, Philadelphia, PA; William Henry Parish, LEAD ATTORNEY, Parish & Small, Stockton, CA.

For Freud Reia, Brent Pickett, Charles Zakin, Ben Flaccus, Plaintiffs (3:10-md-02143-RS): Dianne M. Nast, LEAD ATTORNEY, NastLaw LLC, Philadelphia, PA; Terry Gross, Gross & Belsky P.C., San Francisco, CA.

For Alireza Tabatabai, Plaintiff (3:10-md-02143-RS): Dianne M. Nast, LEAD ATTORNEY, NastLaw LLC, Philadelphia, PA; Robert M. Partain, LEAD ATTORNEY, O'Donnell & Associates, Los Angeles, CA.

For Mary Jane Garland, Plaintiff (3:10-md-02143-RS): Dianne M. Nast, LEAD ATTORNEY, NastLaw LLC, Philadelphia, PA; James Lewis Wilkes, Wilkes & McHugh, Tampa, FL; Timothy Charles McHugh, Wilkes & McHugh, Long Beach, CA.

For Beth O'Donnell, Plaintiff (3:10-md-02143-RS): Brian Joseph Barry, LEAD ATTORNEY, Law Offices of Brian Barry, Los Angeles, CA; Dianne M. Nast, LEAD ATTORNEY, NastLaw**[\*11]** LLC, Philadelphia, PA; Jennifer Sarnelli, LEAD ATTORNEY, Gardy & Notis, LLP, Englewood Cliffs, NJ.

For Vanessa Stark, Jerred Cook, Alex Afanasyev, Scott Druschke, Plaintiffs (3:10-md-02143-RS): Dianne M. Nast, LEAD ATTORNEY, NastLaw LLC, Philadelphia, PA; Jennifer Sarnelli, LEAD ATTORNEY, Gardy & Notis, LLP, Englewood Cliffs, NJ.

For Gregory Sinigiani, Plaintiff (3:10-md-02143-RS): Dianne M. Nast, LEAD ATTORNEY, NastLaw LLC, Philadelphia, PA; Mario N. Alioto, LEAD ATTORNEY, Trump Alioto Trump & Prescott, LLP, San Francisco, CA; Sherman Kassof, LEAD ATTORNEY, Law Offices of Sherman Kassof, Walnut Creek, CA; Joseph Mario Patane, Lauren Clare Capurro, Trump, Alioto, Trump & Prescott, LLP, San Francisco, CA.

For Aimee Brock, William Craig Stephenson, Raymond F. Barbush, Sidney Plitnik, Cynthia Saia, Goeffrey Korwan, Patrick Piper, Frank Warner, Christopher Smith, Plaintiffs (3:10-md-02143-RS): Dianne M. Nast, LEAD ATTORNEY, NastLaw LLC, Philadelphia, PA; Mario N. Alioto, LEAD ATTORNEY, Trump Alioto Trump & Prescott, LLP, San Francisco, CA; Joseph Mario Patane, Lauren Clare Capurro, Trump, Alioto, Trump & Prescott, LLP, San Francisco, CA; Sherman Kassof, Law Offices of Sherman Kassof, Walnut**[\*12]** Creek, CA.

For EMW, Inc., Plaintiff (3:10-md-02143-RS): Dianne M. Nast, LEAD ATTORNEY, NastLaw LLC, Philadelphia, PA; Lingel Hart Winters, Law Offices of Lingel H. Winters, San Francisco, CA.

For Aaron Deshaw, Plaintiff (3:10-md-02143-RS): Dianne M. Nast, LEAD ATTORNEY, NastLaw LLC, Philadelphia, PA; Ernest Warren, LEAD ATTORNEY, Walker & Warren, Portland, OR.

For David Knight, Debra Knight, Plaintiffs (3:10-md-02143-RS): Dianne M. Nast, LEAD ATTORNEY, NastLaw LLC, Philadelphia, PA; Steve Douglas Larson, LEAD ATTORNEY, Stoll Stoll Berne Lokting Shlachter P.C., Portland, OR.

For James P. Ito-Adler, Plaintiff (3:10-md-02143-RS): Charles E. Tompkins, LEAD ATTORNEY, Williams, Montgomery & John, Ltd., Washington, DC; Dianne M. Nast, LEAD ATTORNEY, NastLaw LLC, Philadelphia, PA; Ian J McLoughlin, Shapiro Haber & Urmy LLP, Boston, MA.

For All Plaintiffs, Plaintiff (3:10-md-02143-RS): Dianne M. Nast, LEAD ATTORNEY, NastLaw LLC, Philadelphia, PA; Todd Anthony Seaver, LEAD ATTORNEY, Berman Tabacco, San Francisco, CA; Jeff D Friedman, Shana E. Scarlett, Hagens Berman Sobol Shapiro LLP, Berkeley, CA.

For State of Florida, Office of the Attorney General, Department of Legal Affairs, Plaintiff (3:10-md-02143-RS):**[\*13]** Jeff D Friedman, Hagens Berman Sobol Shapiro LLP, Berkeley, CA; Liz Ann Brady, Office of the Attorney General, ***Antitrust*** Division, Tallahassee, FL; Nicholas J. Weilhammer, Office of the Attorney General, State of Florida, Tallahassee, FL.

For Indirect Purchaser Plaintiffs, Plaintiff (3:10-md-02143-RS): Ivy Arai Tabbara, Steve W. Berman, PRO HAC VICE, Hagens Berman Sobol Shapiro LLP, Seattle, WA; Jeff D Friedman, Rio Shaye Pierce, Shana E. Scarlett, Hagens Berman Sobol Shapiro LLP, Berkeley, CA; Jerrod C. Patterson, Hagens Berman Sobol Shapiro, Seattle, WA; Lingel Hart Winters, Law Offices of Lingel H. Winters, San Francisco, CA; Matthew Alexander Smith, Cohen Milstein Sellers and Toll PLLC, Washington, DC.

For Dell Inc., Dell Products L.P., Plaintiffs (3:10-md-02143-RS): Andrew Jacob Tuck, LEAD ATTORNEY, Alston and Bird LLP, Atlanta, GA; Adrian James Sawyer, James Matthew Wagstaffe, Kerr & Wagstaffe LLP, San Francisco, CA; Debra Dawn Bernstein, Elizabeth Helmer Jordan, Michael P. Kenny, Rodney J Ganske, Alston & Bird LLP, Atlanta, GA; Kelley Connolly Barnaby, PRO HAC VICE, Alston and Bird LLP, Washington, DC; Micah Dean Moon, PRO HAC VICE, Alston Bird LLP, ATLANTA, GA; Michael John Newton,**[\*14]** Alston & Bird, Dallas, TX; Nicolas Ward Steenland, Alston & Bird LLP, New York, NY.

For Direct Purchaser Plaintiffs, Plaintiff (3:10-md-02143-RS): Bruce Lee Simon, LEAD ATTORNEY, Pearson Simon & Warshaw, LLP, San Francisco, CA; Gregory K Arenson, LEAD ATTORNEY, Kaplan Fox and Kilsheimer LLP, New York, NY; Aaron Ross Walner, The Walner Law Firm LLC, Chicago, IL; Cadio R. Zirpoli, Guido Saveri, Richard Alexander Saveri, Saveri & Saveri, Inc., San Francisco, CA; Gary Laurence Specks, Kaplan Fox & Kilsheimer LLP, Highland Park, IL; Jeff D Friedman, Hagens Berman Sobol Shapiro LLP, Berkeley, CA.

For John McKee, Benjamin Porter, Chris Johnson, Evan Jacobson, Douglas Hatfield, Barney Gooman, Jr., Gregg Cooper, Benjamin Murray, Sandra Steffen, Alex Bissen, Benjamin Faber, Matthew Hosking, Cindy Booze, Matthew Ence, Evan Ravenelle, Mike Reilly, Angela Pritchard, Mike Bishop, Kyle Kovalchek, Kim Wood, Plaintiffs (3:10-md-02143-RS): Jeff D Friedman, Shana E. Scarlett, Hagens Berman Sobol Shapiro LLP, Berkeley, CA.

For Hewlett-Packard Company, Plaintiff (3:10-md-02143-RS): Alistair B. Dawson, LEAD ATTORNEY, Beck Redden & Secrest, Houston, TX; Beatrice B. Nguyen, LEAD ATTORNEY, Crowell & Moring LLP,**[\*15]** San Francisco, CA; Daniel A Sasse, Crowell & Moring LLP, Irvine, CA; Matthew J. McBurney, Crowell & Moring LLP, Washington, DC; Michael Joseph Songer, Crowell Moring, Washington, DC; Nathanial John Wood, Crowell & Moring LLP, Los Angeles, CA.

For Ingram Micro Inc, Synnex Corporation, Plaintiffs (3:10-md-02143-RS): Daniel Allen Sasse, LEAD ATTORNEY, Daniel A Sasse, Crowell & Moring LLP, Irvine, CA; Matthew J. McBurney, Crowell & Moring LLP, Washington, DC.

For Acer Inc., Plaintiff (3:10-md-02143-RS): David Bedford Esau, LEAD ATTORNEY, Carlton Fields, P.A., West Palm Beach, FL; Eric Sofge, TechKnowledge Law Group, LLP, Redwood Shores, CA; Hsiang James H Lin, Kaiwen Tseng, Michael C. Ting, TechKnowledge Law Group LLP, Redwood Shores, CA; Jerry Chen, Freitas Tseng & Kaufman LLP, Redwood City, CA; Kevin Christopher Jones, TechKnowledge Law Group, Redwood Shores, CA.

For Acer America Corporation, Gateway, Inc., Gateway U.S. Retail, Inc., Plaintiffs (3:10-md-02143-RS): David Bedford Esau, LEAD ATTORNEY, Carlton Fields, P.A., West Palm Beach, FL; Hsiang James H Lin, LEAD ATTORNEY, Fatima S Alloo, Kaiwen Tseng, Michael C. Ting, TechKnowledge Law Group LLP, Redwood Shores, CA; Eric Sofge, TechKnowledge**[\*16]** Law Group, LLP, Redwood Shores, CA; Jerry Chen, Freitas Tseng & Kaufman LLP, Redwood City, CA; Kevin Christopher Jones, TechKnowledge Law Group, Redwood Shores, CA.

For Alfred H. Siegel, as Trustee for the Circuit City Stores, Inc. Liquidating Trust, Plaintiff (3:10-md-02143-RS): Jonathan Mark Weiss, Michael Lloyd Tuchin, Klee Tuchin Bogdanoff Stern LLP, Los Angeles, CA; Larry Gabriel, Michael W. Davis, Steven Todd Gubner, Brutzkus Gubner, Woodland Hills, CA; Robert J. Pfister, Klee, Tuchin, Bogdanoff & Stern LLP, Los Angeles, CA.

For Peter Kravitz, as Trustee for the RSH Liquidating Trust, Plaintiff (3:10-md-02143-RS): Robert J. Pfister, LEAD ATTORNEY, Klee, Tuchin, Bogdanoff & Stern LLP, Los Angeles, CA; David Marc Stern, Jonathan Mark Weiss, Klee Tuchin Bogdanoff & Stern LLP, Los Angeles, CA; Jason Benjamin Komorsky, Michael W. Davis, Steven Todd Gubner, Brutzkus Gubner, Woodland Hills, CA; Michael Lloyd Tuchin, Klee Tuchin Bogdanoff Stern LLP, Los Angeles, CA.

Barbara Cochran, Plaintiff (3:10-md-02143-RS), Pro se, Oxnard, CA.

For LG Electronics, Inc., Defendant (3:10-md-02143-RS): Ameri Rose Klafeta, Jacob Michael Hamann, Nathan P. Eimer, Sarah Hargadon, Eimer Stahl LLP, Chicago, IL;**[\*17]** Ian T Simmons, O'Melveny & Myers LLP, Washington, DC; Samuel R. Miller, Sidley Austin LLP, San Francisco, CA; Vanessa Greenwood Jacobsen, PRO HAC VICE, Eimer Stahl LLP, Chicago, IL.

For Hitachi-LG Data Storage, Inc., also known as HP Inc., Defendant (3:10-md-02143-RS): Anthony C. Biagioli, Ropes & Grat LLP, Washington, DC; Emily Jessica Derr, PRO HAC VICE, Ropes and Gray LLP, Boston, MA; Jane E. Willis, Ropes & Gray LLP, Boston, MA; Kaede Toh, Ropes and Gray LLP, New York, NY; Mark Samuel Popofsky, Ropes and Gray LLP, Washington, DC; Michelle Lynn Visser, Ropes and Gray LLP, San Francisco, CA.

For Toshiba Corporation, Defendant (3:10-md-02143-RS): Casandra Leann Thomson, LEAD ATTORNEY, Latham & Watkins, Los Angeles, CA; Daniel Murray Wall, LEAD ATTORNEY, Andrew M. Bertolli, Belinda S Lee, Brendan Andrew McShane, Latham & Watkins LLP, San Francisco, CA; Deana Louise Cairo, LEAD ATTORNEY, Tucker Ellis LLP, Denver, CO; Catherine E. Palmer, PRO HAC VICE, Latham and Watkins LLP, New York, NY; Elizabeth Hays Yandell, Latham and Watkins LLP, San Francisco, CA; Ian T Simmons, O'Melveny & Myers LLP, Washington, DC.

For Samsung Electronics Co., Ltd., Defendant (3:10-md-02143-RS): Ian T Simmons,**[\*18]** LEAD ATTORNEY, O'Melveny & Myers LLP, Washington, DC; Benjamin Gardner Bradshaw, O'Melveny & Meyers LLP, Washington, DC; David Josiah Ribner, PRO HAC VICE, Kevin Douglas Feder, O'Melveny and Myers LLP, Washington, DC; James Pearl, Los Angeles, CA; Leah Suzanne Martin, PRO HAC VICE, OMelveny and Myers LLP, Washington, DC; Stephen Joel McIntyre, OMelveny and Myers LLP, Los Angeles, CA.

For Toshiba Samsung Storage Technology Corporation, Defendant (3:10-md-02143-RS): Casandra Leann Thomson, LEAD ATTORNEY, Latham & Watkins, Los Angeles, CA; Daniel Murray Wall, LEAD ATTORNEY, Andrew M. Bertolli, Belinda S Lee, Brendan Andrew McShane, Latham & Watkins LLP, San Francisco, CA; Catherine E. Palmer, PRO HAC VICE, Latham and Watkins LLP, New York, NY; Elizabeth Hays Yandell, Latham and Watkins LLP, San Francisco, CA; Ian T Simmons, O'Melveny & Myers LLP, Washington, DC.

For Koninklijke Philips N.V., Defendant (3:10-md-02143-RS): Stuart Christopher Plunkett, LEAD ATTORNEY, Baker Botts L.L.P., San Francisco, CA; Andrew Leader Lucarelli, Kimberly Ann Murphy, Baker Botts LLP, Washington, DC; Evan J Werbel, Tiffany Belle Gelott, William Lavery, PRO HAC VICE, Baker Botts LLP, Washington, DC; Gina Ann**[\*19]** Bibby, Baker Botts LLP, Palo Alto, CA; Ian T Simmons, O'Melveny & Myers LLP, Washington, DC; James G. Kress, BAKER BOTTS L.L.P., Washington, DC; John M. Taladay, Baker Botts L.L.P., Washington, DC; Jon Vensel Swenson, Baker Botts L.L.P., Palo Alto, CA; Stacy Lynn Turner, PRO HAC VICE, Washington, DC.

For Lite-On It Corporation, Philips & Lite-On Digital Solutions Corporation, Philips & Lite-On Digital Solutions USA, Inc., Defendants (3:10-md-02143-RS): Stuart Christopher Plunkett, LEAD ATTORNEY, Baker Botts L.L.P., San Francisco, CA; Andrew Leader Lucarelli, Baker Botts LLP, Washington, DC; Evan J Werbel, Tiffany Belle Gelott, William Lavery, PRO HAC VICE, Baker Botts LLP, Washington, DC; Gina Ann Bibby, Baker Botts LLP, Palo Alto, CA; Ian T Simmons, O'Melveny & Myers LLP, Washington, DC; James G. Kress, BAKER BOTTS L.L.P., Washington, DC; John M. Taladay, Baker Botts L.L.P., Washington, DC; Jon Vensel Swenson, Baker Botts L.L.P., Palo Alto, CA.

For Teac Corporation, Teac America, Inc., Defendants (3:10-md-02143-RS): Aharon Shaul Kaye, Gutnicki LLP, Skokie, IL; Ian T Simmons, O'Melveny & Myers LLP, Washington, DC; Kristin Lisa Coveney, PRO HAC VICE, Mary Ellen Hennessy, Katten Muchin**[\*20]** Rosenman LLP, Chicago, IL; Lily Niu Chinn, Katten Muchin Rosenman LLP, Oakland, CA; Stuart Matthew Richter, Katten Muchin Rosenman LLP, Los Angeles, CA.

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For NEC Corporation, Defendant (3:10-md-02143-RS): Dana Lynn Cook-Milligan, Winston and Strawn LLP, San Francisco, CA; Ian T Simmons, O'Melveny & Myers LLP, Washington, DC; Jeanifer Ellen Parsigian, Sean D. Meenan, Winston and Strawn, San Francisco, CA; Matthew Robert DalSanto, Winston and Strawn LLP, San Francisco, CA; Paul R. Griffin, Winston & Strawn LLP, San Francisco, CA; Robert Bernard Pringle, Winston & Strawn LLP, San Francisco, CA.

For Toshiba Samsung Storage Technology Korea Corporation, Defendant (3:10-md-02143-RS): Belinda S Lee, LEAD ATTORNEY, Andrew M. Bertolli, Brendan Andrew McShane, Latham & Watkins LLP, San Francisco, CA; Catherine E. Palmer, PRO HAC VICE, Latham and**[\*21]** Watkins LLP, New York, NY; Elizabeth Hays Yandell, Latham and Watkins LLP, San Francisco, CA; Ian T Simmons, O'Melveny & Myers LLP, Washington, DC.

For Quanta Storage Inc, Defendant (3:10-md-02143-RS): Anthony James Ellrod, Manning & Kass Ellrod Ramirez Trester LLP, Los Angeles, CA; Ian T Simmons, O'Melveny & Myers LLP, Washington, DC; Paul Hanna, Los Angeles, CA.

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For Samsung Electronics America, Inc., Defendant (3:10-md-02143-RS): Ian T Simmons, LEAD ATTORNEY, O'Melveny & Myers LLP, Washington, DC; Benjamin Gardner Bradshaw, O'Melveny & Meyers LLP, Washington, DC; James Pearl, Los Angeles, CA; Kevin Douglas Feder, O'Melveny and Myers LLP, Washington, DC; Stephen Joel McIntyre, OMelveny and Myers LLP, Los Angeles, CA.

For Toshiba America Information Systems, Inc., Defendant (3:10-md-02143-RS): Belinda S Lee, LEAD ATTORNEY, Latham & Watkins LLP, San Francisco, CA; Brendan Andrew McShane, LEAD ATTORNEY, Latham & Watkins LLP, San Francisco, CA; Andrew M. Bertolli, Latham & Watkins LLP, San Francisco, CA; Catherine E. Palmer, PRO HAC VICE, Latham and Watkins LLP, New York, NY; Elizabeth Hays Yandell, Latham and Watkins LLP, San Francisco, CA; Ian T Simmons, O'Melveny & Myers LLP, Washington, DC.

For Quanta Storage America, Inc., Defendant (3:10-md-02143-RS): Christopher M. Neumeyer, Asia Law, Taipei, TP; Ian T Simmons, O'Melveny & Myers LLP, Washington, DC.

For Panasonic Corporation, Defendant (3:10-md-02143-RS): Aldo A. Badini, LEAD ATTORNEY, Winston & Strawn LLP, Menlo Park, CA; David L. Greenspan, Jeffrey L. Kessler, LEAD ATTORNEYS,**[\*23]** George E Mastoris, James F. Lerner, Kelli L Lanski, Susannah P. Torpey, Winston & Strawn LLP, New York, NY; Elizabeth A Cate, Winston and Strawn, LLP, New York, NY; Ian T Simmons, O'Melveny & Myers LLP, Washington, DC; Marissa C. Nardi, PRO HAC VICE, New York, NY; Matthew C Oxman, Dewey Leboeuf LLP, New York, NY.

For Panasonic Corporation of America, Defendant (3:10-md-02143-RS): Jeffrey L. Kessler, LEAD ATTORNEY, David L. Greenspan, George E Mastoris, James F. Lerner, Susannah P. Torpey, Winston & Strawn LLP, New York, NY; Jeffrey Hamilton Newhouse, LEAD ATTORNEY, Jackson Lewis P.C., Richmond, VA.

For Panasonic Corporation of North America, Defendant (3:10-md-02143-RS): Aldo A. Badini, LEAD ATTORNEY, Winston & Strawn LLP, Menlo Park, CA; David L. Greenspan, Jeffrey L. Kessler, LEAD ATTORNEYS, George E Mastoris, James F. Lerner, Kelli L Lanski, Susannah P. Torpey, Winston & Strawn LLP, New York, NY; Jeffrey Hamilton Newhouse, LEAD ATTORNEY, Jackson Lewis P.C., Richmond, VA; Elizabeth A Cate, Winston and Strawn, LLP, New York, NY; Ian T Simmons, O'Melveny & Myers LLP, Washington, DC; Marissa C. Nardi, PRO HAC VICE, New York, NY; Matthew C Oxman, Dewey Leboeuf LLP, New York, NY.

For Pioneer**[\*24]** Digital Design & Manufacturing Company, Defendant (3:10-md-02143-RS): Eric Patrick Enson, LEAD ATTORNEY, JONES DAY, Los Angeles, CA; Jeffrey Alan LeVee, LEAD ATTORNEY, Jones Day, Los Angeles, CA.

For Philips Electronics North America Corporation, Lite-On Sales & Distribution Inc., Defendants (3:10-md-02143-RS): Evan J Werbel, Baker Botts LLP, Washington, DC; Stuart Christopher Plunkett, Baker Botts L.L.P., San Francisco, CA.

For John Doe 1, Movant (3:10-md-02143-RS): Sean F. O'Shea, LEAD ATTORNEY, O'Shea Partners LLP, New York, NY; Daniel Mark Hibshoosh, PRO HAC VICE, O'Shea Partners LLP, New York, NY.

For Best Buy Enterprise Services, Inc., Movant (3:10-md-02143-RS): Alyssa Nicole Lawson, Robins Kaplan LLP, Minneapolis, MN.

For Gregory Starrett, Interested Party (3:10-md-02143-RS): Jeffrey B. Gittleman, LEAD ATTORNEY, Barrack Rodos & Bacine, Philadelphia, PA; Christopher T. Heffelfinger, Berman Tabacco, San Francisco, CA; Joshua D. Snyder, Boni & Zack LLC, Bala Cynwyd, PA; Kimberly Ann Kralowec, The Kralowec Law Group, San Francisco, CA.

For Newegg Inc., Interested Party (3:10-md-02143-RS): Gordon M. Fauth, Jr., Litigation Law Group, Alameda, CA.

Patrick S. Sweeney, Interested Party (3:10-md-02143-RS),**[\*25]** Pro se, Madison, WI.

John W Davis, Objector (3:10-md-02143-RS), Pro se.

For John W Davis, Objector (3:10-md-02143-RS): John William Davis, Law Office of John W. Davis, San Diego, CA.

For Debbie Bosse, Individual, Objector (3:10-md-02143-RS): Joseph Darrell Palmer, LEAD ATTORNEY, Carlsbad, CA.

For Conner Erwin, Objector (3:10-md-02143-RS): Timothy Ricardo Hanigan, LEAD ATTORNEY, Lang Hanigan & Carvalho, LLP, Woodland Hills, CA.

For Michael Ira Helfand, Objector (3:10-md-02143-RS): Steven F. Helfand, LEAD ATTORNEY, Helfand Law Offices, San Francisco, CA.

Christopher Andrews, Objector (3:10-md-02143-RS), Pro se, Livonia, MI.

For Mr. Stephen Field, Objector (3:10-md-02143-RS): Michael Frederick Creamer, Jr, Anaheim, CA.

For All Parties, Miscellaneous (3:10-md-02143-RS): Steven Noel Williams, LEAD ATTORNEY, Cotchett Pitre & McCarthy LLP, Burlingame, CA; Belinda S Lee, Latham & Watkins LLP, San Francisco, CA; Shana E. Scarlett, Hagens Berman Sobol Shapiro LLP, Berkeley, CA.

For Apple Inc., Miscellaneous (3:10-md-02143-RS): Ryan Bodine Erickson, LEAD ATTORNEY, Lewis and Llewellyn, SF, CA.

For U.S. Department of J ***Antitrust*** Division, Intervenor (3:10-md-02143-RS): Sidney A. Majalya, LEAD ATTORNEY, ***Antitrust* [\*26]** Division, San Francisco, CA; Ila Casy Deiss, United States Attorney's Office, Northern District of California, San Francisco, CA; Lara Meredith Kroop, ***Antitrust*** Division, San Francisco, CA; Manish Kumar, Department of Justice, ***Antitrust*** Division, San Francisco, CA.

For Fanshawe College of Applied Arts and Technology, Intervenor (3:10-md-02143-RS): Karl Olson, Cannata, O'Toole, Fickes & Almazan LLP, San Francisco, CA; Susan S. Brown, Robins Kaplan LLP, Mountain View, CA.

**Judges:** RICHARD SEEBORG, United States District Judge.

**Opinion by:** RICHARD SEEBORG

**Opinion**

**ORDER GRANTING SUMMARY JUDGMENT AGAINST TRUSTEES OF CIRCUIT CITY AND RADIOSHACK**[[1]](#footnote-0)1

Re: Dkt. No. 2346

**INTRODUCTION**

Circuit City and RadioShack were national retailers of consumer electronics until they declared bankruptcy in 2008 and 2015, respectively. *See* Circuit City Second Am. Compl. [Dkt. No. 2158], at ¶¶ 4, 10; RadioShack Second Am. Compl. [Dkt. No. 2159], at ¶¶ 4, 10. Their respective bankruptcy trustees[[2]](#footnote-1)2 each allege an industry-wide anticompetitive conspiracy to fix, raise, stabilize, and maintain the prices of optical disc drives ("ODDs") from 2004 to 2010 and bring suit for compensatory damages under the**[\*27]** Sherman Act. After the close of fact and expert discovery, Defendants[[3]](#footnote-2)3 moved for summary judgment, challenging the sufficiency of the evidence of causation of harm to Circuit City and RadioShack, as well as to their claims involving products incorporating ODDs and "Other Products," such as recording devices and gaming consoles. Because Circuit City and RadioShack have not demonstrated a genuine issue of material fact as to the existence of a conspiracy resulting in harm to them, Defendants' motion for summary judgment is granted.

**LEGAL STANDARD**

Summary judgment is proper where the pleadings, discovery, and affidavits demonstrate that there is "no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." [*Fed. R. Civ. P. 56(a)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-2421-6N19-F165-00000-00&context=). Material facts are those which may affect the outcome of the case. [*Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-6H80-0039-N37M-00000-00&context=). A dispute as to a material fact is genuine if there is sufficient evidence for a reasonable jury to return a verdict for the nonmoving party. *Id.*

The party moving for summary judgment bears the initial burden of identifying those portions of the pleadings, discovery, and affidavits which demonstrate the absence of a genuine issue of material fact. [*Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-6HC0-0039-N37R-00000-00&context=). Where the moving party will**[\*28]** have the burden of proof on an issue at trial, it must affirmatively demonstrate that no reasonable trier of fact could find other than for the moving party. In contrast, on an issue for which the opposing party will have the burden of proof at trial, the moving party need only point out "that there is an absence of evidence to support the nonmoving party's case." [*Id. at 325*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-6HC0-0039-N37R-00000-00&context=).

Once the moving party meets its initial burden, the nonmoving party must go beyond the pleadings and, by its own affidavits or discovery, set forth specific facts showing that there is a genuine issue for trial. The court is only concerned with disputes over material facts. "Factual disputes that are irrelevant or unnecessary will not be counted." [*Anderson, 477 U.S. at 248*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-6H80-0039-N37M-00000-00&context=). It is not the task of the court to scour the record in search of a genuine issue of triable fact. [*Keenan v. Allan, 91 F.3d 1275, 1279 (9th Cir.1996)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-1GR0-006F-M20N-00000-00&context=). The nonmoving party has the burden of identifying, with reasonable particularity, the evidence that precludes summary judgment. *Id.* If the nonmoving party fails to make this showing, "the moving party is entitled to a judgment as a matter of law." [*Celotex, 477 U.S. at 322*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-6HC0-0039-N37R-00000-00&context=).

**DISCUSSION**

**I. Sufficiency of the Evidence of Harm to Circuit City and RadioShack Caused by the Conspiracy**

**A. Claims Under the Sherman [\*29]  Act**

*Section 1* of the *Sherman* ***Antitrust*** *Act* prohibits "every contract, combination . . . or conspiracy, in restraint of trade or commerce among the several States . . . ." *15 U.S.C. § 1*. Under the rule of reason, the court tests the legality of a restraint by asking whether it "is such as merely ***regulates*** and perhaps thereby promotes competition or whether it is such as may suppress or even destroy competition." [*Gorlick Distrib. Ctrs., LLC v. Car Sound Exhaust Sys., Inc., 723 F.3d 1019, 1024 (9th Cir. 2014)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:58YS-Y6D1-F04K-V011-00000-00&context=). In order to establish a claim under *Section 1*, plaintiffs must demonstrate "(1) the parties to the agreement intend to harm or restrain competition, (2) the agreement actually injures competition and (3) the restraint is unreasonable as determined by balancing the restraint and any justifications or procompetitive effects of the restraint." *Id.* (internal quotation marks and citation omitted)."

When concerted price-fixing is alleged under the Sherman Act, plaintiffs bear the burden of presenting sufficient evidence to prove that an agreement to fix prices existed. *See, e.g.,* [*In re Citric Acid Litig., 191 F.3d 1090, 1093 (9th Cir. 1999)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3X9R-M5W0-0038-X19K-00000-00&context=); [*Sun Microsystems Inc. v. Hynix Semiconductor Inc., 622 F. Supp. 2d 890, 896 (N.D. Cal. 2009)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4W10-7KY0-TXFP-C22V-00000-00&context=). To survive summary judgment, plaintiffs must establish that there is a genuine issue of material fact as to whether defendants entered into an illegal conspiracy that caused plaintiff to suffer a cognizable injury. *See* [*Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-7P90-0039-N51W-00000-00&context=). Plaintiffs**[\*30]** can establish a genuine issue of material fact by producing either direct evidence of a defendant's price-fixing conduct or circumstantial evidence from which a reasonable fact finder could conclude the same. [*In re Citric Acid Litig., 191 F.3d at 1093*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3X9R-M5W0-0038-X19K-00000-00&context=); *see also* [*Sun Microsystems, 622 F. Supp. 2d at 896*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4W10-7KY0-TXFP-C22V-00000-00&context=) (citing [*Movie 1 & 2 v. United Artists Commc'ns, 909 F.2d 1245, 1251-52 (9th Cir. 1990)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-5D90-003B-502F-00000-00&context=); [*United States v. Gen. Motors Corp., 384 U.S. 127, 142-43, 86 S. Ct. 1321, 16 L. Ed. 2d 415, (1966))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-G4P0-003B-S3BX-00000-00&context=).

Direct evidence of a conspiracy "must be evidence that is explicit and requires no inferences to establish the proposition or conclusion being asserted." [*Cty. of Tuolumne v. Sonora Cmty. Hosp., 236 F.3d 1148, 1155 (9th Cir. 2001)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4239-YHM0-0038-X3VW-00000-00&context=). In the absence of direct evidence, plaintiffs "must present evidence from which an inference of conspiracy is more probable than an inference of independent action." [*Wilcox v. First Interstate Bank of Oregon, N.A., 815 F.2d 522, 525 (9th Cir. 1987)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-BF80-001B-K1RV-00000-00&context=). The Ninth Circuit "has outlined a two-part test to be applied whenever a plaintiff rests its case entirely on circumstantial evidence." [*In re Citric Acid Litig., 191 F.3d at 1094*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3X9R-M5W0-0038-X19K-00000-00&context=). "First, the defendant can 'rebut an allegation of conspiracy by showing a plausible and justifiable reason for its conduct that is consistent with proper business practice.' The burden then shifts back to the plaintiff to provide specific evidence tending to show that defendant was not engaging in permissible competitive behavior." *Id.* (internal citations omitted); *see also* [*In re Tableware* ***Antitrust*** *Litig., 484 F. Supp. 2d 1059, 1072 (9th Cir. 2007)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4N86-XD60-TVSH-337V-00000-00&context=).

**B. Evidence of Causation of Harm**

Defendants move for summary judgment on the grounds that Circuit City and RadioShack**[\*31]** cannot show that the alleged conspiracy caused them any cognizable injury. *See* [*Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 585-86, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-7P90-0039-N51W-00000-00&context=). Defendants argue that no evidence exists allowing a reasonable jury to conclude that ODD prices charged to Circuit City and RadioShack were related to those charged to other OEMs. Circuit City and RadioShack do not dispute their inability to present evidence that they were specifically targeted by the conspiracy, and in fact, their liability expert, Dr. John Hayes, admitted at deposition that he did not identify a single communication among Defendants discussing either Circuit City or RadioShack. *See* Gelott Decl. [Dkt. No. 2346-8] Ex. 7, at 35:11-36:7; Opp. [Dkt. No. 2462] at 20-21. Nonetheless, they contend that evidence of targeting is not required by the ***antitrust*** laws, and instead, largely rely on expert testimony to establish causation of their injuries.

They present the testimony of two damages experts, Dr. James McClave and Dr. Alan Frankel. Dr. McClave's analysis opines on the amount, if any, by which prices of ODDs were elevated by the conspiracy, using defendants' transactional data in a multiple regression analysis to compare prices during the relevant time period to competitive prices during**[\*32]** a time unaffected by the conspiracy as a benchmark. McClave Decl. [Dkt. No. 2466] at ¶¶ 1, 4-5. His analysis ultimately calculated an estimated overcharge of 13.5%, and he concluded that "it is reasonable and appropriate to apply this 13.5% overcharge number to all drives at issue in this case." *Id.* ¶ 7. Relying on Dr. McClave's 13.5% overcharge percentage, Dr. Frankel calculates the amount of overcharges on ODD products attributable to the conspiracy, and provides overcharge subtotals for each product category. Frankel Decl. [Dkt. No. 2467] at ¶ 1.

Circuit City and RadioShack correctly conclude that Dr. McClave and Dr. Frankel's testimony is admissible. This does not equate, however, to evidence of causation of harm. Circuit City and RadioShack jumble evidence of damages with evidence of causation, but their burden remains to proffer evidence as to both of those elements separately. *See, e.g.,* [*Catlin v. Wa. Energy Co., 791 F.2d 1343, 1347-48 (9th Cir. 1986)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-4S60-0039-P12F-00000-00&context=) (noting that even though plaintiff showed proof of ***antitrust*** injury, "[n]o causal connection to [defendant's] conduct was demonstrated"); [*Oregon Laborers-Emp'rs Health & Welfare Trust Fund v. Philip Morris Inc., 185 F.3d 957, 963 (9th Cir. 1999)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3WY9-0620-0038-X04Y-00000-00&context=) ("A direct relationship between the injury and the alleged wrongdoing, although not the sole requirement of RICO and ***antitrust*** proximate causation, has been**[\*33]** one of its central elements.") (internal quotation marks and citation omitted); [*McGlinchy v. Shell Chemical Co., 845 F.2d 802, 808 (9th Cir. 1988)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-1CH0-001B-K0DV-00000-00&context=) (noting plaintiffs' failure to "make a showing sufficient to establish the amount, causation, or fact of damages"). Dr. McClave and Dr. Frankel, both as damages experts, do not opine on causation of harm, or present a theory of causation. Instead, Dr. McClave appears to assume that a conspiracy existed, and then calculates overcharge on products during the affected period. Neither he nor Dr. Frankel explain any theory as to how the conspiracy would have affected customers other than those specifically targeted, let alone present any evidence that this actually occurred. Given Circuit City and RadioShack's failure to proffer any evidence as to causation, they fail to raise a genuine issue of material fact, and Defendants' motion for summary judgment against them must be granted.

**II. Claims Based on Purchases of Products Incorporating ODDs, or "Other Products"**

Defendants also argue that they are entitled to summary judgment with respect to claims based on purchases of other products incorporating ODDs, including computers, as well as "Other Products," such as recording devices or gaming consoles, manufactured**[\*34]** by Defendants. While the issue need not be reached in light of the conclusion above, it is worth noting that Circuit City and RadioShack appear to misunderstand their burden of proof at summary judgment. Defendants have, in their opening brief, successfully shown an "absence of evidence to support the nonmoving party's case." [*Celotex Corp. v. Catrett, 477 U.S. at 325*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-6HC0-0039-N37R-00000-00&context=). Circuit City and RadioShack respond insisting Defendants fail to "cit[e] a shred of testimony from any economic experts of their own," and that Defendants' argument must fail because of Circuit City and RadioShack's "unchallenged expert evidence." Opp. [Dkt. No. 2462] at 22-23. It is not, however, Defendants' obligation to offer a rebuttal expert at summary judgment, but only to demonstrate the lack of a genuine issue of material fact. Nor can Circuit City and RadioShack fill their evidentiary void with what they call "expert evidence." While expert testimony is useful to interpreting record evidence, it cannot stand in its place. *See* [*Brooke Grp. Ltd. v. Brown & Williamson Tobacco Corp., 509 U.S. 209, 242, 113 S. Ct. 2578, 125 L. Ed. 2d 168 (1993)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4W-XDD0-003B-R3PV-00000-00&context=) ("When an expert opinion is not supported by sufficient facts to validate it in the eyes of the law, . . . it cannot support a jury's verdict. Expert testimony is useful as a guide to interpreting market facts, but it is not a substitute**[\*35]** for them.") (citation omitted).

Here, Circuit City and RadioShack do not advance sufficient evidence to proceed with their claims based on purchases incorporating ODDs or "Other Products." While their experts, Dr. Hayes and Dr. Frankel, show plausible theories as to how vertically integrated defendants could benefit from a conspiracy to charge supra-competitive rates with respect to products incorporating ODDs, these plaintiffs offer no underlying evidence showing that this actually occurred in reality. Indeed, Dr. Hayes admitted as much at deposition. *See* Gelott Decl. [Dkt. No. 2346-8] Ex. 7, at 81:2-84:5. With respect to "Other Products," Defendants similarly point to various evidence tending to show that the optical disc technology in these "Other Products" is not interchangeable with the ODDs at issue in this litigation. While Dr. Fontecchio provides a contradictory opinion, again it is not a substitute for concrete evidence showing that his opinion is in fact based in reality. Moreover, at deposition, he conceded that more often than not, the majority of ODDs he reviewed did not contain interchangeable optical disc technology. *See* Gelott Decl. [Dkt. No. 2346-4] Ex. 3, at 37:24-38:9.**[\*36]** In fact, he found only a single drive that was arguably interchangeable. *Id.* at 97:11-98:16. Given the vast amount of damages that Circuit City and RadioShack attribute to "Other Products,"—nearly $75 million—this lone example is insufficient to raise a genuine issue of material fact. Without the necessary evidence underpinning their theories, Circuit City and RadioShack cannot show a genuine issue of material fact as to products incorporating ODDs or "Other Products," and thus cannot survive summary judgment.

**CONCLUSION**

For the reasons stated above, Defendants' Motion for Summary Judgment against the trustees of Circuit City and Radio Shack is granted.

**IT IS SO ORDERED**.

Dated: 12/18/17

/s/ Richard Seeborg

RICHARD SEEBORG

United States District Judge

**End of Document**

1. 1This is one of several orders issued contemporaneously addressing the dispositive motions in the *In re Optical Disk Drive* ***Antitrust*** *Litigation*, No. 10-md-02143. *See also* Summary of Rulings. [↑](#footnote-ref-0)
2. 2While the trustees bring the action, for purposes of this Order, the parties will be referred to as Circuit City and RadioShack. [↑](#footnote-ref-1)
3. 3The moving defendants still remaining are Toshiba Corp.; Toshiba America Information Systems, Inc.; Toshiba Samsung Storage Technology Corp.; Toshiba Samsung Storage Technology Korea Corp.; Samsung Electronics Co., Ltd.; and Samsung Electronics America, Inc. [↑](#footnote-ref-2)