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

Attorneys for the United States

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA)	No. CR 11-0061 RS
)	
v.)	PLEA AGREEMENT
)	
POLO SHU-SHENG HSU,)	
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

1. The defendant understands his rights:
 - (a) to be represented by an attorney;
 - (b) to be charged by Indictment;
 - (c) to plead not guilty to any criminal charge brought against him;
 - (d) 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

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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.

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
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).

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 \$25,000 payable in full before the fifteenth (15th) 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

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

3 12. 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
5 Plea Agreement.

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

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

24 **DEFENDANT'S COOPERATION**

25 13. The defendant will cooperate fully and truthfully with the United States in the
26 prosecution of this case, the conduct of the current federal investigation of violations of
27 federal antitrust and related criminal laws involving the manufacture or sale of aftermarket
28 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

1 lights or undertaken in connection with any investigation of such a conspiracy (“Relevant
2 Offense”). The nonprosecution terms of this paragraph do not apply to civil matters of any
3 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.

12 **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.

20 **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.

26 **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**

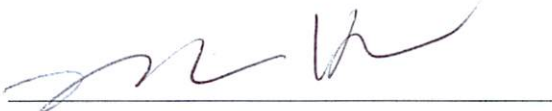
24 20. This Plea Agreement constitutes the entire agreement between the United
25 States and the defendant concerning the disposition of the criminal charge in this case. This
26 Plea Agreement cannot be modified except in writing, signed by the United States and the
27 defendant.

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

22. A facsimile 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.



Polo Shu-Sheng Hsu



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

Dated: 3/10/11

Dated: 3/15/2011



Ed Swanson
Swanson, McNamara & Haller LLP
300 Montgomery Street, Suite 1100
San Francisco, CA 94104
Counsel for Polo Shu-Sheng Hsu

Dated: 3-11-11