

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA)	No. CR-09-0110 SI
)	
v.)	
)	
AU OPTRONICS CORPORATION;)	JURY INSTRUCTIONS
AU OPTRONICS CORPORATION AMERICA;)	
HSUAN BIN CHEN, aka H.B. CHEN;)	
HUI HSIUNG, aka KUMA;)	
LAI-JUH CHEN, aka L.J. CHEN;)	
SHIU LUNG LEUNG, aka CHAO-LUNG)	
LIANG and STEVEN LEUNG; and)	
TSANNRONG LEE, aka TSAN-JUNG LEE)	
and HUBERT LEE;)	
)	
Defendants.)	

1 DUTIES OF JURY TO FIND FACTS AND FOLLOW LAW

2 Members of the jury, now that you have heard all the evidence, it is my duty to instruct
3 you on the law that applies to this case. A copy of these instructions will be available in the jury
4 room for you to consult.

5 It is your duty to weigh and to evaluate all the evidence received in the case and, in that
6 process, to decide the facts. It is also your duty to apply the law as I give it to you to the facts as
7 you find them, whether you agree with the law or not. You must decide the case solely on the
8 evidence and the law and must not be influenced by any personal likes or dislikes, opinions,
9 prejudices, or sympathy. You will recall that you took an oath promising to do so at the
10 beginning of the case.

11 You must follow all these instructions and not single out some and ignore others; they are
12 all important. Please do not read into these instructions or into anything I may have said or done
13 any suggestion as to what verdict you should return - that is a matter entirely up to you.

14
15 CHARGE AGAINST DEFENDANTS NOT EVIDENCE-PRESUMPTION OF
16 INNOCENCE-BURDEN OF PROOF

17 This is a criminal case brought by the United States government. In an indictment, the
18 United States charges the defendants with violating Title 15 of the United States Code, Section
19 1, known as Section 1 of the Sherman Antitrust Act. The defendants on trial are AU Optronics
20 Corporation, AU Optronics Corporation America, and current and former employees of AU
21 Optronics Corporation Hsuan Bin Chen, Hui Hsiung, Lai-Juh Chen, Steven Leung and Hubert
22 Lee. The United States charges that representatives from corporations that manufacture thin-
23 film transistor liquid crystal display panels (“TFT-LCDs”) and certain of their employees
24 engaged in a conspiracy to fix the prices of TFT-LCDs. TFT-LCDs are used in notebook
25 computers, desktop computer monitors and televisions.

26 The indictment is not evidence. The defendants have each pleaded not guilty to the
27 charge. A defendant is presumed to be innocent unless and until the government proves the
28 defendant guilty beyond a reasonable doubt. In addition, a defendant does not have to testify or

1 present any evidence to prove innocence. The government has the burden of proving every
2 element of the charge beyond a reasonable doubt.

3
4 DEFENDANT'S DECISION NOT TO TESTIFY

5 A defendant in a criminal case has a constitutional right not to testify. You may not draw
6 any inference of any kind from the fact that the defendant did not testify.

7
8
9
10 WHAT IS EVIDENCE

11 The evidence you are to consider in deciding what the facts are consists of:

- 12 (1) the sworn testimony of any witness;
13 (2) the exhibits received in evidence; and
14 (3) any facts to which the parties have agreed.

15
16 WHAT IS NOT EVIDENCE

17 In reaching your verdict you may consider only the testimony and exhibits received in
18 evidence. The following things are not evidence and you may not consider them in deciding
19 what the facts are:

- 20 1. Questions, statements, objections, and arguments by the lawyers are not evidence.
21 The lawyers are not witnesses. Although you must consider a lawyer's questions
22 to understand the answers of a witness, the lawyer's questions are not evidence.
23 Similarly, what the lawyers have said in their opening statements, will say in their
24 closing arguments and at other times is intended to help you interpret the
25 evidence, but it is not evidence. If the facts as you remember them differ from the
26 way the lawyers state them, your memory of them controls.
- 27 2. Any testimony that I have excluded, stricken, or instructed you to disregard is not
28 evidence. In addition, some evidence was received only for a limited purpose;

1 when I have instructed you to consider certain evidence in a limited way, you
2 must do so.

- 3 3. Anything you may have seen or heard when the court was not in session is not
4 evidence. You are to decide the case solely on the evidence received at the trial.
5

6 DIRECT AND CIRCUMSTANTIAL EVIDENCE

7 Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such
8 as testimony by a witness about what that witness personally saw or heard or did. Circumstantial
9 evidence is indirect evidence, that is, it is proof of one or more facts from which you can find
10 another fact.

11 You are to consider both direct and circumstantial evidence. Either can be used to prove
12 any fact. The law makes no distinction between the weight to be given to either direct or
13 circumstantial evidence. It is for you to decide how much weight to give to any evidence.
14

15 CREDIBILITY OF WITNESSES

16 In deciding the facts in this case, you may have to decide which testimony to believe and
17 which testimony not to believe. You may believe everything a witness says, or part of it, or none
18 of it.

19 In considering the testimony of any witness, you may take into account:

- 20 1. the witness's opportunity and ability to see or hear or know the things testified to;
21 2. the witness's memory;
22 3. the witness's manner while testifying;
23 4. the witness's interest in the outcome of the case, if any;
24 5. the witness's bias or prejudice, if any;
25 6. whether other evidence contradicted the witness's testimony;
26 7. the reasonableness of the witness's testimony in light of all the evidence; and
27 8. any other factors that bear on believability.

28 The weight of the evidence as to a fact does not necessarily depend on the number of

1 witnesses who testify. What is important is how believable the witnesses were, and how much
2 weight you think their testimony deserves.

3
4 ACTIVITIES NOT CHARGED

5 You are here only to determine whether the defendants are guilty or not guilty of the
6 charge in the indictment. The defendants are not on trial for any conduct or offense not charged
7 in the indictment.

8
9
10 SEPARATE CONSIDERATION OF SINGLE COUNT - MULTIPLE DEFENDANTS

11 A separate crime is charged against each defendant. The charges have been joined for
12 trial. You must consider and decide the case of each defendant separately. Your verdict as to
13 one defendant should not control your verdict as to any other defendant.

14 All the instructions apply to each defendant unless a specific instruction states that it
15 applies to only a specific defendant.

16
17 JURY TO BE GUIDED BY OFFICIAL ENGLISH TRANSLATIONS AND
18 INTERPRETATION

19 The Chinese and Korean languages have been used during this trial.

20 The evidence you are to consider is only that provided through the official court
21 interpreters and translations. Although some of you may know the Chinese and Korean
22 languages, it is important that all jurors consider the same evidence. Therefore, you must accept
23 the evidence presented in the English interpretation and translations and disregard any different
24 meaning.

25
26 OPINION EVIDENCE, EXPERT WITNESS

27 You have heard testimony from persons who, because of education or experience, were
28 permitted to state opinions and the reasons for their opinions.

1 Such opinion testimony should be judged just like any other testimony. You may accept
2 it or reject it, and give it as much weight as you think it deserves, considering the witness's
3 education and experience, the reasons given for the opinion, and all the other evidence in the
4 case.

5 You have heard economic evidence, which includes expert testimony about the effect of
6 the alleged conspiracy on United States commerce. This testimony regarding the effect of the
7 conspiracy is admissible as to all defendants. While you may consider expert testimony in
8 making your determination of whether a conspiracy existed and/or whether it had any effect, no
9 expert witness can offer an opinion on the ultimate issue of whether the charged conspiracy
10 existed. That is an issue for the jury to decide.

11
12 CHARTS AND SUMMARIES

13 During the trial, certain charts and summaries were shown to you in order to help explain
14 the evidence in the case. Those charts and summaries were not admitted in evidence and will not
15 go into the jury room with you. Those summaries and charts are not themselves evidence or
16 proof of any facts. If they did not correctly reflect the facts or figures shown by the evidence in
17 the case, you should disregard those charts and summaries and determine the facts from the
18 underlying evidence.

19 Certain charts and summaries have been admitted in evidence. The charts and summaries
20 in evidence are only as good as the underlying supporting material. You should, therefore, give
21 them only such weight as you think the underlying material deserves.

22
23 STIPULATIONS OF FACT

24 The parties have agreed to certain facts that have been stated to you. You should
25 therefore treat these facts as having been proved.

1 REASONABLE DOUBT - DEFINED

2 Proof beyond a reasonable doubt is proof that leaves you firmly convinced the defendant
3 is guilty. It is not required that the government prove guilt beyond all possible doubt.

4 A reasonable doubt is a doubt based upon reason and common sense and is not based
5 purely on speculation. It may arise from a careful and impartial consideration of all the
6 evidence, or from lack of evidence.

7 If after a careful and impartial consideration of all the evidence, you are not convinced
8 beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant not
9 guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you
10 are convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the
11 defendant guilty.

12
13 PRICE FIXING

14 The indictment charges the defendants with conspiring to fix prices. A conspiracy to fix
15 prices is an agreement or mutual understanding between two or more competitors to fix, control,
16 raise, lower, maintain, or stabilize the prices charged, or to be charged, for products or services.

17 The aim and result of every price-fixing agreement, if successful, is the elimination of
18 one form of competition.

19 A price-fixing conspiracy is commonly thought of as an agreement to establish the same
20 price; however, prices may be fixed in other ways. Prices are fixed if a target, goal, range or
21 level of prices is agreed upon by the conspirators. They are fixed because they are agreed upon.
22 Thus, any agreement to raise or lower a price, to set a maximum price, to stabilize prices, to set a
23 price or price range, to set target prices, or to maintain a price is illegal.

24 If you should find that the defendants entered into an agreement to fix prices, the fact that
25 the defendants or their coconspirators did not abide by it, or that one or more of them may not
26 have lived up to some aspect of the agreement, or that they may not have been successful in
27 achieving their objectives, is no defense.

28 Evidence that the defendants and alleged coconspirators actually competed with each

1 other has been admitted to assist you in deciding whether they actually entered into an agreement
2 to fix prices. If the conspiracy charged in the indictment is proved, it is no defense that the
3 conspirators actually competed with each other in some manner or that they did not conspire to
4 eliminate all competition. Nor is it a defense that the conspirators did not attempt to collude with
5 all of their competitors. Similarly, the conspiracy is unlawful even if it did not extend to all
6 products sold by the conspirators or did not affect all of their customers.

7 Evidence of the prices actually charged by the defendants has been admitted to assist you
8 in deciding whether they entered into an agreement to fix prices. Such evidence may lead you to
9 conclude that the defendants never entered into the agreement charged in the indictment or that
10 they did enter into the agreement. Or such evidence may show that they made an agreement but
11 failed to live up to it, or started undercutting one another right away, or offered prices lower than
12 those agreed upon to customers they did not want to lose, or it may show that they became
13 convinced that the whole scheme was unwise and should be abandoned. Regardless of this type
14 of evidence, if the conspiracy as charged existed, for any period of time, it was unlawful.

15 Evidence of similarity of business practices of the defendants and alleged coconspirators,
16 or the fact that they may have charged identical prices for the same goods, does not alone
17 establish an agreement to fix prices, since such activities may be consistent with ordinary and
18 proper competitive behavior in a free and open market.

19 The defendants and alleged coconspirators may charge the same prices, may copy each
20 other's price lists or may follow and conform exactly to each other's price policies and price
21 changes and such conduct would not violate the Sherman Act, unless you find it was done
22 pursuant to an agreement between two or more conspirators, as alleged in the indictment.

23 Nevertheless, you may consider such facts and circumstances along with all other
24 evidence in determining whether the evidence of competition, prices actually charged, similarity
25 of business practices, or similarity of prices resulted from the independent acts or business
26 judgment of the defendants and alleged coconspirators freely competing in the open market, or
27 whether it resulted from an agreement among or between two or more of them.

28

1 EXCHANGES OF INFORMATION

2 Evidence has been introduced concerning the exchange of information about prices
3 between the defendants and employees of other companies manufacturing TFT-LCDs alleged to
4 be coconspirators. The government claims that such exchanges are part of the evidence
5 establishing that the defendants entered into an agreement or mutual understanding to fix prices,
6 as alleged in the indictment.

7 It is not unlawful for a person to obtain information about a competitor's prices or even to
8 exchange information about prices unless done pursuant to an agreement or mutual
9 understanding between two or more persons to fix prices as charged in the indictment.
10 Nevertheless, you may consider such facts and circumstances, along with other evidence, in
11 determining whether there was an agreement or mutual understanding between two or more
12 persons to fix prices as alleged in the indictment.

13
14 IGNORANCE OF ANTITRUST LAWS/GOOD FAITH NO DEFENSE

15 It is not necessary for the government to prove that the defendants knew that an
16 agreement, combination, or conspiracy to fix prices, as charged in the indictment, is a violation
17 of the law. Thus, if you find beyond a reasonable doubt from the evidence in the case that a
18 defendant knowingly joined a conspiracy to fix prices, as charged, then the fact that the
19 defendant believed in good faith that what was being done was not unlawful is not a defense.

20
21 VENUE

22 Before you can find a defendant guilty of committing the crime charged in the
23 indictment, you must find by a preponderance of the evidence that, between September 14, 2001
24 and December 1, 2006, the conspiratorial agreement or some act in furtherance of the conspiracy
25 occurred in the Northern District of California. This district includes San Francisco, San Mateo,
26 Santa Clara, Alameda, Contra Costa, Marin, Sonoma, Napa, Del Norte, Humboldt, Lake,
27 Mendocino, Monterey, Santa Cruz, and San Benito counties.

28 To prove something by a preponderance of the evidence is to prove it is more likely true

1 than not true. This is a lesser standard than “beyond a reasonable doubt.”

2
3 DISPOSITION OF CHARGES AGAINST COCONSPIRATORS

4 For reasons that do not concern you, the case against several alleged coconspirators of
5 the defendants is not before you. Do not speculate why. That fact should not influence your
6 verdicts with respect to the defendants, and you must base your verdict solely on the evidence
7 against the defendants.

1 APPLICATION OF THE SHERMAN ACT

2 The Sherman Act applies to conspiracies that occur, at least in part, within the United
3 States. The Sherman Act also applies to conspiracies that occur entirely outside the United
4 States if they have a substantial and intended effect in the United States. Thus, to convict the
5 defendants you must find beyond a reasonable doubt one or both of the following:

6 (A) that at least one member of the conspiracy took at least one action in furtherance
7 of the conspiracy within the United States, or

8 (B) that the conspiracy had a substantial and intended effect in the United States.
9

10 ELEMENTS OF THE OFFENSE

11 In order to establish the offense of conspiracy to fix prices charged in the indictment, the
12 government must prove each of the following elements beyond a reasonable doubt:

13 *First*, that the conspiracy existed at or about the time stated in the indictment;

14 *Second*, that the defendants knowingly - that is, voluntarily and intentionally - became
15 members of the conspiracy charged in the indictment, knowing of its goal and intending to help
16 accomplish it; and

17 *Third*, that the members of the conspiracy engaged in one or both of the following
18 activities:

19 (A) fixing the price of TFT-LCD panels targeted by the participants to
20 be sold in the United States or for delivery to the United States; or

21 (B) fixing the price of TFT-LCD panels that were incorporated into finished products
22 such as notebook computers, desktop computer monitors, and televisions, and that
23 this conduct had a direct, substantial, and reasonably foreseeable effect on trade
24 or commerce in those finished products sold in the United States or for delivery to
25 the United States. In determining whether the conspiracy had such an effect, you
26 may consider the total amount of trade or commerce in those finished products
27 sold in the United States or for delivery to the United States; however, the
28 government's proof need not quantify or value that effect.

1 If you find from your consideration of all the evidence that each of these elements has
2 been proved beyond a reasonable doubt, then you should find the defendant guilty.

3 If, on the other hand, you find from your consideration of all of the evidence that any of
4 these elements has not been proved beyond a reasonable doubt, then you should find the
5 defendant not guilty.

6
7 CONSPIRACY EXPLAINED

8 The type of relationship condemned by the Sherman Act as a conspiracy is often
9 described as a “partnership in crime,” in which each person found to be a member of the
10 conspiracy is liable for all acts and statements of the other members made during the existence of
11 and in furtherance of the conspiracy. To create such a relationship, two or more persons must
12 enter into an agreement or mutual understanding that they will act together for some unlawful
13 purpose or to achieve a lawful purpose by unlawful means.

14 In order to establish the existence of a conspiracy, the evidence need not show that the
15 members of the conspiracy entered into any express, formal, or written agreement; that they met
16 together; or that they directly stated what their object or purpose was, or the details of it, or the
17 means by which the object was to be accomplished. The agreement itself may have been entirely
18 unspoken. What the evidence must show in order to prove that a conspiracy existed is that the
19 alleged members of the conspiracy in some way came to an agreement or mutual understanding
20 to accomplish a common purpose.

21 Direct proof of a conspiracy may not be available. A conspiracy may, however, be
22 disclosed by the circumstances or by the acts of the members. Therefore, you may infer the
23 existence of a conspiracy from what you find the parties actually did, as well as from the words
24 they used. Mere similarity of conduct among various persons, however, or the fact that they may
25 have associated with one another and may have met or assembled together and discussed
26 common aims and interests, does not necessarily establish the existence of a conspiracy. If
27 actions were taken independently by them, solely as a matter of individual business judgment,
28 without any agreement or mutual understanding among them, then there would be no conspiracy.

1 A conspiracy may vary in its membership from time to time. It may be formed without
2 all parties coming to an agreement at the same time, knowing all the details of the agreement, or
3 knowing who all the other members are. It is not essential that all members acted exactly alike
4 or agreed to play any particular part in carrying out the agreement. The unlawful agreement may
5 be shown if the proof establishes that the parties knowingly worked together to accomplish a
6 common purpose.

7 In determining whether a conspiracy has been proved, you must view the evidence as a
8 whole and not piecemeal. You should consider the actions and statements of all the alleged
9 conspirators. The conspiracy may be inferred from all the circumstances and the actions and
10 statements of the participants. Acts that are by themselves wholly innocent acts may be part of
11 the sum of the acts that make up a conspiracy to restrain trade in violation of the Sherman Act.

12 A conspiracy ends only when its purposes and objectives have been accomplished or all
13 the parties to the conspiracy abandon or terminate it.

14 PERIOD OF CONSPIRACY

15
16 The indictment charges that the alleged conspiracy began on or about September 14,
17 2001 and continued until on or about December 1, 2006. The government need not prove that the
18 conspiracy existed on those exact dates or that the conspiracy continued for the entire period
19 charged in the indictment. It is sufficient if the government proves beyond a reasonable doubt
20 that the conspiracy existed during or reasonably near the time period alleged in the indictment,
21 and that the defendant joined the conspiracy some time during the period alleged in the
22 indictment and continued to be a member to a time within the period of the statute of limitations,
23 which, for purposes of this case, is the period from June 9, 2005 through June 9, 2010.

24 The indictment alleges that different defendants joined the conspiracy on or about
25 different dates:

26	AU Optronics Corporation:	September 14, 2001
27	AU Optronics Corporation America:	Spring 2003
	Hsuan Bin Chen:	October 19, 2001
	Hui Hsiung:	October 19, 2001
28	Lai-Juh Chen:	February 13, 2003
	Shiu Lung Leung:	May 15, 2002

1 Tsannrong Lee: January 11, 2002

2
3 STATUTE OF LIMITATIONS

4 As I have explained, the indictment charges that the alleged conspiracy began on or about
5 September 14, 2001 and continued until on or about December 1, 2006.

6 A five-year statute of limitations applies to the alleged conspiracy. The grand jury
7 returned its indictment against defendants on June 9, 2010. This means that a defendant cannot
8 be found guilty unless you find beyond a reasonable doubt that the conspiracy existed at some
9 time within the period of the statute of limitations, which is the period beginning from June 9,
10 2005 and continuing until June 9, 2010. One way the government can prove the conspiracy
11 existed in this period is to prove that one or more members of the conspiracy performed some act
12 after June 9, 2005 and before June 9, 2010 in furtherance of the purposes and objectives of the
13 conspiracy.

14 You may consider evidence of a defendant's conduct prior to June 9, 2005, insofar as it
15 tends to prove or disprove the existence of the conspiracy and the defendants acts after that date.

16 KNOWINGLY JOINING THE CONSPIRACY

17 As previously noted, the second element the government must prove beyond a
18 reasonable doubt for you to find a defendant guilty is that the defendant knowingly joined the
19 conspiracy charged in the indictment. To act "knowingly" means to act voluntarily and
20 intentionally, and not because of a mistake, accident, or other innocent reason. Therefore, before
21 you may convict a defendant, the evidence must establish that the defendant joined the
22 conspiracy to fix prices with the intent to aid or advance the object or purpose of the conspiracy.

23 A person may become a member of a conspiracy without full knowledge of all the
24 details of the conspiracy, the identity of all of its members, or the parts they played in the
25 charged conspiracy. Knowledge of the essential nature of the conspiracy is enough. On the
26 other hand, a person who has no knowledge of a conspiracy but who happens to act in a way
27 which furthers some object or purpose of the conspiracy does not thereby become a member of
28 the conspiracy. Similarly, mere knowledge of a conspiracy without participation in the

1 conspiracy is also insufficient to make a person a member of the conspiracy.

2 But a person who knowingly joins an existing conspiracy, or participates in part
3 of the conspiracy, with knowledge of the overall conspiracy, is just as responsible as if he had
4 been one of the originators of the conspiracy or had participated in every part of it. Likewise, a
5 person who knowingly directs another to implement the details of the conspiracy is just as
6 responsible as if he participated in every part of it, including its origin.

7 Your determination whether a defendant knowingly joined the conspiracy must be
8 based solely on the actions of the defendant as established by the evidence. You should not
9 consider what others may have said or done to join the conspiracy. Membership of a defendant
10 in this conspiracy must be established by evidence of his or its own conduct - by what he or it
11 said or did.

12 If you find that a defendant joined the conspiracy, then the defendant is presumed to
13 remain a member of the conspiracy and is responsible for all actions taken in furtherance of the
14 conspiracy until the conspiracy has been completed or abandoned or until the defendant has
15 withdrawn from the conspiracy.

16 17 GROSS PECUNIARY GAIN

18 The government does not have to prove that anyone derived any particular amount of
19 monetary or economic gain from the alleged conspiracy or that the alleged conspiracy caused
20 any particular amount of monetary or economic harm in order for you to find a defendant guilty
21 of the offense. To find a defendant guilty, all that you must find is that the government has
22 proven the elements of the offense, which I previously described.

23 However, you have heard economic evidence, which includes testimony about the
24 alleged gain derived from the alleged conspiracy. The testimony regarding the amount of the
25 alleged gain from the alleged conspiracy is admissible only against the corporate defendants,
26 AUO and AUOA, for a limited purpose. Specifically, the testimony regarding the amount of the
27 alleged gain may be considered by you only if you find AUO or AUOA guilty of the charged
28 conspiracy.

1 that corporation is liable for that offense.

2 Acts done within the scope of employment or with actual or apparent authority
3 are acts performed on behalf of a corporation and directly related to the performance of the
4 duties the agent has general authority to perform. Apparent authority is the authority that
5 outsiders could reasonably assume the agent would have, judging from his position with the
6 company, the responsibilities previously entrusted to him or his office, and the circumstances
7 surrounding his past conduct.

8 To be acting within the scope of his employment or with actual or apparent
9 authority, the agent first must have intended that his act would produce some benefit to the
10 corporation. The agent's acts or statements need not actually have resulted in any benefit to the
11 corporation. As long as the agent intended to benefit the corporation in some manner, the fact
12 that he may also have acted for other reasons as well, such as for his own personal benefit, is of
13 no consequence.

14 CORPORATE OFFICER – INDIVIDUAL LIABILITY

15 A corporate officer, such as a president of a company, is subject to prosecution
16 under Section 1 of the Sherman Act whenever he knowingly participates in effecting the illegal
17 conspiracy by directly participating in the conspiracy and/or indirectly or directly authorizing,
18 ordering, or consenting to the participation of a subordinate in the crime. A person is responsible
19 for conduct that he performs or causes to be performed on behalf of a corporation just as though
20 the conduct were performed on his behalf.

21 To find a defendant liable for the acts of a subordinate as distinguished from his
22 own acts, you must find beyond a reasonable doubt that the defendant knew of the existence of
23 the conspiracy and knowingly authorized, ordered, or consented to the participation of a
24 subordinate in that conspiracy.

25 On the other hand, a person who has no knowledge of a conspiracy, but who
26 happens to act in a way which furthers some purpose of the conspiracy, does not thereby become
27 a member of the conspiracy. Moreover, a person is not responsible for the conduct of others
28 performed on behalf of a corporation merely because that person is an officer, employee, or other

1 agent of the corporation.

2 For purposes of these instructions, to “participate knowingly” means to
3 encourage, advise, or assist for the purpose of furthering the conspiracy.

4
5 ACTS AND STATEMENTS OF COCONSPIRATORS - ADMISSIBILITY AND USE

6 If you find beyond a reasonable doubt that a defendant whose guilt you are
7 considering was a member of the conspiracy charged in the indictment, then any acts done or
8 statements made in furtherance of the conspiracy by persons also found by you to have been
9 members of that conspiracy may be considered against the defendant. This is so even if such
10 acts were done and statements were made in the defendant's absence and/or without the
11 defendant's knowledge.

12 Before you may consider the statements or acts of a conspirator in deciding the
13 issue of a defendant's guilt, you must first determine that the acts and statements were made
14 during the existence and in furtherance of the unlawful scheme. If the acts were done or the
15 statements made by someone whom you do not find to be a member of the conspiracy, or if they
16 were not done or said in furtherance of the conspiracy, then they may be considered by you as
17 evidence only against the person who did or said them.

18
19 TESTIMONY OF CERTAIN WITNESSES

20 You have heard testimony from J.Y. Ho of CMO, Brian Lee of CPT, and C.C. Liu
21 of CPT, witnesses who pleaded guilty to a crime arising out of the same events for which the
22 defendant is on trial and received favored treatment from the government in connection with this
23 case. The guilty pleas are not evidence against the defendants, and you may consider them only
24 in determining these witnesses' believability.

25 In addition, you have heard testimony from Michael Wong, who received
26 immunity. His testimony was given in exchange for a promise by the government that he will not
27 be prosecuted.

28 For these reasons, in evaluating the testimony of these witnesses, you should

1 consider the extent to which or whether their testimony may have been influenced by any of
2 these factors. In addition, you should examine the testimony of J.Y. Ho, Brian Lee, C.C. Liu,
3 and Michael Wong with greater caution than that of other witnesses.

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2 DUTY TO DELIBERATE

3 When you begin your deliberations, elect one member of the jury as your
4 foreperson who will preside over the deliberations and speak for you here in court.

5 You will then discuss the case with your fellow jurors to reach agreement if you
6 can do so. Your verdict, whether guilty or not guilty, must be unanimous. The “Application of
7 the Sherman Act” instruction (page 10) contains two alternative factual elements labeled
8 paragraphs (A) and (B). To find the Sherman Act applicable, you must all agree as to whether
9 (A), (B), or both (A) and (B) have been proven. Similarly, the third element of the “Elements of
10 the Offense” instruction (page 10) contains two alternative factual elements also labeled
11 paragraphs (A) and (B). To convict, you must be unanimous as to (A), (B), or both (A) and (B).
12 You cannot reach a unanimous verdict by having some jurors find only one alternative element
13 to be proven beyond a reasonable doubt while the remaining jurors find only the other alternative
14 element to be so proven.

15 Each of you must decide the case for yourself, but you should do so only after you
16 have considered all the evidence, discussed it fully with the other jurors, and listened to the
17 views of your fellow jurors.

18 Do not be afraid to change your opinion if the discussion persuades you that you
19 should. But do not come to a decision simply because other jurors think it is right.

20 It is important that you attempt to reach a unanimous verdict but, of course, only
21 if each of you can do so after having made your own conscientious decision. Do not change an
22 honest belief about the weight and effect of the evidence simply to reach a verdict.

23
24
25 CONSIDERATION OF EVIDENCE - CONDUCT OF THE JURY

26 Because you must base your verdict only on the evidence received in the case and
27 on these instructions, I remind you that you must not be exposed to any other information about
28 the case or to the issues it involves. Except for discussing the case with your fellow jurors

1 during your deliberations:

2 Do not communicate with anyone in any way and do not let anyone else
3 communicate with you in any way about the merits of the case or anything to do
4 with it. This includes discussing the case in person, in writing, by phone or
5 electronic means, via email, text messaging, or any Internet chat room, blog,
6 website or other feature. This applies to communicating with your family
7 members, your employer, the media or press, and the people involved in the trial.
8 If you are asked or approached in any way about your jury service or anything
9 about this case, you must respond that you have been ordered not to discuss the
10 matter and to report the contact to the court.

11
12 Do not read, watch, or listen to any news or media accounts or commentary about
13 the case or anything to do with it; do not do any research, such as consulting
14 dictionaries, searching the Internet or using other reference materials; and do not
15 make any investigation or in any other way try to learn about the case on your
16 own.

17 The law requires these restrictions to ensure the parties have a fair trial based on
18 the same evidence that each party has had an opportunity to address. A juror who violates these
19 restrictions jeopardizes the fairness of these proceedings. If any juror is exposed to any outside
20 information, please notify the court immediately.

21
22 USE OF NOTES

23 Some of you have taken notes during the trial. Whether or not you took notes,
24 you should rely on your own memory of what was said. Notes are only to assist your memory.
25 You should not be overly influenced by your notes or those of your fellow jurors.

26
27 JURY CONSIDERATION OF PUNISHMENT

28 The punishment provided by law for this crime is for the court to decide. You

1 may not consider punishment in deciding whether the government has proved its case against the
2 defendant beyond a reasonable doubt.

3
4 VERDICT FORM

5 A verdict form has been prepared for you. After you have reached unanimous
6 agreement on a verdict, your foreperson should complete the verdict form according to your
7 deliberations, sign and date it, and advise the clerk that you are ready to return to the courtroom.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28