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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: TFT-LCD (FLAT PANEL) ANTITRUST
LITIGATION

No. M 07-1827 SI
MDL No. 1827

This Order Relates To:

No. C 11-2495 SI

JACO ELECTRONICS, INC.,

Plaintiff,

v.

AU OPTRONICS CORPORATION, *et al.*,

Defendants.

**ORDER GRANTING IN PART NEC
DEFENDANTS' MOTION TO COMPEL
ARBITRATION**

Defendants NEC Corporation, NEC LCD Technologies, Ltd., and Renesas Electronics America, Inc. (collectively, "NEC") have filed a motion to compel arbitration of plaintiff Jaco Electronics' claims.¹ Pursuant to Civil Local Rule 7-1(b), the Court finds this matter suitable for disposition without oral argument and therefore VACATES the hearing currently scheduled for January 13, 2012. Having considered the parties' papers, and for good cause appearing, the Court hereby GRANTS IN PART NEC's motion.

This Court has addressed numerous similar motions in this MDL. *See, e.g.*, Order Granting AU Optronics Corporation's Motion to Compel Arbitration, Master Docket No. 3034 (July 6, 2011); Order

¹NEC Corporation and its wholly-owned subsidiary NEC LCD Technologies, Ltd. are manufacturers of LCD panels based in Japan. First Amended Complaint ("FAC"), ¶¶36-37. Defendant Renesas Electronics America is based in Santa Clara, California, and is the successor by merger to NEC Electronics America, Inc., which was formerly a wholly owned subsidiary of NEC Corporation. FAC at ¶38.

1 Granting in Part Defendants’ Joint Motion to Compel Arbitration, Master Docket No. 3518 (September
2 9, 2011) (“Costco Arbitration Order”); Order Granting in Part LG Display Co., Ltd.’s and LG Display
3 America’s, Inc.’s Motion to Compel Arbitration, Master Docket No. 3613 (September 19, 2011)
4 (“SB Arbitration Order”). As noted in these prior orders, “arbitration is a matter of contract.” *United*
5 *Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582 (1960). Thus, while there is a
6 federal policy favoring arbitration, “a party cannot be required to submit to arbitration any dispute which
7 he has not agreed so to submit.” *Id.*

8 NEC seeks to compel arbitration based upon a distribution agreement that Jaco and NEC
9 Electronics America executed in 2005. *See* Jeter Decl., Exh. A. This distribution agreement contains
10 an exceptionally broad arbitration clause:

11 **Arbitration:** If any disagreement or controversy of any kind arises between
12 DISTRIBUTOR and SUPPLIER, the parties will meet to attempt to resolve it. If the
parties cannot resolve the disagreement, an informal binding arbitration will be held.

13 . . .

14 All disagreements or controversies of any kind whether claimed in tort, contract or
15 otherwise, either concerning this Agreement or any other matter whatsoever, will be
arbitrated according to the provisions of this paragraph

16 Jeter Decl., Exh. A at ¶16.13. NEC claims that the breadth of this clause mandates arbitration of all of
17 Jaco’s claim against it, including those that predate the agreement.

18 The Court agrees with NEC that the expansive language of the arbitration clause mandates
19 arbitration of Jaco’s claims against the NEC entities. *See* SB Arbitration Order at 6-7. Further, because
20 the arbitration clause extends to disputes “either concerning this Agreement or any other matter
21 whatsoever,” the Court agrees that the clause applies retroactively. The Court finds, however, that the
22 arbitration clause is necessarily limited to disputes arising out of the business relationship between Jaco
23 and NEC. Thus, Jaco’s claims are arbitrable to the extent they are based upon purchases it made directly
24 from NEC; to the extent Jaco’s claims against NEC are based on coconspirator liability for purchases
25 Jaco made from other defendants, such claims are not subject to arbitration. In addition, to the extent
26 Jaco argues that its purchases from NEC were for “custom or semi-custom products,” which fall outside
27 the scope of the distribution agreement, the Court finds that such matters are best addressed by the
28 arbitrator.

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Finally, the Court agrees with Jaco that the distribution agreement's limitation on treble damages is unenforceable. *See* Costco Arbitration Order, at 9-10; SB Arbitration Order, at 9-10. The Court denies NEC's request for dismissal or a stay of these proceedings.

CONCLUSION

For the foregoing reasons and for good cause shown, the Court hereby GRANTS IN PART NEC's motion to compel arbitration. Docket No. 3874 in 07-1827; Docket No. 35 in 11-2495.

IT IS SO ORDERED.

Dated: January 10, 2012



SUSAN ILLSTON
United States District Judge