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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

IN RE ANIMATION WORKERS  
ANTITRUST LITIGATION

Master Docket No.:14-CV-04062-LHK

**ORDER GRANTING DEFENDANTS’  
JOINT MOTION TO DISMISS**

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

Re: Dkt. No. 75

Defendants DreamWorks Animation SKG, Inc.; The Walt Disney Company; Lucasfilm Ltd., LLC; Pixar; ImageMovers, LLC.; Two Pic MC LLC (f/k/a ImageMovers Digital); Sony Pictures Animation Inc.; Sony Pictures Imageworks Inc.; and Blue Sky Studios have filed a joint motion to dismiss the consolidated amended complaint. (“MTD”), ECF No. 75. Having considered the parties’ submissions, the relevant law, and the record in this case, the Court GRANTS Defendants’ motion.

**I. BACKGROUND**

This is a consolidated class action brought by former employees alleging antitrust claims against their former employers, various animation studios with principal places of business in

1 California.<sup>1</sup> Plaintiffs contend that Defendants engaged in a conspiracy to fix and suppress  
2 employee compensation and to restrict employee mobility.

3 **A. Factual Background**

4 The Court draws the following factual background from the uncontroverted allegations in  
5 the Consolidated Amended Complaint (“CAC”), and from judicially noticed documents.<sup>2</sup> Unless  
6 otherwise noted, Plaintiffs’ allegations are presumed to be true for purposes of ruling on  
7 Defendants’ motion to dismiss. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

8 **1. The Parties**

9 Defendants include the following animation and visual effects studios: Blue Sky Studios,  
10 Inc. (“Blue Sky”), a Delaware corporation with its principal place of business in Greenwich, CT;  
11 DreamWorks Animation SKG, Inc. (“DreamWorks”), a Delaware corporation with its principal  
12 place of business in Glendale, CA; ImageMovers LLC, a California corporation with its principal  
13 place of business in Los Angeles, CA; ImageMovers Digital LLC, a Delaware corporation with its  
14 principal place of business in Burbank, CA; Lucasfilm Ltd., LLC (“Lucasfilm”), a California  
15 corporation with its principal place of business in San Francisco, CA;<sup>3</sup> Pixar, a California  
16

17 \_\_\_\_\_  
18 <sup>1</sup> Defendant Blue Sky Studios, Inc. has its principal place of business in Greenwich, CT, but  
19 Plaintiffs allege that it is owned by Twentieth Century Fox Film Corporation, which has its  
20 principal place of business in Los Angeles, California. Consol. Am. Compl. (“CAC”), ¶ 21.

21 <sup>2</sup> The Court grants Defendants’ unopposed request for judicial notice, ECF No. 76, and has taken  
22 notice of the adjudicative facts contained therein. Defendants request that the Court take judicial  
23 notice of the Civil Investigative Demands issued by the Department of Justice; public records  
24 from the State of Delaware; the expert report of Edward E. Leamer, as filed in *In re High-Tech  
25 Antitrust Litig.*, Case No. 11-CV-2509-LHK, ECF No. 856-8; media articles regarding the DOJ  
26 investigation; and an advertisement published by Plaintiffs’ counsel. *See United States ex rel.  
27 Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992) (holding  
28 a court may take notice of proceedings in other courts); *Lee v. City of Los Angeles*, 250 F.3d 668,  
689–90 (9th Cir. 2001) (matters of public record); *MGIC Indem. Co. v. Weisman*, 803 F.2d 500,  
505 (9th Cir. 1986) (court records); *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592  
F.3d 954, 960 (9th Cir. 2010), *overruled on other grounds by Galbraith v. Cnty. of Santa Clara*,  
307 F.3d 1119, 1125–26 (9th Cir. 2002) (media publications); *see also* Fed. R. Evid. 201(d).

29 The Court grants Plaintiffs’ unopposed request for judicial notice, ECF No. 97 at 37, and  
30 has taken notice of the adjudicative facts contained therein. Plaintiffs request that the Court take  
31 judicial notice of two sealing orders from the *High-Tech* litigation and a media report. *See Lee*,  
250 F.3d at 689–90; *Van Saher*, 592 F.3d at 960.

32 <sup>3</sup> Plaintiffs aver that Industrial Light & Magic (“ILM”) is a division of Lucasfilm.

1 corporation with its principal place of business in Emeryville, CA;<sup>4</sup> Sony Pictures Animation, Inc.  
2 and Sony Pictures Imageworks, Inc. (collectively, “the Sony Defendants”), California corporations  
3 with their principal places of business in Culver City, CA; and The Walt Disney Company  
4 (“Disney”) is a Delaware corporation with its principal place of business in Burbank, CA.<sup>5</sup> CAC  
5 ¶¶ 21–29.

6 Plaintiffs Robert A. Nitsch, Jr., Georgia Cano, and David Wentworth (collectively,  
7 “Plaintiffs”), are artists and engineers that were previously employed by four of the named  
8 Defendants. *Id.* ¶¶ 18–20. Nitsch worked for Sony Picture Imageworks in 2004 and DreamWorks  
9 from 2007 to 2011. *Id.* ¶ 18. Cano worked for Walt Disney Feature Animation from 2004 to 2005,  
10 ImageMovers Digital in 2010, and at various other visual effects and animation studios. *Id.* ¶ 19.  
11 Wentworth worked at ImageMovers Digital from 2007 to 2010. *Id.* ¶ 20. Nitsch is a resident of  
12 Massachusetts, and Cano and Wentworth are residents of California. *Id.* ¶¶ 18–20.

13 Plaintiffs seek to represent the following class:

14 All persons who worked at any time from 2004 to the present for  
15 Pixar, Lucasfilm, DreamWorks Animation, Walt Disney Animation  
16 Studios, Walt Disney Feature Animation, Blue Sky Studios, Digital  
17 Domain, ImageMovers Digital, Sony Pictures Animation or Sony  
18 Pictures Imageworks in the United States. Excluded from the Class  
19 are officers, directors, senior executives and personnel in the human  
20 resources and recruiting departments of the Defendants.

21 *Id.* ¶ 113.<sup>6</sup>

22 **2. *In re High-Tech Employees Litigation and the Department of Justice Investigation***

23 There is significant factual overlap between Plaintiffs’ allegations and the related action *In*  
24 *re High-Tech Employees Litigation*, No. 11-CV-02509-LHK, as well as the civil complaints filed  
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26 <sup>4</sup> According to Plaintiffs, ILM, Lucasfilm, and Pixar have been owned by Defendant The Walt  
27 Disney Company since 2012. CAC ¶¶ 25–26.

28 <sup>5</sup> Disney also “oversees the operations of” Walt Disney Animation Studios, formerly known as  
Walt Disney Feature Animation. CAC ¶ 29.

<sup>6</sup> Plaintiffs also allege that “[t]he members of the Settlement Class under the September 20, 2013  
Settlement Agreement with Pixar and Lucasfilm [in *High-Tech*] . . . do not bring in this complaint  
any claims against Pixar, Lucasfilm, and Disney that were released pursuant to the Settlement  
Agreement.” *Id.* ¶ 114.

1 by the Department of Justice (“DOJ”) against several Silicon Valley technology companies, Pixar,  
2 and Lucasfilm. As both the factual and procedural history of the related action, *In re High-Tech*,  
3 and the DOJ investigations and complaints are relevant to the substance of Defendants’ motion to  
4 dismiss, the Court briefly summarizes the background of that litigation below.

5 From 2009 to 2010, the Antitrust Division of the DOJ investigated the employment and  
6 recruitment practices of various Silicon Valley technology companies, including Adobe Systems,  
7 Inc., Apple, Inc., Google, Inc., Intel Corp., and Intuit, Inc. *See In re High-Tech Employees Litig.*,  
8 856 F. Supp. 2d 1103, 1109 (N.D. Cal. 2012). In September of 2010, the DOJ then filed civil  
9 complaints against the above-mentioned technology companies, in addition to Pixar and  
10 Lucasfilm. *Id.* The DOJ filed its complaint against Adobe, Apple, Google, Intel, Intuit, and Pixar  
11 on September 24, 2010. *Id.* On December 21, 2010, the DOJ filed another complaint against  
12 Lucasfilm and Pixar. CAC ¶ 94. The defendants, including Pixar and Lucasfilm, stipulated to  
13 proposed final judgments in which they agreed that the DOJ’s complaints had stated claims under  
14 federal antitrust law and agreed to be “enjoined from attempting to enter into, maintaining or  
15 enforcing any agreement with any other person or in any way refrain from . . . soliciting, cold  
16 calling, recruiting, or otherwise competing for employees of the other person. 856 F. Supp. 2d at  
17 1109–10. (quoting Adobe Proposed Final Judgment at 5). The D.C. District Court entered the  
18 stipulated proposed final judgments in March and June of 2011. *Id.*

19 The *High-Tech* plaintiffs filed five separate state court actions between May and July of  
20 2011. Following removal, transfer to San Jose to the undersigned judge, and consolidation, the  
21 *High-Tech* plaintiffs filed a consolidated amended complaint on September 13, 2011. *Id.* at 1113.  
22 In their complaint, the *High-Tech* plaintiffs alleged antitrust claims against their employers,  
23 claiming that the defendants had conspired “to fix and suppress employee compensation and to  
24 restrict employee mobility.” *Id.* at 1108. More specifically, the *High-Tech* plaintiffs alleged a  
25 conspiracy comprised of “an interconnected web of express bilateral agreements.” *Id.* at 1110. One  
26 agreement, the “Do Not Cold Call” agreement involved one company placing the names of the  
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1 other company’s employees on a “Do Not Cold Call” list and instructing its recruiters not to cold  
2 call the employees of the other company. *Id.* In addition to the “Do Not Cold Call” agreements,  
3 the *High-Tech* plaintiffs also alleged that Pixar and Lucasfilm, defendants in both *High-Tech* and  
4 the instant action, entered into express, written agreements to (1) not cold call each other’s  
5 employees, (2) to notify the other company whenever making an offer to an employee of the other  
6 company, and (3) not to engage in “bidding wars.” *Id.* at 1111.

7 **3. Alleged Conspiracy in the Instant Action**

8 Here, Plaintiffs allege that Defendants conspired to suppress compensation in two ways.  
9 First, Defendants allegedly entered into a scheme not to actively solicit each other’s employees.  
10 CAC ¶ 41. Second, Defendants allegedly engaged in “collusive discussions concerning  
11 competitively sensitive compensation information and agreed upon compensation ranges,” which  
12 would artificially limit compensation offered to Defendants’ current and prospective employees.  
13 *Id.*

14 **a. Anti-Solicitation Scheme**

15 According to Plaintiffs, “Defendants agreed not to contact their coconspirators’ employees  
16 to inform them of available positions unless that individual employee had applied for a job  
17 opening on his or her own initiative.” *Id.* ¶ 42. This solicitation, also known as “cold calling,” is “a  
18 key competitive tool in a properly functioning labor market, especially for skilled labor.” *Id.* ¶ 42.  
19 Plaintiffs aver that employees of competitor studios represent “one of the main pools of potential  
20 hires,” and that employees of competitor studios that are not actively searching for new  
21 employment are “more likely to be among the most sought after employees.” *Id.* ¶ 43. Hiring an  
22 employee from a competitor studio “can save costs and avoid risks.” *Id.* Absent active solicitation,  
23 these employees are also difficult to reach. *Id.* Defendants’ anti-solicitation scheme also allegedly  
24 included “notifying each other when an employee of one Defendant applied for a position with  
25 another Defendant, and agreeing to limit counteroffers in such situations.” *Id.* ¶ 44. Moreover,  
26 Defendants allegedly “often refrained from hiring other Defendants’ employees at all without the  
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1 permission of the current employer,” and would sometimes decline to make offers of employment  
2 to an unemployed prospective hire if that individual had an outstanding offer from another  
3 Defendant. *Id.* ¶ 45.

4 *Pixar and Lucasfilm:* According to Plaintiffs, “the roots of the conspiracy reach back to the  
5 mid-1980s,” when George Lucas, the former Lucasfilm Chairman of the Board and CEO, sold  
6 Lucasfilm’s “computer division” to Steve Jobs, who had recently left Apple. *Id.* ¶ 46. Jobs named  
7 his new company Pixar. *Id.* Pixar’s President, Ed Catmull, Lucas, and “other senior executives,  
8 subsequently reached an agreement to restrain their competition for the skilled labor that worked  
9 for the two companies.” *Id.* Pixar drafted the terms of the agreement, which both Defendants  
10 communicated to their senior executives and “select human resources and recruiting employees.”  
11 *Id.* Lucas stated in an email that Pixar and Lucasfilm “have agreed that we want to avoid bidding  
12 wars,” and that the agreement prevented the two companies from “raid[ing] each other’s  
13 companies.” *Id.* Pixar and Lucasfilm allegedly agreed to the following terms: (1) not to cold call  
14 each other’s employees; (2) to notify each other when making an offer to the other company’s  
15 employee; and (3) that any offer by the other company would be “final,” i.e., neither Pixar nor  
16 Lucasfilm would engage in counteroffers. *Id.* ¶¶ 46–48 (citing internal Pixar email sent on January  
17 16, 2006).

18 Plaintiffs further allege that while the conspiracy originated with Pixar and Lucasfilm,  
19 Catmull brought additional studios into the fold. *Id.* ¶ 49. In a 2005 email, then Vice President of  
20 Human Resources at Pixar, Lori McAdams, wrote “With regard to ILM, Sony, Blue Sky, etc., we  
21 have no contractual obligations, but we have a gentleman’s agreement not to directly solicit/poach  
22 from their employee pool.” *Id.* ¶ 50. Pixar also drafted an internal “competitors list” that “listed  
23 anti-solicitation rules for each of the Defendants . . . .” *Id.* According to Plaintiffs, Blue Sky,  
24 DreamWorks, ImageMovers Digital, Sony Pictures Imageworks, and Walt Disney Animation  
25 Studios were “all listed with directions not to ‘recruit directly’ or ‘solicit or poach employees.’”  
26 *Id.* Plaintiffs’ allegations as to each Defendants’ alleged role and participation in the anti-  
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1 solicitation scheme is detailed below.

2 *DreamWorks*: Jobs and DreamWorks CEO, Jeffrey Katzenberg, “personally discussed  
3 DreamWorks joining into the conspiracy.” *Id.* ¶ 52. In a February 18, 2004 email from Catmull to  
4 Jobs, Catmull stated that the mutual agreement “worked quite well.” *Id.* A January 14, 2007 email  
5 from Catmull to Disney’s Chairman Dick Cook, also provided that “we have an agreement with  
6 Dreamworks not to actively pursue each other’s employees.” *Id.* In further emails between  
7 Catmull, McAdams, and DreamWorks’ head of human resources, Kathy Mandato, Pixar and  
8 DreamWorks reiterated their “non-poaching practices.” *Id.* ¶ 53. When a Pixar recruiting email  
9 was sent to a DreamWorks employee, Mandato reached out to McAdams, and McAdams  
10 responded that she’d “put a stop to it!” *Id.* ¶ 54.

11 *Disney*: A 2005 Pixar email “confirmed that Pixar would not recruit workers out of Disney  
12 or other studios.” *Id.* ¶ 56. In 2006, Disney purchased Pixar, and Catmull assumed responsibility  
13 for Walt Disney Animation Studios. *Id.* In communications between Disney Chairman Cook and  
14 Catmull, Cook agreed that “avoid[ing] raiding each other” was necessary to avoid “seriously  
15 mess[ing] up the pay structure.” *Id.* Cook allegedly promised to “reaffirm our position again” with  
16 ImageMovers Digital, which Plaintiffs contend is a joint venture Disney launched with  
17 ImageMovers.<sup>7</sup> *Id.* In 2006, Disney’s Director of Animation Resources apparently asked ILM, a  
18 division of Lucasfilm, to “observe ‘the Gentlewomen’s agreement’” that ILM not recruit Disney  
19 digital artists. *Id.* ¶ 57.

20 *Sony Defendants*: Beginning in 2002, Sony Pictures Imageworks expanded significantly by  
21 offering higher salaries to lure workers away from other studios. *Id.* ¶ 58. In response, Catmull  
22 allegedly met with Sony executives in person in 2004 or 2005 to “ask[] them to quit calling our  
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24 <sup>7</sup> Defendants submit that Exhibit F in their request for judicial notice, consisting of Certificates of  
25 Corporate Formation and Amendment filed with the Secretary of State of the State of Delaware,  
26 Division of Corporations, disproves Plaintiffs’ allegation that ImageMovers LLC was a party to  
27 the joint venture that created ImageMovers Digital. *See* ECF No. 76. Plaintiffs voluntarily  
28 dismissed ImageMovers LLC from this action after Defendants filed their motion to dismiss and  
request for judicial notice. Consequently, the Court concludes that ImageMovers’ involvement in  
the purported joint venture is not relevant.

1 employees.” *Id.* ¶ 59. Plaintiffs allege that Catmull reached an agreement with Sony at that time  
2 that the companies would not directly solicit or poach from each other. *Id.* Moreover, Sony  
3 allegedly then began to “restrain its relatively higher-wage practices to levels below what would  
4 otherwise have existed in a competitive market.” *Id.* ¶ 62.

5 *Blue Sky Studios*: Plaintiffs aver that Blue Sky “similarly entered the conspiracy,” did not  
6 recruit from other studios, and requested that other studios not recruit from Blue Sky. *Id.* ¶ 63. In  
7 2005, Blue Sky allegedly declined to pursue a DreamWorks employee that would have been “an  
8 amazing addition,” because Blue Sky did not “want to be starting anything with [Katzenberg, the  
9 DreamWorks CEO] over one story guy.” *Id.* Blue Sky’s Director of Human Resources, Linda  
10 Zazza, also allegedly spoke with Pixar’s McAdams to discuss “our sensitive issue of employee  
11 retention,” and McAdams assured Blue Sky that Pixar was not attempting to poach Blue Sky  
12 employees. *Id.* ¶ 64.

13 *ImageMovers Defendants*:<sup>8</sup> The ImageMovers Defendants allegedly also joined the  
14 conspiracy. Catmull wrote in a January 2007 email to Disney Chairman Cook that Catmull knew  
15 ImageMovers would “not target Pixar.” *Id.* ¶ 65. Plaintiffs allege, however, that ImageMovers  
16 continued to recruit from other conspiring studios, including DreamWorks, by “offering higher  
17 salaries.” *Id.* ¶ 66. Catmull then met with one of the founders of ImageMovers, Steve Starkey.  
18 Starkey allegedly told Catmull that ImageMovers had informed Lucas that ImageMovers would  
19 “not raid ILM.” *Id.* ¶ 67. Catmull then contacted Disney Studio’s President, Alan Bergman, and  
20 Senior Vice President of Human Resources, Marjorie Randolph, requesting that they require the  
21 ImageMovers Defendants to comply with the anti-solicitation scheme. *Id.* ¶ 68. According to  
22 Plaintiffs, Randolph “responded that Disney had in fact gotten the ImageMovers Defendants to  
23 agree to the ‘rules’ of the anti-solicitation scheme.” *Id.*

24 *Digital Domain*<sup>9</sup>: Digital Doman allegedly joined the conspiracy and had anti-solicitation  
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26 <sup>8</sup> Plaintiffs dismissed ImageMovers LLC without prejudice pursuant to a tolling agreement on  
27 January 14, 2015. ECF No. 83.

28 <sup>9</sup> Plaintiffs also dismissed Digital Domain 3.0 without prejudice pursuant to a tolling agreement.

1 agreements with “at least” DreamWorks, Lucasfilm/ILM and the Sony Defendants. *Id.* ¶ 69.  
2 According to Plaintiffs, starting in 2007, Digital Domain’s Head of Human Resources was Lala  
3 Gavgavian, who had previously worked at Lucasfilm’s ILM division “in senior roles in talent  
4 acquisition . . . during which time Pixar President Jim Morris explicitly informed her that Pixar  
5 and Lucasfilm” had an anti-solicitation/no-poaching agreement. *Id.* ¶ 70. Gavgavian and other  
6 senior personnel at Digital Domain allegedly “specifically instructed employees not to cold call or  
7 otherwise solicit other Defendants’ employees.” *Id.* ¶ 71.

8 As to all Defendants, Plaintiffs contend that Defendants “repeatedly sought to recruit” new  
9 studios into the scheme, including a small studio in 2008. *Id.* ¶ 72.

10 **b. Compensation Ranges**

11 In addition to the anti-solicitation scheme, Plaintiffs further allege that Defendants  
12 “directly communicated and met regularly to discuss and agree upon compensation ranges.” *Id.*  
13 ¶ 74. According to Plaintiffs, Defendants met at least once a year in California at meetings  
14 organized by the Croner Company, a third-party that apparently collects industry-specific salary  
15 information. At the official meetings, the Defendants “set the parameters of a compensation  
16 survey” that “provides wage and salary ranges for the studios’ technical or artistic positions,  
17 broken down by position and experience level.” *Id.* ¶ 75. Senior human resources and recruiting  
18 personnel from DreamWorks, Pixar, Lucasfilm/ILM, Disney, ImageMovers Digital, the Sony  
19 Defendants, Blue Sky, and Digital Domain attended these survey meetings, in addition to other  
20 studios. *Id.* ¶ 76. Plaintiffs aver that Defendants used the Croner meetings to “go further than their  
21 matching of job positions across companies; they discussed, agreed upon and set wage and salary  
22 ranges during meals, drinks and other social gatherings that they held outside of the official  
23 Croner meetings.” *Id.* ¶ 77. Defendants’ human resources and recruiting personnel also allegedly  
24 held “side” meetings at the Siggraph conference, a major visual effects industry conference, which  
25 senior personnel from Blue Sky, Pixar, DreamWorks, Lucasfilm, and Sony Picture ImageWorks

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26  
27 *See* CAC at 16 n.3.

1 attended. *Id.* ¶ 79.

2 Defendants’ Directors of Human Resources also allegedly “frequently sought to create new  
3 relationships when one of their counterparts was replaced at a co-conspirator to ensure the efficacy  
4 of communications about the conspiracy,” and met with each other one-on-one “on many  
5 occasions.” *Id.* ¶¶ 79–80. Plaintiffs further allege that Defendants regularly emailed each other  
6 with specific salary ranges. On May 13, 2005, DreamWorks requested that Disney provide salary  
7 information on three positions, and Disney promptly responded. *Id.* ¶ 81. The following spring,  
8 DreamWorks also requested similar information from Pixar and Disney, and “made clear it was  
9 surveying multiple studios.” *Id.* ¶ 82. On September 2, 2009, Blue Sky’s Director of Human  
10 Resources requested salary range information from Pixar. *Id.* ¶ 83. In a 2007 email, DreamWorks’  
11 Head of Compensation explained that “we do sometimes share general comp information (ranges,  
12 practices) in order to maintain the relationships with other studios and to be able to ask for that  
13 kind of information ourselves when we need it.” *Id.* ¶ 84.

14 According to Plaintiffs, Defendants’ communications regarding salary ranges were not  
15 limited to bilateral “one off” exchanges, but rather Defendants would “openly email[] each other  
16 in large groups with competitively sensitive confidential current and future compensation  
17 information.” *Id.* ¶ 85. On November 17, 2006, Pixar’s McAdams emailed senior human resources  
18 personnel at DreamWorks, Sony Pictures Imageworks, Lucas Film, Walt Disney Animation  
19 Studios, and others:

20 Quick question from me, for those of you who can share the info.

21 What is your salary increase budget for FY ’07? Ours is  
22 [REDACTED] but we may manage it to closer to [REDACTED] on  
average. Are you doing anything close, more, or less?

23 *Id.* ¶ 86. In January 2009, DreamWorks’ Head of Production Technology emailed the heads of  
24 human resources at Pixar, ILM, Sony Pictures Animation, and Disney to “learn how they handled  
25 overtime.” More specifically, DreamWorks wanted to “see if the other companies were ‘as  
26 generous.’” *Id.* ¶ 88.

1 Defendants' human resources and recruiting personnel also allegedly regularly  
2 communicated via telephone. *Id.* ¶ 89. Plaintiffs quote emails from Pixar's McAdams to Sony  
3 Pictures Imageworks, ILM, DreamWorks, Disney, and Blue Sky "in early 2007" stating  
4 "[c]hatting with all of you each day is really becoming a fun habit," and an email response from  
5 Walt Disney Animation Studios Vice President of Human Resources also commenting that "[i]t is  
6 fun to hear from you all on a daily basis." *Id.* ¶ 90.

7 As Plaintiffs describe it, the Croner survey meetings, side meetings, emails, and telephone  
8 calls "provided the means and opportunities for Defendants to collude and to implement and  
9 enforce the conspiracy to suppress workers' compensation." *Id.* ¶ 91. Plaintiffs further allege that  
10 while press reports in 2009 noted that the DOJ was investigating anti-solicitation agreements  
11 among high-tech companies, including Google and Apple, there was no indication that the DOJ  
12 was also investigating Pixar, Lucasfilm, or any other animation company. *Id.* ¶ 95. Plaintiffs aver  
13 that September 17, 2010 marked the first news story naming Pixar as a company under  
14 investigation, but that there was no public disclosure that any other Defendant in the instant action  
15 was part of the conspiracy. *Id.* According to Plaintiffs, Lucasfilm was implicated in the Pixar  
16 investigation in December 2010, but until the Court unsealed certain filings in the *High-Tech* case,  
17 there was no public information that the other Defendants in this action had engaged in similar  
18 conduct. *Id.*

19 **4. Claims**

20 Plaintiffs' CAC contains three claims for relief under the following statutes: (1) Section 1  
21 of the Sherman Act, 15 U.S.C. § 1; (2) California's Cartwright Act, Cal. Bus. & Prof. Code  
22 § 16720; and (3) California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200  
23 *et seq.* Plaintiffs seek damages, pre- and post-judgment interest, attorney's fees and expenses, and  
24 a permanent injunction. *Id.* ¶ 147.

25 **B. Procedural Background**

26 In light of the relationship between the instant case and the *High-Tech* case, the Court  
27

1 briefly summarizes the relevant procedural history in *High-Tech* in addition to the instant case.

2 **1. *High-Tech* Procedural Background**

3 The *High-Tech* defendants removed the first state-court action on May 23, 2011. No. 11-  
4 2509, ECF No. 1. On April 18, 2012, the Court granted in part and denied in part the *High-Tech*  
5 defendants' joint motion to dismiss and denied Lucasfilm's motion to dismiss. No. 11-2509, ECF  
6 No. 119. On April 5, 2013, the Court granted in part and denied in part the *High-Tech* plaintiffs'  
7 motion for class certification with leave to amend. No. 11-2509, ECF No. 382. The Court granted  
8 the *High-Tech* plaintiffs' supplemental motion for class certification on October 24, 2013. No. 11-  
9 2509, ECF No. 531. On November 13, 2013, the *High-Tech* defendants filed a Rule 23(f) petition  
10 before the Ninth Circuit, requesting permission to appeal this Court's October 24, 2013 class  
11 certification order. No. 13-80223, ECF No. 1. The Ninth Circuit denied the defendants' petition on  
12 January 14, 2014. No. 13-80223, ECF No. 18.

13 In the interim, three of the *High-Tech* defendants, Intuit, Lucasfilm, and Pixar, reached an  
14 early settlement with the plaintiffs. On September 21, 2013, the *High-Tech* plaintiffs filed a  
15 motion for preliminary approval of a proposed class action settlement as to defendants Intuit,  
16 Lucasfilm, and Pixar. No. 11-2509, ECF No. 501. On October 30, 2013, the Court preliminarily  
17 approved the proposed settlement with Intuit, Lucasfilm, and Pixar. No. 11-2509, ECF No. 540.  
18 The Court granted final approval as to that settlement on May 16, 2014. No. 11-2509, ECF No.  
19 915. The Court entered a final judgment with regards to Lucasfilm, Pixar, and Intuit on June 9,  
20 2014. No. 11-2509, ECF No. 936. At the request of Intuit, the Court entered an amended final  
21 judgment on June 20, 2014. No. 11-2509, ECF No. 947.

22 The remaining *High-Tech* defendants, Adobe, Apple, Google, and Intel, filed individual  
23 motions for summary judgment, and joint motions for summary judgment and to strike certain  
24 expert testimony on January 9, 2014. No. 11-2509, ECF Nos. 554 (Intel), 556–57 (joint motions),  
25 560 (Adobe), 561 (Apple), 564 (Google). The Court denied the *High-Tech* defendants' individual  
26 motions for summary judgment on March 28, 2014. No. 11-2509, ECF No. 771. On April 4, 2014,  
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1 the Court granted in part and denied in part the *High-Tech* defendants’ motion to strike, and  
2 denied the defendants’ joint motion for summary judgment. No. 11-2509, ECF No. 778.

3 On May 22, 2014, the *High-Tech* plaintiffs filed a motion for preliminary approval of class  
4 action settlement as to the remaining defendants. No. 11-2509, ECF No. 920. On August 8, 2014,  
5 the Court denied the *High-Tech* plaintiffs’ motion for preliminary approval, concluding that the  
6 proposed settlement did not fall “within the range of reasonableness.” No. 11-2509, ECF No. 974,  
7 at 30. On September 4, 2014, the *High-Tech* defendants filed a petition for a writ of mandamus  
8 with the Ninth Circuit. No. 14-72745, ECF No. 1. On January 13, 2015, the *High-Tech* defendants  
9 filed correspondence with the Ninth Circuit referring to a new proposed settlement agreement. No.  
10 14-72745, ECF No. 21. On January 30, 2015, the defendants filed an unopposed motion to dismiss  
11 the petition, which the Ninth Circuit granted on February 2, 2015. No. 14-72745, ECF Nos. 23,  
12 24.

13 On January 15, 2015, the *High-Tech* plaintiffs filed a motion for preliminary approval of  
14 class action settlement as to the remaining defendants. No. 11-2509, ECF No. 1032. In this second  
15 proposed class action settlement, the parties had reached a settlement amount exceeding the  
16 previously rejected settlement by approximately \$90.5 million dollars. *Id.* at 1. Following a  
17 fairness hearing on March 2, 2015, the Court granted preliminary approval to the January 2015  
18 settlement agreement on March 3, 2015. No. 11-1509, ECF Nos. 1051, 1054. A final approval  
19 hearing is scheduled for July 9, 2015.

20 **2. Procedural Background in the Instant Action**

21 Plaintiff Nitsch filed the first complaint against all Defendants but Blue Sky on September  
22 8, 2014. ECF No. 1. The Court related Nitsch’s action to *In re High-Tech Employee Antitrust*  
23 *Litigation*, No. 11-2509, on September 23, 2014. Plaintiff Cano filed the second complaint against  
24 all Defendants on September 17, 2014, which the Court related to *High-Tech* on October 7, 2014.  
25 *See* Case No. 14- 4203, ECF Nos. 1, 9. Plaintiff Wentworth filed the third complaint against all  
26 Defendants but Blue Sky on October 2, 2014, which the Court related to *High-Tech* on October  
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1 28, 2014. *See* Case No. 14-4422, ECF Nos. 1, 26. On November 5, 2014, the Court granted  
2 Plaintiffs’ motion to consolidate the above-mentioned three cases into a single action, *In re*  
3 *Animation Workers Antitrust Litigation*. *See* Case No. 14-4062, ECF No. 38.

4 Pursuant to the Court’s case management order, Plaintiffs filed their CAC on December 2,  
5 2014. ECF No. 63. On January 9, 2015, Defendants filed the instant joint motion to dismiss, and a  
6 request for judicial notice. ECF Nos. 75, 76. Defendants also filed an administrative motion to seal  
7 exhibits in support of their motion to dismiss. ECF No. 79. Plaintiffs filed a timely opposition,  
8 ECF No. 97, and Defendants replied, ECF No. 100.

9 Also pending before the Court is Defendants’ January 9, 2015, motion to compel  
10 arbitration. ECF No. 71. As that motion is set for hearing on April 23, 2015, the Court does not  
11 address that motion in the instant order.

12 **II. LEGAL STANDARD**

13 **A. Rule 12(b)(6)**

14 Under Federal Rule of Civil Procedure 12(b)(6), a party may move to dismiss a complaint  
15 for failure to state a claim upon which relief can be granted. Such a motion tests the legal  
16 sufficiency of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). In considering  
17 whether the complaint is sufficient, the Court must accept as true all of the factual allegations  
18 contained in the complaint. *Iqbal*, 556 U.S. at 678. However, the Court need not accept as true  
19 “allegations that contradict matters properly subject to judicial notice or by exhibit” or “allegations  
20 that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” *In re*  
21 *Gilead Scis. Secs. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008) (citation omitted). While a  
22 complaint need not allege detailed factual allegations, it “must contain sufficient factual matter,  
23 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Iqbal*, 556 U.S. at 678  
24 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility  
25 when the plaintiff pleads factual content that allows the court to draw the reasonable inference that  
26 the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a  
27 ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted

1 unlawfully.” *Iqbal*, 556 U.S. at 678 (internal citation omitted).

2 **B. Rule 9(b)**

3 Claims sounding in fraud or mistake are subject to the heightened pleading requirements of  
4 Federal Rule of Civil Procedure 9(b), which require that a plaintiff alleging fraud “must state with  
5 particularity the circumstances constituting fraud.” Fed. R. Civ. P. 9(b); *see Kearns v. Ford Motor*  
6 *Co.*, 567 F.3d 1120, 1124 (9th Cir. 2009). To satisfy the heightened standard under Rule 9(b), the  
7 allegations must be “specific enough to give defendants notice of the particular misconduct which  
8 is alleged to constitute the fraud charged so that they can defend against the charge and not just  
9 deny that they have done anything wrong.” *Semegen v. Weidner*, 780 F.2d 727, 731 (9th Cir.  
10 1985). Thus, claims sounding in fraud must allege “an account of the time, place, and specific  
11 content of the false representations as well as the identities of the parties to the  
12 misrepresentations.” *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir. 2007) (per curiam)  
13 (internal quotation marks and citation omitted). A plaintiff must set forth what is false or  
14 misleading about a statement, and why it is false.” *In re GlenFed, Inc. Secs. Litig.*, 42 F.3d 1541,  
15 1548 (9th Cir. 1994) (en banc), *superseded by statute on other grounds as stated in Marksman*  
16 *Partners, L.P. v. Chantal Pharm. Corp.*, 927 F. Supp. 1297, 1309 (C.D. Cal. 1996). However,  
17 “intent, knowledge, and other conditions of a person’s mind” need not be stated with particularity,  
18 and “may be alleged generally.” Fed. R. Civ. P. 9(b).

19 **C. Leave to Amend**

20 If the court concludes that the complaint should be dismissed, it must then decide whether  
21 to grant leave to amend. Under Rule 15(a) of the Federal Rules of Civil Procedure, leave to amend  
22 “shall be freely given when justice so requires,” bearing in mind “the underlying purpose of Rule  
23 15 . . . [is] to facilitate decision on the merits, rather than on the pleadings or technicalities.” *Lopez*  
24 *v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (internal quotation marks and citation  
25 omitted). Nonetheless, a district court may deny leave to amend a complaint due to “undue delay,  
26 bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by  
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1 amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of  
2 the amendment, [and] futility of amendment.” *See Leadsinger, Inc. v. BMG Music Publ’g*, 512  
3 F.3d 522, 532 (9th Cir. 2008).

4 **III. DISCUSSION**

5 Defendants move to dismiss on the following grounds: that (1) Plaintiffs’ claims are barred  
6 under the relevant statutes of limitations; (2) Plaintiffs fail to sufficiently allege a *per se* antitrust  
7 claim based on wage-fixing agreements; (3) Plaintiffs fail to state plausible claims against Blue  
8 Sky, the Sony Defendants, and the ImageMovers Defendants; (4) Plaintiffs’ requested remedies  
9 are not unavailable under the UCL; and (5) Plaintiffs lack standing to seek injunctive relief. The  
10 Court begins by addressing whether Plaintiffs’ claims are time barred.

11 **A. Statute of Limitations**

12 In the instant case, Defendants contend that Plaintiffs’ claims are time barred. The parties  
13 agree that Plaintiffs’ claims are subject to a four year statute of limitations. The parties dispute  
14 when Plaintiffs’ claims accrued, whether Plaintiffs have adequately alleged a continuing violation,  
15 and whether Plaintiffs have sufficiently alleged fraudulent concealment so as to toll the statute of  
16 limitations.

17 As a threshold matter, the Court agrees that Plaintiffs’ claims under the Sherman Act,  
18 Cartwright Act, and UCL are all subject to a four year statute of limitations. *See* 15 U.S.C. § 15b  
19 (Sherman Act); Cal. Bus. & Prof. Code § 16750.1 (Cartwright Act); Cal. Bus. & Prof. Code  
20 § 17208 (UCL). The statute of limitations provision in the Sherman Act provides:

21 Any action to enforce any cause of action under section 15, 15a, or  
22 15c of this title shall be forever barred unless commenced within  
23 four years after the cause of action accrued. No cause of action  
barred under existing law on the effective date of this Act shall be  
revived by this Act.

24 15 U.S.C. § 15b. The statute of limitations provision under California’s Cartwright Act is  
25 functionally identical:

26 Any civil action to enforce any cause of action for a violation of this  
27 chapter shall be commenced within four years after the cause of

1 action accrued. No cause of action barred under existing law on the  
2 effective date of the amendment of this section at the 1977-78  
Regular Session of the Legislature shall be revived by such  
amendment.

3 Cal. Bus. & Prof. Code § 16750.1. California’s UCL similarly provides for a four-year statute of  
4 limitations:

5 Any action to enforce any cause of action pursuant to this chapter  
6 shall be commenced within four years after the cause of action  
7 accrued. No cause of action barred under existing law on the  
effective date of this section shall be revived by its enactment.

8 Cal. Bus. & Prof. Code § 17208 (UCL). The Court begins by addressing the accrual rule  
9 applicable to Plaintiffs’ Sherman Act claim, which the parties do not dispute would also apply to  
10 Plaintiffs’ Cartwright Act claim.<sup>10</sup> See MTD at 4; Opp. at 10 n.36. The Court then addresses  
11 Plaintiffs’ UCL claim.

12 **1. Accrual Rule**

13 As an initial matter, the parties dispute whether Plaintiffs’ claims accrued at the time of  
14 Plaintiffs’ injuries (the “injury rule”) or at the time that Plaintiffs discovered, or reasonably should  
15 have discovered their injuries (the “discovery rule”). Under controlling Supreme Court and Ninth  
16 Circuit authority, Plaintiffs’ antitrust claims began to accrue at the time of injury.

17 Generally, [an antitrust cause] of action accrues and the statute  
18 begins to run when a defendant commits an act that injures a  
19 plaintiff’s business. . . . This much is plain from the treble-damage  
20 statute itself. . . . [E]ach time a plaintiff is injured by an act of the  
21 defendants a cause of action accrues to him to recover the damages  
caused by that act and that, as to those damages, the statute of  
limitations runs from the commission of the act.

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22 <sup>10</sup> As Defendants note, under California law the general accrual rule is the “last element rule,”  
23 where a claim accrues “when [it] is complete with all of its elements”—those elements being  
24 wrongdoing, harm, and causation.” *Poosh v. Philip Morris USA, Inc.*, 51 Cal. 4th 788, 797 (2011)  
25 (quoting *Norgart v. Upjohn Co.*, 21 Cal. 4th 383, 397 (1999)). The “discovery rule” is an  
26 exception to the common law accrual rule. *Id.* In light of the fact that the discovery rule is an  
27 exception and not the default rule, the *Aryeh* court’s holding that federal interpretation of the  
Sherman Act is instructive in interpreting the Cartwright Act, and the absence of any contrary  
argument from Plaintiffs, the Court focuses on the Sherman Act to resolve whether both Plaintiffs’  
Sherman and Cartwright Act claims are time barred. See *Aryeh v. Canon Bus. Solutions, Inc.*, 55  
Cal. 4th 1185, 1196 (2013). Moreover, as stated above, the parties do not dispute that resolution of  
Plaintiffs’ Sherman Act claim would also resolve Plaintiffs’ Cartwright Act claim.

1 *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321, 338 (1971); *see also* P. Areeda and  
 2 H. Hovencamp, Antitrust Law ¶ 320a–b. As the Ninth Circuit explained in *Beneficial Standard*  
 3 *Life Insurance Co. v. Madariaga*, 851 F.2d 271, 274–75 (9th Cir. 1988), “In [antitrust] actions  
 4 governed by 15 U.S.C. § 15b, the plaintiff’s knowledge is generally irrelevant to accrual, which is  
 5 determined according to the date on which injury occurs.”

6 While Plaintiffs are correct that some of the authorities Defendants cite are discussing  
 7 accrual rules in the civil RICO context, the Court concludes that the U.S. Supreme Court and  
 8 Ninth Circuit have clearly held that claims under the Sherman Act are subject to an injury rule,  
 9 rather than a discovery rule. For example, although *Klehr v. A.O Smith Corp.*, 521 U.S. 178  
 10 (1997), addressed accrual rules in the civil RICO context, the *Klehr* Court explicitly noted that  
 11 “the ordinary Clayton Act rule, applicable in private antitrust treble damages actions, [is where] a  
 12 cause of action accrues and the statute begins to run when a defendant commits an act that injures  
 13 a plaintiff’s business.” *Id.* at 188. The *Klehr* Court explicitly distinguished the “pure injury accrual  
 14 rule . . . [as] it applies in traditional antitrust cases,” from the possible discovery accrual rules in  
 15 the civil RICO context. *See id.*; *see also id.* at 191 (“The use of a discovery rule may reflect the  
 16 fact that a high percentage of civil RICO cases, unlike typical antitrust cases, involve fraud  
 17 claims.”). If there were any remaining doubts, Justice Scalia’s concurrence in *Klehr* explicitly  
 18 listed the potential accrual rules to be applied in RICO cases: “last predicate act, injury discovery,  
 19 and injury and pattern discovery . . . [and] the fourth accrual rule—the Clayton Act ‘injury’ rule.”  
 20 *Id.* at 197 n.1 (Scalia, J., concurring in part and concurring in the judgment).

21 Plaintiffs also take issue with Defendants’ reliance on *Hexcel Corp. v. Ienos Polymers,*  
 22 *Inc.*, 681 F.3d 1055 (9th Cir. 2012). Plaintiffs contend that the Ninth Circuit did not apply an  
 23 injury rule, but rather addressed whether the plaintiff had sufficient actual or constructive  
 24 knowledge of its injuries so as to defeat its fraudulent concealment claim. *Id.* at 1060–61. What  
 25 Plaintiffs fail to recognize, however, is that the Ninth Circuit began with the basic statement of  
 26 law: “We do not require a plaintiff to actually discover its antitrust claims before the statute of  
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1 limitations begins to run.” *Id.* at 1060 (citing *Beneficial Life Ins.*, 851 F.2d at 274–75). Plaintiffs  
 2 may be correct in a hypertechnical sense that Defendants cite no Ninth Circuit authority explicitly  
 3 “rejecting” the discovery rule for antitrust claims, but that appears to be a function of the fact that  
 4 the Ninth Circuit has consistently interpreted 15 U.S.C. § 15b as requiring an injury rule since  
 5 1950. *See Suckow Borax Mines Consol. v. Borax Consol.*, 185 F.2d 196, 208 (9th Cir. 1950) (cited  
 6 approvingly in *Zenith*, 401 U.S. at 338). Simply put, both the Ninth Circuit and the U.S. Supreme  
 7 Court have long assumed as a basic principle of antitrust law that antitrust claims accrue at the  
 8 time of injury. In light of that established assumption, there has been no need for the Ninth Circuit  
 9 to explain why a different accrual rule does not apply.

10 Plaintiffs’ reliance on the general proposition that “in general, the discovery rule applies to  
 11 statutes of limitations in federal litigation,” is unavailing. *See Opp.* at 6 (quoting *Mangum v.*  
 12 *Action Collection Serv., Inc.*, 575 F.3d 935, 940 (9th Cir. 2009)). In light of explicit, longstanding  
 13 U.S. Supreme Court and Ninth Circuit authority specifically holding that antitrust claims accrue at  
 14 the time of injury, the Court declines to rely on general policy justifications for the discovery rule.  
 15 Moreover, while the Seventh Circuit may have applied the discovery rule to antitrust claims in *In*  
 16 *re Copper Antitrust Litigation*, 436 F.3d 782 (7th Cir. 2006), this Court is bound by contrary Ninth  
 17 Circuit authority. Insofar as Plaintiffs contend that the Ninth Circuit has not directly rejected the  
 18 discovery rule, the Court further concludes that clear U.S. Supreme Court authority and the  
 19 overwhelming majority of Circuits have explicitly held that antitrust claims are subject to a pure  
 20 injury rule, not a discovery rule. *See Johnson v. Nyack Hosp.*, 86 F.3d 8, 11 (2d Cir. 1996) (“An  
 21 antitrust cause of action accrues as soon as there is injury to competition.”); *Mathews v. Kidder,*  
 22 *Peabody & Co., Inc.*, 260 F.3d 239, 246 n.8 (3d Cir. 2001) (“[A]ntitrust claims are subject to the  
 23 less plaintiff-friendly ‘injury occurrence’ accrual rule” as opposed to “a more lenient ‘injury  
 24 discovery’ rule”); *Detrick v. Panalpina, Inc.*, 108 F.3d 529, 538 (4th Cir. 1997) (agreeing that  
 25 “under the antitrust accrual rule, the statute of limitations is triggered by the date of the injury  
 26 alone”); *Bell v. Dow Chem. Co.*, 847 F.2d 1179, 1186 (5th Cir. 1988) (“The general rule in our  
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1 Circuit is that an antitrust cause of action accrues each time a defendant commits an act that  
 2 injures plaintiff.”); *DXS, Inc. v. Siemens Med. Sys., Inc.*, 100 F.3d 462, 467 (6th Cir. 1996)  
 3 (holding that “[f]or statute of limitations purposes . . . the focus is on the timing of the causes of  
 4 injury . . .”) (internal quotation marks omitted); *Granite Falls Bank v. Henrikson*, 924 F.2d 150,  
 5 153 (8th Cir. 1991) (“[A]ccrual in antitrust actions depends on the commission of the defendant’s  
 6 injurious act rather than on the plaintiff’s knowledge of that act or the resulting injury . . .”),  
 7 *disapproved on other grounds by Rotella v. Wood*, 528 U.S. 549 (2000); *Robert L. Kroenlein Trust*  
 8 *ex rel. Alden v. Kirchhefer*, 764 F.3d 1268, 1276 (10th Cir. 2014) (noting that “the Clayton Act . . .  
 9 employs the injury-occurrence rule” as opposed to the “the injury-discovery rule”); *Connors v.*  
 10 *Hallmark & Son Coal Co.*, 935 F.2d 336, 342 n.10 (D.C. Cir. 1991) (“[I]n the area of antitrust, . . .  
 11 the Supreme Court has held, as a matter of statutory interpretation, that a cause of action accrues at  
 12 the time of injury.”).

13 Plaintiffs also rely on a recent decision from this District, *Fenerjian v. Nongshim Co., Ltd.*,  
 14 No. 13-CV-04115-WHO, 2014 WL 5685562 (N.D. Cal. Nov. 4, 2014). While the *Fenerjian* court  
 15 applied the discovery rule to Sherman Act claims, for the reasons stated above, this Court  
 16 respectfully disagrees. In *Fenerjian*, the parties *did not dispute* that the discovery rule applied to  
 17 Sherman Act claims, and the *Fenerjian* court therefore did not have the benefit of briefing on the  
 18 question. *See* 2015 WL 585562, at \*12 n.27 (“Defendants do not dispute that the ‘discovery rule’  
 19 or fraudulent concealment are available to toll [the antitrust] statutes of limitation.”). In the instant  
 20 case, the Court agrees with Defendants that Plaintiffs’ antitrust claims began to accrue at the time  
 21 Plaintiffs suffered their injury, regardless of whether or not Plaintiffs knew of their injury at the  
 22 time it occurred.

23 Moreover, the Court also concludes that Plaintiffs’ UCL claim based on Defendants’  
 24 alleged anticompetitive conduct also began to accrue at the time Plaintiffs suffered their injury.  
 25 Plaintiffs assert that the discovery rule applies as a matter of law to their UCL claim under *Aryeh*  
 26 *v. Canon Bus. Solutions, Inc.*, 55 Cal. 4th 1185, 1196 (2013). However, the Court agrees with  
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1 Defendants that Plaintiffs mischaracterize the breadth of *Aryeh*. The *Aryeh* court held only that the  
 2 UCL does not categorically *forbid* the application of the discovery rule under appropriate  
 3 circumstances, not that the UCL requires application of the discovery rule to every cause of  
 4 action.<sup>11</sup> *See id.* at 1196–97. More specifically, the *Aryeh* court explained that the “UCL is a  
 5 chameleon,” and that the discovery rule might be appropriate for misrepresentation or fraud  
 6 claims, but not in unfair competition claims. *See id.* (citing approvingly *M&F Fishing, Inc. v. Sea-*  
 7 *Pac Ins. Managers, Inc.* 202 Cal. App. 4th 1509, 1531–32 (Ct. App. 2012) (nature of UCL unfair  
 8 competition claim rendered discovery rule inappropriate)). As Plaintiffs’ UCL claim here is based  
 9 purely on Defendants’ alleged anticompetitive conduct, the Court concludes that Plaintiffs’ UCL  
 10 claim is also subject to the injury rule.

11 Here, Plaintiffs’ claims began to accrue as early as 2004–05, when Plaintiff Cano worked  
 12 for Defendant Disney and Plaintiff Nitsch worked for Sony. *See* CAC ¶¶ 19, 49–50, 56–57. At the  
 13 latest, Plaintiffs’ claims began to accrue in 2007 when Plaintiff Nitsch worked for DreamWorks  
 14 and Plaintiff Wentworth worked at ImageMovers Digital. *Id.* ¶¶ 18, 20. As a result, the four-year  
 15 statute of limitations ran on Plaintiffs’ claims as early as 2008, and at best in 2011. The Court  
 16 therefore concludes that Plaintiffs’ claims are time barred absent sufficient allegations that  
 17 Defendants engaged in “continuing violations” after September 8, 2010, i.e., four years prior to the  
 18 first-filed complaint in this consolidated action, or that Defendants’ fraudulent concealment should  
 19 toll the statute of limitations.<sup>12</sup>

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22 <sup>11</sup> Plaintiffs cite this Court’s order in *Plumlee v. Pfizer*, No. 13-CV-414-LHK, 2014 WL 695024,  
 23 at \*8 (N.D. Cal. Feb. 21, 2014), for the proposition that the delayed discovery rule applies to UCL  
 24 claims as a matter of law. However, the UCL claims at issue in *Plumlee* were based on alleged  
 25 fraudulent misrepresentations to consumers, precisely the type of UCL claim the *Aryeh* court  
 26 recognized might be subject to the delayed discovery rule. *See Aryeh*, 55 Cal. 4th at 1195–96.  
 27 Thus in the fraud context, the Court observed that under *Aryeh*, the delayed discovery rule was  
 28 “available to toll the statute of limitations” for a UCL claim. The Court did not hold that the  
 discovery rule applied to all UCL claims. *See id.* at \*8 n.6 (emphasis added).

<sup>12</sup> The Court notes that Defendants contend that Blue Sky was not named in the first-filed  
 complaint, the *Nitsch* complaint, but rather was only named on September 17, 2014 in the  
*Wentworth* complaint. *See* MTD at 4 n.3.

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## 2. Continuing Violations

Plaintiffs contend that even if the injury rule applies to antitrust claims, Plaintiffs have alleged that Defendants engaged in “continuing violations,” that would render Plaintiffs’ claims timely. Defendants argue that Plaintiffs have failed to allege that Defendants took any “overt acts” that would restart the statute of limitations. According to Defendants, Plaintiffs’ allegations are both insufficient under *Twombly* and also implausible in light of the 2009 DOJ investigation and 2011 stipulated final judgments.

Under the “continuing violation” doctrine, “each overt act that is part of the [antitrust] violation and that injures the plaintiff . . . starts the statutory period running again, regardless of the plaintiff’s knowledge of the alleged illegality at much earlier times.” *Klehr*, 521 U.S. at 189 (internal citations and quotations omitted); *Pace Indus. v. Three Phoenix Co.*, 813 F.2d 234, 237 (9th Cir. 1987) (“A continuing violation is one in which the plaintiff’s interests are repeatedly invaded and a cause of action arises each time the plaintiff is injured.”). In the Ninth Circuit, an overt act restarts the statute of limitations if it: (1) is “a new and independent act that is not merely a reaffirmation of a previous act”; and (2) “inflict[s] new and accumulating injury on the plaintiff.” *Pace*, 813 F.2d at 237; *see also Samsung Elecs. Co., Ltd. v. Panasonic Corp.*, 747 F.3d 1199, 1202–03 (9th Cir. 2014).

Here, the Court concludes that the bald assertion that “Defendants repeatedly invaded Plaintiffs’ . . . interests,” is insufficient to show a continuing violation. *See* CAC ¶ 123. Plaintiffs allege that “Defendants’ conspiracy was a continuing violation in which Defendants repeatedly invaded Plaintiffs’ and class members’ interest by adhering to, enforcing and reaffirming the anticompetitive agreements described herein.” CAC ¶ 123. A review of the specific factual allegations in Plaintiffs’ CAC, however, reveals no alleged wrongful communications or specific conduct during the limitations period. The Court observes the rather conspicuous absence of specific dates for many of Plaintiffs’ factual allegations, but those allegations that do contain specific dates all pre-date 2009, with the vast majority occurring between 2004 and 2007. *See* CAC ¶¶ 4–7, 12–14, 48, 50, 52–73, 78, 82, 84–86, 90 (2004–2007 communications and conduct);

1 *id.* ¶ 83 (September 2, 2009 email); *id.* ¶ 88 (January 2009 email). Plaintiffs do not allege that any  
2 Defendant abided by, attempted to enforce, or otherwise “reaffirmed” the anti-solicitation scheme  
3 or salary range setting on or after September 8, 2010, i.e., four years prior to the first-filed  
4 complaint in this consolidated action. There are no allegations of any new or independent actions  
5 taken by the Defendants after September 8, 2010 that caused Plaintiffs any new or accumulating  
6 injury. *See Pace*, 813 F.2d at 237. Plaintiffs fail to allege any new or accumulating injuries within  
7 the limitation period. The remainder of Plaintiffs’ allegations in the “Statute of Limitations”  
8 portion of the CAC focus on Plaintiffs’ fraudulent concealment claim. *See CAC* ¶¶ 124–32.

9 In opposition, Plaintiffs appear to concede that the CAC lacks factual allegations that  
10 Defendants engaged in any new and independent wrongful conduct after September 8, 2010, but  
11 instead rely on a price-fixing analogy. *See Opp.* at 20–21. Plaintiffs put forward the novel theory  
12 that because they entered into employment agreements with Defendants during the alleged  
13 conspiracy, and because Plaintiffs received artificially depressed compensation as a result,  
14 Plaintiffs suffered antitrust injury each time they received “price-fixed” compensation. As Plaintiff  
15 Nitsch worked for DreamWorks through 2011, Plaintiffs’ theory is that Nitsch continued to be  
16 injured through 2011. According to Plaintiffs, their injuries are no different than consumers who  
17 suffer antitrust injury when purchasing artificially higher priced goods as a result of a price-fixing  
18 conspiracy. *Id.*

19 However, the Court is not persuaded that Plaintiffs’ “price-fixed compensation” theory, as  
20 put forth in Plaintiffs’ opposition, satisfies the “overt act” requirement. As a threshold matter,  
21 Plaintiffs need to do more than merely allege a continuing violation—they must also allege an  
22 overt act:

23 A continuing violation is one in which the plaintiff’s interests are  
24 repeatedly invaded and a cause of action arises each time the  
25 plaintiff is injured. *However, even when a plaintiff alleges a*  
*continuing violation, an overt act by the defendant is required to*  
*restart the statute of limitations and the statute runs from the last*  
*overt act.*

26 *Pace*, 813 F.2d at 237 (emphasis added). Plaintiffs’ bare allegation that their interests were  
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1 “repeatedly invaded” is therefore insufficient as a matter of law. Rather, Plaintiffs must plead that  
2 Defendants engaged in an overt act, e.g., that Defendants engaged in a “new and independent act  
3 that is not merely a reaffirmation of a previous act,” which “inflict[ed] new and accumulating  
4 injury” on Plaintiffs. *Id.* at 238.

5 Here, even assuming that Plaintiff’s “price-fixed” compensation theory is viable, the Court  
6 concludes that Plaintiffs have failed to sufficiently allege that Defendants took any overt act that  
7 would restart the statute of limitations. Plaintiffs do not allege that their compensation was  
8 permanently depressed or otherwise continued to be affected by Defendants’ wrongful conduct,  
9 which allegedly took place from 2004 to, at best, 2009. In other words, while Plaintiffs may have  
10 sufficiently pled facts showing Defendants’ wrongful conduct from 2004 to 2009 prevented  
11 employees from receiving higher pay during that period of time, Plaintiffs have not pled any facts  
12 showing that Defendants continued to engage in the wrongful conduct which would have resulted  
13 in “artificially depressed compensation” on or after September 8, 2010. While Plaintiffs are  
14 correct that the Court generally takes as true factual allegations made in the complaint, *see Iqbal*,  
15 556 U.S. 678, Plaintiffs have failed to allege any facts showing that their compensation was at all  
16 impacted at any point after September 8, 2010. This is unsurprising in light of Plaintiffs’ failure to  
17 allege any wrongful conduct post-2009.

18 To be clear, the Court does not rely on Defendants’ arguments regarding the plausibility of  
19 Plaintiffs’ factual allegations. For instance, Defendants’ reliance on the fact that the DOJ chose not  
20 to bring complaints against certain Defendants is irrelevant on a motion to dismiss, as that goes to  
21 the weight and veracity of Plaintiffs’ factual allegations. *See Iqbal*, 556 U.S. at 678. Nor does the  
22 fact that an expert in *High-Tech* assumed that the anti-solicitation agreements at issue in that  
23 litigation stopped affecting wages in 2010 affect the adequacy of Plaintiffs’ allegations in the  
24 instant case. *See* MTD at 8 n.6. Whether or not Defendants continued to engage in anticompetitive  
25 behavior in the four year period preceding the filing of the first complaint in this action is a factual  
26 question that the Court does not resolve on a motion to dismiss. Rather, the Court concludes that  
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1 Plaintiffs have failed to state any such allegations in the first instance. In opposition, Plaintiffs rely  
2 on a single paragraph in the CAC, where Plaintiffs allege: “Nor did DreamWorks make any  
3 changes to its practices in the wake of the entrance of the Lucasfilm consent decree in 2011 that  
4 might have alerted its workers to the company’s prior misconduct.” CAC ¶ 129. Even construing  
5 this allegation broadly, the Court concludes this allegation has nothing to do with whether  
6 DreamWorks, or any other Defendant, continued to engage in anticompetitive behavior within the  
7 limitations period.

8 Furthermore, Plaintiffs cite *Oliver v. SD-3C LLC*, 751 F.3d 1081, 1086–87 (9th Cir. 2014),  
9 in support of their price-fixing analogy, but that case is distinguishable. As *Oliver* relied on the  
10 factual background of the related case *Samsung Electronics Co., Ltd. v. Panasonic Corp.*, 747  
11 F.3d at 1201–02, the Court also relies on *Samsung*. In both *Oliver* and *Samsung*, the price-fixing  
12 conspiracy involved a group of defendants that had adopted two license agreements, in 2003 and  
13 2006, which imposed royalties on non-group member manufacturers of flash memory storage  
14 cards (“SD cards”). *Id.* Subsequently, in late 2006, the defendants attempted to enforce the royalty  
15 term on the plaintiff, a non-group member. *Id.* In *Samsung*, the Ninth Circuit held that the  
16 defendants’ 2006 amended license agreement and the defendants’ subsequent efforts to enforce the  
17 royalty agreement against the plaintiff constituted overt acts that restarted the statute of  
18 limitations, notwithstanding the fact that the alleged conspiracy began in 2003. *Id.* In *Oliver*,  
19 consumers of the SD cards sued the *Samsung* defendants, alleging, among other theories, a price-  
20 fixing conspiracy. 751 F.3d at 1086. The *Oliver* plaintiffs alleged that they purchased SD cards  
21 within four years of filing their complaint and that they had been injured by the unlawfully high  
22 priced sales at the time of purchase.<sup>13</sup> *Id.* at 1086–87. Applying *Klehr*, the Ninth Circuit concluded  
23 that the *Oliver* plaintiffs had alleged both a continuing violation and an overt act within the  
24 limitations period. *Id.* at 1086–87.

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26 <sup>13</sup> Plaintiffs also neglect to mention that the Ninth Circuit in *Oliver* explicitly held that the four  
27 year statute of limitation in 15 U.S.C. § 15b did not apply to the plaintiffs’ claims, as they sought  
28 only injunctive relief. 751 F.3d at 1084.



1 be pled with particularity. *Conmar*, 858 F.2d at 502.

2 Here, Defendants contend that Plaintiffs have failed to adequately allege any of the three  
3 elements of a fraudulent concealment claim. As the Court concludes that Plaintiffs have failed to  
4 adequately allege affirmative acts, the Court does not reach Defendants’ arguments as to  
5 knowledge and diligence.

6 In the instant case, Plaintiffs contend that they have alleged three categories of conduct that  
7 satisfy the element of “affirmative acts”: (1) Defendants’ secret meetings; (2) Defendants’ efforts  
8 to “minimize any written record of the conspiracy”; and (3) Defendants’ efforts to mislead the  
9 public through use of the Croner survey. As to Plaintiffs’ three categories of conduct, the Court  
10 concludes that these allegations fail to show affirmatively misleading conduct “above and beyond”  
11 the alleged conspiracy itself. *See Guerrero v. Gates*, 442 F.3d 697, 706–07 (9th Cir. 2003)  
12 (quoting *Santa Maria v. Pac. Bell*, 202 F.3d 1170, 1176 (9th Cir. 2000)).<sup>14</sup> As the Ninth Circuit  
13 explained in *Conmar*, the fact that a defendant’s acts are “by nature self-concealing” is insufficient  
14 to show that the defendant has affirmatively misled the plaintiff as to the existence of the  
15 plaintiff’s claim. *See* 858 F.2d at 505. In doing so, the *Conmar* court concluded that “[p]assive  
16 concealment of information is not enough to toll the statute of limitations, unless the defendant  
17 had a fiduciary duty to disclose information.” *Id.* (internal citation omitted).

18 Here, the Court finds that the allegation that “Defendants engaged in a secret conspiracy”  
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21 <sup>14</sup> While Plaintiffs are correct that the Ninth Circuit overruled *Santa Maria* in *Socop-Gonzales v.*  
22 *INS*, 272 F.3d 1176, 1194–95 (9th Cir. 2001), the Ninth Circuit did so on other grounds. In *Socop-*  
23 *Gonzales*, the Ninth Circuit held that *Santa Maria*’s suggestion that “courts should not apply  
24 equitable tolling in situations where a plaintiff discovers the existence of a claim before the end of  
25 a limitations period and the court believes that the plaintiff reasonably could have been expected  
26 to bring a claim within the remainder of the limitations period,” was contrary to Supreme Court  
27 precedent. *Id.*

28 The *Socop-Gonzales* court did not, however, overrule the general proposition that  
fraudulent concealment requires some affirmative acts of misconduct “above and beyond” the  
conduct inherent to the underlying claims themselves. The “above and beyond” language has been  
cited by the Ninth Circuit approvingly in subsequent cases as an element of fraudulent  
concealment claims. *See, e.g., Guerrero*, 442 F.3d at 706–07; *Lukovsky v. City and Cnty. of San*  
*Francisco*, 535 F.3d 1044, 1052 (9th Cir. 2008); *Coppinger-Martin v. Solis*, 627 F.3d 745, 751  
(9th Cir. 2010).

1 does not show that Defendants took “affirmative steps to mislead.” *See Volk v. D.A. Davidson &*  
2 *Co.*, 816 F.2d 1406, 1415–16 (9th Cir. 1987). Plaintiffs allege that Defendants’ senior human  
3 resources directors and senior management discussed the conspiracy in small in-person group  
4 meetings, avoided memorializing the scheme in writing, and attempted to keep the conspiracy  
5 secret from Plaintiffs. In *Volk*, however, the Ninth Circuit held that merely “passively  
6 conceal[ing]” material information is insufficient to toll the statute of limitations. In the instant  
7 action, it may be the case that Defendants engaged in a secret conspiracy, but that allegation alone  
8 does not show that Defendants affirmatively and fraudulently concealed the existence of Plaintiffs’  
9 claims. As in *Volk*, Plaintiffs have failed to “represent any facts indicating an affirmative effort on  
10 the part of any [defendant] to mislead them or to conceal the fraud.” *Id.*

11 Moreover, Plaintiffs’ failure to aver any affirmative attempts to mislead “above and  
12 beyond” the existence of the conspiracy itself is illustrated by *Conmar*. In *Conmar*, the Ninth  
13 Circuit found that the defendant’s creation and dissemination of false customs forms to mislead  
14 the plaintiff, and the “direct public denial of any wrongdoing” could constitute affirmative actions  
15 to conceal anticompetitive behavior. 858 F.2d at 505. Here, while Plaintiffs do provide detailed  
16 allegations of when and where certain Defendants met and conspired, these allegations do not  
17 support the conclusion that Defendants took active, affirmative steps to mislead Plaintiffs about  
18 the existence of Plaintiffs’ claims. Instead, Plaintiffs’ allegations show only that Defendants  
19 engaged in a conspiracy, that “by nature [is] self-concealing.” *Conmar*, 858 F.2d at 505. That  
20 Defendants did not affirmatively disclose the details of their allegedly unlawful conspiracy to  
21 Plaintiffs is neither surprising nor sufficient to constitute “affirmative steps to mislead.” *See id.* If  
22 the mere fact of a secret conspiracy were sufficient to toll the statute of limitations under the  
23 fraudulent concealment doctrine, there would be little point in imposing a period of limitation in  
24 the first instance. *See, e.g.,* *Areeda and Hovencamp*, Antitrust Law § 320e (“Of course, regarding  
25 every secret conspiracy as sufficiently self-concealing to toll the statute would often force the  
26 courts to deal with stale, if not ancient, evidence.”).

1           Moreover, Plaintiffs cite *In re Lithium Ion Batteries Antitrust Litigation*, No. 13-MD-2420,  
 2           2014 WL 309192, at \*16 (N.D. Cal. Jan. 21, 2014), but that case only highlights the insufficiency  
 3           of Plaintiffs’ factual allegations. In *Lithium Ion*, the plaintiffs alleged both that the defendants had  
 4           made “public, putatively false statements . . . affirming their compliance with applicable antitrust  
 5           laws, as well as the existence of vigorous price competition in the . . . market,” on which plaintiffs  
 6           could have reasonably relied, and that the defendants had taken affirmative steps to destroy  
 7           evidence of the conspirators’ secret meetings, avoided memorializing conversations, and used  
 8           secret codes to refer to coconspirators and topics. *Id.*; see also *In re TFT-LCD (Flat Panel)*  
 9           *Antitrust Litig.*, 586 F. Supp. 2d 1109, 1119 (N.D. Cal. 2008) (defendants provided “numerous  
 10           specific pretextual reasons for inflated prices” and also kept conspiracy secret); *In re Cathode Ray*  
 11           *Tube (CRT) Antitrust Litig.*, 738 F. Supp. 2d 1101, 1024–25 (N.D. Cal. 2010) (defendants gave  
 12           “pretextual reasons for price increases, and coordinated their misleading announcements” and also  
 13           kept conspiracy secret). These cases, *Lithium Ion*, *TFT-LCD*, and *Cathode Ray*, entailed  
 14           affirmative, public misrepresentations by the defendants that they were not engaging in  
 15           anticompetitive conduct, which allegedly misled the plaintiffs as to the existence of the plaintiffs’  
 16           claims. It was the combination of those misleading, pretextual statements *and* the affirmative  
 17           efforts taken to destroy evidence of the conspiracy or otherwise keep the conspiracies secret that  
 18           supported the respective plaintiffs’ fraudulent concealment allegations.

19           The above-mentioned cases also illustrate why Plaintiffs’ allegations with regards to the  
 20           Croner survey are lacking. In their opposition, Plaintiffs argue for the first time that because the  
 21           Croner survey describes itself as providing “competitive compensation information,” when the  
 22           survey actually reported “anticompetitive compensation,” Defendants “deliberately  
 23           misrepresent[ed] their suppressed compensation data as ‘competitive.’” Opp. at 17. However, the  
 24           Court concludes that this allegation is qualitatively different from the public misrepresentations  
 25           that the defendants made in *Lithium Ion*, *TFT-LCD*, and *Cathode Ray*. See *Lithium Ion*, 2014 WL  
 26           309192, at \*16 (noting “public, putatively false statements by various defendants affirming their  
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1 compliance with applicable antitrust laws”); *TFT-LCD*, 586 F. Supp. 2d at 1119 (allegations that  
2 defendants provided “numerous specific pretextual reasons for the inflated prices”); *Cathode Ray*,  
3 738 F. Supp. 2d at 1024–25 (allegations that defendants used “misleading announcements” and  
4 “gave pretextual reasons for price increases”). As a threshold matter, there are no allegations in the  
5 CAC that the compensation information in the Croner survey was publicly accessible, that  
6 Defendants were responsible for publishing the Croner survey, or that Defendants publicized the  
7 Croner survey as “affirming their compliance with applicable antitrust laws . . . .” *See Lithium Ion*,  
8 2014 WL 309192, at \*16. Nor do Plaintiffs allege that Defendants’ participation in the Croner  
9 survey involved the type of “public statements” at issue in *Cathode Ray*, where the defendants  
10 allegedly agreed “on what to tell customers about price changes,” and published misleading or  
11 pretextual statements on “capacity and supply.” 738 F. Supp. 2d at 1025. At bottom, Plaintiffs  
12 simply offer no factual allegations with regards to the information in the Croner survey itself, or  
13 Plaintiffs’ reliance on such information.

14 Moreover, to the extent Plaintiffs rely on the bare allegation that “Defendants provided  
15 pretextual, incomplete or materially false and misleading explanations for hiring, recruiting and  
16 compensation decisions made pursuant to the conspiracy,” CAC ¶ 130, the Court finds this  
17 conclusory allegation insufficient under Rule 9(b). Plaintiffs offer no specific facts showing the  
18 “who, what, where, when” of these alleged incomplete or materially false statements. *See Swartz*,  
19 476 F.3d at 764. This allegation would not satisfy *Twombly*, much less the heightened pleading  
20 standard in Rule 9(b).

21 In sum, the Court concludes that Plaintiffs have failed to allege that Defendants took  
22 affirmative steps to mislead Plaintiffs as to the factual basis for Plaintiffs’ claims. While Plaintiffs  
23 are correct as a general matter that Plaintiffs’ allegations that Defendants attempted to avoid  
24 memorializing the anti-solicitation scheme in order to keep the conspiracy secret may be relevant  
25 to Plaintiffs’ fraudulent concealment claim, those allegations alone as currently pled are  
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1 insufficient.<sup>15</sup> Here, the Court finds that Plaintiffs fail to allege facts showing that Defendants did  
2 more than passively conceal information. *See Volk*, 816 F.2d at 1416.

3 As Plaintiffs have failed to allege an essential element of fraudulent concealment, and the  
4 Court has also concluded that Plaintiffs' claims, as currently alleged, are time barred, the Court  
5 grants Defendants' motion to dismiss Plaintiffs' CAC. This dismissal is without prejudice, as the  
6 Court concludes that amendment would not necessarily be futile, as Plaintiffs may be able to  
7 allege sufficient facts to support their continuing violations claim and their equitable tolling claim.  
8 *See Leadsinger*, 512 F.3d at 532.

9 In light of this conclusion, the Court does not reach the remainder of Defendants'  
10 arguments in support of their motion to dismiss Plaintiffs' CAC.<sup>16</sup>

11 **IV. CONCLUSION**

12 For the reasons stated above, the Court GRANTS Defendants' motion to dismiss Plaintiffs'  
13 CAC. Should Plaintiffs elect to file a Second Amended Complaint curing the deficiencies  
14 identified herein, Plaintiffs shall do so within 30 days of the date of this Order. Failure to meet the  
15 30-day deadline to file a Second Amended Complaint or failure to cure the deficiencies identified  
16 in this Order will result in a dismissal with prejudice. Plaintiffs may not add new causes of action  
17 or parties without leave of the Court or stipulation of the parties pursuant to Federal Rule of Civil  
18 Procedure 15.

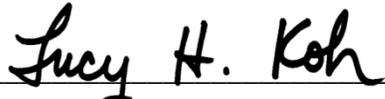
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21 <sup>15</sup> Plaintiffs, in their opposition, raise for the first time the claim that some of the Defendants'  
22 requests to seal certain information in the *High-Tech* litigation constituted affirmative efforts to  
23 conceal information. As this theory is not pled anywhere in the CAC, the Court declines to  
24 entertain this new argument. *See Barnes v. Campbell Soup Co.*, No. 12-05185, 2013 WL 5530017,  
25 at \*2 (N.D. Cal. July 25, 2013).

26 <sup>16</sup> The Court notes that Defendants request that the Court dismiss or strike Plaintiffs' claim for  
27 wage-fixing in the event that the Court does not grant their motion to dismiss. MTD at 18 n.21.  
28 That request is denied. Moreover, the Court is concerned by Defendants' contention that "the  
claim regarding wage-fixing . . . should not proceed into the discovery phase." *Id.* The Court has  
not stayed discovery in this action, and at the initial case management conference on November 5,  
2014, the Court explicitly denied both Plaintiffs' request to expedite discovery and Defendants'  
request to stay discovery. ECF No. 39. To the extent Plaintiffs have properly served discovery  
requests to Defendants regarding Plaintiffs' wage-fixing claims, Defendants must promptly  
respond.

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**IT IS SO ORDERED.**

Dated: April 3, 2015

  
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LUCY H. KOH  
United States District Judge