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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

12 UNITED STATES OF AMERICA ) No. CR 11-0061 RS  
13 )  
14 v. ) PLEA AGREEMENT  
15 POLO SHU-SHENG HSU, )  
16 Defendant. )

## **PLEA AGREEMENT**

The United States of America and Polo Shu-Sheng 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**

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

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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  
13 recommended sentence in Paragraph 8 of this Plea Agreement, regardless of how the sentence  
14 is determined by the Court. This agreement does not affect the rights or obligations of the  
15 United States as set forth in 18 U.S.C. § 3742(b) and (c). Nothing in this paragraph, however,  
16 shall act as a bar to the defendant perfecting any legal remedies he may otherwise have on  
17 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 on or about April 2000, to on or about  
24 September 3, 2008, 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 on or about April 2000, to on or about September 3, 2008. 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. From April 2000 to July 2000,  
10 the defendant was a Product Researcher, and from July 2000 to October 2010, the  
11 defendant served as President and Chief Executive Officer. During the relevant  
12 period, Company A was the exclusive United States distributor of aftermarket auto  
13 lights produced by Company B, an entity organized and existing under the laws of  
14 Taiwan. Since 2007, Company A has been a wholly owned subsidiary of Company B.  
15 Aftermarket auto lights are incorporated into an automobile after its original sale,  
16 usually as repairs following a collision, but also as accessories and upgrades. Lighting  
17 components include items such as headlights, taillights, fog lights, turn signals, brake  
18 signals, and reflectors. Aftermarket auto lights are sold through U.S. distributors to  
19 aftermarket auto lights wholesalers, retailers, and automotive repair shops.

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

1 manager or supervisor of one or more of those participants.

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

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

12 **POSSIBLE MAXIMUM SENTENCE**

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

16 (a) a term of imprisonment for ten (10) years (15 U.S.C. § 1);  
 17 (b) a fine in an amount equal to the greatest of (1) \$1 million, (2) twice the  
 18 gross pecuniary gain the conspirators derived from the crime, or (3) twice the gross  
 19 pecuniary loss caused to the victims of the crime by the conspirators (15 U.S.C. § 1; 18  
 20 U.S.C. § 3571(b) and (d)); and

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

26 6. In addition, the defendant understands that:

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

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

## **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  
10 the Court is not ultimately bound to impose a sentence within the applicable Guidelines range,  
11 its sentence must be reasonable based upon consideration of all relevant sentencing factors set  
12 forth in 18 U.S.C. § 3553(a).

## **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 \$25,000 payable in full before the fifteenth (15<sup>th</sup>) day after the date of judgment; a period of  
18 imprisonment of 180 days; no order of restitution; and no period of supervised release ("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  
22 a recommendation to the Bureau of Prisons that the Bureau of Prisons designate that the  
23 defendant be assigned to a Federal Minimum Security Camp (and specifically to the Federal  
24 Minimum Security Camp at Taft, California) to serve his sentence and that the defendant be  
25 released following the imposition of sentence to allow him to self-surrender to the assigned  
26 prison facility on a specified date. The parties agree that there exists no aggravating or  
27 mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by  
28 the U.S. Sentencing Commission in formulating the Sentencing Guidelines justifying a

1 departure pursuant to U.S.S.G. §5K2.0. The parties agree not to seek or support any sentence  
2 outside of the Guidelines range nor any Guidelines adjustment for any reason that is not set  
3 forth in this Plea Agreement. The parties further agree that the recommended sentence set  
4 forth in this Plea Agreement is reasonable. The defendant understands that the Court will  
5 order him to pay a \$100 special assessment pursuant to 18 U.S.C. § 3013(a)(2)(A) in addition  
6 to any fine imposed.

7 9. The United States and the defendant agree that, pursuant to U.S.S.G.  
8 §5E1.1(b), the defendant should not be ordered to pay restitution in light of the civil cases  
9 filed against Company A, including *In re Aftermarket Automotive Lighting Products Antitrust*  
10 *Litigation*, No. 09-ML-2007 GW, consolidated in the United States District Court, Central  
11 District of California, which potentially provide for a recovery of a multiple of actual  
12 damages.

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

23 11. Subject to the ongoing, full, and truthful cooperation of the defendant  
24 described in Paragraph 13 of this Plea Agreement, and before sentencing in the case, the  
25 United States will fully advise the Court and the Probation Office of the fact, manner, and  
26 extent of the defendant's cooperation and his commitment to prospective cooperation with the  
27 United States' investigation and prosecutions, all material facts relating to the defendant's  
28 involvement in the charged offense, and all other relevant conduct. To enable the Court to

have the benefit of all relevant sentencing information, the United States may request, and the defendant will not oppose, that sentencing be postponed until his cooperation is complete.

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

(a) If the Court does not accept the recommended sentence, the United States and the defendant agree that this Plea Agreement, except for Paragraph 12(b) below, shall be rendered void. Neither party may withdraw from this Plea Agreement, however, based on the type or location of the prison facility to which the defendant is assigned to serve his sentence.

(b) If the Court does not accept the recommended sentence, the defendant will be free to withdraw his guilty plea (Fed. R. Crim. P. 11(c)(5) and (d)). If the defendant withdraws his plea of guilty, this Plea Agreement, the guilty plea, and any statement made in the course of any proceedings under Fed. R. Crim. P. 11 regarding the guilty plea or this Plea Agreement or made in the course of plea discussions with an attorney for the government shall not be admissible against the defendant in any criminal or civil proceeding, except as otherwise provided in Fed. R. Evid. 410. In addition, the defendant agrees that, if he withdraws his guilty plea pursuant to this subparagraph of the Plea Agreement, the statute of limitations period for any Relevant Offense, as defined in Paragraph 14 below, shall be tolled for the period between the date of the signing of the Plea Agreement and the date the defendant withdrew his guilty plea, or for a period of sixty (60) days after the date of the signing of the Plea Agreement, whichever period is greater.

## DEFENDANT'S COOPERATION

13. 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 or sale of aftermarket auto lights in the United States and elsewhere, any other federal investigation resulting

1 therefrom, and any litigation or other proceedings arising or resulting from any such  
 2 investigation to which the United States is a party (“Federal Proceeding”). The ongoing, full,  
 3 and truthful cooperation of the defendant shall include, but not be limited to:

- 4 (a) producing all non-privileged documents, including claimed personal  
 5 documents, and other materials, wherever located, in the possession, custody, or  
 6 control of the defendant, requested by attorneys and agents of the United States;
- 7 (b) making himself available for interviews, not at the expense of the  
 8 United States, upon the request of attorneys and agents of the United States;
- 9 (c) responding fully and truthfully to all inquiries of the United States in  
 10 connection with any Federal Proceeding, without falsely implicating any person or  
 11 intentionally withholding any information, subject to the penalties of making false  
 12 statements (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. § 1503, *et seq.*);
- 13 (d) otherwise voluntarily providing the United States with any  
 14 non-privileged material or information, not requested in (a) - (c) of this paragraph, that  
 15 he may have that is related to any Federal Proceeding; and
- 16 (e) when called upon to do so by the United States in connection with any  
 17 Federal Proceeding, testifying in grand jury, trial, and other judicial proceedings, fully,  
 18 truthfully, and under oath, subject to the penalties of perjury (18 U.S.C. § 1621),  
 19 making false statements or declarations in grand jury or court proceedings (18 U.S.C.  
 20 § 1623), contempt (18 U.S.C. §§ 401 - 402), and obstruction of justice (18 U.S.C.  
 21 § 1503, *et seq.*).

22 **GOVERNMENT'S AGREEMENT**

23 14. Subject to the full, truthful, and continuing cooperation of the defendant, as  
 24 described in Paragraph 13 of this Plea Agreement, and upon the Court’s acceptance of the  
 25 guilty plea called for by this Plea Agreement and the imposition of the recommended  
 26 sentence, the United States will not bring further criminal charges against the defendant for  
 27 any act or offense committed before the date of this Plea Agreement that was undertaken in  
 28 furtherance of an antitrust conspiracy involving the manufacture or sale of aftermarket auto

lights or undertaken in connection with any investigation of such a conspiracy (“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.

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

## **REPRESENTATION BY COUNSEL**

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

**VOLUNTARY PLEA**

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

## **VIOLATION OF PLEA AGREEMENT**

27        18.      The defendant agrees that, should the United States determine in good faith,  
28 during the period that any Federal Proceeding is pending, that the defendant has failed to

1 provide full and truthful cooperation, as described in Paragraph 13 of this Plea Agreement, or  
 2 has otherwise violated any provision of this Plea Agreement, the United States will notify the  
 3 defendant or his counsel in writing by personal or overnight delivery or facsimile transmission  
 4 and may also notify his counsel by telephone of its intention to void any of its obligations  
 5 under this Plea Agreement (except its obligations under this paragraph), and the defendant  
 6 shall be subject to prosecution for any federal crime of which the United States has knowledge  
 7 including, but not limited to, the substantive offenses relating to the investigation resulting in  
 8 this Plea Agreement. The defendant may seek Court review of any determination made by the  
 9 United States under this Paragraph to void any of its obligations under the Plea Agreement.  
 10 The defendant agrees that, in the event that the United States is released from its obligations  
 11 under this Plea Agreement and brings criminal charges against the defendant for any Relevant  
 12 Offense, the statute of limitations period for such offense shall be tolled for the period  
 13 between the date of the signing of this Plea Agreement and six (6) months after the date the  
 14 United States gave notice of its intent to void its obligations under this Plea Agreement.

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

23       **ENTIRETY OF AGREEMENT**

24       20. This Plea Agreement constitutes the entire agreement between the United  
 25 States and the defendant concerning the disposition of the criminal charge in this case. This  
 26 Plea Agreement cannot be modified except in writing, signed by the United States and the  
 27 defendant.

28       //

1        21. The undersigned attorneys for the United States have been authorized by the  
2 Attorney General of the United States to enter this Plea Agreement on behalf of the United  
3 States.

4           22. A facsimile signature shall be deemed an original signature for the purpose of  
5 executing this Plea Agreement. Multiple signature pages are authorized for the purpose of  
6 executing this Plea Agreement.

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9 || Polo Shu-Sheng Hsu

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Dated: 11/10/11

Dated: 3/15/2011

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Dated: 3-11-11

11. *What is the primary purpose of the U.S. Constitution?*