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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAMSUNG ELECTRONICS CO., LTD., SAMSUNG ELECTRONICS AMERICA, INC. and SAMSUNG RESEARCH AMERICA,

Plaintiffs,

v.

ZTE CORPORATION,

Defendant.

Case No. 3:25-cv-02000-AMO

ZTE CORPORATION'S NOTICE OF MOTION AND MOTION TO DISMISS SAMSUNG'S COMPLAINT AND STAY DISCOVERY AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date: July 17, 2025
Time: 2:00 pm PT
Judge: Martínez-Olguín
Place: Courtroom 10, 19th Floor,
450 Golden Gate Ave.,
San Francisco, California

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TABLE OF ABBREVIATIONS

Term	Abbreviation
European Telecommunications Standards Institute	ETSI
Third Generation Partnership Project	3GPP
Samsung Electronics Co., Ltd.	Samsung KR
Samsung Electronics America, Inc., a subsidiary of Samsung KR	SEA
Samsung Research America, a subsidiary of Samsung KR	SRA
Samsung Electronics (UK) Limited, a subsidiary of Samsung KR	SEUK
Samsung Electronics GmbH, a subsidiary of Samsung KR	SEG
Standard Essential Patent	SEP
ZTE Corporation	ZTE
ZTE (USA) Inc., a former subsidiary of ZTE	ZTE (USA)
ZTE (TX) Inc., a former subsidiary of ZTE	ZTE (TX)

NOTICE OF MOTION AND MOTION TO DISMISS

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on Thursday, July 17, 2025 at 2:00 pm or as soon thereafter as the matter may be heard, before the Honorable Judge Arceli Martínez-Olguín of the United States District Court for the Northern District of California, San Francisco Division, located at 450 Golden Gate Avenue, Courtroom 10, 19th Floor, San Francisco, CA 94102, defendant ZTE Corporation will and hereby does move for an Order dismissing each of the causes of action in Plaintiffs Samsung Electronics Co., Ltd.'s, Samsung Electronics America, Inc.'s, and Samsung Research America's (collectively, "Samsung") Complaint for Breach of Contract, Violation of Section 2 of the Sherman Act, and Violation of Section 17200 ("Complaint"). ZTE moves for dismissal of Samsung's Complaint under Federal Rule of Civil Procedure 12(b)(1), (2), and (6). ZTE also moves for an Order staying discovery pending resolution of its motion to dismiss.

This motion is based upon this Notice of Motion and Motion To Dismiss; the accompanying Memorandum of Points and Authorities; the pleadings filed in this action; and such other further argument and matter as may be offered at the time of the hearing on this motion.

Dated: May 27, 2025

PERKINS COIE LLP

By: */s/ John D. Esterhay*
John D. Esterhay, Bar No. 282330

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

I. INTRODUCTION

This suit is needless and frivolous. It should be dismissed. ZTE owns substantial cellular patent portfolios, including on the 5G standard. Samsung needs a license to ZTE's portfolios, but has made unreasonably low offers. Rather than continue with negotiations, however, Samsung KR and SEUK launched a U.K. lawsuit against ZTE just before Christmas last year seeking, *inter alia*, a determination of the FRAND[1] terms for a license to ZTE's 2G–5G SEPs. A day later, SEG sued ZTE in Germany asserting EU competition law claims based on alleged breach by ZTE of FRAND licensing commitments (to ETSI). Samsung launched the U.K. and German lawsuits even though the substantial activity giving rise to this dispute occurred not in those countries, but in China (and South Korea). China is where ZTE is headquartered, where the discussions between Samsung KR and ZTE have occurred, where Samsung KR outsources smartphone manufacture, and where Samsung KR once brought FRAND rate-setting claims on cellular patents against Ericsson.

Given these facts, it would seem inconceivable that Samsung would file another case against ZTE asserting breach of ETSI FRAND commitments and antitrust claims, in yet another jurisdiction. But Samsung has done just that, before this Court. Worse, Samsung's Complaint fails at every instance. First, personal jurisdiction over ZTE does not exist: none of the parties' discussions about licensing terms—the supposedly wrongful conduct—occurred in California or the U.S.; ZTE has had only *de minimis* and sporadic contacts with California and the U.S. in the past few years; and no nexus exists between those contacts and Samsung's claims. Second, Samsung's antitrust claim is the lynchpin for subject matter jurisdiction in this case, yet it fails for many reasons. That claim, for example, is predicated on alleged breach of ETSI FRAND commitments, but breach of ETSI FRAND commitments is not a viable Sherman Act claim under Ninth Circuit precedent. Moreover, without that claim, no Federal Question jurisdiction exists; and so Samsung must show Diversity Jurisdiction to salvage subject matter jurisdiction. But Samsung KR and ZTE are foreign corporations, destroying complete diversity. Finally, Samsung's breach of contract and California Unfair Competition Law (UCL) claims are generic and

[1] FRAND means fair, reasonable and non-discriminatory.

implausibly pled. In sum, Samsung's Complaint is baseless and demonstrates that rather than trying to raise plausible claims, Samsung is instead burying ZTE with litigation in an effort to deprive ZTE of fair compensation for its cellular patent portfolios. The Court should dismiss this case.

II. BACKGROUND

ZTE is a global telecommunications and technology company, founded in 1985. Decl. of Wenfeng Zhong at ¶ 4. ZTE has been a pioneer in cellular telecommunications for decades. More recently, ZTE has taken a leading role on the cellular standards known as 4G and 5G, developed under the auspices of 3GPP. Decl. of Wenyan Yang, ¶ 6. 3GPP is a partnership of standards setting organizations ("SSOs") that includes ETSI. *Id.* ¶ 6, n.1. Companies that contribute technologies to 3GPP cellular standards typically declare the associated patent rights to ETSI, including by stating whether they will license these patent rights on FRAND terms.

ZTE's investment in 3GPP standards has been massive. ZTE spent nearly 10 billion USD on research and development (R&D) when 4G was principally under development (2004 to 2014), with an average annual R&D headcount that grew from 9,000 engineers in 2004 to over 25,000 in 2014. Decl. of Kevin Zeck, ¶ 4. Since development of 5G began (in 2015), ZTE has spent over 23 billion USD on R&D, with an average annual R&D headcount of over 31,000 engineers. *Id.*

ZTE has received industry praise and recognition for its work on cellular standards. For example, ZTE has been recognized as one of the leading 5G technology innovators. Ex. 7 at 4–5 (IPLytics, *Who is Leading the 5G Patent Race?* (2023)).[2] As a result of its work, ZTE holds substantial cellular patent portfolios. Relevant here, ZTE has a substantial 5G portfolio, with around 7,000 declared patent families (and counting). Ex. 9 at 1 (ZTE White Paper). It is considered one of the top ten 5G portfolios worldwide. *See*, *e.g.*, Yang Decl., ¶ 5; Ex. 10 (ZTE Patent Portfolio); Ex. 11 at 2 (Grey B, 5G Patent Landscape (Updated 2025). ZTE's cellular portfolios are the result of its voluminous technological contributions to 3GPP. *See, e.g.*, Ex. 12 at 10 (Omdia 3GPP Contributions Analysis). ZTE's contributions have included critical advances for 5G, such as MIMO (multiple-input multiple-output) technologies. Yang Decl, ¶ 6.

ZTE and its U.S. subsidiaries have had, at most, only *de minimis* business operations in the

[2] Unless noted otherwise, all citations to exhibits are exhibits to the Zeck Decl.

U.S. since 2022, long before Samsung KR and ZTE began negotiating a successor agreement to their [redacted] Patent License. In 2022, the FCC banned ZTE's telecommunications and video surveillance equipment from U.S. networks. Ex. 13. After that happened, ZTE's U.S. subsidiaries wound down and were dissolved. Zhong Decl. ¶ 7. By December 2023—months before ZTE's first offer in the successor negotiations—ZTE's U.S. subsidiaries had only a few remaining employees, and by July 2024, none. *Id.*, ¶¶ 8–9. The last of ZTE's U.S. subsidiaries, ZTE (USA), was dissolved in December 2024, months before this suit was filed. Ex. 6 (N.J. Certificate of Dissolution).[3]

Samsung KR is a Korean company headquartered in Suwon, South Korea. Compl. ¶ 12. A substantial portion of Samsung's cellular-enabled devices are made in China, Ex. 14, and Samsung has filed at least one FRAND rate setting action in a Chinese court, calling the China's court system "a sophisticated, respected judiciary." Ex. 15 at 8; Ex. 16.

In 2018, ZTE approached Samsung KR about taking a license to ZTE's cellular patents. Yang Decl. ¶ 7. After years of negotiations, they reached agreement on [redacted]. *Id.*, ¶ 7. [redacted]. *Id.* [redacted]. *Id.* The negotiations toward the [redacted] Patent License took place primarily in China and South Korea. *Id.*

In [redacted] ZTE and Samsung KR began discussions for a successor agreement to the [redacted] Patent License, [redacted]. Yang Decl., ¶ 9. Those discussions have not been successful. Samsung has made unreasonably low offers, while ZTE's offers have been consistent with [redacted]. ZTE has not breached any commitment to license [redacted] on FRAND terms, and has not made so-called "false" FRAND" declarations to ETSI.

[3] While ZTE agreed not to contest service to conserve resources, it should be noted that Samsung represented it effected service "on ZTE Corporation" via "ZTE USA." Dkt. 23 (Summons Returned). Samsung's representation was misleading both because Samsung served a ZTE subsidiary—not ZTE—and because that subsidiary did not exist at the time of supposed service.

The parties were in negotiations [redacted] in December 2024 when Samsung KR (and SEUK) ambushed ZTE with a U.K. lawsuit. *Id.*, ¶ 11. In that lawsuit, Samsung sought injunctive relief on its alleged SEPs (if ZTE refused to accept FRAND license-terms as set by the U.K. court), making Samsung's complaints here about ZTE's later lawsuits seeking injunctive relief hypocritical, as well as declarations ZTE breached ETSI FRAND commitments as part of its request for an "interim license." *Id.*, ¶¶ 11, 13; Ex. 17 (Amend. Particulars of Claim), ¶¶ 44E, (3), (8C); Ex. 18 (*Samsung Elecs. Co., Ltd. v. ZTE Corp.*, [2025] EWHC 705 (Pat)), ¶¶ 10, 33. A day later, SEG filed an EU competition law claim against ZTE in Germany based on alleged breach of ETSI FRAND commitments. Yang Decl., ¶ 12.

The successor negotiations have occurred primarily in China and South Korea. No meetings have been in the U.S. *Id.*, ¶ 9. All ZTE personnel involved in the successor negotiations reside outside the U.S. *Id.*, ¶¶ 9. The first offer for the successor license agreement [redacted], after Dr. Mang Zhu left ZTE's now-dissolved subsidiary, ZTE (USA).[4] *Id.*, ¶ 10.

ZTE's personnel responsible for pre-suit licensing of ZTE's cellular SEPs principally reside in China. *Id.*, ¶ 14. Since 2018, none have resided in the U.S. *Id.*

III. APPLICABLE LEGAL STANDARDS

A. Motions to dismiss for lack of Subject Matter Jurisdiction

"Federal courts are courts of limited jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Federal subject matter jurisdiction can generally arise in two ways: from (1) a Federal Question, or (2) Diversity Jurisdiction. 28 U.S.C. § 1331-32. Samsung only asserts Federal Question jurisdiction, based on its Sherman Act claim (with supplemental jurisdiction over the other claims), and does not assert Diversity Jurisdiction. Compl. ¶ 16.

B. Motions to dismiss for lack of Personal Jurisdiction

On a Rule 12(b)(2) motion to dismiss for lack of personal jurisdiction, the plaintiff bears the burden, which requires at least "a prima facie showing of jurisdictional facts." *McCarthy v. Intercont'l Exch., Inc*, No. 20-cv-05832, 2022 WL 4227247, *1 (N.D. Cal. Sep. 13, 2022). Uncontroverted allegations must be accepted as true, but "bare allegations" are insufficient.

[4] While a ZTE (USA) employee, Dr. Zhu resided in Illinois, not California. Exs. 20, 21.

Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 800 (9th Cir. 2004).

Two types of personal jurisdiction exist: general and specific. *Goodyear Dunlop Tires Ops., S.A. v. Brown*, 564 U.S. 915, 919 (2011). General jurisdiction exists only where a defendant's forum contacts are so "continuous and systematic" as to render it "essentially at home in the forum State." *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014). Specific personal jurisdiction requires a defendant to have sufficient minimum contacts with the forum, *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945), and "must exist for each claim asserted against a defendant." *Action Embroidery Corp. v. Atlantic Embroidery, Inc.*, 368 F.3d 1174, 1180 (9th Cir. 2004).

The Ninth Circuit has a test for specific jurisdiction with three requirements: (1) the defendant must "purposefully direct" her activities at, or "purposefully avail" herself of, the forum; (2) the claim must arise out of or relate to the forum-related activities; and (3) the exercise of jurisdiction must not be unreasonable. *Schwarzenegger*, 374 F.3d at 802. The plaintiff must satisfy the first two prongs, and if it does, the defendant has the burden as to the third. *Id.*

C. Motions to dismiss for failure to state a claim

In deciding whether to grant a Rule 12(b)(6) motion to dismiss for failure to state a claim, a court must generally accept "well-pleaded factual allegations," but need not accept threadbare or conclusory allegations. *Ashcroft v. Iqbal*, 556 U.S. 662, 664 (2009). To satisfy this standard, a plaintiff must offer "sufficient factual matter . . . 'to state a claim to relief that is plausible on its face.'" *Id.* at 678 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

Claims sounding in fraud must also satisfy Rule 9(b)'s heightened pleading requirements. *See Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1102–03 (9th Cir. 2003); *Apple Inc. v. Samsung Elecs. Co., Ltd.*, No. 11-cv-01846, 2011 WL 4948567, *4 (N.D. Cal. Oct. 18, 2011) (false-FRAND-promise antitrust claim subject to Rule 9(b) pleading requirements). Under Rule 9(b), a party "must state with particularity the circumstances constituting fraud."

IV. ARGUMENT

A. The Court lacks Personal Jurisdiction over ZTE.

The Court cannot exercise personal jurisdiction over ZTE. The real parties in this matter are Samsung KR, a Korean corporation, and ZTE, a Chinese corporation. The failed negotiations

preceding this lawsuit were primarily conducted in China and South Korea, with no discussions concerning the commercial terms of the successor license occurring in the U.S. And the technology at the center of this dispute was developed under the auspices of 3GPP, headquartered in France, and ETSI, a French SSO, to implement "cellular communication standards … throughout the world." Compl. ¶¶ 21, 29 ("The geographic scope of the Standardized Technology Markets is therefore global."); 3GPP, *Contact US*, https://www.3gpp.org/contact-us. In other words, nothing ties this dispute to California or the United States.

Samsung has alleged no facts altering that conclusion. Instead, Samsung's two paragraphs of personal jurisdiction allegations (Compl. ¶¶ 17–18) weakly point to ZTE's past patent development and prosecution activities in California—eliding the fact that those activities do not relate to any alleged unlawful conduct—or contain only conclusory allegations that ZTE "directed" communications or activities towards California and the U.S. As affirmed by the Fourth and Sixth Circuits, ZTE cannot be haled into court on such tenuous grounds. *See NTCH-West Tenn, Inc. v. ZTE Corp.*, 761 Fed. App'x 485 (6th Cir. 2019); *PTA-FLA, Inc. v. ZTE Corp.*, 715 Fed. App'x 237 (4th Cir. 2017). Dismissal on personal jurisdiction grounds is warranted.

1. General Jurisdiction over ZTE does not exist.

General jurisdiction over ZTE does not exist. Samsung did not allege, even in conclusory fashion, that general jurisdiction exists, either in California or the U.S. Samsung concedes that ZTE is a Chinese corporation, with its principal place of business in China, and does not plead any facts showing that ZTE is "at home" in either California or the U.S. Compl. ¶ 15; s*ee Ratha v. Phatthana Seafood Co.*, 35 F.4th 1159, 1172 (9th Cir. 2022) (no general jurisdiction over defendants because they were "not incorporated in the United States, and Plaintiffs have not shown—much less argued—that the United States is their principal place of business").

2. Specific Jurisdiction over ZTE does not exist.

Samsung's specific personal jurisdiction allegations fare no better. Samsung is required to plead facts showing (1) ZTE either "purposefully availed" itself of or "purposefully directed" its activities at the forum; and (2) its claims "arise[] out of or relate[] to [ZTE]'s forum-related activities." *See*, *e.g.*, *Davis v. Cranfield Aero. Sols., Ltd.*, 71 F.4th 1154, 1162–63 (9th Cir. 2023).

The Ninth Circuit typically applies a "purposeful availment" test for claims "sounding in contract" and a "purposeful direction" test for claims arising under antitrust law or "sounding in tort." *Schwarzenegger*, 374 F.3d at 802–803. Thus, Samsung must show "purposeful availment" as to its breach of contract and declaratory judgment claims, and "purposeful direction" for its UCL and Sherman Act, Section 2 claims. *Id.*; *see also Salesforce.com Inc v. GEA, Inc.*, No. 19-cv-01710, 2019 WL 3804704, *3 (N.D. Cal. Aug. 13, 2019) (applying purposeful availment to declaratory judgment claims "rooted in the parties' contract."); *Adobe Sys. Inc. v. Blue Source Grp., Inc.*, 125 F. Supp. 3d 945, 960 (N.D. Cal. 2015) ("[C]ourts in the Ninth Circuit require a showing of purposeful direction for claims brought pursuant to the UCL."); *In re Packaged Seafood Antitrust Litig.*, 338 F. Supp. 3d 1118, 1148 (S.D. Cal. 2018) (same for antitrust cases).

a. Samsung cannot show minimum contacts for the breach of contract and declaratory judgment claims.

Samsung alleged a hodgepodge of conduct that both fails to show purposeful availment and that does not give rise or relate to Samsung's contract or declaratory judgment claims. *Schwarzenegger*, 374 F.3d at 802. Samsung alleged ZTE: (1) "supervised, coordinated with, and/or directed the activities of personnel in California in connection with developing and asserting the patent portfolio and excessive payment demands at issue in this case"; (2) hired "attorneys located in California" to prosecute ZTE's patents; (3) developed and invented patents in California; and (4) participated in 3GPP activities through personnel located in California. Compl. ¶ 17.[5] These allegations are insufficient as shown below.

(i) Samsung's allegations are contradicted by the evidence and do not show purposeful availment.

Samsung's purposeful availment allegations are contradicted by evidence and should not be accepted. Specifically, by the time the parties started negotiations on the terms of the successor agreement, ZTE's U.S. operations had dwindled to almost nothing. Most of ZTE (USA)'s personnel, including Mang Zhu, were terminated by November 2023, and none remained by July 2024. Zhong Decl. ¶¶ 8–9. Thus, Samsung's bare allegations about ZTE's California-related

[5] The remaining allegations in Paragraph 17 assert conduct "directed" at California, and are therefore relevant to the "purposeful direction" test discussed below.

conduct, including its allegations that ZTE's California personnel were "asserting" and making "demands," should not be accepted. *Alternate Energy Corp. v. Redstone*, 328 F. Supp. 2d 1379, 1382 (S.D. Fla. 2004) (allegations controverted by affidavit cannot stand unless substantiated).

(ii) Samsung's claims neither arise out of nor relate to the alleged activities.

Samsung's allegations also fail to satisfy the "arises out of or relates to" requirement. Even assuming their truth, "[c]ontacts with a forum state are relevant for purposes of specific jurisdiction only if they are sufficiently related to the cause of action." *MGM Studios, Inc. v. Grokster, Ltd.*, 243 F. Supp. 2d 1073, 1085 (C.D. Cal. 2003). A lawsuit "arises out of" a defendant's forum contacts only if a "direct nexus" exists between those contacts and the cause of action. *See Yamashita v. LG Chem, Ltd.*, 62 F.4th 496, 504 (9th Cir. 2023). Similarly, a claim "relates to" forum contacts if the alleged injury is the kind that tends to be caused by or is foreseeable from the forum contacts. *Id.* at 505-506 ("[R]elatedness requires a close connection between contacts and injury.").

Samsung failed to allege any facts showing the required nexus between its contract and declaratory judgment claims and the alleged California-related activities. *Schwarzenegger*, 374 F.3d at 802. The fact that ZTE may have hired personnel and attorneys in California to participate in standard-setting activities and develop, prosecute, and manage its patents has "no relationship to [Samsung's claims against ZTE]" for alleged breach of ETSI FRAND commitments. *Callaway Golf Corp. v. Royal Canadian Golf Ass'n*, 125 F. Supp. 2d 1194, 1204 (C.D. Cal. 2000). Samsung did not allege that any of that activity itself constituted a breach of contract or was otherwise wrongful, or that any of its alleged injuries were related to that activity. *Yamashita*, 62 F.4th at 505.

Instead, Samsung's claims are for "failure to provide FRAND licensing terms in response to Samsung's requests, demands for excessive royalties from Samsung, divestment scheme, obstruction of neutral resolutions of FRAND terms, pursuit of a redundant and improper second-filed global rate setting action in China, improper pursuit of patent infringement injunction actions as a means of seeking unfair leverage over Samsung, and related unfair and unreasonable conduct" (Compl. ¶ 44) and "failing to offer licenses on FRAND terms" (*id.* ¶ 50). Because Samsung's claimed wrongful licensing and enforcement conduct has no nexus to any portion of ZTE's

standard-setting and portfolio development activities alleged to have taken place in California, that alleged activity cannot be a "but for" cause of Samsung's alleged injury, and is not otherwise related to that alleged injury. *See Miller v. Head USA, Inc.*, No. 8:16-cv-01696, 2016 WL 10570274, *4 (C.D. Cal. Dec. 16, 2016); *Sheppard v. Fantasia Trading LLC*, No. 5:23-cv-02407, 2024 WL 3707825, *9 (C.D. Cal. July 26, 2024).

b. Samsung cannot show minimum contacts for the UCL or Sherman Act claims.

To show "purposeful direction," Samsung needed to have pled facts showing ZTE: "(1) committed an intentional act, (2) expressly aimed at the forum [], (3) causing harm that [ZTE knew was] likely to be suffered in the forum state." *Axiom Foods, Inc. v. Acerchem Int'l Inc*, 874 F.3d 1064, 1069 (9th Cir. 2017). Samsung failed to do so.

(i) Samsung cannot show purposeful direction at California.

Samsung cannot show purposeful direction at California. Samsung alleged: (1) "ZTE has directed communications and assertions to multiple companies located in this District relating to the 4G and/or 5G patents at issue in this case and relating to its efforts to obtain excessive royalties for licensing its patents, including for example Apple"; and (2) "ZTE's communications and assertions to Samsung, which relate to multiple Samsung entities, likewise are directed at business conducted in this District, including the headquarters of SRA." Compl. ¶ 17.

Not only are Samsung's allegations regarding ZTE's communications and assertions "directed to this District" conclusory and thus insufficient, *see Corcoran v. CVS Health Corp.*, 169 F. Supp. 3d 970, 981 (N.D. Cal. 2014), Samsung's allegations also fail, on a more fundamental level, to demonstrate that any such communications and assertions were "expressly aimed" at California or caused harm that ZTE knew was likely to be suffered in California. Samsung alleged that ZTE's communications with non-party companies, located in California, and its communications with Samsung KR, in China and South Korea, relate to and thus are "directed at business conducted in" California. Compl. ¶ 17. Yet Samsung did ***not*** allege that either type of communication caused any injury to Samsung that ZTE knew would be suffered in California. *See Lenovo (United States) Inc. v. IPCom GmbH & Co., KG*, No. 5:19-cv-01389-EJD, 2022 WL

2644096, *12-14 (N.D. Cal. July 8, 2022) ("*Lenovo II*") (finding that the patent holders' licensing demands to a Chinese company for a worldwide license was not "expressly aimed" at either of the Chinese company's U.S. subsidiaries). Even if Samsung had so alleged, the mere fact that the third-party companies (*e.g.*, Apple) and an uninvolved affiliate (SRA) are located in California is not sufficient to confer jurisdiction over ZTE here. *See Williby v. Hearst Corporation*, No. 5:15-cv-02538, 2017 WL 1210036, *5-*6 (N.D. Cal. Mar. 31, 2017) ("Here, Plaintiff contends jurisdiction over Mourelo is proper in California because Plaintiff—a California resident—was the 'target of the defamatory statement.' [] Absent more, the Supreme Court and the Ninth Circuit have both squarely rejected this theory of personal jurisdiction.") (citing *Walden v. Fiore*, 571 U.S. 277, 290 (2014) (holding that "mere injury to a forum resident is not a sufficient connection to the forum"))"; *see also Lenovo II*, 2022 WL 2644096 at *14 (finding patent holder's conduct toward third parties in seeking licenses is an insufficient basis to assert personal jurisdiction over Sherman Act claim).[6]

Furthermore, although Samsung alleged "ZTE's conduct has caused injury to Samsung in this District, including impact upon business activities in this District," Compl. ¶ 17, Samsung did ***not*** allege that such injury caused "harm that [ZTE] [knew was] likely to be suffered in the" U.S. *Ratha*, 35 F.4th at 1172. Thus, there can be no purposeful direction on these grounds as well.

(ii) Samsung cannot show purposeful direction towards the United States for the Sherman Act Claim.

Samsung's allegations of "purposeful direction" toward the U.S.—applicable to its Sherman Act claim—are even more flimsy. Those allegations comprise just two sentences in a single paragraph of the Complaint: (1) "ZTE's activities relating to enforcement, prosecution, and development of 4G and 5G SEPs have been directed to California, as set forth above, as well as to additional areas in the United States;" and (2) "ZTE's global patent-related activities during at least a portion of the time period at issue in this case were directed by personnel located in the United States, including for example Mang Zhu." Compl. ¶ 18. Neither is sufficient.

Allegation (1) is identical to Samsung's allegations of "purposeful direction" at California,

[6] None of Samsung's other allegations in Paragraph 17 purporting to show purposeful availment satisfy the purposeful direction test either.

with the conclusory addition that the alleged activities were also directed to "additional areas in the United States." But that vague conclusory addition, with no additional specific conduct alleged, fails for the same reasons that the California conduct fails as discussed in Section IV.A.2.b.(i).

Allegation (2) is deficient on its face. It concerns ZTE's alleged "*global* patent-related activities," but never specifies how any of that activity is "expressly aimed" at the U.S. To the extent Samsung contends that ZTE's extraterritorial conduct would necessarily have an effect on the U.S., the Ninth Circuit has cautioned that "something more than mere foreseeability" of an effect in the forum is necessary to establish purposeful direction. *Schwarzenegger*, 374 F.3d at 805 (internal citation and quotation omitted); *see also Kramer Motors, Inc. v. British Leyland, Ltd.*, 628 F.2d 1175, 1178 (9th Cir.1980) ("[T]he foreign-acts-with-forum-effects jurisdictional principle 'must be applied with caution, particularly in an international context.'").

Lenovo II is directly on point. There, the plaintiff asserted antitrust claims based on the defendant's alleged "intentionally false promise to ETSI [] to license its SEPs on FRAND terms, thereby causing its patents to be incorporated into standards, and subsequently pursuing supra-competitive royalties from Plaintiffs and other[s]." 2022 WL 2644096, *11. In evaluating purposeful direction, the court found the defendant's "FRAND statements were not 'expressly aimed' at the U.S. because they were made to a French SSO for use in a worldwide standard, [which] targets neither California nor the United States." *Id.*, *12. "The mere possibility that those FRAND statements could have some effect in the forum state did not satisfy 'express aiming.'" *Id.*

(iii) Samsung's competition law claims neither arise out of nor relate to the alleged activities.

None of ZTE's alleged communications and assertions to California third-parties bear any relationship to Samsung's UCL and Sherman Act claims, which are predicated on "failure to offer licenses on FRAND terms, its patent divestment scheme, and its program of extracting excessive royalty payments from the industry" and ZTE's commitment to ETSI. Compl. ¶¶ 18, 54, 58. ZTE's alleged communications with third parties like Apple are not at issue in those claims, and Samsung did not allege communications between ZTE and SRA at all. All that remains are allegations ZTE's communications with Samsung KR were somehow "directed at business conducted in this District,

including the headquarters of SRA," *id.* ¶ 17, but a mere common "business" interest cannot sweep uninvolved affiliates into a UCL claim. *See Hong Kong uCloudlink Network Tech. Ltd. v. SIMO Holdings, Inc.*, No. 18-cv-05031, 2019 WL 331161, *4-5 (N.D. Cal. Jan. 25, 2019) (no personal jurisdiction on California trade secret claims based on alleged injury to California subsidiary of claimant). The lack of any relationship between Samsung's claims and ZTE's alleged U.S. conduct is yet another reason specific jurisdiction cannot be exercised.[7]

Any additional global conduct should be disregarded mostly for lack of direction at the U.S. (as discussed above), but also because it fails to give rise to or lacks any relationship with the claims here. Samsung failed to allege facts showing it would not have been injured "but for" ZTE's "global patent-related activities [allegedly directed by U.S. personnel] during at least a portion of the time period at issue in this case," or that its alleged injuries are in any way related to such activities. Compl. ¶ 18; *see Matus v. Premium Nutraceuticals, LLC*, 715 Fed. App'x 662, 663 (9th Cir. 2018) ("[U]nder [plaintiff's] proposed rule, [ ] every online advertiser worldwide can be haled into California."); *GeoSolutions B.V. v. Sina.com Online*, 700 F. Supp. 3d 821, 829 (N.D. Cal. 2023). As the court explained in *Lenovo II* with respect to the same type of claim, for example, Samsung "cannot show that, but for [ZTE's] licensing negotiations with third parties, [Samsung] would otherwise not have brought [its] antitrust claim, which fails to satisfy the 'arising out of' prong of the jurisdictional requirement." *Lenovo II*, 2022 WL 2644096, *14. And even if the licensing negotiations between Samsung and ZTE were conducted in the U.S. (they were not[8]), the antitrust and UCL claims would neither arise out of nor relate to such negotiations because "the core anticompetitive conduct in a *Broadcom* claim is the false promise made to an SSO and the SSO's reliance on that promise," not any subsequent licensing negotiations. *Id.*, *16; *see also Aldini, AG v. Silvaco, Inc.*, No. 23-15630, 2024 WL 5165600, *2 (9th Cir. Dec. 19, 2024).

With no nexus between Samsung's claims and ZTE's alleged California or U.S. conduct,

[7] Samsung's UCL and Sherman Act claims also do not arise out of or relate to the other allegations in Paragraph 17 purporting to show "purposeful availment"; *i.e.*, ZTE's alleged hiring of personnel and attorneys in California.

[8] As discussed above, those licensing communications were not "expressly aimed" at California, and thus the court need not address this alternative reason for lack of jurisdiction.

there is no personal jurisdiction.

3. The exercise of jurisdiction over ZTE would be unreasonable, particularly given the duplicative nature of this lawsuit.

Even if Samsung were to show purposeful availment or purposeful direction, as well as nexus—and it cannot—personal jurisdiction would nonetheless be unreasonable and thus improper.

Ninth Circuit courts consider seven factors in deciding whether personal jurisdiction in a forum is reasonable:(1) the extent of a defendant's purposeful interjection into the forum state's affairs; (2) the defendant's burden in litigating in the forum; (3) the extent of conflict with the sovereignty of the defendant's state; (4) the forum state's interest in adjudicating the dispute; (5) the most efficient judicial resolution of the dispute; (6) the importance of the forum to the plaintiff's interest in convenient and effective relief; and (7) the existence of an alternative forum. *Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1132–33 (9th Cir. 2003). No factor is dispositive; courts must instead "balance all seven." *Id.*

The factors, when balanced, strongly weigh against the exercise of jurisdiction here. As to factors (1) and (2), ZTE has been effectively prevented from participating in the U.S. market by the FCC since 2022; it has thus not "purposefully interjected" itself into California or the U.S. regarding Samsung's claims. Additionally, it would be unduly burdensome for ZTE to defend itself in California for at least two reasons: ZTE's witnesses and evidence are located overseas; and Samsung KR previously initiated duplicative litigation in the U.K. and Germany. *See Happy Merch. Ltd. v. Far E. Shipping Co., Inc.*, No. C-94-3927, 1995 WL 705131, *4 (N.D. Cal. Nov. 8, 1995) ("The first factor closely parallels the minimum contacts question. As made clear above, defendant's contacts with the forum are few, and are non-existent with respect to the events leading to the present case. Second, the burden on defendant of defending this case in California would be substantial. Defendant has no operations or offices here, nor are the witnesses or evidence local. The [ ] 'unique burden' placed upon foreign corporations must be afforded 'significant weight' in assessing the reasonableness of personal jurisdiction.") (internal citation omitted).

Factor (3) also weighs in ZTE's favor because ZTE is a Chinese corporation and a "foreign nation presents a higher sovereignty barrier than another state within the United States." *Gelasio v.*

Zafar, No. 3:24-cv-01555, 2024 WL 4634058, *10 (N.D. Cal. Oct. 30, 2024).

As to factor (4), neither California nor the U.S. have any interest in adjudicating this dispute, which is between two foreign corporations and has no specific ties to either forum—particularly where the plaintiff, Samsung, filed duplicative litigations in other countries. *Happy Merchant,* 1995 WL 705131, *4 ("California has absolutely no interest in this dispute. All of the parties, including plaintiff, are foreign corporations litigating a contract dispute that arose abroad. … [T]he forum's interest is no greater than that of any[where else] in the world.").

Factor (5)—the most efficient judicial resolution of the controversy—is "generally one where the witnesses and evidence are located and where the injury occurred." *Id*. "That forum is unequivocally [ ] China or [South Korea]." *Id*. And while ZTE filed a China rate-setting action in December 2024 (before this case was filed), Samsung resists. Compl. ¶ 41. This is so even though Samsung previously filed a China FRAND rate-setting action against Ericsson. Ex. 15 at 8.

Regarding (6), Samsung KR, as a South Korean corporation, has no articulated interest in litigating the alleged claims in California or the U.S. As noted above, Samsung KR initiated duplicative claims in the U.K. and Germany. Indeed, Samsung KR's request for a FRAND rate determination in the U.K., and SEG's request to the German court to order ZTE to accept a license agreement (attached to the German complaint) that Samsung claimed to be on FRAND terms, would, if granted, moot all of Samsung's claims here. Conversely, its requests for "specific performance" and "injunctive relief" here would moot its requested relief in the U.K. and Germany,

Regarding (7), the parties are already litigating the breach-of-FRAND issues raised in Samsung's Complaint in U.K, German, and Chinese courts. Thus, not only do alternative forums exist, they are being employed. Because all factors weigh against exercise of personal jurisdiction over ZTE, the Court should dismiss Samsung's case. *See, e.g.*, *Happy Merchant*, 1995 WL 705131, *4 (dismissing case where "most [] factors weigh[ed] heavily in favor of defendant").

B. Samsung's Sherman Act Claim should be dismissed.

Samsung alleged ZTE violated Section 2 of the Sherman Act through actual monopolization of vaguely defined technology "markets" by "demanding excessive royalties" for alleged SEPs, Compl. ¶¶ 52–56, but Samsung's Sherman Act claim is generic—nothing more than a breach of

FRAND claim. Dismissal is warranted for several reasons.

To state a claim of monopolization under Section 2 of the Sherman Act, Samsung must allege non-conclusory facts plausibly showing that (1) ZTE possesses "monopoly power in the relevant market"; (2) ZTE willfully acquired or maintained that power through anticompetitive means and "with an 'intent to control prices or exclude competition in the relevant market'" rather than "as a consequence of a superior product, business acumen, or historic accident"; and (3) ZTE's conduct caused "antitrust injury." *ChriMar Sys., Inc. v. Cisco Sys., Inc.*, 72 F. Supp. 3d 1012, 1017 (N.D. Cal. 2014) (citations omitted); *Dreamstime.com, LLC v. Google, LLC*, 54 F.4th 1130, 1137 (9th Cir. 2022). Such allegations are critical to the viability of an antitrust claim because "[t]he mere possession of monopoly power, and the concomitant charging of monopoly prices, is not only not unlawful; it is an important element of the free-market system." *Id.* (quoting *Verizon Commc'ns Inc. v. L. Offs. of Curtis V. Trinko*, 540 U.S. 398, 407 (2004)).

Samsung's allegations, however, are an attempt to spiral a routine patent licensing dispute between two sophisticated parties into an antitrust claim, and thus they fail at every turn.

1. Breach of ETSI FRAND is not a cognizable antitrust claim.

Samsung's Sherman Act claim, at bottom, constitutes nothing more than a breach of an ETSI FRAND commitment. Mere a breach of FRAND commitment, however, "do[es] not give rise to antitrust liability." *Fed. Trade Comm'n v. Qualcomm Inc.*, 969 F.3d 974, 997 (9th Cir. 2020) [hereinafter *FTC*], *rehearing en banc denied by* No. 19-16122, ECF No. 11874048 (9th Cir. Oct. 28, 2020). Indeed, no appellate court has ever held that a patent holder's breach of an ETSI FRAND commitment, standing alone, constitutes an antitrust violation. This is because a breach of contractual obligations, without more, is not a violation of U.S. antitrust laws, standards-setting activities are pro-competitive, and there is no antitrust duty to deal on terms preferred by "rivals," except under the rarest of circumstances. *See, e.g.*, Statement of Interest of the United States, *Continental Auto. Sys., Inc. v. Avanci, LLC*, No. 3:19-cv-02933 (N.D. Tex.), ECF No. 278 (Feb. 27, 2020) (citing, *e.g.*, *Trinko*, 540 U.S. at 409)).

Samsung attempts to avoid *FTC* by couching its claim under a deceptive-FRAND-commitment theory, relying on the Third Circuit's *Broadcom v. Qualcomm* "'intentional deception'

exception to the general rule that breach of SSO commitments do not give rise to antitrust liability." *FTC* at 997. But *Broadcom* cannot save Samsung's conclusory allegations.

Putting aside whether the Ninth Circuit would agree with the Third Circuit's "exception"[9]—which requires that an SEP holder make an *intentionally false* promise to license its SEPs on FRAND terms and that the SSO *relies* on that promise in adopting the SEP technology into the standard—the allegations in *Broadcom* were far different and far more specific than Samsung's vanilla breach of FRAND allegations.[10] Broadcom alleged several specific anticompetitive practices by Qualcomm, and not just breach of FRAND: (i) Qualcomm possessed a near-monopoly in one market (the CDMA chipset market) and used that monopoly to obtain a new monopoly in a different market (the UTMS chipset market); (ii) Qualcomm had engaged in discriminatory licensing practices by charging higher licensing fees to companies who did not buy Qualcomm chips; (iii) Qualcomm charged double-royalties to UTMS cell phone makers using non-Qualcomm chips; and (iv) Qualcomm demanded sensitive sales and pricing information from licensees as a condition of granting licenses, even if the licensees were Qualcomm competitors. *See, e.g.*, *Broadcom Corp. v. Qualcomm, Inc.*, 501 F.3d 297, 315–16, 318 (3d Cir. 2007) (citing ¶¶ 82–109 of Ex. 19, Broadcom's First Amended Complaint, No. 3:08-cv-01607 (D.N.J.), Dkt. 14 (Sept. 19, 2005)). Broadcom's highly specific allegations allowed the Third Circuit to find a plausible inference that Qualcomm had used intentional deception to obtain a monopoly in UTMS technologies "willfully" and thereby harm competition. *Broadcom*, 501 F.3d at 315–16.

Samsung has alleged nothing similar here. Instead, Samsung generically and circularly alleged that ZTE "deceptively committ[ed] to license SEPs on FRAND terms while intending not to honor this commitment." Compl. ¶¶ 52, 54. To support this contention, Samsung points to its

[9] Other courts have expressly disagreed with the Third Circuit. *Rambus Inc. v. F.T.C.*, 522 F.3d 456, 464–467 (D.C. Cir. 2008) ("Deceptive conduct—like any other kind—must have an anticompetitive effect in order to form the basis of a monopolization claim."); *Continental Automotive Sys., Inc. v. Avanci, LLC*, 485 F. Supp. 3d 712, 735 (N.D. Tex. 2020) ("The Court does not agree with those cases concluding that deception of an SSO constitutes the type of anticompetitive conduct required to support a § 2 claim."), *aff'd by* Appeal No. 20-11032, 2022 WL 2205469 (5th Cir. 2022). Further, ZTE is aware of no case after *FTC* issued where a district court within the Ninth Circuit held that a *Broadcom*-type claim was viable.

[10] Indeed, Broadcom's complaint was sixty pages long, while Samsung's is only twenty.

allegation that ZTE "breached its contractual FRAND obligation in connection with licensing patents that ZTE contends are SEPs for the 5G and 4G standards, including for example through failure to provide FRAND licensing terms in response to Samsung's requests." This, again, is nothing more than an insufficient allegation of breach of FRAND commitments. *Compare* Compl. ¶ 52 ("including in view of the conduct described above"), *with id.* ¶ 44.

Samsung also makes a passing reference to a "patent divestment scheme," Compl. ¶ 54, but omits that FRAND commitments run with transferred patents. This reference then is just "breach of a FRAND commitment" by another name. ETSI IPR Policy, ¶ 6.1*bis* ("FRAND licensing undertakings … shall be interpreted as encumbrances that bind all successors-in-interest."), https://www.etsi.org/images/files/IPR/etsi-ipr-policy.pdf. Indeed, Samsung gives up the game in a different paragraph of the Complaint, where it alleged that ZTE's "divesting" was done to "drive up the overall price in violation of FRAND commitments." Compl. ¶ 7.

Samsung's Sherman Act claim amounts to no more than mere "breach of a FRAND commitment" and must be dismissed. *FTC*, 969 F.3d at 997.

2. Samsung failed to plead its claim with particularity as required by Fed. R. Civ. P. 9(b).

Samsung's allegations of anticompetitive conduct are also insufficient because Samsung failed to plead "fraudulent" conduct with "particularity." *Compare* Compl. ¶ 60, *with* Fed. R. Civ. P. 9(b); *Apple Inc. v. Samsung Elecs. Co., Ltd.*, No. 5:11-cv-01846, 2011 WL 4948567, *4 (N.D. Cal. Oct. 18, 2011) ("Because Apple's allegations regarding Samsung's conduct sound in fraud, [Apple] is required to plead, with particularity, 'the circumstances constituting fraud or mistake.'").

In *Apple*, Samsung was the defendant and, at that time, correctly recognized this burden, noting "[t]he party alleging fraud must specifically plead 'the 'who, what, when where, and how' that would suggest fraud … .'" *Apple*, No. 5:11-cv-01846 (N.D. Cal.), Dkt. 153, Mtn. to Dismiss at 7 (quoting *Cooper v. Pickett*, 137 F.3d 616, 627 (9th Cir. 1977)). Samsung argued in *Apple* that Apple's generic allegations regarding deceptive submission of FRAND declarations did not suffice, yet Samsung's Complaint here is subject to the same deficiency it highlighted in Apple's complaint. That is, Samsung alleged, with one exception, that unidentified ZTE personnel made unidentified

"deceptive FRAND commitments" at unidentified times that resulted in unidentified ZTE "technology" being incorporated into "cellular communication standards." *See, e.g.*, Compl. ¶¶ 33–35, 52–55. Even as to the one exception, Samsung merely alleged that a Mr. Chen submitted a FRAND declaration to ESTI on November 26, 2024 regarding "various patents allegedly essential to the 5G cellular communication standard." But Samsung failed to provide any specifics about why that declaration was false, or what ZTE technologies were allegedly incorporated into the 5G standard as a result of that declaration. In short, Samsung has failed to provide allegations showing, with particularity, "what is false or misleading about" ZTE's licensing declarations and why those declarations were false when made. *Avakian v. Wells Fargo Bank, N.A.*, 827 Fed. App'x 765, 766 (9th Cir. Oct. 27, 2020) (citing *In re GlenFed, Inc. Sec. Litig.*, 42 F.3d 1541, 1548 (9th Cir. 1994)).

3. Samsung failed to allege plausible "relevant markets"

To state a plausible Sherman Act, Section 2 claim, a plaintiff must "delineate a relevant market." *In re eBay Seller Antitrust Litig.*, 545 F. Supp. 2d 1027, 1031 (N.D. Cal. 2008). Samsung, however, does not state with any particularity what technology or actual patents comprise the market, something it was required to do. *See*, *e.g.*, *Intel Corp. v. Fortress Grp. LLC*, No. 19-cv-07651-EMC, 2020 WL 6390499, *8-11 (N.D. Cal. July 15, 2020) (dismissing antitrust claims where alleged "Electronics Patents Markets" were "vague and overbroad," and dismissing UCL claim based on "antitrust laws, where alleged "Input Technology Markets" "refer[red] broadly to SEPs for cellular standards without any additional specificity").

Instead, Samsung merely alleged that the subject-matter of each of ZTE's cellular essential patents, along with the alternative technologies to those patents, constitutes a "Standardized Technology Market." Compl. ¶ 29. This "vague and overbroad" market definition is plainly insufficient. *Intel*, 2020 WL 6390499, *8–11. It is not conceivable, much less plausible, that for each and every one of ZTE's several thousands of cellular patents, ZTE obtained monopoly power using anticompetitive conduct, rather than "as a consequence of a superior product, business acumen, or historic accident." ZTE has spent billions on research and development efforts yielding thousands of inventive cellular technologies, making it *more than likely* that whatever "monopoly power" ZTE might have is the consequence of a "superior product." Moreover, Samsung fails to

identify *any* "alternative technologies" to *any* of ZTE's patents. *See ChriMar*, 72 F. Supp. 3d at 1017 (dismissing Sherman Act claims where plaintiff defined markets by reference to alternative technologies, but failed to identify any). ZTE is thus left to speculate about which "technology markets" are relevant. Samsung's antitrust claim fails.

4. Samsung failed to plausibly allege the "willful" acquisition or maintenance of "monopoly power."

Samsung's Sherman Act claim also fails because its allegations about willful acquisition of monopoly power *are predicated* on the existence of "alternative technologies to ZTE's patents that could have been used in the cellular standards," Compl. ¶¶ 29, 31, 35, 53, 55, 56, yet Samsung offers only conclusory allegations about those "alternative technologies." Indeed, as noted above Samsung failed to identify *even a single instance of an alternative technology*. Samsung thus failed to plausibly allege that ZTE's alleged monopoly power is the result of anticompetitive conduct.

Put differently, for each of the supposed "Standardized Technology Markets," Samsung has failed to concretely identify the existence of a competing technology to ZTE's standardized technology, and so it is, at the very least, equally likely (if not more so) that any alleged ZTE monopoly was the result of something other than "willful" acquisition, e.g., a "superior product". *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) (antitrust claim insufficiently alleged where alternative explanation to unlawful conspiracy existed); *Rambus v. Fed. Trade Comm'n*, 522 F.3d 456, 466–67 ("Thus, if JEDEC, in the world that would have existed but for Rambus's deception, would have standardized the very same technologies, Rambus's alleged deception cannot be said to have had an effect on competition in violation of the antitrust laws."); *Apple*, 2011 WL 4948567, *6 (Apple "failed to allege sufficient facts to support a plausible inference that had Samsung disclosed its intellectual property rights to the SSO, a viable alternative technology performing the same functionality would have been incorporated into the UMTS standard … .").

5. The Foreign Antitrust Trade and Improvements Act (FTAIA) precludes Samsung's antitrust claim.

Samsung's allegations of wrongful antitrust conduct are entirely foreign—extraterritorial commitments to a French SSO, ETSI, alleged to be "deceptive," and "unreasonable demands" for

royalties on a global patent license allegedly breaching those commitments. The FTAIA, 15 U.S.C. § 6a, however, precludes application of the Sherman Act to entirely foreign conduct. *U.S. v. Hui Hsiung*, 778 F.3d 738, 753–54 (9th Cir. 2015). To avoid the FTAIA, Samsung is required to have pled that (1) the allegedly wrongful conduct has "a direct, substantial, and reasonably foreseeable effect on American domestic, import, or (certain) export commerce and (2) [that it] has an effect of a kind that antitrust law considers harmful." *Id.* at 754 (citation omitted). As to the first, the Ninth Circuit employs a stringent "direct" effects test, requiring that the effect be an "immediate consequence of the defendant['s] activity." *Id.* at 758 (citation omitted). As to the second, the "direct effect" must be the proximate cause of Samsung's injury. *Id.* at 758–59 (citation omitted). Samsung made no attempt to allege either element. Indeed, Samsung never connects the allegedly wrongful conduct to any effect on U.S. commerce, much less a direct, substantial, and reasonably foreseeable effect (*e.g.*, an effect following "as an immediate consequence" of the conduct). *E.g.*, Compl. ¶¶ 52–55. Nor does Samsung begin to allege that a direct effect on U.S. commerce is the proximate cause of its alleged injuries (*e.g.*, "higher costs" for a *global* patent license, loss of time of Korean personnel dealing with ZTE, and the prospect of injunctive relief *in foreign jurisdictions*). *E.g.,* Compl. ¶ 56. The FTAIA precludes Samsung's claim.

6. Samsung failed to allege "antitrust injury."

Lastly, Samsung's Sherman Act claim fails because Samsung failed to allege a cognizable antitrust injury. To plead "antitrust injury," Samsung must allege an injury "of the type the antitrust laws were intended to prevent," *i.e.*, harm to competition and not "merely injury to [] a competitor." *Reilly v. Apple Inc.*, 578 F. Supp. 3d 1098, 1109–1110 (N.D. Cal. 2022). Samsung did not do so.

Samsung alleged injury to itself, not "harm to competition." For example, Samsung alleged it has had "difficulty in obtaining license rights [from ZTE],"may have "higher costs for licenses," has suffered "loss of personnel time spent dealing with improper assertions," and faces "the prospect of injunctive relief if Samsung does not concede to ZTE's unreasonable demands." Compl. ¶ 56. These are, at most, allegations of harm to an individual market participant, not competition generally, and thus are insufficient. *See Reilly*, 578 F. Supp. 3d at 1109–1110; *ChriMar*, 72 F. Supp. 3d at 1018. To the extent that Samsung argues its passing references to

exclusion of "substitutable alternative technologies" and "higher costs for licenses to … the industry" constitute allegations of harm to competition, these are conclusory, speculative, and likewise insufficient. *Reilly*, 578 F. Supp. 3d at 1110 ("'[T]hreadbare recitals' of the element of antitrust injury are insufficient to state a claim.") (citations omitted); *see also* Sections IV.B.3, .4 *supra* (Samsung's allegations of "alternative technologies" are conclusory).[11]

C. Without the Sherman Act Claim, the Court lacks Subject Matter Jurisdiction because Diversity Jurisdiction does not exist.

Once the Sherman Act claim is dismissed—either for lack of personal jurisdiction or for failure to state a claim—the Court will have no subject matter jurisdiction over the remaining claims, requiring dismissal of the entire case. The Sherman Act claim is the sole basis for Federal Question jurisdiction.[12] Without that claim, Samsung must show Diversity Jurisdiction. Samsung cannot do so, however, because both Samsung KR and ZTE are foreign corporations, Compl. ¶¶ 12, 15, thus destroying complete diversity. *See, e.g.*, *Nike, Inc. v. Comercial Iberica de Exclusivas Deportivas, S.A.*, 20 F.3d 987, 991 (9th Cir. 1994) (dismissing case filed by foreign plaintiff (Nike Int'l) and domestic plaintiff (Nike, Inc.) against foreign defendant); *Faysound Ltd. v. United Coconut Chems., Inc.*, 878 F.2d 290, 294–95 (9th Cir. 1989) (no diversity jurisdiction where aliens were on both sides, despite U.S. defendant).

D. Samsung's Breach of FRAND Claim is insufficiently pled.

Samsung insufficiently alleged its claim for breach of ETSI FRAND commitments. To allege breach of contract, Samsung must allege, *inter alia*, facts plausibly showing conduct constituting a "breach" and "damages" resulting therefrom. Samsung failed to do either. *See*, *e.g.*, *Jackson v. Rhino Ent. Co.*, No. 16-01668, 2016 WL 11002546, *5 (C.D. Cal. Nov. 10, 2016) (dismissing breach of contract claim due to conclusory allegations of "breach" and "damages").

Samsung's generic "breach" allegations are either threadbare recitals (*e.g.*, "unfair and

[11] Samsung does not even allege harm as a "competitor" of ZTE, only as a potential licensee ("customer") of ZTE or a seller of products in downstream markets, not the market for technological inputs into the ESTI standards, which is the asserted relevant market. Compl. ¶ 56.

[12] A declaratory judgment claim predicated on state law, like Count II of Samsung's Complaint, does not provide a basis for Federal Question jurisdiction. *Negrete v. City of Oakland*, 46 F.4th 811, 820 (9th Cir. 2022) (citing *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 672 (1950)).

unreasonable conduct," and "lack of compliance with FRAND licensing obligations"), wholly unspecific ("obstruction of neutral resolutions of FRAND terms"), or legally insufficient ("patent divestment scheme," "pursuit of a redundant and improper second-filed global rate setting action," and "improper pursuit of patent infringement injunction actions"). Compl. ¶ 44. The last subset of allegations are legally insufficient because: FRAND commitments bind successors-in-interest and so "divestment" cannot constitute a FRAND-commitment breach, ETSI IPR Policy 6.1*bis*; even if "redundant," the China action will nonetheless lead to FRAND terms, which means *a fortiori* it cannot constitute a breach of FRAND; and injunctions on SEPs are not impermissible *per se*, *see*, *e.g.*, *Apple, Inc. v. Motorola Inc.*, 757 F.3d 1286, 1331–1332 (Fed. Cir. 2014) ("To the extent that the district court applied a *per se* rule that injunctions are unavailable for SEPs, it erred.").

Samsung also vaguely and speculatively alleged "damage" ("expenditure of personnel time and resources to deal with ZTE's unreasonable conduct" and "being subject to uncertainty over obtaining licenses"). This is insufficient. *Jackson*, 2016 WL 11002546, *5.[13]

E. Samsung's California Unfair Competition Law claim should be dismissed for failure to plead cognizable or redressable harm.

The Court should dismiss Samsung's cause of action for unfair competition under the California Unfair Competition Law because Samsung failed to plead the kind of competitive injury required. To state a claim for unfair competition under California Business & Professions Code § 17200 ("UCL"), a complaint must allege "conduct that threatens an incipient violation of an antitrust law, or violates the policy or spirit of one of those laws because its effects are comparable to or the same as a violation of the law, or otherwise significantly threatens or harms competition." *Cel-Tech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal. 4th 163, 187 (1999). Samsung failed to plead that ZTE engaged in any such conduct, and so its UCL claim should be dismissed.

Samsung's allegations of UCL harm are directed almost exclusively toward itself, with only a passing reference to possible harm to competition at-large. Compl. ¶ 61 ("This conduct harms Samsung and the public and injures marketplace competition by, at a minimum, avoiding

[13] If an "offensive" Declaratory Judgment claim, such as Samsung's, is predicated on a state law claim, and the state law claim is insufficiently pled, then the Declaratory Judgment claim fails as well. *City of Reno v. Netflix, Inc.*, 52 F.4th 874, 878–79 (9th Cir. 2022).

incorporation of alternative technologies into the standards and instead driving up the price of standards-compliant products and raising the specter of injunctions under ZTE's patent assertions."); *id.* ¶ 62 (alleging only harm to itself). As with Sherman Act claims, such speculative allegations of marketplace harm are insufficient. *See, e.g.*, *Realtek Semiconductor Corp. v. LSI Corp.*, No. C-12-03451, 2012 WL 4845628, *7 (N.D. Cal. Oct. 10, 2012) (dismissing UCL claim based on alleged FRAND violation because plaintiff only speculatively alleged "other competitors or consumers will be adversely affected"); *see also Apple*, 2011 WL 4948567, *9.

Finally, Samsung cannot assert a UCL claim because it has not alleged that it lacks an adequate remedy at law. *See Sonner v. Premier Nutrition Corp.*, 971 F.3d 834, 844 (9th Cir. 2020) (holding that plaintiff "must establish that [it] lacks an adequate remedy at law before securing equitable restitution [ ] under the UCL").

F. The Court should stay discovery pending this motion's resolution.

The Court should stay discovery pending this motion's resolution. The Court has "wide discretion in controlling discovery." *Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988). The Court may use that discretion to stay discovery pending a Rule 12(b) motion. *Wenger v. Monroe*, 282 F.3d 1068, 1077 (9th Cir. 2002). To establish "good cause" for such a stay, a movant must ordinarily show (1) the motion to dismiss is "potentially dispositive of the entire case," and (2) the motion "can be decided absent additional discovery." *In re Google Digit. Advert. Antitrust Litig.*, No. 20-cv-03556, 2020 WL 7227159, *2 (N.D. Cal. Dec. 8, 2020). In applying this test, the Court must take a "preliminary peek" at the merits to assess whether a stay is warranted. *Id.* (citing *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D. 597, 602 (D. Nev. 2011)).

ZTE's motion is potentially dispositive of the entire case. If the Sherman Act claim is dismissed (and many bases for its dismissal exist), the entire case *must be* dismissed. *See supra* Section IV.C; *see also Tradin Organics USA LLC v. Terra Nostra Organics, LLC*, No. 23-cv-03373, 2023 WL 8481814, *2 (N.D. Cal. Dec. 7, 2023) (motion to dismiss for lack of personal jurisdiction potentially dispositive of entire case); *Micron Tech., Inc. v. United Microelecs. Corp.*, No. 17-cv-06932, 2018 WL 7288018, *2 (N.D. Cal. Mar. 16, 2018) (staying discovery pending a Rule 12(b) motion because "a ruling in [defendant]'s favor on that issue would be dispositive").

Additionally, no discovery is necessary to resolve ZTE's motion because the court can resolve the motion on the papers. *See, e.g., In re Google Digit. Advert. Antitrust Litig.*, 2020 WL 7227159 at *2 (Rule 12(b)(6) motion to dismiss antitrust claim could be decided absent discovery); *Cal. Crane Sch., Inc. v. Google LLC*, No. 21-cv-10001, 2022 WL 1271010, *1 (N.D. Cal. Apr. 28, 2022) ("[N]o additional discovery would help the Court resolve [the defendant's 12(b)(6) motion to dismiss] because [it] … challenge[s] the legal sufficiency of Plaintiff's complaint."). And, as part of its "preliminary peek" at the merits, the Court will see Samsung's Complaint is devoid of allegations plausibly stating an antitrust claim or showing personal jurisdiction. *See supra* Sections IV.A, IV.B. No amount of discovery can cure these fundamental defects.

A stay of discovery is particularly warranted here, to conserve resources and promote efficiency. Courts have repeatedly recognized stays of discovery pending Rule 12 motions are particularly appropriate in antitrust cases. *See, e.g., In re Netflix Antitrust Litig.*, 506 F. Supp. 2d 308, 321 (N.D. Cal. 2007) ("[T]he Supreme Court has recognized that staying discovery [pending resolution of a dispositive motion] may be particularly appropriate in antitrust cases … ."); *In re Graphics Processing Units Antitrust Litig.*, No. C 06-07417, 2007 WL 2127577, *4–5 (N.D. Cal. July 24, 2007) ("[T]o allow discovery prior to sustaining a complaint would defeat one of the rationales of *Twombly*."); *Realtek Semiconductor Corp. v. MediaTek, Inc.*, 732 F. Supp. 3d 1101, 1118 (N.D. Cal. 2024) (staying discovery, finding "the burdens of discovery in antitrust lawsuits can be substantial"). Forcing ZTE to engage in antitrust discovery before the Court determines whether personal jurisdiction exists or whether Samsung has pled any plausible claim would be inappropriate, inefficient, and prejudicial to ZTE. *See, e.g., Cal. Crane Sch., Inc.*, 2022 WL 1271010 at *1 ("[F]orcing Defendants to spend time and resources on … discovery … before the Court has an opportunity to assess [the plausibility of Plaintiff's claims] may subject Defendants to undue burden and expense."). This is particularly true here, given Samsung's conclusory Complaint.

V. CONCLUSION.

For the foregoing reasons, Samsung's Complaint should be dismissed in its entirety, and the Court should stay discovery pending the resolution of this motion.

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