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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA)	CR 12-0121 RS
)	
v.)	PLEA AGREEMENT
)	
SHIU-MIN HSU,)	
)	
Defendant.)	
)	
)	
)	

The United States of America and Shiu-Min Hsu ("defendant") hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(C) 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 be charged by Indictment;
 - (c) as a citizen and resident of Taiwan, to decline to accept service of the Summons in this case, and to contest the jurisdiction of the United States to prosecute this

1 case against him in the United States District Court for the Northern District of
2 California;

3 (d) to plead not guilty to any criminal charge brought against him;

4 (e) to have a trial by jury, at which he would be presumed not guilty of the
5 charge and the United States would have to prove every essential element of the charged
6 offense beyond a reasonable doubt for him to be found guilty;

7 (f) to confront and cross-examine witnesses against him and to subpoena
8 witnesses in his defense at trial;

9 (g) not to be compelled to incriminate himself;

10 (h) to appeal his conviction, if he is found guilty; and

11 (i) to appeal the imposition of sentence against him.

12 **AGREEMENT TO PLEAD GUILTY AND WAIVE CERTAIN RIGHTS**

13 2. The defendant knowingly and voluntarily waives the rights set out in Paragraph
14 1(b)-(h) above. The defendant also knowingly and voluntarily waives the right to file any
15 appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal
16 under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2241 or 2255, that challenges the
17 sentence imposed by the Court if that sentence is consistent with or below the recommended
18 sentence in Paragraph 8 of this Plea Agreement, regardless of how the sentence is determined by
19 the Court. This agreement does not affect the rights or obligations of the United States as set
20 forth in 18 U.S.C. § 3742(b)-(c). Nothing in this paragraph, however, shall act as a bar to the
21 defendant perfecting any legal remedies he may otherwise have on appeal or collateral attack
22 respecting claims of ineffective assistance of counsel or prosecutorial misconduct. The
23 defendant agrees that there is currently no known evidence of ineffective assistance of counsel or
24 prosecutorial misconduct. Pursuant to Fed. R. Crim. P. 7(b), the defendant will waive indictment
25 and plead guilty to a one-count Information to be filed in the United States District Court for
26 the Northern District of California. The Information will charge the defendant with
27 participating in a conspiracy to suppress and eliminate competition by fixing the prices of
28 aftermarket automotive lighting equipment ("aftermarket auto lights") sold in the United States

1 and elsewhere, from about April 2000 to about September 3, 2008, in violation of the Sherman
2 Antitrust Act, 15 U.S.C. § 1.

3 3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty to
4 the criminal charge described in Paragraph 2 above and will make a factual admission of guilt to
5 the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below. The United
6 States agrees that at the arraignment, it will stipulate to the release of the defendant on his
7 personal recognizance, pursuant to 18 U.S.C. § 3142, pending the sentencing hearing in this case.

8 **FACTUAL BASIS FOR OFFENSE CHARGED**

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

11 (a) For purposes of this Plea Agreement, the “relevant period” is that period
12 from about April 2000 to about September 3, 2008. During the relevant period, the
13 defendant was Chairman of Depo Auto Parts Industrial Co., Ltd. (“Depo”), an entity
14 organized and existing under the laws of Taiwan and with its principal place of business
15 in Lu Kang, Taiwan. During the relevant period, Depo was a producer of aftermarket
16 auto lights and was engaged in the sale of aftermarket auto lights in the United States and
17 elsewhere. Aftermarket auto lights are incorporated into an automobile after its original
18 sale, usually as repairs following a collision, but also as accessories and upgrades.
19 Lighting components include items such as headlights, taillights, fog lights, turn signals,
20 brake signals, and reflectors. Aftermarket auto lights are sold through U.S. distributors to
21 aftermarket auto lights wholesalers, retailers, and automotive repair shops.

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

1 the United States and elsewhere. The conspiracy involved five or more participants, and
 2 the defendant was an organizer or leader of one or more of those participants.

3 (c) During the relevant period, aftermarket auto lights sold by one or more of
 4 the conspirator firms, and equipment and supplies necessary to the production and
 5 distribution of aftermarket auto lights, as well as payments for aftermarket auto lights,
 6 traveled in interstate and foreign commerce. The business activities of Depo and co-
 7 conspirators in connection with the production and sale of aftermarket auto lights that
 8 were the subjects of this conspiracy were within the flow of, and substantially affected,
 9 interstate and foreign trade and commerce.

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

13 POSSIBLE MAXIMUM SENTENCE

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

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

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

22 (c) a term of supervised release of three (3) years following any term of
 23 imprisonment. If the defendant violates any condition of supervised release, the
 24 defendant could be required to serve up to two (2) years in prison (18 U.S.C. §
 25 3559(a)(3); 18 U.S.C. § 3583(b)(2) and (e)(3); and United States Sentencing Guidelines
 26 ("U.S.S.G.," "Sentencing Guidelines," or "Guidelines") §5D1.2(a)(2)).

27 6. In addition, the defendant understands that:

28 (a) pursuant to U.S.S.G. §5E1.1 or 18 U.S.C. § 3663(a)(3) or 3583(d), the

1 Court may order him to pay restitution to the victims of the offense; and

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

4 SENTENCING GUIDELINES

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

13 SENTENCING AGREEMENT

14 8. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and the defendant
15 agree that the appropriate disposition of this case is, and agree to recommend jointly that the
16 Court impose, a sentence requiring the defendant to pay to the United States a criminal fine of
17 \$35,000 payable in full before the fifteenth (15th) day after the date of judgment; a period of
18 imprisonment of 285 days; and no period of supervised release and no order of restitution ("the
19 recommended sentence"). The defendant agrees that he will not request that he be allowed to
20 serve any part of his sentence in home detention, intermittent confinement, or community
21 confinement. The United States will not object to the defendant's request that the Court make a
22 recommendation to the Bureau of Prisons that the Bureau of Prisons designate that the defendant
23 be assigned to a Federal Minimum Security Camp (and specifically at the Federal Minimum
24 Security Camp at Taft, California) to serve his sentence and that the defendant be released
25 following the imposition of sentence to allow him to self-surrender to the assigned prison facility
26 on a specified date. The parties agree that there exists no aggravating or mitigating circumstance
27 of a kind, or to a degree, not adequately taken into consideration by the U.S. Sentencing
28 Commission in formulating the Sentencing Guidelines justifying a departure pursuant to

1 U.S.S.G. §5K2.0. The parties agree not to seek or support any sentence outside of the Guidelines
 2 range nor any Guidelines adjustment for any reason that is not set forth in this Plea Agreement.
 3 The parties further agree that the recommended sentence set forth in this Plea Agreement is
 4 reasonable.

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

8 (b) In light of the civil cases filed against Depo, including *In re Aftermarket*
 9 *Automotive Lighting Products Antitrust Litigation*, No. 09-ML-2007 GW, consolidated in
 10 the United States District Court, Central District of California, which potentially provide
 11 for a recovery of a multiple of actual damages, the recommended sentence does not
 12 include a restitution order for the offense charged in the Information.

13 9. The United States and the defendant agree that the applicable Guidelines fine and
 14 imprisonment ranges exceed the fine and term of imprisonment contained in the recommended
 15 sentence set out in Paragraph 8 above. Subject to the full, truthful, and continuing cooperation of
 16 the defendant, as defined in Paragraph 12 of this Plea Agreement, and prior to sentencing in this
 17 case, the United States agrees that it will make a motion, pursuant to U.S.S.G. §5K1.1, for a
 18 downward departure from the Guidelines fine and imprisonment ranges in this case and will
 19 request that the Court impose the fine and term of imprisonment contained in the recommended
 20 sentence set out in Paragraph 8 of this Plea Agreement because of the defendant's substantial
 21 assistance in the government's investigation and prosecutions of violations of federal criminal
 22 law in the aftermarket auto lights industry.

23 10. Subject to the full, truthful, and continuing cooperation of the defendant, as
 24 defined in Paragraph 12 of this Plea Agreement, and prior to sentencing in this case, the United
 25 States will fully advise the Court and the Probation Office of the fact, manner, and extent of the
 26 defendant's cooperation and his commitment to prospective cooperation with the United States'
 27 investigation and prosecutions, all material facts relating to the defendant's involvement in the
 28 charged offense, and all other relevant conduct. To enable the Court to have the benefit of all

1 relevant sentencing information, the United States may request, and the defendant will not
2 oppose, that sentencing be postponed until his cooperation is complete.

3 11. The United States and the defendant understand that the Court retains complete
4 discretion to accept or reject the recommended sentence provided for in Paragraph 8 of this Plea
5 Agreement.

6 (a) If the Court does not accept the recommended sentence, the United States
7 and the defendant agree that this Plea Agreement, except for Paragraph 11(b) below, shall
8 be rendered void. Neither party may withdraw from this Plea Agreement, however,
9 based on the type or location of the prison facility to which the defendant is assigned to
10 serve his sentence.

11 (b) If the Court does not accept the recommended sentence, the defendant will
12 be free to withdraw his guilty plea (Fed. R. Crim. P. 11(c)(5) and (d)). If the defendant
13 withdraws his plea of guilty, this Plea Agreement, the guilty plea, and any statement
14 made in the course of any proceedings under Fed. R. Crim. P. 11 regarding the guilty plea
15 or this Plea Agreement or made in the course of plea discussions with an attorney for the
16 government shall not be admissible against the defendant in any criminal or civil
17 proceeding, except as otherwise provided in Fed. R. Evid. 410. In addition, the defendant
18 agrees that, if he withdraws his guilty plea pursuant to this subparagraph of this Plea
19 Agreement, the statute of limitations period for any Relevant Offense, as defined in
20 Paragraph 13 below, shall be tolled for the period between the date of the signing of this
21 Plea Agreement and the date the defendant withdrew his guilty plea or for a period of
22 sixty (60) days after the date of the signing of this Plea Agreement, whichever period is
23 greater. For a period of three (3) consecutive days following such a withdrawal of the
24 guilty plea under this subparagraph, the United States shall take no action, based upon
25 either a Relevant Offense or any actual or alleged violation of this Plea Agreement, to
26 revoke the defendant's release on his personal recognizance, to subject the defendant to
27 service of process, arrest, or detention, or to prevent the defendant from departing the
28 United States.

DEFENDANT'S COOPERATION

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

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

(b) making himself available for interviews in the United States and at other mutually agreed-upon locations, not at the expense of the United States, upon the request of attorneys and agents of the United States;

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

(d) otherwise voluntarily providing the United States with any non-privileged material or information, not requested in (a) - (c) of this paragraph, that he may have that is related to any Federal Proceeding;

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

(f) after compliance with any request by the United States to testify in a Federal Proceeding and prior to sentencing, making a series of at least four targeted antitrust compliance presentations to business leaders in Taiwan to educate the business community on the nature and importance of the United States' antitrust laws and the consequences to corporations and individuals who violate the United States' antitrust laws, and providing a written certification to the United States upon completion of these presentations.

GOVERNMENT'S AGREEMENT

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

14. The United States agrees that when the defendant travels to the United States for interviews, grand jury appearances, or court appearances pursuant to this Plea Agreement, or for meetings with counsel in preparation therefor, the United States will take no action, based upon any Relevant Offense, to subject the defendant to arrest, detention, or service of process, or to prevent the defendant from departing the United States. This paragraph does not apply to the defendant's commission of perjury (18 U.S.C. § 1621), making false statements (18 U.S.C. § 1001), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), obstruction of justice (18 U.S.C. § 1503, *et seq.*), or contempt (18 U.S.C. §§ 401 - 402) in connection with any testimony or information provided or requested in any Federal Proceeding.

15. (a) Subject to the full, truthful, and continuing cooperation of the defendant, as defined in Paragraph 12 of this Plea Agreement, and upon the Court's acceptance of the defendant's guilty plea and imposition of sentence in this case, the United States

1 agrees not to seek to remove the defendant from the United States under Sections 238 and
2 240 of the Immigration and Nationality Act, 8 U.S.C. §§ 1228 and 1229a, based upon the
3 defendant's guilty plea and conviction in this case, should the defendant apply for or
4 obtain admission to the United States as a nonimmigrant (hereinafter referred to as the
5 "agreement not to seek to remove the defendant"). The agreement not to seek to remove
6 the defendant is the equivalent of an agreement not to exclude the defendant from
7 admission to the United States as a nonimmigrant or to deport the defendant from the
8 United States. (Immigration and Nationality Act, § 240(e)(2), 8 U.S.C. § 1229a(e)(2)).

9 (b) The Antitrust Division of the United States Department of Justice has
10 consulted with United States Immigration and Customs Enforcement ("ICE") on behalf
11 of the United States Department of Homeland Security ("DHS"). ICE, on behalf of DHS
12 and in consultation with the United States Department of State, has agreed to the
13 inclusion in this Plea Agreement of this agreement not to seek to remove the defendant.
14 The Secretary of DHS has delegated to ICE the authority to enter this agreement on
15 behalf of DHS.

16 (c) So that the defendant will be able to obtain any nonimmigrant visa that he
17 may need to travel to the United States, DHS and the Visa Office, United States
18 Department of State, have concurred in the granting of a nonimmigrant waiver of the
19 defendant's inadmissibility. This waiver will remain in effect so long as this agreement
20 not to seek to remove the defendant remains in effect. While the waiver remains in
21 effect, the Department of State will not deny the defendant's application for a
22 nonimmigrant visa on the basis of the defendant's guilty plea and conviction in this case,
23 and DHS will not deny his application for admission as a nonimmigrant on the basis of
24 his guilty plea and conviction in this case. This nonimmigrant waiver only applies to
25 applications for entry as a nonimmigrant. DHS does not agree to waive any grounds of
26 removability on an application for an immigrant visa.

27 (d) This agreement not to seek to remove the defendant will remain in effect
28 so long as the defendant:

(i) acts and has acted consistently with his cooperation obligations under this Plea Agreement;

(ii) is not convicted of any felony under the laws of the United States or any state, other than the conviction resulting from the defendant's guilty plea under this Plea Agreement or any conviction under the laws of any state resulting from conduct constituting an offense subject to this Plea Agreement; and

(iii) does not engage in any other conduct that would warrant his removal from the United States under the Immigration and Nationality Act.

The defendant understands that should the Antitrust Division become aware that the defendant has violated any of these conditions, the Antitrust Division will notify DHS. DHS will then determine, in consultation with the Antitrust Division, whether to rescind this agreement not to seek to remove the defendant.

(e) The defendant agrees to notify the Assistant Attorney General of the Antitrust Division should the defendant be convicted of any other felony under the laws of the United States or of any state.

(f) Should the United States rescind this agreement not to seek to remove the defendant because of the defendant's violation of a condition of this Plea Agreement, the defendant irrevocably waives his right to contest his removal from the United States under the Immigration and Nationality Act on the basis of his guilty plea and conviction in this case, but retains his right to notice of removal proceedings.

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

REPRESENTATION BY COUNSEL

17. The defendant has reviewed all legal and factual aspects of this case with his attorney and is fully satisfied with his attorney's legal representation. The defendant has thoroughly reviewed this Plea Agreement with his attorney and has received satisfactory explanations from his attorney concerning each paragraph of this Plea Agreement and alternatives available to the defendant other than entering into this Plea Agreement. After conferring with his attorney and considering all available alternatives, the defendant has made a knowing and voluntary decision to enter into this Plea Agreement.

VOLUNTARY PLEA

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

VIOLATION OF PLEA AGREEMENT

19. The defendant agrees that, should the United States determine in good faith, during the period that any Federal Proceeding is pending, that the defendant has failed to provide full, truthful, and continuing cooperation, as defined in Paragraph 12 of this Plea Agreement, or has otherwise violated any provision of this Plea Agreement, the United States will notify the defendant or his counsel in writing by personal or overnight delivery or facsimile transmission and may also notify his counsel by telephone of its intention to void any of its obligations under this Plea Agreement (except its obligations under this paragraph), and the defendant shall be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, the substantive offenses relating to the investigation resulting in this Plea Agreement. The defendant may seek Court review of any determination made by the United States under this paragraph to void any of its obligations under this Plea Agreement. The defendant agrees that, in the event that the United States is released from its obligations under this Plea Agreement and brings criminal charges against the defendant for any Relevant Offense,

1 the statute of limitations period for such offense shall be tolled for the period between the date of
2 the signing of this Plea Agreement and six (6) months after the date the United States gave notice
3 of its intent to void its obligations under this Plea Agreement.

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

12 21. The defendant agrees to and adopts as his own the factual statement contained in
13 Paragraph 4 above. In the event that the defendant breaches this Plea Agreement, the defendant
14 agrees that this Plea Agreement, including the factual statement contained in Paragraph 4 above,
15 provides a sufficient basis for any possible future extradition request that may be made for his
16 return to the United States to face charges either in the Information referenced in Paragraph 2 of
17 this Plea Agreement or in any related indictment. The defendant further agrees not to oppose or
18 contest any request for extradition by the United States to face charges either in the Information
19 referenced in Paragraph 2 of this Plea Agreement or in any related indictment.

20 **ENTIRETY OF AGREEMENT**

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


24 23. The undersigned attorneys for the United States have been authorized by the
25 Attorney General of the United States to enter this Plea Agreement on behalf of the United
26 States.

27 //

28 //

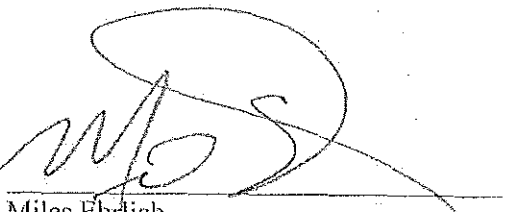
24. A facsimile or PDF signature shall be deemed an original signature for the purpose of executing this Plea Agreement. Multiple signature pages are authorized for the purpose of executing this Plea Agreement.

Respectfully submitted,


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Dated: 3/6/12

Dated: 2/29/12


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Dated: 3/1/12