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10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION  
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14 UNITED STATES OF AMERICA ) No. CR-09-0110 SI  
15 v. ) UNITED STATES' PROPOSED  
16 AU OPTRONICS CORPORATION; ) INSTRUCTION ON IGNORANCE OF  
17 AU OPTRONICS CORPORATION AMERICA; ) LAW  
18 HSUAN BIN CHEN, aka H.B. CHEN; ) Date: TBA  
19 HUI HSIUNG, aka KUMA; ) Court: Hon. Susan Illston  
LAI-JUH CHEN, aka L.J. CHEN; ) Place: Courtroom 10, 19th Floor  
20 SHIU LUNG LEUNG, aka CHAO-LUNG  
LIANG and STEVEN LEUNG; )  
21 BORLONG BAI, aka RICHARD BAI; )  
TSANNRONG LEE, aka TSAN-JUNG LEE and )  
22 HUBERT LEE; )  
CHENG YUAN LIN, aka C.Y. LIN; )  
23 WEN JUN CHENG, aka TONY CHENG; and )  
DUK MO KOO, )  
24 Defendants. )

1 Brian Lee testified on direct examination that he reached price agreements with TFT-  
2 LCD competitors during crystal meetings. *See, e.g.*, Trial Tr., vol. 8, 1423-26, 1449-52, 1468-  
3 72, 1475-76, January 23, 2012. During cross-examination of Mr. Lee today, defendants asked a  
4 series of questions about whether Mr. Lee believed that he had done anything illegal during his  
5 meetings with competitors, and he testified that he did not. *See* Trial Tr., vol. 10, 1753-54,  
6 January 25, 2012. Defendants also asked Mr. Lee a question about whether he knew whether  
7 defendant Hsuing – with whom Mr. Lee testified he attended crystal meetings at which pricing  
8 agreements were reached – thought anything he was doing was illegal. *Id.*

9 In addition, on the third day of trial, J.Y. Ho testified that he attended crystal meetings  
10 during which agreements were reached among competitors to fix target prices of TFT-LCDs.  
11 *See* Trial Tr., vol. 3, 660-61, 669-70, 676, 680, January 11, 2012. On cross-examination the  
12 following day, defendants asked Mr. Ho a series of questions about whether he thought he had  
13 done anything wrong by attending the crystal meetings and whether he thought he was sending  
14 subordinates to illegal meetings; he repeatedly testified that he did not. *See* Trial Tr., vol. 4, 776-  
15 78, January 13, 2012.

16 The jury has now heard repeated questioning and testimony that individuals who entered  
17 into price-fixing agreements with their competitors did not believe that they were violating the  
18 law. It is well-established, and the Court has acknowledged, that ignorance of the law is no  
19 defense. *See* Dec. 13, 2011 Hearing Tr. 56. In order to avoid significant prejudice to the  
20 government, the United States now requests that the Court give an interim instruction to the jury  
21 as follows:

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

26 *Model Jury Instructions in Criminal Antitrust Cases* 76 (ABA Section of Antitrust Law eds.,  
27 2009); *see Ninth Circuit Manual of Model Criminal Jury Instructions*, § 5.6 (2010) (“The  
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1 government is not required to prove that the defendant knew that [his] [her] acts or omissions  
2 were unlawful.”).

3 Courts have long recognized the general rule that ignorance or mistake of law is no  
4 defense. *Cheek v. United States*, 498 U.S. 192, 199 (1991) (“The general rule that ignorance of  
5 the law or a mistake of law is no defense to criminal prosecution is deeply rooted in the  
6 American legal system.”); *United States v. Aguilar*, 883 F.2d 662, 673 (9th Cir. 1989) (“It is  
7 axiomatic that ignorance or mistake of law is no defense.”). Thus, any evidence by the defense  
8 that conspirators were unaware of antitrust laws or did not know what they were doing was  
9 illegal would not be relevant to a valid defense. The only knowledge required is knowledge “of  
10 the facts that make the defendant’s conduct illegal.” *Staples v. United States*, 511 U.S. 600, 622  
11 n.3 (1994).

12 Dated: January 25, 2012

Respectfully submitted,

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14 /s/ Peter K. Huston  
15 Peter K. Huston  
16 Antitrust Division  
17 U.S. Department of Justice  
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