

PETER K. HUSTON (Cal. Bar No. 150058)
MICHAEL L. SCOTT (Cal. Bar No. 165452)
HEATHER S. TEWKSBURY (Cal. Bar No. 222202)
BRENT SNYDER (Cal. Bar. No. 165888)
JON B. JACOBS (D.C. Bar No. 412249)
Antitrust Division
U.S. Department of Justice
450 Golden Gate Avenue
Box 36046, Room 10-0101
San Francisco, CA 94102-3478
Telephone: (415) 436-6660
Facsimile: (415) 436-6687
peter.huston@usdoj.gov

Attorneys for the United States

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA) No. CR-09-0110 SI
)
 v.) DECLARATION OF DALE ZUEHLS
) IN SUPPORT OF UNITED STATES'
 AU OPTRONICS CORPORATION;) REPLY TO DEFENDANTS'
 AU OPTRONICS CORPORATION AMERICA;) SENTENCING MEMORANDA
 HSUAN BIN CHEN, aka H.B. CHEN;)
 HUI HSIUNG, aka KUMA;)
 LAI-JUH CHEN, aka L.J. CHEN;)
 SHIU LUNG LEUNG, aka CHAO-LUNG) Date: September 20, 2012
 LIANG and STEVEN LEUNG;) Time: 10:00 a.m.
 BORLONG BAI, aka RICHARD BAI;) Court: Hon. Susan Illston
 TSANNRONG LEE, aka TSAN-JUNG LEE) Place: Courtroom 10, 19th Floor
 and HUBERT LEE;)
 CHENG YUAN LIN, aka C.Y. LIN;)
 WEN JUN CHENG, aka TONY CHENG; and)
 DUK MO KOO,)
)
 Defendants.)

1 I, Dale Zuehls, hereby declare as follows:

2 1. I am a principal in the Certified Public Accounting and consulting firm of Zuehls,
3 Legaspi & Company (formerly, Consulting Sciences, Inc.). I have been retained by the U.S.
4 Department of Justice, Antitrust Division to review the Expert Declaration of Robert Hall PhD
5 dated August 27, 2012, which was provided in support of AU Optronics and AU Optronics
6 America's (collectively the "Company") "Estimates of Consumer Harm." In his Declaration,
7 Mr. Hall concluded that "Each of the measures discussed above indicates that AUO faces serious
8 financial challenges." I have been retained to review such statements in light of my experience
9 analyzing whether a particular corporate defendant has the ability to pay a criminal fine without
10 substantially jeopardizing its continued viability and its ability to pay restitution to the victims of
11 its criminal conduct. I have personal knowledge of the matters set forth herein and, if called as a
12 witness, could testify thereto.

13
14
15 **BACKGROUND**

16 2. I am a Certified Public Accountant, I have a *PhD in Accounting*; I am also
17 *Certified in Financial Forensics*; I am *Accredited in Business Valuations*; I am a *Certified*
18 *Global Management Accountant*; and I have a *Juris Doctorate degree*. I also have almost 40
19 years of experience in complex accounting, fraud, forensic, tax and consulting matters.
20

21 3. I am currently and have been in charge of numerous engagements with complex
22 forensic accounting and valuation issues and have frequently been retained in high profile
23 accounting fraud and forensic engagements. My work has included projects for the United
24 States Department of Justice, United States Customs, the Federal Bureau of Investigation, the
25 Los Angeles Police Department, the Judicial Council of California and others.
26
27
28

1 4. I was originally in the audit practice with Arthur Andersen & Co. and later
2 became a partner with the international accounting firm of KPMG. In my role at KPMG, I was
3 the National Partner in Charge of Class Action Services. I consulted with major law firms
4 throughout the country on complex forensic accounting, valuation, tax and litigation matters.
5 Additionally, I have provided expert testimony in many complex business litigation matters. My
6 litigation experience has included work on various complex accounting and tax issues,
7 quantification of damages, development of complex damage models, market data research,
8 business data analysis, business and market trend analysis, rebuttal of opposing expert damage
9 theories, valuation of assets, going concern and lost opportunity and other similar activities.
10

11 5. I have been retained on numerous occasions by the Department of Justice,
12 Antitrust Division to perform an independent assessment of the ability of a company to pay a
13 criminal fine for an antitrust violation. As set forth in more detail below, my work in this area
14 requires me to consider not only the payment of a criminal fine to the United States but also the
15 likelihood of civil liability and the need to pay restitution. In international matters, I may also
16 have to consider the likelihood of liability to foreign jurisdictions and in foreign civil matters.
17

18 6. My past work for the Antitrust Division has included ability-to-pay assessments
19 of companies in the airline cargo and passenger industries, the computer memory industry, and
20 the domestic water freight industry, among others. I have also performed assessments, on
21 occasion, in response to a request by a company to defer, in whole or in part, criminal fine
22 installment payments.
23

24
25 **ABILITY-TO-PAY ANALYSIS**

26 7. The expert report by Mr. Hall was 82 pages in length wherein approximately 3
27 pages dealt with the Company's current financial position. Mr. Hall's work resulted in a 1
28

1 sentence determination that “Each of the measures discussed above indicates that AUO faces
2 serious financial challenges.” In reaching his summary conclusion, Mr. Hall appears to rely
3 solely on 4 general items found on the internet such as bond yields, analyst ratings and calculated
4 formula-driven “financial health scores.” Such a cursory and conclusory analysis can be given
5 little weight in determining a company’s ability to pay a fine given the lack of any meaningful
6 financial analysis conducted.
7

8 8. An ability-to-pay analysis must look deeply into the financial statements, review
9 recent years’ financial performance and do comprehensive forecasts of expected performance
10 and balance sheet strength. Such an analysis typically encompasses reviewing over a thousand
11 pages of documents. Such documents typically include five years of past audit reports, annual
12 reports, corporate tax returns, statements of cash flows, debt agreements and covenants,
13 forecasts, analyst reports, earnings releases, and numerous other documents. Any such analysis
14 would also typically include numerous meetings with the company's Chief Financial Officer,
15 experts, and counsel.
16
17

18 9. A typical approach to a financial analysis would be to (a) understand the historic
19 performance of the company, (b) understand its current financial position and balance sheet
20 strength and (c) understand the future forecasts and prospects for the company and the industries
21 it operates in as a whole. Historic performance is often a good indicator of future performance
22 but is not, in and of itself, wholly dispositive. One would typically review the current and future
23 strengths and opportunities of the company and temper such findings by company-specific and
24 industry threats and weaknesses. Several issues also reviewed extensively are debt covenants
25 requirements, stock listing issues, and acceleration debt clauses, among others.
26
27
28

1 10. After a comprehensive review and many meetings, one would typically process
2 the financial information through financial models based upon many different iterations of
3 possible future events, pricing components, debt refinancing, and others. Based upon the
4 financial modeling, one would then triangulate the findings with the company's forecasts,
5 analysts' forecasts, and common-sizing projected financials. After several iterations and
6 reiterations one would then narrow the universe of payment options under an ability-to-pay
7 analysis. It does not appear that Mr. Hall did any of the work required of a complete and well
8 reasoned analysis.
9

10 11. Mr. Hall refers to the "Z Score" of the Company apparently as evidence of the
11 Company's inability-to-pay due to "...serious financial challenges." A company's Z score
12 merely expresses the difference of the experimental result "X" from the most probable result "U"
13 as a number of standard deviations. The probability can then be calculated from the cumulative
14 standard normal distribution - sigma ("Z"). Stated alternatively, the Z-score is a formula for
15 predicting financial distress and was published in 1968 by Edward I. Altman, an Assistant
16 Professor of Finance at New York University. However, the Z score is only one indicator out of
17 hundreds. The individual ratios in the Altman model may or may not be predictive of default,
18 but the model's coefficients result in a poor fit. Consequently, the overall model is no more
19 predictive than the most predictive individual ratio of the model itself.
20
21

22 12. Likewise, Mr. Hall cites the Hillegeist probability of default. The Hillegeist
23 estimates are based on the Black-Scholes-Merton option pricing model. The basic idea behind
24 the default probability estimates is to extract public information about the probability of default
25 that is contained in stock market prices. The procedure to extract this information was developed
26 by Hillegeist wherein the model encompasses stock prices, as opposed to accounting data, to
27
28

1 extract the probability estimates. The commonly noted weakness is in the description itself --
2 that the model uses only stock prices and essentially ignores the underlying accounting and
3 financial data.

4
5 13. Likewise, the Company ratings and the bond yields also ignore the underlying
6 financial data and rely solely on analysts' opinions or market driven stock and bond prices.
7 Many wholly unrelated factors might influence bond yields and stock prices apart from the
8 financial performance and forecasts of the Company.

9
10 14. While each and every one of these items briefly discussed by Mr. Hall may
11 indeed be an "indicator" of financial stress, none alone can be relied upon to reach any
12 determination of the ability-to-pay a certain level of an assessed fine. Certainly the amount of a
13 fine the Company can indeed pay was not discussed by Mr. Hall at all. It would be wholly
14 unbelievable to suggest a company with a cash balance reflected on its most recent financial
15 statements of almost \$3 billion U.S. could pay little or no fine on the basis of Mr. Hall's
16 declaration. Nothing less than a full and complete analysis is necessary to effectively determine
17 the Company's ability to pay an assessed fine.
18

19 I declare under penalty of perjury under the laws of the United States of America that the
20 foregoing is true and correct.

21 Executed this 13 day of September 2012 at Los Angeles, California.

22
23 

24 Dale Zuehls
25 Dale Zuehls
26
27
28