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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 Individual Case No. 13-
cv-3349 SI:

No. C 13-3349 SI

ACER AMERICA CORPORATION;
GATEWAY, INC.; and GATEWAY U.S.
RETAIL, INC. f/k/a EMACHINES, INC.,

**ORDER RE NEC DEFENDANTS'
MOTION TO TRANSFER VENUE**

Plaintiffs,

v.

HITACHI, LTD.; HITACHI DISPLAYS, LTD.;
HITACHI ELECTRONIC DEVICES (USA),
INC.; NEC CORPORATION; NEC
CORPORATION OF AMERICA; NEC
DISPLAY SOLUTIONS OF AMERICA, INC.;
NEC LCD TECHNOLOGIES, LTD.; NEC
ELECTRONICS AMERICA, INC.; TOSHIBA
CORPORATION; TOSHIBA MOBILE
DISPLAY CO., LTD.; TOSHIBA AMERICA
ELECTRONIC COMPONENTS, INC.;
TOSHIBA AMERICA INFORMATION
SYSTEMS, INC.; LG DISPLAY CO., LTD.; LG
DISPLAY AMERICA, INC.,

Defendants.

Currently before the Court is the NEC defendants' motion to transfer venue. Pursuant to Civil
Local Rule 7-1(b), the Court determines that this matter is appropriate for resolution without oral
argument and VACATES the hearing scheduled for April 18, 2014. For the reasons set forth below, the
Court DENIES the motion to transfer venue.

BACKGROUND

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2 The current motion is brought by five related defendants: NEC Corporation; NEC LCD
3 Technologies, Ltd.; NEC Display Solutions of America, Inc.; NEC Electronics America, Inc.; and NEC
4 Corporation of America, Inc. (collectively, “NEC”). On February 23, 1998, plaintiff Gateway, Inc.
5 (“Gateway”) entered into a purchase agreement with Mitsubishi Electronics America – a predecessor
6 to NDSA. See Declaration of Dylan Dunavan (“Dunavan Decl.”) Ex. A. Under the terms of the
7 agreement, “any legal action by either party against the other relating to this Agreement or Schedule as
8 contained therein shall be commenced in a court of competent jurisdiction in the State of South Dakota.”
9 *Id.* ¶ 19.

10 NEC now moves for an order transferring this case to the District of South Dakota, following
11 pretrial proceedings.

LEGAL STANDARD

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14 Under 28 U.S.C. § 1404(a), a court considering a motion to transfer venue must evaluate and
15 weigh numerous private and public interest factors. See *Williams v. Bowman*, 157 F. Supp. 2d 1103,
16 1106 (N.D. Cal. 2001); see also *Jones v. GNC Franchising Inc.*, 211 F.3d 495, 498-99 (9th Cir. 2000).
17 However, when venue is putatively governed by a valid forum selection clause, the calculus changes
18 in three ways. See *Atl. Marine Constr. Co., Inc. v. United States Dist. Court*, 134 S. Ct. 568, 581 (2013).
19 First, courts may accord no weight to the plaintiff’s chosen forum. *Id.* Second, courts may not consider
20 the parties’ private interests. *Id.* at 582. Third, if venue is transferred, the original venue’s choice-of-
21 law rules will not apply. *Id.* Thus, when a court considers a motion to transfer venue involving a valid
22 forum selection clause, it may only consider public interest factors. *Id.* “In all but the most unusual
23 cases, therefore, ‘the interest of justice’ is served by holding parties to their bargain.” *Id.* at 583.

DISCUSSION

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26 NEC argues that venue should be transferred to South Dakota because the relevant public interest
27 factors do not weigh in favor of keeping the case in the Northern District of California. The Court
28 disagrees.

1 As discussed more fully in the Court's Order on NEC's motion to compel arbitration, the
2 February 23, 1998 agreement governs only direct purchases made by Gateway from NEC during the
3 period of February 23, 1998 through February 23, 2002. It does not cover claims by the other two
4 plaintiffs, or against defendants other than NEC. It also does not cover any of the plaintiffs' indirect
5 purchaser claims or claims based on co-conspirator liability. The plaintiffs here allege an array of
6 conspiratorial conduct by multiple defendants, occurring from 1996 through the end of 2006. Am.
7 Compl. ¶ 1. Thus, the vast majority of the alleged wrongdoing in this case is not governed by the
8 agreement.

9 The Court agrees with plaintiffs that enforcing the forum selection clause under these
10 circumstances would contravene the federal policy in favor of "efficient resolution of controversies."
11 *See Frigate Ltd. v. Damia*, No. C 06-04734 CRB, 2007 WL 127996, at *3 (N.D. Cal. Jan. 12, 2007).
12 Enforcing the forum selection clause would splinter Gateway's Sherman Act claims from its California
13 state law claims. It would also require that Gateway's claims against NEC be tried separately from its
14 substantially similar claims against the other defendants. This would be "needlessly inconvenient and
15 burdensome [and] plainly contrary to the policy of the federal judiciary of promoting the consistent and
16 complete adjudication of disputes." *Frigate*, 2007 WL 127996 at *3.


17 Accordingly, the Court finds that the public interest would be best served by keeping this case
18 in the Northern District of California, and therefore DENIES NEC's motion to transfer venue.

19
20 **CONCLUSION**

21 For the foregoing reasons and for good cause shown, and on the basis of the record before it, the
22 Court hereby DENIES NEC's motion to transfer venue. This Order resolves Master Docket No. 8882.

23
24 **IT IS SO ORDERED.**

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26 Dated: April 14, 2014

27 
28 SUSAN ILLSTON
UNITED STATES DISTRICT JUDGE