

1 BRIGID S. MARTIN (CA Bar No. 231705)  
JACKLIN CHOU LEM (CA Bar No. 255293)  
2 MAY LEE HEYE (CA Bar No. 209366)  
Antitrust Division  
3 U.S. Department of Justice  
450 Golden Gate Avenue  
4 Box 36046, Room 10-0101  
San Francisco, CA 94102  
5 Telephone: (415) 436-6660

6 Attorneys for the United States

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

11 UNITED STATES OF AMERICA ) No. CR 11-0166 RS  
12 )  
13 )  
14 v. ) **PLEA AGREEMENT**  
15 CHIEN CHUNG CHEN, )  
a/k/a ANDREW CHEN, )  
16 Defendant. )  
17

18 PLEA AGREEMENT

19 The United States of America and Andrew Chen (“defendant”) hereby enter into the  
20 following Plea Agreement pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal  
21 Procedure (“Fed. R. Crim. P.”):

22 RIGHTS OF DEFENDANT

- 23 1. The defendant understands his rights:  
24 (a) to be represented by an attorney;  
25 (b) to be charged by Indictment;  
26 (c) to plead not guilty to any criminal charge brought against him;  
27 (d) to have a trial by jury, at which he would be presumed not guilty of the  
28 charge and the United States would have to prove every essential element of the

1 charged offense beyond a reasonable doubt for him to be found guilty;

2 (e) to confront and cross-examine witnesses against him and to subpoena  
3 witnesses in his defense at trial;

4 (f) not to be compelled to incriminate himself;

5 (g) to appeal his conviction, if he is found guilty; and

6 (h) to appeal the imposition of sentence against him.

7 AGREEMENT TO PLEAD GUILTY AND WAIVE CERTAIN RIGHTS

8 2. The defendant knowingly and voluntarily waives the rights set out in Paragraph  
9 1(b)-(g) above. The defendant also knowingly and voluntarily waives the right to file any  
10 appeal, any collateral attack, or any other writ or motion, including but not limited to an  
11 appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2241 or 2255, that challenges  
12 the sentence imposed by the Court if that sentence is consistent with or below the Sentencing  
13 Guidelines range stipulated by the parties in Paragraph 8 of this Plea Agreement, regardless of  
14 how the sentence is determined by the Court. This agreement does not affect the rights or  
15 obligations of the United States as set forth in 18 U.S.C. § 3742(b). Nothing in this paragraph,  
16 however, shall act as a bar to the defendant perfecting any legal remedies he may otherwise  
17 have on appeal or collateral attack respecting claims of ineffective assistance of counsel or  
18 prosecutorial misconduct. Pursuant to Fed. R. Crim. P. 7(b), the defendant will waive  
19 indictment at arraignment and plead guilty to a one-count Information to be filed in the United  
20 States District Court for the Northern District of California. The Information will charge the  
21 defendant with participating in a conspiracy to suppress and eliminate competition by fixing  
22 the prices of aftermarket automotive lighting equipment (hereinafter "aftermarket auto lights")  
23 sold in the United States and elsewhere, from as early as September 2003 until in or about  
24 September 2005, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

25 3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty  
26 to the criminal charge described in Paragraph 2 above and will make a factual admission of  
27 guilt to the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below.  
28 The United States agrees that at the arraignment, it will stipulate to the release of the

1 defendant on his personal recognizance, pursuant to 18 U.S.C. § 3142, pending the sentencing  
2 hearing in this case.

3 FACTUAL BASIS FOR OFFENSE CHARGED

4 4. Had this case gone to trial, the United States would have presented evidence  
5 sufficient to prove the following facts:

6 (a) For purposes of this Plea Agreement, the "relevant period" is that  
7 period from in or about September 2003 to in or about September 2005. During the  
8 relevant period, the defendant was an officer or employee of Company A, an entity  
9 organized and existing under the laws of California. During the relevant period, the  
10 defendant was Executive Vice President of Company A. During the relevant period,  
11 Company A was a major United States distributor of aftermarket auto lights produced  
12 by Company B, an entity organized and existing under the laws of Taiwan.  
13 Aftermarket auto lights are incorporated into an automobile after its original sale,  
14 usually as repairs following a collision, but also as accessories and upgrades. Lighting  
15 components include items such as headlights, taillights, fog lights, turn signals, brake  
16 signals, and reflectors. Aftermarket auto lights are sold through U.S. distributors to  
17 aftermarket auto lights wholesalers, retailers, and automotive repair shops.

18 (b) During the relevant period, the defendant knowingly participated in a  
19 conspiracy with other persons and entities engaged in the manufacture and sale of  
20 aftermarket auto lights, the primary purpose of which was to fix the price of  
21 aftermarket auto lights sold in the United States and elsewhere. In furtherance of the  
22 conspiracy, the defendant engaged in conversations and attended meetings with  
23 representatives of other major firms engaged in the manufacture and sale of  
24 aftermarket auto lights. During such meetings and conversations, agreements were  
25 reached to fix the price of aftermarket auto lights sold in the United States and  
26 elsewhere.

27 (c) During the relevant period, aftermarket auto lights sold by one or more  
28 of the conspirator firms, and equipment and supplies necessary to the production and

1 distribution of aftermarket auto lights, as well as payments for aftermarket auto lights,  
2 traveled in interstate and foreign commerce. The business activities of Company A  
3 and co-conspirators in connection with the production and sale of aftermarket auto  
4 lights that were the subjects of this conspiracy were within the flow of, and  
5 substantially affected, interstate and foreign trade and commerce.

6 (d) Acts in furtherance of this conspiracy were carried out within the  
7 Northern District of California. Aftermarket auto lights that were the subjects of the  
8 conspiracy were sold by one or more of the conspirators to customers in this District.

9 POSSIBLE MAXIMUM SENTENCE

10 5. The defendant understands that the statutory maximum penalty which may be  
11 imposed against him upon conviction for a violation of Section One of the Sherman Antitrust

12 Act is:

13 (a) a term of imprisonment for ten (10) years (15 U.S.C. § 1);

14 (b) a fine in an amount equal to the greatest of (1) \$1 million, (2) twice the  
15 gross pecuniary gain the conspirators derived from the crime, or (3) twice the gross  
16 pecuniary loss caused to the victims of the crime by the conspirators (15 U.S.C. § 1; 18  
17 U.S.C. § 3571(b) and (d)); and

18 (c) a term of supervised release of three (3) years following any term of  
19 imprisonment. If the defendant violates any condition of supervised release, the  
20 defendant could be required to serve up to two (2) years in prison (18 U.S.C.  
21 § 3559(a)(3); 18 U.S.C. § 3583(b)(2) and (e)(3); and United States Sentencing  
22 Guidelines (“U.S.S.G.,” “Sentencing Guidelines,” or “Guidelines”) §5D1.2(a)(2)).

23 6. In addition, the defendant understands that:

24 (a) pursuant to U.S.S.G. §5E1.1 or 18 U.S.C. § 3663(a)(3) or 3583(d), the  
25 Court may order him to pay restitution to the victims of the offense; and

26 (b) pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court is required to order  
27 the defendant to pay a \$100.00 special assessment upon conviction for the charged  
28 crime.

SENTENCING GUIDELINES

1  
2 7. The defendant understands that the Sentencing Guidelines are advisory, not  
3 mandatory, but that the Court must consider the Guidelines in effect on the day of sentencing,  
4 along with the other factors set forth in 18 U.S.C. § 3553(a), in determining and imposing  
5 sentence. The defendant understands that the Guidelines determinations will be made by the  
6 Court by a preponderance of the evidence standard. The defendant understands that although  
7 the Court is not ultimately bound to impose a sentence within the applicable Guidelines range,  
8 its sentence must be reasonable based upon consideration of all relevant sentencing factors set  
9 forth in 18 U.S.C. § 3553(a). Pursuant to U.S.S.G. §1B1.8, the United States agrees that self-  
10 incriminating information that the defendant provides to the United States pursuant to this  
11 Plea Agreement will not be used to increase the volume of affected commerce attributable to  
12 the defendant or in determining the defendant's applicable Guidelines range, except to the  
13 extent provided in U.S.S.G. §1B1.8(b).

SENTENCING AGREEMENT

14  
15 8. The United States and the defendant agree that the following Sentencing  
16 Guidelines apply:

- |    |    |   |                       |
|----|----|---|-----------------------|
| 17 | a. | Base Offense Level, U.S.S.G. §2R1.1(a):   | 12                    |
| 18 | b. | Volume of Commerce (stipulated to be \$13.8 million),<br>More than \$10 million, U.S.S.G. §2R1.1(b)(2)(B):  | +4                    |
| 19 | c. | Fine calculated as one to five percent of the volume of<br>commerce (stipulated to be \$13.8 million) but not<br>less than \$20,000, U.S.S.G. §2R1.1(c)(1): | \$138,000 - \$690,000 |
| 20 |    |   |                       |
| 21 |    |   |                       |

22 9. The United States agrees that it will make a motion, pursuant to U.S.S.G.  
23 §3E1.1, for a downward adjustment of three levels for acceptance of responsibility due to the  
24 defendant's timely notification of his intention to enter a guilty plea.

25 10. Subject to the full, truthful, and continuing cooperation of the defendant,  
26 the United States will recommend as the appropriate disposition of this case, pursuant to  
27 Fed. R. Crim. P. 11(c)(1)(B), that the Court sentence the defendant to a period of no more than  
28 twelve (12) months imprisonment (prior to any motion pursuant to U.S.S.G. §5K1.1); require

1 the defendant to pay to the United States a fine of no more than \$25,000 payable in full before  
2 the fifteenth (15<sup>th</sup>) day after the date of judgment; and impose no period of supervised release.  
3 The defendant understands that the Court will order him to pay a \$100 special assessment  
4 pursuant to 18 U.S.C. § 3013(a)(2)(A) in addition to any fine imposed. The United States will  
5 not object to the defendant's request that the Court make a recommendation to the Bureau of  
6 Prisons that the Bureau of Prisons designate that the defendant be assigned to a Federal  
7 Minimum Security Camp (and specifically to the Federal Minimum Security Camp at  
8 Lompoc, California) to serve his sentence and that the defendant be released following the  
9 imposition of sentence to allow him to self-surrender to the assigned prison facility on a  
10 specified date. The parties agree that there exists no aggravating or mitigating circumstance of  
11 a kind, or to a degree, not adequately taken into consideration by the U.S. Sentencing  
12 Commission in formulating the Sentencing Guidelines justifying a departure pursuant to  
13 U.S.S.G. §5K2.0.

14       11. The United States and the defendant agree that, pursuant to U.S.S.G.  
15 §5E1.1(b), the defendant should not be ordered to pay restitution for the offense charged in the  
16 information in light of the civil cases filed against Company A, including *In re Aftermarket*  
17 *Automotive Lighting Products Antitrust Litigation*, No. 09-ML-2007 GW, consolidated in the  
18 United States District Court, Central District of California, which potentially provide for a  
19 recovery of a multiple of actual damages.

20       12. The United States and the defendant are not aware of any information which  
21 would impact the defendant's Criminal History Category. If no other information were  
22 discovered, the defendant's Criminal History Category would be I. The parties understand  
23 that the defendant's Criminal History Category is determined by the Court.

24       13. The defendant understands that the sentence to be imposed on him is within the  
25 sole discretion of the sentencing judge. The United States cannot and does not make any  
26 promises or representations as to what sentence he will receive. However, the United States  
27 will inform the Probation Office and the Court of (a) this Agreement; (b) the nature and extent  
28 of the defendant's activities with respect to this case and all other activities of the defendant

1 which the United States deems relevant to sentencing; and (c) the nature and extent of the  
2 defendant's cooperation with the United States. In so doing, the United States may use any  
3 information it deems relevant, including information provided by the defendant both prior and  
4 subsequent to the signing of this Agreement. The United States reserves the right to make any  
5 statement to the Court or the Probation Office concerning the nature of the criminal violation  
6 charged in the attached Information, the participation of the defendant therein, and any other  
7 facts or circumstances that it deems relevant. The United States also reserves the right to  
8 comment on or to correct any representation made by or on behalf of the defendant, and to  
9 supply any other information that the Court may require.

10       14. If the United States determines that the defendant has provided substantial  
11 assistance in any investigations or prosecutions, and has otherwise fully complied with all of  
12 the terms of this Plea Agreement, it will file a motion, pursuant to U.S.S.G. §5K1.1, advising  
13 the sentencing judge of all relevant facts pertaining to that determination and requesting the  
14 Court to sentence the defendant in light of the factors set forth in U.S.S.G. §5K1.1(a)(1)-(5).  
15 The defendant acknowledges that the decision whether he has provided substantial assistance  
16 in any investigations or prosecutions and has otherwise complied with the terms of this Plea  
17 Agreement is within the sole discretion of the United States. It is understood that, should the  
18 United States determine that the defendant has not provided substantial assistance in any  
19 investigations or prosecutions, or should the United States determine that the defendant has  
20 violated any provision of this Plea Agreement, such a determination will release the United  
21 States from any obligation to file a motion pursuant to U.S.S.G. §5K1.1, but will not entitle  
22 the defendant to withdraw his guilty plea once it has been entered. The defendant further  
23 understands that, whether or not the United States files a motion pursuant to U.S.S.G. §5K1.1,  
24 the sentence to be imposed on him remains within the sole discretion of the sentencing judge.

25       15. Subject to the ongoing, full, and truthful cooperation of the defendant  
26 described in Paragraph 17 of this Plea Agreement, and before sentencing in the case, the  
27 United States will fully advise the Court and the Probation Office of the fact, manner, and  
28 extent of the defendant's cooperation and his commitment to prospective cooperation with the

1 United States' investigation and prosecutions, all material facts relating to the defendant's  
2 involvement in the charged offense, and all other relevant conduct. To enable the Court to  
3 have the benefit of all relevant sentencing information, the United States may request, and the  
4 defendant will not oppose, that sentencing be postponed until his cooperation is complete.

5 16. The United States and the defendant understand that the Court retains  
6 complete discretion to accept or reject either party's sentencing recommendation. The  
7 defendant understands that, as provided in Fed. R. Crim. P. 11(c)(3)(B), if the Court does not  
8 impose a sentence consistent with either party's sentencing recommendation, he nevertheless  
9 has no right to withdraw his plea of guilty.

10 DEFENDANT'S COOPERATION

11 17. The defendant will cooperate fully and truthfully with the United States in the  
12 prosecution of this case, the conduct of the current federal investigation of violations of  
13 federal antitrust and related criminal laws involving the manufacture or sale of aftermarket  
14 auto lights in the United States and elsewhere, any other federal investigation resulting  
15 therefrom, and any litigation or other proceedings arising or resulting from any such  
16 investigation to which the United States is a party ("Federal Proceeding"). The ongoing, full,  
17 and truthful cooperation of the defendant shall include, but not be limited to:

18 (a) producing all non-privileged documents, including claimed personal  
19 documents, and other materials, wherever located, in the possession, custody, or  
20 control of the defendant, requested by attorneys and agents of the United States;

21 (b) making himself available for interviews, not at the expense of the  
22 United States, upon the request of attorneys and agents of the United States;

23 (c) responding fully and truthfully to all inquiries of the United States in  
24 connection with any Federal Proceeding, without falsely implicating any person or  
25 intentionally withholding any information, subject to the penalties of making false  
26 statements (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. § 1503, *et seq.*);

27 (d) otherwise voluntarily providing the United States with any  
28 non-privileged material or information, not requested in (a) - (c) of this paragraph, that



1 he may have that is related to any Federal Proceeding; and

2 (e) when called upon to do so by the United States in connection with any  
3 Federal Proceeding, testifying in grand jury, trial, and other judicial proceedings, fully,  
4 truthfully, and under oath, subject to the penalties of perjury (18 U.S.C. § 1621),  
5 making false statements or declarations in grand jury or court proceedings (18 U.S.C.  
6 § 1623), contempt (18 U.S.C. §§ 401 - 402), and obstruction of justice (18 U.S.C.  
7 § 1503, *et seq.*).

8 GOVERNMENT'S AGREEMENT

9 18. Subject to the full, truthful, and continuing cooperation of the defendant  
10 described in Paragraph 17 of this Plea Agreement, and upon the Court's acceptance of the  
11 guilty plea called for by this Plea Agreement and the imposition of sentence, the United States  
12 will not bring further criminal charges against the defendant for any act or offense committed  
13 before the date of this Plea Agreement that was undertaken in furtherance of an antitrust  
14 conspiracy involving the manufacture or sale of aftermarket auto lights or undertaken in  
15 connection with any investigation of such a conspiracy ("Relevant Offense"). The  
16 nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any  
17 violation of the federal tax or securities laws, or to any crime of violence.

18 19. The defendant understands that he may be subject to administrative  
19 action by federal or state agencies other than the United States Department of Justice,  
20 Antitrust Division, based upon the conviction resulting from this Plea Agreement, and that  
21 this Plea Agreement in no way controls whatever action, if any, other agencies may take.  
22 However, the United States agrees that, if requested, it will advise the appropriate officials of  
23 any governmental agency considering such administrative action of the fact, manner, and  
24 extent of the cooperation of the defendant as a matter for that agency to consider before  
25 determining what administrative action, if any, to take.

26 REPRESENTATION BY COUNSEL

27 20. The defendant has reviewed all legal and factual aspects of this case with his  
28 attorney and is fully satisfied with his attorney's legal representation. The defendant has

1 thoroughly reviewed this Plea Agreement with his attorney and has received satisfactory  
2 explanations from his attorney concerning each paragraph of this Plea Agreement and  
3 alternatives available to the defendant other than entering into this Plea Agreement. After  
4 conferring with his attorney and considering all available alternatives, the defendant has made  
5 a knowing and voluntary decision to enter into this Plea Agreement.

6 VOLUNTARY PLEA

7 21. The defendant's decision to enter into this Plea Agreement and to tender a plea  
8 of guilty is freely and voluntarily made and is not the result of force, threats, assurances,  
9 promises, or representations other than the representations contained in this Plea Agreement.  
10 The United States has made no promises or representations to the defendant as to whether the  
11 Court will accept or reject the recommendations contained within this Plea Agreement.

12 VIOLATION OF PLEA AGREEMENT

13 22. The defendant agrees that, should the United States determine in good faith,  
14 during the period that any Federal Proceeding is pending, that the defendant has failed to  
15 provide full and truthful cooperation, as described in Paragraph 17 of this Plea Agreement, or  
16 has otherwise violated any provision of this Plea Agreement, the United States will notify the  
17 defendant or his counsel in writing by personal or overnight delivery or facsimile transmission  
18 and may also notify his counsel by telephone of its intention to void any of its obligations  
19 under this Plea Agreement (except its obligations under this paragraph), and the defendant  
20 shall be subject to prosecution for any federal crime of which the United States has knowledge  
21 including, but not limited to, the substantive offenses relating to the investigation resulting in  
22 this Plea Agreement. The defendant may seek Court review of any determination made by the  
23 United States under this Paragraph to void any of its obligations under the Plea Agreement.  
24 The defendant agrees that, in the event that the United States is released from its obligations  
25 under this Plea Agreement and brings criminal charges against the defendant for any Relevant  
26 Offense, the statute of limitations period for such offense shall be tolled for the period  
27 between the date of the signing of this Plea Agreement and six (6) months after the date the  
28 United States gave notice of its intent to void its obligations under this Plea Agreement.

1 23. The defendant understands and agrees that in any further prosecution of him  
2 resulting from the release of the United States from its obligations under this Plea Agreement  
3 based on the defendant's violation of the Plea Agreement, any documents, statements,  
4 information, testimony, or evidence provided by him to attorneys or agents of the United  
5 States, federal grand juries, or courts, and any leads derived therefrom, may be used against  
6 him in any such further prosecution. In addition, the defendant unconditionally waives his  
7 right to challenge the use of such evidence in any such further prosecution, notwithstanding  
8 the protections of Fed. R. Evid. 410.

9 ENTIRETY OF AGREEMENT

10 24. This Plea Agreement constitutes the entire agreement between the United  
11 States and the defendant concerning the disposition of the criminal charge in this case. This  
12 Plea Agreement cannot be modified except in writing, signed by the United States and the  
13 defendant.

14 25. The undersigned attorneys for the United States have been authorized by the  
15 Attorney General of the United States to enter this Plea Agreement on behalf of the United  
16 States.

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

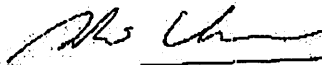
26 //

27 //

28 //

1 26. A facsimile signature shall be deemed an original signature for the purpose of  
2 executing this Plea Agreement. Multiple signature pages are authorized for the purpose of  
3 executing this Plea Agreement.

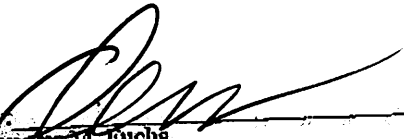
Respectfully submitted,

4  
5  
6 By:   
7 Andrew Chen  
Defendant

By: \_\_\_\_\_  
Brigid S. Martin  
Jacklin Chou Lem  
May Lee Heye  
Trial Attorneys  
U.S. Department of Justice  
Antitrust Division  
450 Golden Gate Avenue  
Box 36046, Room 10-0101  
San Francisco, CA 94102

8  
9 Dated: 5/23/11

Dated: \_\_\_\_\_

10  
11  
12  
13 By:   
14 Douglas M. Fuchs  
15 Gibson, Dunn & Crutcher LLP  
333 South Grand Avenue  
Los Angeles, CA 90071  
Counsel for Andrew Chen

16  
17 Dated: 5/23/11

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 26. A facsimile signature shall be deemed an original signature for the purpose of  
2 executing this Plea Agreement. Multiple signature pages are authorized for the purpose of  
3 executing this Plea Agreement.

4 Respectfully submitted,

5  
6 By: Andrew Chen  
7 Andrew Chen  
8 Defendant

By: \_\_\_\_\_  
Brigid S. Martin  
Jacklin Chou Lem  
May Lee Heye  
Trial Attorneys  
U.S. Department of Justice  
Antitrust Division  
450 Golden Gate Avenue  
Box 36046, Room 10-0101  
San Francisco, CA 94102

9 Dated: June 7, 2011

10  
11  
12 Dated: \_\_\_\_\_

13 By: \_\_\_\_\_  
14 Douglas M. Fuchs  
15 Gibson, Dunn & Crutcher LLP  
16 333 South Grand Avenue  
17 Los Angeles, CA 90071  
18 Counsel for Andrew Chen

19  
20  
21  
22  
23  
24  
25  
26  
27  
28 Dated: \_\_\_\_\_

1           26.    A facsimile signature shall be deemed an original signature for the purpose of  
2 executing this Plea Agreement. Multiple signature pages are authorized for the purpose of  
3 executing this Plea Agreement.

Respectfully submitted,

4  
5

6 By: \_\_\_\_\_  
Andrew Chen  
7 Defendant

By:  \_\_\_\_\_

Brigid S. Martin  
Jacklin Chou Lem  
May Lee Heye  
Trial Attorneys  
U.S. Department of Justice  
Antitrust Division  
450 Golden Gate Avenue  
Box 36046, Room 10-0101  
San Francisco, CA 94102

8

9 Dated: \_\_\_\_\_

10

11

12

13 By:  \_\_\_\_\_  
Douglas M. Fuchs  
14 Gibson, Dunn & Crutcher LLP  
333 South Grand Avenue  
15 Los Angeles, CA 90071  
Counsel for Andrew Chen

Dated: 5/23/11 \_\_\_\_\_

16

17 Dated: 5/23/11 \_\_\_\_\_

18

19

20

21

22

23

24

25

26

27

28