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Attorneys for the United States

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA

v.

EAGLE EYES TRAFFIC INDUSTRIAL
CO., LTD.; E-LITE AUTOMOTIVE, INC.;
HOMY HONG-MING HSU; and YU-CHU
LIN, aka David Lin,

Defendants.

No. CR 11-0488 RS

PLEA AGREEMENT

Hon. Richard Seeborg
United States District Judge

PLEA AGREEMENT

The United States of America and Homy Hong-Ming Hsu ("defendant") hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P.):

RIGHTS OF DEFENDANT

1. The defendant understands his rights:
 - (a) to be represented by an attorney;

- (b) to plead not guilty to any criminal charge brought against him;
- (c) to have a trial by jury, at which he would be presumed not guilty of the charge and the United States would have to prove every essential element of the charged offense beyond a reasonable doubt for him to be found guilty;
- (d) to confront and cross-examine witnesses against him and to subpoena witnesses in his defense at trial;
- (e) not to be compelled to incriminate himself;
- (f) to appeal his conviction, if he is found guilty; and
- (g) to appeal the imposition of sentence against him.

AGREEMENT TO PLEAD GUILTY
AND WAIVE CERTAIN RIGHTS

2. The defendant knowingly and voluntarily waives the rights set out in Paragraph 1(b)-(g) above. The defendant also knowingly and voluntarily waives the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2241 or 2255, that challenges the sentence imposed by the Court if that sentence is consistent with or below the recommended sentence in Paragraph 8 of this Plea Agreement, regardless of how the sentence is determined by the Court. This agreement does not affect the rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b). Nothing in this paragraph, however, shall act as a bar to the defendant perfecting any legal remedies he may otherwise have on appeal or collateral attack respecting claims of ineffective assistance of counsel or prosecutorial misconduct. The defendant will plead guilty to the one-count Superseding Indictment filed in this case on November 30, 2011. The Superseding Indictment charges the defendant with participating in a conspiracy to suppress and eliminate competition by agreeing to fix the prices of aftermarket auto lights sold to customers in the United States and elsewhere, from at least as early as November 2001 until at least in or about September 2008, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

1 3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty to
2 the criminal charge described in Paragraph 2 above and will make a factual admission of guilt to
3 the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below.

4 **FACTUAL BASIS FOR OFFENSE CHARGED**

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

7 (a) For purposes of this Plea Agreement, the “relevant period” is
8 that period from about November 2001 to about September 2008. During the relevant
9 period, the defendant was Vice Chairman of Eagle Eyes Traffic Industrial Co., Ltd.
10 (“Eagle Eyes”), an entity organized and existing under the laws of Taiwan and with its
11 principal place of business in Yongkang City, Tainan County, Taiwan. During the
12 relevant period, Eagle Eyes was a manufacturer of aftermarket auto lights sold in the
13 United States and elsewhere. Aftermarket auto lights are lighting components
14 incorporated into an automobile after its original sale, usually as repairs following a
15 collision, but also as accessories and upgrades. Lighting components include items such
16 as headlights, taillights, fog lights, turn signals, brake signals, and reflectors. Aftermarket
17 auto lights are sold through U.S. distributors to aftermarket auto lights wholesalers,
18 retailers, and automotive repair shops.

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

1 and distribution of aftermarket auto lights, as well as payments for aftermarket
 2 auto lights, traveled in interstate and foreign commerce. The business activities of
 3 Eagle Eyes and co-conspirators in connection with the production and sale of aftermarket
 4 auto 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, San Francisco Division. Aftermarket auto lights that
 8 were the subjects of the conspiracy were sold by one or more of the conspirators to
 9 customers in this District.

10 **POSSIBLE MAXIMUM SENTENCE**

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

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

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

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

24 6. In addition, the defendant understands that:

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

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

SENTENCING GUIDELINES

7. The defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in effect on the day of sentencing, along with the other factors set forth in 18 U.S.C. § 3553(a), in determining and imposing sentence. The defendant understands that the Guidelines determinations will be made by the Court by a preponderance of the evidence standard. The defendant understands that although the Court is not ultimately bound to impose a sentence within the applicable Guidelines range, its sentence must be reasonable based upon consideration of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a).

SENTENCING AGREEMENT

8. Pursuant to Fed. R. Crim. P. 11(c)(1)(B), the United States agrees that it will recommend, as the appropriate disposition of this case, that the Court impose a sentence requiring the defendant to pay to the United States a criminal fine of no more than \$25,000; a period of imprisonment of no more than 27 months; no period of supervised release; and no order of restitution ("the recommended sentence"). The recommended sentence is based on a Sentencing Guidelines range of 27 to 33 months, based on a total offense level of 18 and a Criminal History Category of I. The United States will not object to the defendant's request that the Court make a recommendation to the Bureau of Prisons that the Bureau of Prisons designate that the defendant be assigned to a Federal Minimum Security Camp (and specifically to the Federal Minimum Security Camp at Taft, California) to serve his sentence and that the defendant be allowed following the imposition of sentence to self-surrender to the assigned prison facility on a specified date.

(a) The defendant understands that the Court will order him to pay a \$100 special assessment pursuant to 18 U.S.C. § 3013(a)(2)(A) in addition to any fine imposed.

(b) In light of the civil cases filed against the defendant's employer Eagle Eyes, including *In re Aftermarket Automotive Lighting Products Antitrust Litigation*, No. 09-ML-2007 GW, consolidated in the United States District Court, Central District of

1 California, which potentially provide for a recovery of a multiple of actual damages, the
 2 recommended sentence does not include a restitution order for the offense charged in the
 3 Superseding Indictment.

4 (c) The defendant makes no agreement as to the Sentencing Guidelines
 5 calculation or the appropriate sentence and is free to advocate for any calculation and
 6 sentence in any materials submitted to the Probation Office and/or to the Court and orally
 7 at the time of sentencing.

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

13 **GOVERNMENT'S AGREEMENT**

14 10. Upon the Court's acceptance of the guilty plea called for by this Plea Agreement
 15 and the imposition of sentence, the United States will not bring further criminal charges against
 16 the defendant for any act or offense committed before the date of this Plea Agreement that was
 17 undertaken in furtherance of an antitrust conspiracy involving the manufacture or sale of
 18 aftermarket auto lights ("Relevant Offense"). The nonprosecution terms of this paragraph do not
 19 apply to civil matters of any kind, to any violation of the federal tax or securities laws, or to any
 20 crime of violence.

21 11. The defendant understands that he may be subject to administrative action by
 22 federal or state agencies other than the United States Department of Justice, Antitrust Division,
 23 based upon the conviction resulting from this Plea Agreement, and that this Plea Agreement in
 24 no way controls whatever action, if any, other agencies may take.

25 **REPRESENTATION BY COUNSEL**

26 12. The defendant has reviewed all legal and factual aspects of this case with his
 27 attorney and is fully satisfied with his attorney's legal representation. The defendant has
 28 thoroughly reviewed this Plea Agreement with his attorney and has received satisfactory

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

5 **VOLUNTARY PLEA**

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

11 **ENTIRETY OF AGREEMENT**

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

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

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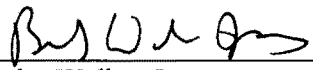
1 16. A facsimile or PDF signature shall be deemed an original signature for the
2 purpose of executing this Plea Agreement. Multiple signature pages are authorized for the
3 purpose of executing this Plea Agreement.

4 
5 _____
6 Homy Hong-Ming Hsu
7 Defendant

8 Dated: 9/25/12

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Dated: _____

14 
15 _____
16 Becky Walker James
17 Kathryn Lohmeyer
18 Counsel for Homy Hong-Ming Hsu
19 Law Offices of Becky Walker James
20 1990 South Bundy Drive, Suite 705
21 Los Angeles, CA 90025

22 Dated: 9/25/12

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Homy Hong-Ming Hsu
Defendant

Dated: _____



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Dated: _____