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6 Attorneys for the NEC Defendants

7
8 UNITED STATES DISTRICT COURT

9 IN THE NORTHERN DISTRICT OF CALIFORNIA

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

Case No.: M: 07-md-1827 SI
MDL No. 1827

11 This Document Relates to Individual Cases:

12 *Office Depot, Inc. v. AU Optronics Corp.*, No.
13 3:11-cv-2225 SI

14 *Jaco Electronics, Inc. v. AU Optronics Corp.*, No.
15 3:11-cv-2495 SI

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

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

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

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

22 *Tech Data Corp. v. AU Optronics Corp.*, No.
23 3:11-cv-5765 SI

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

25 *CompuCom v. AU Optronics Corp.*, No. 3:11-cv-
26 6241 SI

27 *NECO Alliance LLC v. AU Optronics Corp.*, No.
28 3:12-cv-1426 SI

Case No. 3-11-cv-2225 SI
Case No. 3-11-cv-2495 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-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-1426 SI

**DECLARATION OF STEPHEN H.
SUTRO IN SUPPORT OF DEFENDANTS'
JOINT OPPOSITION RE: MOTION FOR
PRETRIAL AND TRIAL SCHEDULES IN
DIRECT ACTION CASES**

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DECLARATION OF STEPHEN H. SUTRO

I, Stephen H. Sutro, declare:

1. I am a partner at the law firm of Duane Morris LLP, counsel of record for the NEC Defendants in this matter. The facts set forth below are true of my personal knowledge and, if called upon, I could and would testify competently to these facts.

2. Attached hereto as Exhibit A is a true and correct copy of the January 31, 2012 direct action plaintiffs' proposed schedule for "Track 2."

3. Attached hereto as Exhibit B is a true and correct copy of the Defendants' February 16, 2012 response to the direct action plaintiffs' proposal for a "Track 2" schedule.

4. Attached hereto as Exhibit C is a true and correct copy of Defendants' March 27, 2012 scheduling proposal for the direct action plaintiff cases.

5. Attached hereto as Exhibit D is the direct action plaintiffs' April 29, 2012 scheduling proposal for the direct action cases.

6. Five NEC entities are named as defendants in direct action plaintiff cases. They are NEC Corporation, NEC LCD Technologies, Ltd., NEC Electronics America, Inc. (n/k/a Renesas Electronics America), NEC Display Solutions of America, Inc., and NEC Corporation of America, Inc. (collectively the "NEC Defendants").

7. NEC LCD Technologies, Ltd. and NEC Electronics America, Inc. were dismissed in August 2008 from the class litigation. Following dismissal, the class plaintiffs did not allege claims against these NEC entities, or any other company within the NEC corporate family. None of the NEC Defendants were implicated in the Department of Justice investigation or the considerable discovery in the Class, State Attorney General, or Track One proceedings.

8. As a result of being named as defendants in direct action cases, the NEC Defendants are familiarizing themselves with the Court's earlier rulings, the tens of millions of documents produced (many of which are in Chinese, Japanese, or Korean), the hundreds of days of deposition testimony that occurred before the NEC Defendants were joined in the litigation, and extensive

EXHIBIT A

Sutro, Stephen H.

From: Kenneth S. Marks <KMARKS@SusmanGodfrey.com>

To: Blumenstein, Carl L.; Nedeau, Christopher A.; cristina.ashworth@wilmerhale.com <cristina.ashworth@wilmerhale.com>; steven.cheny@wilmerhale.com <steven.cheny@wilmerhale.com>; Roger, Kent M. <kroger@morganlewis.com>; Hoying, Herman J. <hhoying@morganlewis.com>; Brass, Rachel S. <RBrass@gibsondunn.com>; jsanders@gibsondunn.com <jsanders@gibsondunn.com>; Justice Lazarus, Rebecca <RJustice@gibsondunn.com>; patrick.ahern@bakermckenzie.com <patrick.ahern@bakermckenzie.com>; roxane.busey@bakermckenzie.com <roxane.busey@bakermckenzie.com>; nancy.c.allred@bakernet.com <nancy.c.allred@bakernet.com>; sfreccero@mofo.com <sfreccero@mofo.com>; mgoldman@mofo.com <mgoldman@mofo.com>; hugh.bangasser@klgates.com <hugh.bangasser@klgates.com>; ramona.emerson@klgates.com <ramona.emerson@klgates.com>; julianne.halter@klgates.com <julianne.halter@klgates.com>; jeff.bornstein@klgates.com <jeff.bornstein@klgates.com>; jcalsyn@cgsh.com <jcalsyn@cgsh.com>; kcolitti@cgsh.com <kcolitti@cgsh.com>; jerome.roth@mto.com <jerome.roth@mto.com>; Ludwin, Derek <dludwin@cov.com>; rwick@cov.com <rwick@cov.com>; tcunningham@sheppardmullin.com <tcunningham@sheppardmullin.com>; ghalling@sheppardmullin.com <ghalling@sheppardmullin.com>; albert.boro@pillsburylaw.com <albert.boro@pillsburylaw.com>; john.grenfell@pillsburylaw.com <john.grenfell@pillsburylaw.com>; lindsay.lutz@pillsburylaw.com <lindsay.lutz@pillsburylaw.com>; annie.kaldor@bingham.com <annie.kaldor@bingham.com>; erin.smart@bingham.com <erin.smart@bingham.com>; jchung@whitecase.com <jchung@whitecase.com>; ccurran@whitecase.com <ccurran@whitecase.com>

Cc: Parker Folse <pfolse@SusmanGodfrey.com>; Johnny W. Carter <JCARTER@SusmanGodfrey.com>; Rachel S. Black <rblack@SusmanGodfrey.com>; Jordan Connors <jconnors@SusmanGodfrey.com>; Phil Iovieno <piovieno@BSFLLP.com>; William Isaacson <Wisaacson@BSFLLP.com>; jbaldinger@carltonfields.com <jbaldinger@carltonfields.com>; 'desau@carltonfields.com' <desau@carltonfields.com>; Brooke Taylor <BTaylor@SusmanGodfrey.com>; Steven G. Sklaver <ssklaver@SusmanGodfrey.com>; Murphy, Jerome <JMurphy@crowell.com>; Murray, Jason <JMurray@crowell.com>; Stokes, Joshua <JStokes@crowell.com>; Stuart Singer <ssinger@bsflp.com>; Les Houtz <les.houtz@bartlit-beck.com>; Karma Giulianelli <karma.giulianelli@bartlit-beck.com>; 'Goldstein, David M.' <dgoldstein@orrick.com>; Bomse, Stephen V. <sbomse@orrick.com>

Sent: Tue Jan 31 08:29:30 2012

Subject: Direct Action Plaintiff LCD Cases -- Proposed Schedule for "Track 2"

Counsel: Attached is a proposed pretrial schedule for entry in the following so-called Track 2 DAP cases: MetroPCS Wireless, T-Mobile, Jaco, Office Depot, SB Liquidation Trust, HP, Circuit City, Sony, Compucom, AASI Creditor Trust, Tech Data, PC Richard & Son, Schultze Agency Services, Interbond, TracFone, and Electrograph (11-cv-03342).

Please forward this email and the proposed schedule to any defense counsel not included on this email. Let us know if we can prepare a stipulation for entry by the court with the dates on this schedule.

Kenneth S. Marks
Susman Godfrey LLP

1000 Louisiana Street, Suite 5100
Houston, Texas 77002
(713) 653-7843

Event	Current Track 1 Schedule	Proposed Track 2 Schedule
Disclosure of identities of plaintiffs' experts and one paragraph description of issues to be addressed by each expert	October 3, 2011	June 1, 2012
Disclosure of identities of all defendants' experts and one paragraph description of issues to be addressed by each expert	November 3, 2011	July 2, 2012
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 1, 2012	November 2, 2012
Close of limited fact discovery unique to DAP and State AG cases	December 8, 2011	August 10, 2012
Service of opening expert reports for plaintiffs	December 15, 2011	August 17, 2012
Service of underlying data and Code	December 19, 2011	August 22, 2012
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 2, 2012	December 3, 2012
Service of opposition expert Reports	February 20, 2012	October 19, 2012
Service of underlying data and Code	March 1, 2012	October 24, 2012
Service of reply expert reports	April 27, 2012	December 19, 2012
Service of underlying data and Code	April 30, 2012	December 24, 2012
Last day to file dispositive Motions	May 25, 2012	January 31, 2013
Close of expert discovery	May 18, 2012	January 25, 2013
Last day to file oppositions to dispositive motions	June 22, 2012	March 1, 2013
Last day to file reply briefs in support of dispositive motions	July 20, 2012	March 29, 2013
Last day for hearing dispositive motions	August 15, 2012	April 19, 2013

Event	Current Track 1 Schedule	Proposed Track 2 Schedule
Pretrial conference and date by which actions filed outside of ND Cal shall be returned to courts in which originally filed	October 9, 2012	
Trial begins	November 5, 2012	Structure of trial(s) to be determined

EXHIBIT B

PAUL HASTINGS

1(202) 551-1772
leeberger@paulhastings.com

February 16, 2012

VIA E-MAIL

Johnny Carter (JCarter@susmangodfrey.com)
Susman Godfrey L.L.P.
Suite 5100
1000 Louisiana
Houston, TX 77002

Nicholas Weilhammer (Nicholas.weilhammer@myfloridalegal.com)
Assistant Attorney General
Office of the Attorney General of Florida
The Capitol
PL-01
Tallahassee, FL 32399-1050

Anne Schneider (anne.schneider@ago.mo.gov)
Assistant Attorney General
Missouri Attorney General's Office
P.O. Box 899
Jefferson City, MO 65102

Dear Johnny, Nick and Anne:

I write to respond to direct action plaintiffs' proposal for a Track 2 schedule. I include Nick and Anne here as liaison counsel for the attorneys general whose case schedules may be affected here too.

Defendants appreciate plaintiffs' proposal, but the proposal is both overbroad and too tight. It is overbroad because it lumps together cases that are ready to proceed and those that are just beginning. It is too tight because, based on our experience with the class and Track 1 cases, there is simply too much packed into too short a time frame. The specifics of our proposal are detailed below.

Part I: Included Plaintiffs

It is not feasible to put all remaining plaintiffs on the same track. First, not all plaintiffs are similarly situated. Some remaining plaintiffs filed their lawsuits in 2010 or the beginning of 2011 and have finished the initial pleadings stage, having their complaints answered. Others filed their cases more recently (some within the last two months) and have not even begun briefing on a motion to dismiss. Second, some of the cases have named a new defendant who has not had an opportunity to fully develop its case. Third, it is not fair to force defendants to defend 19 cases all at the same time on the same schedule, with some not even ripe for discovery.

Therefore, it is appropriate to limit application of Track 2 to a certain subset of cases that are ripe to advance faster. It is also appropriate to include the attorneys general not currently on a schedule in this proposal. This would include Circuit City, MetroPCS, SB Liquidation Trust, T-Mobile, TracFone, and the Oregon Attorney General. Accordingly, other plaintiffs would be on separate, later schedules, including

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Nicholas Weilhammer
Anne Schneider
February 16, 2012
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All American, Brandsmart, CompuCom, Electrographs (NEC), Hewlett Packard, Jaco, Office Depot, PC Richard, Sony, TechData, Tweeter, Viewsonic, and the Oklahoma Attorney General (and any other follow-on actions).

The schedule presented herein applies only to Track 2.

Part II: Proposed Track 2 Schedule

Defendants have three primary concerns with the schedule plaintiffs propose. First, based on experience in the class and Track 1 cases, the schedule does not permit enough time for merits discovery or expert discovery. Regarding merits discovery, many of the Track 1 plaintiffs (including some that eventually were agreed to join Track 2) have taken a very long time to produce documents – often up to the last minute – and thereafter produce witnesses. To avoid the same here, there should be a longer merits discovery period. Second, two months is not enough time to adequately prepare opposition reports to a large number of plaintiff experts in a large number of cases; additional time is needed. Third, we want to avoid overlapping deadlines in Track 2 with deadlines in Track 1. Accordingly, defendants propose the following as a schedule for the Track 2 plaintiffs.

Event	Plaintiffs' Proposed Track 2 Schedule	Defendants' Proposed Track 2 Schedule
Last day to amend complaints and join parties with leave of Court		April 5, 2012
Disclosure of identities of plaintiffs' experts and one paragraph description of issues to be addressed by each expert	June 1, 2012	December 3, 2012
Disclosure of identities of all defendants' experts and one paragraph description of issues to be addressed by each expert	July 2, 2012	January 15, 2013
Close of limited fact discovery unique to DAP and State AG cases	August 10, 2012	February 28, 2013
Service of opening expert reports for plaintiffs	August 17, 2012	March 7, 2013
Service of underlying data and Code	August 22, 2012	March 10, 2013
Service of opposition expert Reports	October 19, 2012	June 11, 2013
Service of underlying data and Code	October 24, 2012	June 14, 2013

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Anne Schneider
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Event	Plaintiffs' Proposed Track 2 Schedule	Defendants' Proposed Track 2 Schedule
Plaintiffs and defendants each to provide one paragraph description of each issue/ subject of summary judgment motions (copies to be provided to the court)	November 2, 2012	June 25, 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)	December 3, 2012	July 25, 2013
Service of reply expert reports	December 19, 2012	September 12, 2013
Service of underlying data and Code	December 24, 2012	September 15, 2013
Close of expert discovery	January 25, 2013	October 17, 2013
Last day to file dispositive Motions	January 31, 2013	November 7, 2013
Last day to file oppositions to dispositive motions	March 1, 2013	December 9, 2013
Last day to file reply briefs in support of dispositive motions	March 29, 2013	January 13, 2014
Last day for hearing dispositive motions	April 19, 2013	January 31, 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
Trial begins	Structure of trial(s) to be determined	To be determined by transferor court

Please let me know when you would be available to discuss this proposal.

Best regards,



Lee F. Berger
for PAUL HASTINGS LLP

EXHIBIT C

Sutro, Stephen H.

From: Berger, Lee F. [mailto:leeberger@paulhastings.com]
Sent: Tuesday, March 27, 2012 7:27 PM
To: Johnny W. Carter
Subject: RE: Track 2 schedule [PH-LEGAL_USW.FID366436]

Johnny,

Attached please find defendants' scheduling proposal for the Track 2 and Track 3 cases. As you will see, we have proposed times for Track 2 that are a compromise between our previous position and your latest position. We believe that this proposal reflects both a fair compromise and a workable schedule. A few notes:

1. As you requested, we used the NY AG schedule as a starting point for scheduling Track 2, and included only as much time as we thought necessary (and in some instances, less time than we think necessary). It will also avoid the impractical overlapping of deadlines between the Track 1 and Track 2 cases.
2. I talked with Phil Iovieno, who requested that all of the Boies Schiller cases, include the late-filed NECO case, but put onto the same track. He said that he would be willing to live with a delay for his cases as to the Track 2 schedule if it meant he could keep his cases together, including NECO. This also satisfies one of defendants' concerns, which is that not all of the cases proceed on the same exact schedule. For these reasons, we have put all of the Boies Schiller cases (including NECO) on Track 3. The proposed Track 3 has an approximately 4 month delay from Track 2, to avoid overlapping motion practice and discovery deadlines, and to allow the later-filed Boies Schiller cases time to develop more fully.
3. We have also put Jaco on Track 3, as we do not believe that Jaco is ripe to be resolved as quickly as the Track 2 cases.
4. As you instructed, we have not placed Sony, HP, or the Oklahoma Attorney General cases on a Track.

5. We have not put the very recently-filed Viewsonic case on a Track, as we have a hard time understanding how all of the work could get done in that case on the Track 3 schedule, even if we do not consider the stipulation entered regarding the response period.

Accordingly, we have included the following plaintiffs on Track 2: Circuit City, MetroPCS, the Oregon AG, SB Liquidation Trust, T-Mobile, and TracFone. We included the following plaintiffs on Track 3: Office Depot, All American, Brandsmart, CompuCom, Electrograph (NEC), Jaco, NECO, PC Richards, TechData, and Tweeter.

Based on discussions that my cocounsel has had with Viewsonic's counsel, we anticipate that Viewsonic will want to be on Track 2. It is possible that one or two other plaintiffs may also want to jump Tracks. We are willing to further meet and confer on this schedule and inclusion in the Tracks, but we do believe that the proposed schedule is fair and should be acceptable to most plaintiffs. If that is true, we would hope that a few issues regarding individual plaintiffs would not stop us from reaching a general agreement with willing plaintiffs as to the schedule, and then resolving issues in those individual cases one-on-one. We do not want to hold up the entire scheduling process for the rest of the cases over the concerns of a few cases.

Please let me know when you are available to discuss. I appreciate your patience with this process.

Many thanks,

Lee

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Lee F. Berger | Of Counsel, Litigation Department

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leeberger@paulhastings.com | www.paulhastings.com

From: Johnny W. Carter [mailto:JCARTER@SusmanGodfrey.com]
Sent: Tuesday, March 27, 2012 3:51 PM
To: Berger, Lee F.
Subject: RE: Track 2 schedule

Lee, what's the word? Thanks.

From: Berger, Lee F. [mailto:leeberger@paulhastings.com]
Sent: Thursday, March 22, 2012 10:43 AM
To: Johnny W. Carter
Subject: RE: Track 2 schedule

Johnny,

We are close. We have a counterproposal drafted and I have a call scheduled with my codefendants today to see if we can get a consensus on the proposed approach, which also takes into account a call I had with Boies Schiller regarding their cases. I hope to get you something tomorrow, but if there are more objections in my group it may take a few more days to reach consensus or to give you competing proposals.

Best regards,

Lee

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Lee F. Berger | Of Counsel, Litigation Department

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From: Johnny W. Carter [<mailto:JCARTER@SusmanGodfrey.com>]
Sent: Thursday, March 22, 2012 11:40 AM
To: Berger, Lee F.
Subject: Track 2 schedule

Lee, how are you coming along on getting back to me about the Track 2 schedule? Thanks. -Johnny

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DEFENDANTS' PROPOSED SCHEDULE FOR TRACKS 2 AND 3
MARCH 27, 2012

Event	NY AG Schedule	Proposed Track 2 Schedule¹	Proposed Track 3 Schedule²
Last day to amend complaints and join parties with leave of Court	N/A	May 3, 2012	June 28, 2012
Disclosure of identities of plaintiffs' experts and one paragraph description of issues to be addressed by each expert	June 5, 2012	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	No disclosure required	September 6, 2012	January 3, 2013
Close of limited fact discovery unique to DAP and State AG cases	July 27, 2012	November 1, 2012	February 28, 2013
Service of opening expert reports for plaintiffs	August 6, 2012	November 20, 2012	March 12, 2013
Service of underlying data and Code	August 10, 2012	November 23, 2012	March 14, 2013
Service of opposition expert Reports	November 9, 2012	February 28, 2013	July 10, 2013
Service of underlying data and Code	November 14, 2012	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)	October 19, 2012	March 14, 2013	July 30, 2013

¹ Track 2 includes: Circuit City, MetroPCS, SB Liquidation Trust, T-Mobile, TracFone, and the Oregon AG.

² Track 3 includes: Office Depot, All American, Brandsmart, CompuCom, Electrograph (NEC), PC Richards, Tweeter, TechData, NECO, and Jaco.

Event	NY AG Schedule	Proposed Track 2 Schedule¹	Proposed Track 3 Schedule²
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)	November 16, 2012	April 11, 2013	August 27, 2013
Service of reply expert reports	January 16, 2013	May 9, 2013	October 1, 2013
Service of underlying data and Code	February 15, 2013	May 14, 2013	October 7, 2013
Close of expert discovery	March 8, 2013	June 5, 2013	October 23, 2013
Last day to file dispositive Motions	March 15, 2013	July 18, 2013	December 11, 2013
Last day to file oppositions to dispositive motions	April 15, 2013	August 16, 2013	January 8, 2014
Last day to file reply briefs in support of dispositive motions	May 15, 2013	September 17, 2013	February 5, 2014
Last day for hearing dispositive motions	June 10, 2013	October 1, 2013	February 27, 2014

EXHIBIT D

From: Johnny W. Carter [mailto:JCARTER@SusmanGodfrey.com]
Sent: Sunday, April 29, 2012 12:38 AM
To: Berger, Lee F.
Subject: Track 2 schedule

Lee, see below for our counter-proposal for a Track 2 schedule for all remaining cases except: (1) State of Oregon & State of Oklahoma (last I heard, these plaintiffs wanted to work out their own schedules) and (2) HP has not yet decided that it wants to be on this schedule. We've been going back & forth on this for a while, so I'd appreciate getting your feedback within the next week. Thanks. -Johnny

Event	Track 2
Last day to amend complaints and join parties without leave of Court	May 30, 2012
Disclosure of identities of plaintiffs' experts and one paragraph description of	September 7, 2012

Event	Track 2
issues to be addressed by each expert	
Disclosure of identities of all defendants' experts and one paragraph description of issues to be addressed by each expert	October 12, 2012
Close of limited fact discovery unique to DAP and State AG cases	December 7, 2012
Service of opening expert reports for plaintiffs	January 11, 2013
Service of underlying data and Code	January 16, 2013
Service of opposition expert Reports	April 12, 2013
Service of underlying data and Code	April 17, 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)	April 26, 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)	May 24, 2013
Service of reply expert reports	June 14, 2013
Service of underlying data and Code	June 19, 2013
Close of expert discovery	July 19, 2013
Last day to file dispositive Motions	August 23, 2013
Last day to file oppositions to dispositive motions	September 20, 2013
Last day to file reply briefs in support of dispositive motions	October 18, 2013
Last day for hearing dispositive motions	November 1, 2013
The court will then	

Event	Track 2
consider remanding cases filed outside of N.D. Cal. to the transferor courts for separate trial.	

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