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7
 8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA**
 10 **SAN FRANCISCO DIVISION**

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

Master Docket No. M:07-1827 SI

MDL No. 1827

12
 13 THIS DOCUMENT RELATES TO:

14 *Tracfone Wireless, Inc. v. AU Optronics Corp.*
 3:10-cv-3205-SI

15 *SB Liquidating Trust v. AU Optronics Corp.*,
 3:10-cv-5458-SI

16 *Sony Electronics Inc. v. LG Display Co., Ltd.*,
 3:10-cv-5616-SI

17 *Alfred H. Siegel, as Trustee of the Circuit City*
Stores, Inc. Liquidating Trust, v. AU Optronics
 18 *Corp.*, 3:10-cv-5625-SI

19 *MetroPCS Wireless, Inc. v. AU Optronics Corp.*,
 3:11-cv-829-SI.

20 *Office Depot, Inc. v. AU Optronics Corp.*,
 3:11-cv-2225-SI

21 *Jaco Electronics, Inc. v. AU Optronics Corp.*,
 3:11-cv-2495-SI

22 *T-Mobile U.S.A., Inc. v. AU Optronics Corp.*,
 3:11-cv-2591-SI

23 *Electrograph Systems, Inc. v. NEC Corp., et al.*,
 3:11-cv-3342-SI

24 *Interbond Corp. of America v. AU Optronics Corp.*,
 3:11-cv-3763-SI

25 *Schultze Agency Services, LLC, on behalf of*
Tweeter Opco, LLC and Tweeter Newco, LLC, v.
 26 *AU Optronics Corp.*, 3:11-cv-3856-SI

Case No. 3:10-cv-3205-SI
 Case No. 3:10-cv-5458-SI
 Case No. 3:10-cv-5616-SI
 Case No. 3:10-cv-5625-SI
 Case No. 3:11-cv-829-SI
 Case No. 3:11-cv-2225-SI
 Case No. 3:11-cv-2495-SI
 Case No. 3:11-cv-2591-SI
 Case No. 3:11-cv-3342-SI
 Case No. 3:11-cv-3763-SI
 Case No. 3:11-cv-3856-SI
 Case No. 3:11-cv-4116-SI
 Case No. 3:11-cv-4119-SI
 Case No. 3:11-cv-4119-SI
 Case No. 3:11-cv-4119-SI
 Case No. 3:11-cv-5765-SI
 Case No. 3:11-cv-5781-SI
 Case No. 3:11-cv-6241-SI
 Case No. 3:12-cv-335-SI
 Case No. 3:12-cv-1426-SI
 Case No. 3:12-cv-1599-SI
 Case No. 3:12-cv-2214-SI
 Case No. 3:12-cv-2495-SI

**TRACK TWO DIRECT ACTION
 PLAINTIFFS' NOTICE OF MOTION
 AND MOTION AND MEMORANDUM
 IN SUPPORT OF MOTION FOR
 ENTRY OF A TRACK TWO
 SCHEDULING ORDER AND TRIAL
 SETTING**

Motion for Entry of Scheduling Order

MASTER FILE NO.: M-07-1827-SI

1 *Hewlett-Packard Co. v. AU Optronics Corp.*,
3:11-cv-4116-SI
2 *ABC Appliance, Inc. v. AU Optronics Corp.*,
3:11-cv-4119-SI
3 *Marta Cooperative of America, Inc. v. AU*
4 *Optronics Corp.*, 3:11-cv-4119-SI
5 *P.C. Richard & Son Long Island Corp. v. AU*
Optronics Corp., 3:11-cv-4119-SI
6 *Tech Data Corp. v. AU Optronics Corp.*,
3:11-cv-5765-SI
7 *The AASI Creditor Liquidating Trust, by and*
8 *through Kenneth A. Welt, Liquidating Trustee, v.*
AU Optronics Corp., 3:11-cv-5781-SI
9 *CompuCom Systems, Inc. v. AU Optronic Corp.*,
3:11-cv-6241-SI
10 *Viewsonic Corp. v. AU Optronics Corp.*,
11 3:12-cv-335-SI
12 *NECO Alliance LLC v. AU Optronics Corp.*,
3:12-cv-1426-SI
13 *Sony Electronics Inc. v. AU Optronics Corp.*,
3:12-cv-1599-SI
14 *Sony Electronics Inc. v. Hannstar Display Corp.*,
15 3:12-cv-2214-SI
16 *Rockwell Automation, Inc. v. AU Optronics Corp.*,
3:12-cv-2495-SI

Date: July 6, 2012
Time: 9:00 a.m.
Ct. Room: No. 10, 19th Floor
The Honorable Susan Illston

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL:

PLEASE TAKE NOTICE that at 9:00 a.m. on July 6, 2012, or at such time subject to the Court’s calendar, plaintiffs in the captioned cases will, and hereby do, move before the Honorable Susan Illston, United States District Judge, at the United States Courthouse, 450 Golden Gate Avenue, Courtroom 10, San Francisco, California, for an order directing the pretrial and trial schedule of these cases.

This motion is brought pursuant to Federal Rule of Civil Procedure 16 and is based upon the supporting Memorandum of Points and Authorities filed concurrently with this Notice, the records, pleadings and papers filed in these cases and in Master Docket No. M-07-01827-SI, and upon such argument as may be presented to the Court at the hearing on this motion.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 The Direct Action Plaintiffs in the captioned cases (“Track Two DAPs”) submit this
3 Memorandum in support of their motion for entry of a pretrial and trial scheduling order for these
4 cases. A proposed Order re: Pretrial and Trial Schedule for Track Two Direct Action Cases is
5 submitted with the motion.
6

7 **I. BACKGROUND**

8 On November 23, 2010, the Court entered an Order Re: Pretrial and Trial Schedule for
9 the direct and indirect purchaser class actions in the TFT-LCD (Flat Panel) Antitrust Litigation
10 and for all Direct Action Plaintiffs (the “Track One DAPs”) and all State AG Plaintiffs in cases
11 on file by December 1, 2010 (the “Track One DAP Scheduling Order”). (Docket No. 2165) The
12 Track One DAP Scheduling Order prescribed all pretrial deadlines, including completion of fact
13 discovery and disclosure and discovery of experts, and set a trial date for the Track One DAPs of
14 November 5, 2012. While a later Stipulation modified certain of the pretrial deadlines applicable
15 to the Track One DAPs and the AG Plaintiffs (Docket No. 3110), the trial date for those cases
16 was unchanged and remains November 5, 2012.
17

18 The Track One DAP Scheduling Order recognized that other direct action cases had been
19 and were likely to be filed after December 1, 2010 and provided that “[d]irect action and State
20 AG cases filed after December 1, 2010, will be subject to a separate pretrial and trial schedule, or,
21 if circumstances permit, will be folded into the schedule set forth in this order.” Order Re:
22 Pretrial and Trial Schedule, November 23, 2010, at 1, n. 1.¹
23

24 _____
25 ¹ Subsequent to the entry of the Track One Scheduling Order, certain of the State AGs negotiated separate
26 scheduling stipulations with the defendants, which were entered by the Court, e.g., Order Regarding Extension of
27 Time on Deadlines in Case Schedule, December 16, 2011 (applicable to Missouri, Arkansas, West Virginia,
28 Michigan and Wisconsin) (Docket No. 4393); Order Modifying Pretrial Schedule, February 2, 2012 (New York)
(Docket No. 4750). On May 25, 2012, the State AGs of Missouri, Arkansas, West Virginia, Michigan, Wisconsin,
Florida and New York submitted a proposed Stipulation Regarding Extension of Time on Deadlines in Case
Schedule. (Docket No. 5793) That proposed stipulation states that the applicable AGs “are entering into this
stipulation to finalize settlement agreements” in their respective actions. Id. at 2. The State AG cases are not

1 Counsel for the Track Two DAPs conferred for months with counsel for defendants over a
2 pretrial and resulting trial schedule appropriate for these cases but have been unable to reach
3 agreement. The parties appear to be in agreement over the deadlines to be included in a Track
4 Two DAP scheduling order and in the sequencing of those deadlines. The principal disagreement
5 is over whether these cases should be included in a single Track Two DAP schedule or whether,
6 as defendants argue, the DAPs in these cases should be separated into three pretrial and trial
7 schedules for a Track Two, Track Three, and Track Four, each separated by a period of several
8 months of more. The Track Two DAPs believe that a single schedule for these cases is
9 appropriate and will not result in undue burden or complication for the defendants. The proposed
10 common schedule for the Track Two DAPs also completely moves these cases through the
11 Court's calendar by the end of 2013. In contrast, defendants' multi-track approach delays
12 resolution of these cases well into 2014 and likely into 2015.

15 **II. ARGUMENT**

16 Both the schedule and the cases included in the proposed Track Two DAP schedule are
17 reasonable and appropriate.

18 The pretrial deadlines and the sequencing of those deadlines generally are based on those
19 in the Track One DAP Scheduling Order. Reasonable periods are provided for the completion of
20 fact discovery limited to the Track Two DAP cases (12/7/12), the designation of experts
21 (plaintiffs 9/7/12, defendants 10/12/12), the provision of expert reports (ending 6/14/13), the
22 completion of expert discovery (7/19/13), and the briefing and submission of dispositive motions,
23 to the extent any are filed. The proposed Track Two DAP schedule provides for dispositive
24 motions to be heard no later than November 1, 2013, following which the Court can enter dates
25 for the remand of cases filed outside this district to the transferor courts and for the pretrial
26

27
28 included in this motion and the proposed pretrial and trial schedule submitted with this motion.

1 conference and trial of the remaining Track Two DAP cases. Under this schedule, the Track Two
2 DAP cases filed in this court will be ready for trial in 2013.

3 The twenty-three DAP cases proposed to be included in the Track Two DAP schedule will
4 not cause undue burden to defendants.² There is sufficient time between now and the close of
5 fact discovery in December 2012 for defendants to take the limited discovery they legitimately
6 need from plaintiffs. A number of the Track Two DAPs have produced to defendants the key
7 information they need -- data on their purchases and/or sales of LCD panels and products. Some
8 Track Two DAPs have produced other documents, as well.

9
10 Expert discovery in the Track Two DAP cases also can proceed on the proposed schedule
11 without undue complication. Plaintiffs' expert reports are due in January 2013, and defendants'
12 expert reports are due ninety days' later in April 2013. By this point, defendants are well-
13 practiced at producing responsive expert reports in the LCD cases, having done so both in the
14 class cases and more recently in the Track One DAP cases. Further, a number of the Track Two
15 DAPs expect to designate several of the same experts as the Track One DAPs, so defendants will
16 have the added benefit of reviewing their work product and deposing them at least once before.

17
18 Summary judgment motion practice, to the extent it occurs in the Track Two DAP cases,
19 is easily manageable. The Court's rulings on the numerous summary judgment motions in the
20 class cases should obviate or at least severely limit the need for summary judgment motions in the
21 Track Two DAP cases. Those that are filed in the face of the prior rulings can be handled on the
22 proposed briefing and hearing schedule, which spans a period of two and one-half months.

23
24 While new DAP cases may (or may not) be filed after the proposed Track Two DAP

25
26 ² The proposed Track Two DAP scheduling order is like the Track One DAP Scheduling Order in that it provides a
27 cut-off date for the DAP cases to which it applies. Under the Track One DAP Scheduling Order, DAP cases filed
28 after December 1, 2010 are subject to a separate scheduling order, or they may be included in the Track One DAP
Scheduling Order if circumstances permit. The proposed Track Two scheduling order provides that DAP cases filed
after the date on which it is entered will be subject to a separate scheduling order, or they may be included in the
Track Two DAP scheduling order if circumstances permit.

1 schedule is entered, thus potentially requiring a track three, that is not a reason to separate the
2 Track Two DAPs into three separate tracks, as defendants desire. The Track Two DAP cases are
3 pending in this Court and capable of proceeding on the proposed schedule. Depending on when,
4 if ever, additional DAP cases are brought, they may be folded into the Track Two DAP schedule.
5 Even if they cannot be included in the Track Two DAP schedule, the existing Track Two DAP
6 cases should be not separated into tracks extending well into 2014 or into 2015 based on the
7 belief that later-filed cases will necessitate a third track.
8

9 The Track Two DAPs respectfully request that the Court grant this Motion and enter the
10 proposed Order Re: Pretrial and Trial Schedule for Track Two Direct Action Cases. We request
11 that the Court set these cases on the trial calendar at the earliest date following the proposed
12 deadline of November 1, 2013 for hearing dispositive motions.
13

14
15 Dated: June 5, 2012

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of June, 2012, that a copy of the foregoing was filed electronically through the Court's CM/ECF system, with notice of case activity automatically generated and sent electronically to all parties.

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