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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

IN RE: TFT-LCD (FLAT PANEL) ANTITRUST LITIGATION	Case No.: M: 07-md-1827 SI MDL No. 1827
This Document Relates to Individual Cases: *Tracfone Wireless, Inc. v. AU Optronics Corp.*, No. 3:10-cv-3205 SI *State of Oregon v. AU Optronics Corp.*, No. 3:10-cv-4346-SI *SB Liquidation Trust v. AU Optronics Corp.*, No. 3:10-cv-5458 SI *Sony Electronics, Inc. v. LG Display Co., Ltd.*, No. 3:10-cv-5616 SI *Alfred H. Siegel, as Trustee of the Circuit City Stores, Inc. Liquidating Trust v. AU Optronics Corp.*, No. 3:10-cv-5625 SI *MetroPCS Wireless, Inc. v. AU Optronics Corp.*, No. 3:11-cv-829 SI *Office Depot, Inc. v. AU Optronics Corp.*, No. 3:11-cv-2225 SI *Jaco Electronics, Inc. v. AU Optronics Corp.*, No. 3:11-cv-2495 SI *T-Mobile U.S.A., Inc. v. AU Optronics Corp.*, No. 3:11-cv-2591 SI	Case No. 3:10-cv-3205 SI Case No. 3:10-cv-4346 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-5765 SI Case No. 3-11-cv-5781 SI Case No. 3-11-cv-6241 SI Case No. 3:11-cv-6686 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 **DEFENDANTS' JOINT OPPOSITION RE: MOTION FOR PRETRIAL AND TRIAL SCHEDULES IN DIRECT ACTION CASES**

Electrograph Systems, Inc., et al., v. NEC Corp., No. 3:11-cv-03342 SI

Interbond Corporation of America v. AU Optronics Corp., No. 3:11-cv-03763 SI

Schultze Agency Services, LLC, on behalf of Tweeter Opco, LLC and Tweeter Newco, LLC, v. AU Optronics Corp., No. 3:11-cv-3856 SI

Hewlett-Packard Co. v. AU Optronics Corp., No. 3:11-cv-4116 SI

P.C. Richard & Son Long Island Corporation, et al. v. AU Optronics Corp., No. 3:11-cv-4119 SI

Tech Data Corp. v. AU Optronics Corp., No. 3:11-cv-5765 SI

The AASI Creditor Liquidating Trust, by and through Kenneth A. Welt, Liquidating Trustee v. AU Optronics Corp., No. 3:11-cv-5781 SI

CompuCom Systems, Inc. v. AU Optronics Corp., No. 3:11-cv-6241 SI

State of Oklahoma v. AU Optronics Corp., No. 3:11-cv-6686-SI

Viewsonic Corp. v. AU Optronics Corp., No. 3:12-cv-335 SI

NECO Alliance LLC v. AU Optronics Corp., No. 3:12-cv-1426 SI

Sony Electronics Inc. v. AU Optronics Corp., No. 3:12-cv-1599 SI

Sony Electronics v. Hannstar Display Corp., No. 3:12-cv-2214 SI

Rockwell Automation, Inc. v. AU Optronics Corp., No. 3:12-cv-2495 SI

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I. INTRODUCTION.

The Defendants agree that the Court should order pre-trial schedules for the Direct Action Plaintiff ("DAP") cases not in Track One. The indiscriminate mega-track proposed by the DAPs' Motion for Entry of a Track Two Scheduling Order and Trial Setting (the "Motion"), however, is not the answer.

There are two primary problems with the schedule: (1) there is not enough time for discovery in a number of the "twenty-three" DAP cases plaintiffs identify; [1] and (2) the burdens of discovery deadlines, expert reports and depositions, and summary judgment deadlines in the "twenty-three" cases at once is simply too great for the parties and the Court.

The DAP cases do not involve cookie-cutter plaintiffs, nor are they cookie-cutter cases. A number of the cases on the proposed Track Two involve plaintiffs that only recently filed suit. Some of these actions involve substantially complex procurement operations and products (*e.g.*, Hewlett-Packard, Sony); new defendants that never previously produced documents, participated in discovery, or retained experts (*e.g.*, the NEC defendants); LCD products on which no discovery has been taken and no expert has opined (*e.g.*, the industrial LCD panel market); conglomerates of entities pursuing claims jointly (*e.g.*, P.C. Richard); and issues which must be resolved by the Ninth Circuit before trial (*e.g.,* appeal of denial of arbitration in *Jaco*). Major additional potential claimants, such as Apple, Walmart, and Home Depot, have opted out of the classes but have not yet filed complaints. It simply is not feasible – nor is it necessary – to craft a single litigation track that takes into account all of the different stages and issues presented.

[1] The DAPs claim that their mega-track has "twenty-three DAP cases." Motion, at 4:3-4. The DAPs have lost track, which is understandable given their number. There are 21 different cases at issue in the Motion, as the claims by ABC Appliance, Marta Cooperative, and P.C. Richard were filed as one case. *See* Case No. 3:11-cv-4119-SI. The Motion also identifies three different Sony cases, which properly should be grouped together as one. Case Nos. 3:10-cv-5616-SI; 3:12-cv-1599-SI; and 3:12-cv-2214-SI. Additionally, the State of Oregon joined in the DAPs' Motion. MDL Docket No. 5595. As disclosed during the meet and confer process, Defendants believe that the State of Oklahoma should also be assigned to a litigation track but was not included in the DAPs' Motion. Accordingly, the Motion really concerns 21 DAP and AG actions and 26 different plaintiffs within those actions. For the sake of brevity, this opposition will refer to the Direct Action Plaintiffs and Attorneys General jointly as "DAPs".

For that reason, as they did during meet and confer, Defendants propose: (1) six of the most advanced DAP cases for a more aggressive Track Two schedule than that proposed by the DAP Motion; (2) ten DAP cases for a "Track Three" schedule that trails by roughly four months; and (3) five DAP cases filed after December 25, 2011 (and still in their infancy) plus any additional opt-out or attorneys general actions for a "Track Four" schedule that should be determined later this year following the filing of those additional actions.[2] This approach is reasonable, logical, and presents no unnecessary delay. In fact, barring unforeseen circumstances, all cases except those filed since December 25, 2011 (16 in total) will be ready for trial in February 2014 – only a few months after the mega-schedule proposed in the DAP Motion (when cases are ready for trial in November 2013).[3]

Unlike the schedule proposed in the DAP Motion, Defendants' proposal allows the parties and the Court to prepare for trials in these cases in an orderly and manageable fashion. Like the Court's original Track One schedule that divided the cases into two tracks with the cut-off date for Track One at December 1, 2010,[4] Defendants' proposal appropriately staggers deadlines among the tracks to allow a focus on cases and claims as they become ripe for adjudication, rather than as part of a mad scramble to meet deadlines in "twenty-three" differently situated matters all at once. Furthermore, the schedule is crafted to allow complete discovery into each DAP's claims, ensuring that the Court and the parties will be fully informed when addressing the claims in expert discovery and pre-trial motions. Importantly, the schedule also allows new litigants like the five NEC defendants – who are making every effort to produce documents from locations in the U.S. and Asia while they review the voluminous record for the first time and craft their own litigation plan – to properly and appropriately prepare their defenses.[5] The Defendants' proposal is reasonable.

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[2] Although *Sony Electronics, Inc. v. LG Display Co., Ltd.*, 3:10-cv-5616 SI, was filed in 2010, it should proceed with *Sony Electronics Inc. v. AU Optronics Corp.*, 3:12-cv-1599 SI, and *Sony Electronics v. Hannstar Display Corp.*, No. 3:12-cv-2214 SI, both of which were filed in 2012.

[3] A copy of the Defendants' proposed schedule is attached as Appendix A hereto and also is set forth in the concurrently filed proposed order.

[4] Order Re: Pretrial and Trial Schedule, Dkt. No. 2165 (Nov. 23, 2010).

[5] Cases against the NEC Defendants only became at issue on February 29, 2012. In the Defendants' proposed schedule, all NEC Defendants would be on Track Three and Track Four.

In fact, during the meet and confer on this issue, the DAPs never provided any rationale for why the Defendants' proposed separate tracks was not good case management in complex litigation such as this. *See, e.g., Manual for Complex Litigation*, Fourth, Federal Judicial Center, § 10.1 ("Judges should tailor case-management procedures to the needs of the particular litigation and to the resources available from the parties and the judicial system"). Rather, as reflected by the conclusory DAP Motion, the DAPs appear to have given little substantive thought to scheduling and case management, other than to proceed on as short a schedule as possible and to reduce the time for Defendants' case preparation, even as many defendants simultaneously engage in their long-scheduled Track One pre-trial and trial obligations.

Nowhere is this more evident than the request to schedule cases *filed in 2012* with those that have been the focus of the parties' considerable litigation efforts *since 2010*. The DAPs' original scheduling proposal did not include these new cases; they had not even been filed when the parties commenced discussion on scheduling in January 2012 (although DAP counsel ostensibly were aware of them). The Motion does not explain how or why these cases should or could proceed within the minimum time remaining under the proposed mega-track, where motions to dismiss would not even be resolved until only a few months before the close of discovery. Plaintiffs in the late-filed cases may very well wish to rush their cases to trial on the grounds that other earlier-filed cases are claimed to be ready. But it is not Defendants' fault that certain DAPs chose to wait until 2012 to pursue their claims. If the Court were to accept the Motion's scheduling proposal, it is Defendants that significantly and unfairly would suffer because of the DAPs' choice to delay. So too would the Court, which would simultaneously face innumerable discovery disputes, summary judgment motions, and expert analyses.

In sum, the Court should establish a pre-trial schedule to govern the claims by the 21 DAPs and future claimants, but not on a one-size-fits-all basis. Defendants' proposed schedule should be ordered, as it will allow for the timely and fair disposition of the DAPs' claims, while considering the resources and needs of the parties and the Court.

II. BACKGROUND.

A. Timing for the Track One Schedule.

There are ten DAP cases currently on Track One. The first of these cases was filed in March 2009,[6] four others were filed in late 2009,[7] and the remainder were filed in 2010.[8] The pre-trial schedule for these cases originally was set by the Court's Order re: Pretrial and Trial Schedule on November 23, 2010. MDL Dkt. 2165. Following entry of this Order, however, and even though at least half of these cases had been pending for well over a year, the parties agreed to the extension of dates set to allow sufficient time for discovery and related work. MDL Dkt. No. 3110, at 1 (Stipulation and Order Modifying Pretrial Schedule ["Track One Scheduling Order"]). Specifically, under the Track One Scheduling Order, discovery was to be concluded in the ten cases by December 8, 2011, on average approximately 20 months after the Track One cases had been filed.

Notwithstanding this deadline, all Track One cases required extensions of time beyond December 8, 2011 to conclude discovery, with some Track One cases continuing discovery to this day. *See, e.g., ATS Claim*, Dkt. No. 135, *Costco*, Dkt. No. 98, *Eastman Kodak*, Dkt. No. 50 (granting stipulation extending time for plaintiffs to respond to defendants' contention discovery requests to January 30, 2012, and defendants' deadline to file motions to compel with respect to that discovery to March 1, 2012); *AT&T Mobility*, Dkt. No. 235 (granting stipulation extending time for Sanyo to move to compel further responses to the discovery to March 8, 2012); *Electrograph*, Dkt.

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[6] *ATS Claim, LLC v. Epson Electronics America, Inc., et al*., Case No. 09-cv-1115 (March 3, 2009).

[7] *AT&T Mobility LLC, et al. v. AU Optronics Corporation, et al*., Case No. 09-cv-4997 (October 20, 2009); *Electrograph Systems, Inc., et al. v. Epson Imaging Devices Corp., et al*., Case No. 10-cv-0117 (November 6, 2009); *Motorola, Inc. v. AU Optronics Corporation, et al*., Case No. 09-cv-5840 (October 20, 2009); *Nokia Corporation, et al. v. AU Optronics Corporation, et al*., Case No. 09-cv-5609 (November 25, 2009).

[8] *Best Buy Co., Inc., et al. v. AU Optronics Corporation, et al.*, Case No. 10-cv-4572 (October 8, 2010); *Costco Wholesale Corporation v. AU Optronics Corporation, et al*., Case No. 11-cv-0058 (November 30, 2010); *Dell Inc., et al. v. Sharp Corporation, et al*., Case No. 10-cv-1064 (March 21, 2010); *Eastman Kodak Co. v. Epson Imaging Devices Corp., et al.,* Case No. 10-cv-5452 (December 1, 2010; and *Target Corporation, et al. v. AU Optronics Corporation, et al*., Case No. 10-cv-4945 (November 1, 2010). Additional cases, including *SB Liquidation Trust*, *State of Oregon*, and *TracFone*, were originally on Track One, and then voluntarily moved off of Track One because they needed more time for discovery.

No. 186 (granting stipulation extending deadline for depositions of former Electrograph employees to June 25, 2012); *Motorola*, Dkt. No. 334 (granting stipulation extending the deadline for Motorola to move to compel compliance with the parties' agreement regarding the discovery to May 7, 2012); *Nokia*, Dkt. No. 149 (granting stipulation extending the deadline for Nokia to supplement its responses to the discovery to March 9, 2012, and for Hitachi Displays to move to compel further responses to the discovery requests identified in Hitachi Displays' February 22, 2012, letter to March 16, 2012); *Best Buy*, Dkt. No. 127 (granting stipulation extending the deadline for Hitachi Displays to move to compel further response to the Discovery to March 8, 2012); *Dell*, Dkt. No. 216 (granting stipulation extending the deadline for AUO to move to compel Dell to supplement its responses to the AUO Settlement Discovery Requests to June 15, 2012); *Target*, Dkt. No. 177 (granting stipulation extending the deadline for LG Display to move to compel further response to the discovery to March 16, 2012).

B. Meet and Confer on Scheduling for Additional DAP Cases.

On January 31, 2012, the DAPs proposed a Track Two litigation schedule for 16 cases not on Track One. Declaration of Stephen H. Sutro ["Sutro Decl."], Ex. A. The schedule proposed dates which were unrealistic and which the DAPs have since abandoned. Defendants, in response to the proposal, explained: (1) all of the then-existing 16 plaintiffs were not similarly situated, as some filed their lawsuits in 2010 or the beginning of 2011 and – as of February 2012 – had finished the initial pleadings stage, while others filed cases more recently and were not close to being at issue; (2) some of the cases named new defendants who had not yet had an opportunity to develop a litigation strategy or to participate in discovery; and (3) it would not be fair to force defendants to defend the cases all at the same time on the same schedule, with some not even ripe for discovery. Sutro Decl., Ex. B.

Defendants therefore proposed a Track Two that included six cases that were ripe to advance faster than the others. Sutro Decl., Ex. B. These cases were all filed in 2010 or the beginning of 2011 and were well into discovery as of February 2012. *Id.* Defendants otherwise suggested that the remaining cases be on separate, later schedules. *Id.*

In March, the DAPs asserted that Defendants' schedule went too far into the future. Accordingly, Defendants submitted a further proposal. Sutro Decl., Ex. C. This time, Defendants proposed the same six cases for litigation on Track Two, but moved up the pre-trial schedule by roughly three months in response to the DAP concerns. *Id.* The Defendants also identified ten cases for Track Three, approximately four months behind Track Two, designed to: (1) avoid overlapping motion practice and discovery deadlines; (2) allow the later-filed cases on that Track Three more time to develop; (3) permit all of the Boies Schiller cases to proceed together; and (4) allow new defendants additional time to get up to speed and prepare their case. *Id.*[9]

The DAPs did not respond for a month. When they did, with little discussion or analysis, they rejected this approach and again suggested a single litigation track. Sutro Decl., Ex. D. Defendants did not agree, and suggested some minor revisions to their earlier proposal, which is the schedule presented here.

This Motion followed.

III. DISCUSSION.

Defendants agree that a pre-trial schedule should be ordered for DAP cases that were filed through December 1, 2011. Defendants also agree with the matters to be included in the DAP schedules and the sequencing of those matters.

Defendants depart, however, on the following issues: (1) whether there should be a mega-track of 21 DAP cases; and (2) if there is a mega-track, the timing of the deadlines that might account for the different stages of the litigations and defendants in those cases, as well as the amount of time between deadlines that might allow the parties to meet the responsive deadlines.

Defendants, for the reasons discussed fully below, therefore propose that: (1) six DAP cases filed in 2010 and early 2011 be schedule for a Track Two that includes earlier deadlines than those which are provided by the DAPs' proposal; (2) ten DAP cases which were filed before December 2011 be scheduled for a Track Three that trails Defendants' Track Two by only four months; and (3)

[9] The Defendants did not include the *Hewlett-Packard* or *Sony* cases in their proposal because the DAPs informed the Defendants that these plaintiffs did not want to be included in the negotiations. *Id.* The Defendants' proposed schedule submitted with this Opposition does include these cases. *See* Appendix A hereto.

the remaining cases (including opt-out cases yet to be filed) be set for scheduling this fall after further time passes to account for the filing of additional DAP actions.

A. Neither the Parties Nor the Court Would Be Well Served by a Single Mega Track of DAP Cases.

Proceeding on a single litigation track with all currently filed DAP cases fails to account for the different stages of these cases and presents a myriad of problems.

As an initial matter, meeting the discovery deadlines for cases that are not yet at issue would place an unworkable and undue burden on the Court and the parties. Even with, on average, approximately 20 months for discovery post-filing in the ten Track One DAP cases, numerous extensions of time were and still are required. *See* Section II.A., *supra*; *Electrograph*, Dkt. No. 186 (granting stipulation extending deadline for depositions of former Electrograph employees to June 25, 2012); *Dell*, Dkt. No. 216 (granting stipulation extending the deadline for AUO to move to compel Dell to supplement its responses to the AUO Settlement Discovery Requests to June 15, 2012). Many of these delays were the result of plaintiffs' failure to provide discovery timely. Under the mega-track proposed by the Motion, however, all but a handful of the cases would have less than 20 months for discovery – some as few as seven months – and the parties and the Court would have twice as much work to do given the number of cases.

Furthermore, while the DAPs suggest that their various cases are uniform and that discovery will be "limited," Motion at 4:5, that suggestion is not accurate.

The DAPs span the spectrum of the complex distribution chain, from direct purchasers – such as Hewlett-Packard and Sony – with expansive world-wide procurement, manufacturing, and distribution operations, to distributors of LCD panels (*e.g.,* Jaco) and finished products (*e.g.,* Tech Data), to those who participated in the wireless market (*e.g.,* Tracfone and T-Mobile), to purchasers of LCD panels for industrial use (*e.g.,* Rockwell), and to others who resold different types of finished products with LCD panels in dozens of retail locations across the United States (*e.g.,* Office Depot and Tweeter). The Motion blurs these distinctions and summarily concludes that "[a] number of the Track Two DAPs have produced to defendants the key information they need – data on their purchases and/or sales of LCD panels and products" and "[s]ome Track Two DAPs have produced

other documents, as well." Motion at 4:7-9 (emphasis added). This ambiguous statement is in no way probative of what actually must be done. Discovery in the cases identified by Defendants for Track Three is at the beginning stages. In some cases that are not at issue, discovery has not even commenced. Defendants cannot piggy-back on discovery in one case to understand another plaintiff's claims. Defendants must fully understand each plaintiff's claims in order to defend against them.

Experience in the Track One cases has shown that discovery from plaintiffs is both essential and time-consuming. If discovery from plaintiffs had not been sufficiently broad in the Track One cases, Defendants would not have discovered key facts for their defense, such as the facts that direct purchaser Dell and that retailer Best Buy had knowledge of the Crystal Meetings long before the first complaints were filed. Discovery can be especially challenging from bankrupt plaintiffs such as All American and Circuit City, because those companies do not have current employees to depose or well-organized documents. With plaintiffs requesting billions of dollars in damages, it is a matter of due process to give defendants the ability to fully develop discovery from the plaintiffs.

Nor is it comfort that the "a number of the Track Two DAPs expect to designate several of the same experts as the Track One DAP cases." Motion at 4:16 (emphasis added). The Defendants have no idea what this means from a case management perspective and, we expect, the DAPs do not either. While the DAPs plainly want the Court to assume that no new experts or new opinions will be required for the remaining DAP cases, that is hard to believe. Indeed, the DAPs are unwilling to make any such assurances (if we are wrong, they should say so).

In addition, it must not be lost on the Court that 11 of the DAP cases proposed for the mega-track include five new and diverse NEC entities as defendants. As this Court knows, the NEC entities were dismissed at an early stage from the class litigation (August 2008) and never were implicated in the Department of Justice investigation or the considerable discovery in the Class, State Attorney General, or Track One proceedings. Sutro Decl., ¶ 7. Now that these entities must defend themselves, they are being required to familiarize themselves with the Court's earlier rulings, the tens of millions of documents produced (many of which are in Chinese, Japanese, or Korean),

and the hundreds of days of deposition testimony that occurred before they were joined in the litigation. Sutro Decl., ¶ 8. This work is in addition to responding to the DAPs recent extensive request for documents located around the world. *Id.*[10] The DAPs also have indicated that they will seek deposition testimony of the NEC companies and their employees, requiring further work before a discovery cut-off. *Id.* The NEC Defendants also are participating in discovery to the DAPs and for the first time identifying areas for potential expert testimony. *Id.* Considering that the first of the cases against the NEC defendants was not at issue until February 29, 2012, a little more than three months ago, the NEC companies are left with just over nine months of time under the proposed mega-track to comply with discovery, complete their discovery, and develop their defenses in 11 different complex matters. That is not a reasonable or fair amount of time given this massive litigation and is considerably less time than the Track One defendants received, even without factoring in the large number of extensions for discovery and dispositive motions.

Finally, even assuming that all of the DAP cases currently on file would be ready to proceed at the same time, the burden of having the close of discovery, expert reports, and summary judgment motions occurring simultaneously in approximately 20 cases at once is too great. Indeed, while it might be reasonable to assume that depositions in a smaller subset of cases could be complete by a December 2012 discovery cut-off, completing depositions in the second half of this year in 19 different matters – a number of which have pending motions to dismiss that have not been heard and others where Defendants have not yet appeared – is simply not realistic. This is particularly true because Track One cases simultaneously will be in trial. Likewise, although three months may be an adequate amount of time to take expert depositions and respond to the DAPs' opening expert reports for a reasonable number of cases, that turnaround time becomes less and less feasible as additional opt-outs are added to the litigation track.[11]

[10] The DAPs and NEC are working to make this production as efficient as possible, but even so – given the issues involved – the process of completing the production will take months. Sutro Decl., ¶ 8.

[11] In addition, at the same time as the DAPs' mega-track of expert discovery, three of the DAP Track One cases (*Costco*, *Motorola*, and *Electrograph*) will return to their transferor districts for trial. As a result, in addition to the proceedings before this Court, defendants could face trials in three different districts in Spring and Summer 2013.

Accordingly, were the Court to desire a single track for the DAP cases now on file, the sequencing and time for the deadlines would need to be greatly adjusted from what the DAPs propose.

In sum, the Defendants should not be unreasonably pressed in their efforts to prepare to defend the DAP cases, as would occur if the Court were to adopt the DAPs' proposed mega-track. The DAPs, not Defendants, chose the time to file their respective cases, taking into account whatever litigation strategy was devised between them and their counsel. Defendants should not have less time for discovery or to prepare their defenses because of the DAPs' decision to delay.

B. Defendants' Proposed Track Two and Track Three Allow the Cases to Proceed in An Orderly, Timely Manner and Accommodates the Litigation Concerns of the Defendants.

1. Defendants' Proposed Track Two.

Defendants' proposed Track Two schedule calls for earlier pre-trial deadlines than the schedule proposed by the DAPs. That is because the Defendants have identified six cases that may proceed at a more advanced pace than the remaining DAP cases. Those cases include: (1) *Tracfone Wireless, Inc. v. AU Optronics Corp*., Case No. 3:10-cv-3205-SI, filed May 4, 2010; (2) *SB Liquidation Trust v. AU Optronics Corp*., Case No. 3:10-cv-5458-SI, filed December 1, 2010; (3) *Alfred H. Siegel, as Trustee of the Circuit City Stores, Inc. Liquidating Trust, v. AU Optronics Corp.,* Case No. 3:10-cv-5625-SI, filed December 10, 2010; (4) *MetroPCS Wireless, Inc. v. AU Optronics Corp*, Case No. 3:11-cv-829-SI, filed December 17, 2010; (5) *State of Oregon v. AU Optronics Corp.*, Case No. 3:10-cv-4346-SI, filed August 10, 2010; and (6) *T-Mobile U.S.A., Inc. v. AU Optronics Corp.*, Case No. 3:11-cv-2591-SI, filed April 18, 2011.[12] On average, these cases will conclude discovery approximately 23 months after they were filed, not dissimilar to the average of approximately 20 months for the Track One cases. In contrast, under the schedule proposed by the Motion, these cases would conclude discovery on average over two years after they were filed – beyond that which is suggested by Defendants.

[12] None of these cases include NEC entities as defendants. All cases against NEC are on Defendants' Track Three and Track Four.

For these cases, it is reasonable to disallow further amendment of the complaints, to require that plaintiffs disclose their experts on August 9, 2012, to require that defendants disclose their experts on September 6, 2012, and to require that fact discovery close on November 1, 2012. *See* Appendix A hereto. The remaining dates in the proposed schedule should then follow the sequencing and timing negotiated by the parties. Scheduling this earlier litigation track will lessen the burden on the parties and the Court by not having multiple deadlines in multiple cases simultaneously, and it will appropriately move these cases to trial sooner as they are at a more advanced litigation stage.

2. Defendants' Proposed Track Three.

Defendants' Track Three is roughly four months behind the schedule proposed by the Motion, yet it accounts for: (1) the minimum amount of time needed to prepare these cases; (2) the minimum amount of time needed for new defendants to familiarize themselves with the already voluminous record, to identify and designate experts, and to develop defenses to the claims against them; (3) the burdens associated with litigating cases on the earlier DAP tracks; and (4) other factors unique to several of the cases.

To be clear, this litigation track already is aggressive and includes less time than the Defendants ordinarily would request. Still, the Defendants believe that the litigation schedule represents acceptable middle ground, provided the DAPs timely comply with their discovery obligations and there are no other unforeseen scheduling issues.

Below we discuss the rationale for the litigation deadlines and the DAPs to be included in the proposed Track Three.

a. The Track Three Schedule Reflects A Modest But Necessary Extension Beyond the DAPs' Proposed Track Two.

A comparison of the DAPs' proposed Track Two and Defendants' proposed Track Three reflects that there is no material delay in litigating these cases, especially considering that the DAPs on this proposed track waited years to file their claims against the Defendants. Key dates in the competing tracks proposed are as follows:

Event	DAP Track Two	Defendant Track Three
Last day to amend complaints and join parties with leave of Court[13]	July 13, 2012	July 13, 2012
Disclosure of identities of plaintiffs' experts and one paragraph description of issues to be addressed by each expert	September 7, 2012	December 6, 2012
Disclosure of identities of all defendants' experts and one paragraph description of issues to be addressed by each expert	October 12, 2012	January 3, 2013
Close of limited fact discovery unique to DAP and State AG cases	December 7, 2012	February 28, 2013
Service of opening expert reports for plaintiffs	January 11, 2013	March 12, 2013
Service of opposition expert reports	April 12, 2013	July 10, 2013
Service of reply expert reports	June 14, 2013	October 1, 2013
Close of expert discovery	July 19, 2013	October 23, 2013
Last day to file dispositive motions	August 23, 2013	December 11, 2013
Last day to file oppositions to dispositive motions	September 20, 2013	January 8, 2014
Last day to file reply briefs in support of dispositive motions	October 18, 2013	February 5, 2014
Last day for hearing dispositive motions	November 1, 2013	February 27, 2014

This proposed schedule is reasonable, and the DAPs have never provided any explanation to the contrary. The schedule contemplates other litigation deadlines on Tracks One and Two, so as not to cause undue burden to parties litigating cases on each of these tracks. The schedule also provides three extra months to complete discovery and allow for the orderly preparation of the cases (a few of which are not yet at issue). Finally, as explained below, there are ten cases proceeding on this proposed track (the same number as on Track One), which Defendants believe is a maximum that reasonably could be included in a single litigation track for the parties and the Court to be able to effectively administer and meet the various pre-trial deadlines.

[13] The DAPs proposed scheduling order provides that July 13 should be the last date to amend complaints and join parties "without" leave of court. Proposed Order, MDL Docket No. 5861-1, at 2:15. Defendants assume that this is a typo and that the DAPs intended the proposed order to include a deadline where leave of court could be sought. At this late stage, the DAPs cannot amend their Complaints to add parties without leave of court. Fed. Rule Civ. Proc. 15(a)(2).

b. The Cases on Defendants' Proposed Track Three Belong on Track Three.

The Defendants propose the following ten cases for Track Three: (1) *Office Depot, Inc. v. AU Optronics Corp*., Case No. 3:11-cv-2225-SI, filed March 31, 2011; (2) *Jaco Electronics, Inc. v. AU Optronics Corp.*, Case No. 3:11-cv-2495-SI, filed May 20, 2011; (3) *Electrograph Systems, Inc. v. NEC Corp*., et al., Case No. 3:11-cv-3342-SI, filed April 5, 2011; (4) *Interbond Corp. of America v. AU Optronics Corp.*, Case No. 3:11-cv-3763-SI, filed June 3, 2011; (5) *Schultze Agency Services, LLC, on behalf of Tweeter Opco, LLC and Tweeter Newco, LLC, v. AU Optronics Corp*. ("*Tweeter"*), Case No. 3:11-cv-3856-SI filed July 1, 2011; (6) *P.C. Richard & Son Long Island Corp. v. AU* Optronics *Corp.*, Case No. 3:11-cv-4119-SI filed June 16, 2011; (7) *Tech Data Corp. v. AU Optronics Corp.,* Case No. 3:11-cv-5765-SI filed October 28, 2011; (8) *AASI Creditor Liquidating Trust, by and through Kenneth A. Welt, Liquidating Trustee, v. AU Optronics Corp*., Case No. 3:11-cv-5781-SI, filed November 2, 2011; (9) *CompuCom Systems, Inc. v. AU Optronic Corp*., Case No. 3:11-cv-6241-SI, filed November 15, 2011; and (10) *Hewlett-Packard Co. v. AU Optronics Corp*., Case No. 3:11-cv-4116-SI, filed August 29, 2011. On average, the ten cases proposed for Track Three will complete discovery approximately 19 months after they were filed, shorter than the approximately 20 months utilized for the Track One cases (and not even factoring in the numerous extensions of time required in the Track One cases).

The rationale for selecting these ten cases for Track Three is as follows:

- The following three cases are not yet at issue: *CompuCom, Tweeter,* and *Tech Data*. Hearings on the Motions to Dismiss in these matters will not be heard until August 3, 2012 (*Tweeter* and *Tech Data*) and August 24, 2012 (*CompuCom*). Under the circumstances, assuming that the cases survive in some fashion, it is not reasonable to suppose that the Defendants will complete discovery of these entities in four months, as the DAPs propose. Indeed, even under Defendants' proposed Track Three, there are only seven months left for discovery following the hearing dates scheduled for the responsive motions;

- Defendants did not answer the remaining DAP cases for Track Three until earlier this year (January 23, 2012 [*Hewlett-Packard*], February 29, 2012 [*Office Depot, Electrograph, Interbond*, and *P.C. Richard*], March 23, 2012 [*Jaco*], and May 31, 2012 [*All American*]). It is appropriate to allow adequate time for discovery into these plaintiffs' claims (and the many associated entities on whose behalf they are asserting claims). Defendants' proposal – allowing discovery through the end of

February, 2013 – is reasonable. Conversely, the DAPs' proposal, requiring discovery to be finished at the beginning of December, is not;

- Nine of the ten Track Three cases include NEC entities as defendants: *Office Depot, Electrograph, Jaco, Interbond, P.C. Richard, All American, CompuCom, Tweeter,* and *Tech Data*. As explained, the NEC defendants are new to this litigation and require (at a minimum) the time proposed by Defendants' Track Three schedule to comply with discovery, to conduct discovery, and to prepare their defenses;

- In *Jaco*, the NEC defendants have appealed to the Ninth Circuit the Court's order denying arbitration of Jaco's claims based on joint and several liability for purchases made from other defendants and co-conspirators. Ninth Circuit Case No. 12-1581. The parties hope that the Ninth Circuit will schedule argument by the beginning of 2013, but that likely is overly optimistic. Placing *Jaco* on Track Three does not materially vary the time in which Jaco's claim will be adjudicated, but it does provide the Ninth Circuit with additional time to resolve the appeal, which could moot the district court proceedings against NEC. Furthermore, placing *Jaco* on a later track is consistent with the deference that courts are required to show to agreements to arbitrate; and

- In *Hewlett-Packard*, the plaintiff apparently has not yet added all of the defendants it intends to join.

The schedule presents no unnecessary delay; in fact, barring delays by plaintiffs or unforeseen circumstances, all cases filed before December 25, 2011 (16 DAP cases in total) will be ready for trial in February 2014 – only a few months after the schedule proposed in the DAP Motion (in which cases are ready for trial in November 2013). At the same time, however, the Court and the parties will not be burdened by multiple, simultaneous deadlines in "twenty-three" cases and – barring unforeseen delay or circumstances – the Defendants' right to participate in discovery and prepare their defenses should not be jeopardized.

3. The Court Should Set the Schedule For Track Four Later This Year.

The cases remaining for Track Four include opt-out cases that were filed in 2012: (1) *Viewsonic Corp. v. AU Optronics Corp.,* No. 3:12-cv-335 SI; (2) *NECO Alliance LLC v. AU Optronics Corp.,* No. 3:12-cv-1426 SI; (3) *Rockwell Automation, Inc. v. AU Optronics Corp.,* No. 3:12-cv-2495 SI; (4) *Sony Electronics Inc. v. AU Optronics Corp.,* 3:12-cv-1599 SI; and (5) *Sony Electronics v. Hannstar Display Corp.,* No. 3:12-cv-2214 SI. Another matter, *Sony Electronics, Inc. v. LG Display Co., Ltd.,* 3:10-cv-5616 SI, filed in 2010, should also be included on Track Four so that it may proceed with the cases against other co-conspirators that Sony filed in 2012. Finally,

although not part of the DAP Motion, the Court should include *State of Oklahoma v. AU Optronics Corp.*, No. 3:11-cv-6686 SI, filed December 28, 2011, in Track Four.[14] These cases are at their very beginnings and motions to dismiss will not be considered – and in some cases filed – for months. Setting a pre-trial schedule at this stage is premature.

Defendants understand that there are additional opt-out cases that are being contemplated. We therefore suggest that the litigation schedule for Track Four be set this fall, once the Court has had the opportunity to consider motions to dismiss and after all involved have a better understanding of the DAP claims that remain.

IV. CONCLUSION.

The Court should establish a pre-trial schedule to govern the claims by DAPs that were filed before December 25, 2011. Defendants' proposed schedule will allow for the timely and fair disposition of the DAPs' claims, while considering the resources and needs of the parties and the Court. Accordingly, we respectfully request that the Defendants' proposed schedule be ordered, and that the Court consider a further scheduling order this fall for the scheduling of cases filed after December 25, 2011.

NOSSAMAN LLP

Dated: June 19, 2012

By: */s/ Christopher A. Nedeau*
Christopher A. Nedeau
Attorneys for Defendants
AU Optronics Corporation and
AU Optronics Corporation America

With the approval of counsel for Chi Mei Corporation; Chi Mei Optoelectronics USA, Inc.; Chimei Innolux Corporation (f/k/a Chi Mei Optoelectronics Corporation); CMO Japan Co., Ltd.; Nexgen Mediatech, Inc.; Nexgen Mediatech USA, Inc.; Chunghwa Picture Tubes, Ltd.; Epson Electronics America, Inc.; Epson Imaging Devices Corporation; Seiko Epson Corporation; HannStar Display Corporation; Hitachi, Ltd.; Hitachi Displays, Ltd. (n/k/a Japan Display East, Inc.);

[14] Moreover, Sony just recently added Hitachi and Toshiba as defendants in *Sony Electronics, Inc. v. LG Display Co., Ltd.,* 3:10-cv-5616 SI, and none of the defendants has yet responded to Sony's Consolidated Complaint.

Hitachi Electronic Devices (USA), Inc.; LG Display Co., Ltd.; LG Display America, Inc.; Mitsui & Co. (Taiwan), Ltd.; Mitsui & Co. (U.S.A.), Inc.; Samsung SDI America, Inc.; Samsung SDI Co., Ltd.; Sanyo Consumer Electronics Company, Ltd.; Sharp Corporation; Sharp Electronics Corporation; Tatung Company of America, Inc.; Tatung Company; Toshiba Corporation; Toshiba Mobile Display Co., Ltd.; Toshiba America Electronic Components, Inc.; Toshiba America Information Systems, Inc.

APPENDIX A

Defendants' Proposed DAP Pre-Trial and Trial Schedule

Event	Track 2 Schedule[15]	Track 3 Schedule[16]
Last day to amend complaints and join parties with leave of Court	n/a	July 13, 2012
Disclosure of identities of plaintiffs' experts and one paragraph description of issues to be addressed by each expert	August 9, 2012	December 6, 2012
Disclosure of identities of all defendants' experts and one paragraph description of issues to be addressed by each expert	September 6, 2012	January 3, 2013
Close of limited fact discovery unique to DAP and State AG cases	November 1, 2012	February 28, 2013
Service of opening expert reports for plaintiffs	November 20, 2012	March 12, 2013
Service of underlying data and Code	November 23, 2012	March 14, 2013
Service of opposition expert Reports	February 28, 2013	July 10, 2013
Service of underlying data and Code	March 5, 2013	July 15, 2013
Plaintiffs and defendants each to provide one paragraph description of each issue / subject of summary judgment motions (copies to be provided to the court)	March 14, 2013	July 30, 2013
Parties to serve supplemental disclosure with one paragraph description of any additional issues/topics of summary judgment motions (copies to be provided to the court)	April 11, 2013	August 27, 2013
Service of reply expert reports	May 9, 2013	October 1, 2013
Service of underlying data and Code	May 14, 2013	October 7, 2013
Close of expert discovery	June 5, 2013	October 23, 2013
Last day to file dispositive Motions	July 18, 2013	December 11, 2013
Last day to file oppositions to dispositive motions	August 16, 2013	January 8, 2014
Last day to file reply briefs in support of dispositive motions	September 17, 2013	February 5, 2014
Last day for hearing dispositive motions	October 1, 2013	February 27, 2014
Pretrial conference and date by which actions filed outside of ND Cal shall be returned to courts in which originally filed	To be determined by transferor court	To be determined by transferor court
Trial begins	To be determined by transferor court	To be determined by transferor court

[15] Track Two includes the following cases: (1) *Tracfone Wireless, Inc. v. AU Optronics Corp.*, Case No. 3:10-cv-3205-SI; (2) *SB Liquidation Trust v. AU Optronics Corp.*, Case No. 3:10-cv-5458-SI;

(3) *Alfred H. Siegel, as Trustee of the Circuit City Stores, Inc. Liquidating Trust, v. AU Optronics Corp.,* 3:10-cv-5625-SI; (4) *MetroPCS Wireless, Inc. v. AU Optronics Corp*, Case No. 3:11-cv-829-SI; (5) *State of Oregon v. AU Optronics Corp.,* Case No. 3:10-cv-4346-SI; and (6) *T-Mobile U.S.A., Inc. v. AU Optronics Corp.*, Case No. 3:11-cv-2591-SI.

[16] Track Three includes the following cases: (1) *Office Depot, Inc. v. AU Optronics Corp*., Case No. 3:11-cv-2225-SI; (2) *Jaco Electronics, Inc. v. AU Optronics Corp.*, Case No. 3:11-cv-2495-SI; (3) *Electrograph Systems, Inc. v. NEC Corp*., et al., Case No. 3:11-cv-3342-SI; (4) *Interbond Corp. of America v. AU Optronics Corp.*, Case No. 3:11-cv-3763-SI; (5) *Schultze Agency Services, LLC, on behalf of Tweeter Opco, LLC and Tweeter Newco, LLC, v. AU Optronics Corp*. ("*Tweeter"*), Case No. 3:11-cv-3856-SI; (6) *P.C. Richard & Son Long Island Corp. v. AU* Optronics *Corp.*, Case No. 3:11-cv-4119-SI; (7) *Tech Data Corp. v. AU Optronics Corp.,* Case No. 3:11-cv-5765-SI; (8) *AASI Creditor Liquidating Trust, by and through Kenneth A. Welt, Liquidating Trustee, v. AU Optronics Corp*., Case No. 3:11-cv-5781-SI; (9) *CompuCom Systems, Inc. v. AU Optronic Corp*., Case No. 3:11-cv-6241-SI; and (10) *Hewlett-Packard Co. v. AU Optronics Corp*., Case No. 3:11-cv-4116-SI.