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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

7 Attorneys for the United States

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

11 UNITED STATES OF AMERICA
12 v.
13 HSUEH-LUNG "BRIAN" LEE,
14 Defendant.
Case No. CR 09-0045 SI

15
16 **PLEA AGREEMENT**

17 The United States of America and Hsueh-Lung "Brian" Lee ("defendant") hereby enter
18 into the following Plea Agreement pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal
19 Procedure ("Fed. R. Crim. P.):

20 **RIGHTS OF DEFENDANT**

- 21 1. The defendant understands his rights:
- 22 (a) to be represented by an attorney;
 - 23 (b) to be charged by Indictment;
 - 24 (c) as a permanent resident of Taiwan, Republic of China, and holder of a
25 Taiwan passport to decline to accept service of the Summons in this case, and to contest
26 the jurisdiction of the United States to prosecute this case against him in the United States
27 District Court for the Northern District of California;
 - 28 (d) to plead not guilty to any criminal charge brought against him;

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

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

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

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

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

9 **AGREEMENT TO PLEAD GUILTY**
10 **AND WAIVE CERTAIN RIGHTS**

11 2. The defendant knowingly and voluntarily waives the rights set out in Paragraph
12 1(b)-(h) above, including all jurisdictional defenses to the prosecution of this case, and agrees
13 voluntarily to consent to the jurisdiction of the United States to prosecute this case against him in
14 the United States District Court for the Northern District of California. The defendant also
15 knowingly and voluntarily waives the right to file any appeal, any collateral attack, or any other
16 writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under
17 28 U.S.C. § 2241 or 2255, that challenges the sentence imposed by the Court if that sentence is
18 consistent with or below the recommended sentence in Paragraph 8 of this Plea Agreement,
19 regardless of how the sentence is determined by the Court. This agreement does not affect the
20 rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b) and (c). Nothing in
21 this paragraph, however, shall act as a bar to the defendant perfecting any legal remedies he may
22 otherwise have on appeal or collateral attack respecting claims of ineffective assistance of
23 counsel or prosecutorial misconduct. Pursuant to Fed. R. Crim. P. 7(b), the defendant will waive
24 indictment and plead guilty at arraignment to a one-count Information to be filed in the United
25 States District Court for the Northern District of California. The Information will charge the
26 defendant with participating in a conspiracy to suppress and eliminate competition by fixing the
27 prices of thin-film transistor liquid crystal display panels ("TFT-LCD") sold in the United States
28 and elsewhere, from on or about September 14, 2001, to on or about December 1, 2006, in

1 violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

2 3. The defendant, pursuant to the terms of this Plea Agreement, will
3 plead guilty to the criminal charge described in Paragraph 2 above and will make a factual
4 admission of guilt to the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4
5 below. The United States agrees that at the arraignment it will stipulate to the release of the
6 defendant on his personal recognizance, pursuant to 18 U.S.C. § 3142, pending the sentencing
7 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
12 that period from on or about September 14, 2001, to on or about December 1, 2006. During the
13 relevant period, the defendant held various sales positions, including Vice President of Sales of
14 Chunghwa Picture Tubes, Ltd., an entity organized and existing under the laws of Taiwan,
15 Republic of China, and with its principal place of business in Taoyuan, Taiwan, Republic of
16 China. During the relevant period, Chunghwa Picture Tubes, Ltd. was a producer of TFT-LCD
17 and was engaged in the sale of TFT-LCD in the United States and elsewhere. TFT-LCD are
18 glass panels composed of an array of tiny pixels that are electronically manipulated in order to
19 display images. TFT-LCD are manufactured in a broad range of sizes and specifications for use
20 in televisions, notebook computers, desktop monitors, mobile devices, and other applications.

21 (b) During the relevant period, the defendant participated in a conspiracy
22 with other persons and entities engaged in the manufacture and sale of TFT-LCD, the
23 primary purpose of which was to fix the price of TFT-LCD sold in the United States and
24 elsewhere. In furtherance of the conspiracy, the defendant engaged in conversations and
25 attended meetings, including group meetings commonly referred to by the participants as
26 "crystal meetings," with representatives of other major TFT-LCD producing firms.
27 During such meetings and conversations, agreements were reached to fix the price of
28 TFT-LCD to be sold in the United States and elsewhere.

1 (c) During the relevant period, TFT-LCD sold by one or more of the
2 conspirator firms, and equipment and supplies necessary to the production and
3 distribution of TFT-LCD, as well as payments for TFT-LCD, traveled in interstate and
4 foreign commerce. The business activities of Chunghwa Picture Tubes, Ltd. and co-
5 conspirators in connection with the production and sale of TFT-LCD affected by this
6 conspiracy were within the flow of, and substantially affected, interstate and foreign trade
7 and commerce.

8 (d) Acts in furtherance of this conspiracy were carried out within the
9 Northern District of California. TFT-LCD affected by this conspiracy were sold by one
10 or more of the conspirators to customers in this District.

11 **POSSIBLE MAXIMUM SENTENCE**

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

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

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

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

25 6. In addition, the defendant understands that:

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

28 (b) pursuant to 18 U.S.C. § 3013(a)(2)(A), the Court is required to order the

1 defendant to pay a \$100.00 special assessment upon conviction for the charged crime.

2 **SENTENCING GUIDELINES**

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

11 **SENTENCING AGREEMENT**

12 8. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and the defendant
13 agree that the appropriate disposition of this case is, and agree to recommend jointly that the
14 Court impose, a sentence requiring the defendant to pay to the United States a criminal fine of
15 \$20,000 payable in full before the fifteenth (15th) day after the date of judgment; a period of
16 imprisonment of 180 days; no order of restitution; and no period of supervised release ("the
17 recommended sentence"). The defendant agrees that he will not request that he be allowed to
18 serve any part of his sentence in home detention, intermittent confinement, or community
19 confinement. The United States will not object to the defendant's request that the Court make a
20 recommendation to the Bureau of Prisons that the Bureau of Prisons designate that the defendant
21 be assigned to a Federal Minimum Security Camp (and specifically to the Lompoc Prison Camp
22 in Lompoc, California) to serve his sentence and that the defendant be released following the
23 imposition of sentence to allow him to self-surrender to the assigned prison facility on a specified
24 date. The parties agree that there exists no aggravating or mitigating circumstance of a kind, or
25 to a degree, not adequately taken into consideration by the U.S. Sentencing Commission in
26 formulating the Sentencing Guidelines justifying a departure pursuant to U.S.S.G. §5 K2.0. The
27 parties agree not to seek or support any sentence other than the recommended sentence set forth
28 in this Paragraph 8. The parties further agree that the recommended sentence set forth in this

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

3 9. The United States and the defendant agree that, pursuant to U.S.S.G. § 5E1.1(b),
4 defendant should not be ordered to pay restitution in light of the civil cases filed against
5 Chunghwa Picture Tubes, Ltd., defendant's current employer, including *In re TFT-LCD (Flat*
6 *Panel) Antitrust Litigation, No. M-07-1827 SI*, consolidated in the United States District Court,
7 Northern District of California, which potentially provide for a recovery of a multiple of actual
8 damages.

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

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

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

28 (a) If the Court does not accept the recommended sentence, the United States

1 and the defendant agree that this Plea Agreement, except for Paragraph 12 (b) below,
2 shall be rendered void. Neither party may withdraw from this Plea Agreement, however,
3 based on the type or location of the prison facility to which the defendant is assigned to
4 serve his sentence or based on the Court-imposed surrender date.

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

23 DEFENDANT'S COOPERATION

24 13. The defendant will cooperate fully and truthfully with the United
25 States in the prosecution of this case, the conduct of the current federal investigation of violations
26 of federal antitrust and related criminal laws involving the manufacture or sale of TFT-LCD in
27 the United States and elsewhere, any other federal investigation resulting therefrom, and any
28 litigation or other proceedings arising or resulting from any such investigation to which the

1 United States is a party ("Federal Proceeding"). The ongoing, full, and truthful cooperation of
2 the defendant shall include, but not be limited to:

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

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

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

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

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

23 **GOVERNMENT'S AGREEMENT**

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

1 furtherance of an antitrust conspiracy involving the manufacture or sale of TFT-LCD or
2 undertaken in connection with any investigation of such a conspiracy ("Relevant Offense"). The
3 nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any violation
4 of the federal tax or securities laws, or to any crime of violence.

5 15. The United States agrees that when the defendant travels to the United States for
6 interviews, grand jury appearances, or court appearances pursuant to this Plea Agreement, or for
7 meetings with counsel in preparation therefor, the United States will take no action, based upon
8 any Relevant Offense, to subject the defendant to arrest, detention, or service of process, or to
9 prevent the defendant from departing the United States. This paragraph does not apply to the
10 defendant's commission of perjury (18 U.S.C. § 1621), making false statements (18 U.S.C. §
11 1001), making false statements or declarations in grand jury or court proceedings (18 U.S.C. §
12 1623), obstruction of justice (18 U.S.C. § 1503, *et seq.*), or contempt (18 U.S.C. §§ 401 - 402) in
13 connection with any testimony or information provided or requested in any Federal Proceeding.

14 16. (a) Subject to the full and continuing cooperation of the defendant,
15 as described in Paragraph 13 of this Plea Agreement, and upon the Court's acceptance of
16 the defendant's guilty plea and imposition of sentence in this case, the United States
17 agrees not to seek to remove the defendant from the United States under Sections 238 and
18 240 of the Immigration and Nationality Act, 8 U.S.C. §§ 1228 and 1229a, based upon the
19 defendant's guilty plea and conviction in this case, should the defendant apply for or
20 obtain admission to the United States as a nonimmigrant (hereinafter referred to as the
21 "agreement not to seek to remove the defendant"). The agreement not to seek to remove
22 the defendant is the equivalent of an agreement not to exclude the defendant from
23 admission to the United States as a nonimmigrant or to deport the defendant from the
24 United States. (Immigration and Nationality Act, § 240(e)(2), 8 U.S.C. § 1229a(e)(2)).

25 (b) The Antitrust Division of the United States Department of
26 Justice has consulted with United States Immigration and Customs Enforcement ("ICE")
27 on behalf of the United States Department of Homeland Security ("DHS"). ICE, on
28 behalf of DHS and in consultation with the United States Department of State, has agreed

1 to the inclusion in this Plea Agreement of this agreement not to seek to remove the
2 defendant. The Secretary of DHS has delegated to ICE the authority to enter this
3 agreement on behalf of DHS.

4 (c) So that the defendant will be able to obtain any nonimmigrant
5 visa that he may need to travel to the United States, DHS and the Visa Office, United
6 States Department of State, have concurred in the granting of a nonimmigrant waiver of
7 the defendant's inadmissibility. This waiver will remain in effect so long as this
8 agreement not to seek to remove the defendant remains in effect. While the waiver
9 remains in effect, the Department of State will not deny the defendant's application for a
10 nonimmigrant visa on the basis of the defendant's guilty plea and conviction in this case,
11 and DHS will not deny his application for admission as a nonimmigrant on the basis of
12 his guilty plea and conviction in this case.

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

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

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

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

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

27 (e) The defendant agrees to notify the Assistant Attorney General
28 of the Antitrust Division should the defendant be convicted of any other felony under the

1 laws of the United States or of any state.

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

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

15 **REPRESENTATION BY COUNSEL**

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

23 **VOLUNTARY PLEA**

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

1 Agreement.

2 **VIOLATION OF PLEA AGREEMENT**

3 20. The defendant agrees that, should the United States determine in good
4 faith, during the period that any Federal Proceeding is pending, that the defendant has failed to
5 provide full and truthful cooperation, as described in Paragraph 13 of this Plea Agreement, or has
6 otherwise violated any provision of this Plea Agreement, the United States will notify the
7 defendant or his counsel in writing by personal or overnight delivery or facsimile transmission
8 and may also notify his counsel by telephone of its intention to void any of its obligations under
9 this Plea Agreement (except its obligations under this paragraph), and the defendant shall be
10 subject to prosecution for any federal crime of which the United States has knowledge. The
11 defendant may seek Court review of any determination made by the United States under this
12 Paragraph to void any of its obligations under the Plea Agreement. The defendant agrees that, in
13 the event that the United States is released from its obligations under this Plea Agreement and
14 brings criminal charges against the defendant for any Relevant Offense, the statute of limitations
15 period for such offense will be tolled for the period between the date of the signing of this Plea
16 Agreement and six (6) months after the date the United States gave notice of its intent to void its
17 obligations under this Plea Agreement.

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

26 22. The defendant agrees to and adopts as his own the factual statement contained in
27 Paragraph 4, above. In the event that the defendant breaches the Plea Agreement, the defendant
28 agrees that the Plea Agreement, including the factual statement contained in Paragraph 4 above,

1 provides a sufficient basis for any possible future extradition request that may be made for his
2 return to the United States to face charges either in the Information referenced in Paragraph 2 of
3 this Plea Agreement or in any related indictment. The defendant further agrees not to oppose or
4 contest any request for extradition by the United States to face charges either in the Information
5 referenced in Paragraph 2 of this Plea Agreement or in any related indictment.

6 **ENTIRETY OF AGREEMENT**

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

11 24. The undersigned attorneys for the United States have been authorized
12 by the Attorney General of the United States to enter this Plea Agreement on behalf of the United
13 States.

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1 25. A facsimile signature shall be deemed an original signature for the
2 purpose of executing this Plea Agreement. Multiple signature pages are authorized for the purpose
3 of executing this Plea Agreement.
4

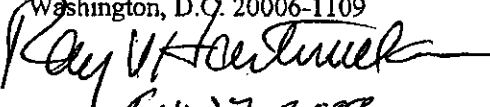
5 DATED: Feb. 17, 2009

Respectfully submitted,

6
7 BY: 
8 Hsueh Lung "Brian" Lee
Defendant

BY: 
Niall E. Lynch, CA No. 157959
Michael L. Scott, CA No. 165452
Heather S. Tewksbury, CA No. 222202
Alexandra J. Shepard, CA No. 205143
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9
10 BY: 
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14 Feb 27, 2009