

BRIAN P. BERSON, ESQ.

235 Montgomery St., Suite 625
San Francisco, CA 94104
California State Bar No. 130249
brian@bersonlaw.net
Telephone:(415) 788-2707
Facsimile:(415) 392-5275

WILLIAM L. OSTERHOUDT, ESQ.

135 Belvedere Street
San Francisco, CA 94117
California State Bar No. 043021
osterhoudt@aol.com
Telephone: (415) 664-4600
Facsimile: (415) 664-4691

CHRISTOPHER T. HANDMAN, ESQ.

Admitted Pro Hac Vice
Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, D.C. 20004
chris.handman@hoganlovells.com
Telephone: (202) 637-5600
Facsimile: (202) 637-5910

Counsel for Defendant **HUI HSIUNG**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	CR 09-0110 SI
)	
)	DEFENDANT HUI HSIUNG'S
Plaintiff,)	SENTENCING MEMORANDUM
vs.)	
)	
)	
HUI HSIUNG, et al.)	Date: September 20, 2012
)	Time: 10:00 a.m.
Defendants.)	Judge: Hon. Susan Illston
)	Courtroom: 10, 19th Floor
_____)	

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INTRODUCTION

1
2 Like the ten other corporate executives who have already come before this Court, *see infra*
3 Tables 1 & 2, Defendant Hui Hsiung was convicted under Section 1 of the Sherman Act for
4 conspiring to fix the prices of TFT-LCD panels. Like those ten executives, Dr. Hsiung attended
5 Crystal Meetings—though his 9 appearances pale in comparison to the 29 of Brian Lee, the 24 of
6 CC Liu, and the 23 of Sam Wu. And like those ten executives, Dr. Hsiung had an impressive title
7 while working for his company—though his Executive Vice President stint with AU Optronics
8 (AUO) was lower on the corporate ladder than Frank Lin’s role as Chairman and CEO of
9 Chunghwa Picture Tubes or JY Ho’s title of President at Chi Mei Optoelectronics.
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12 But unlike each of those individuals, Dr. Hsiung faces a sentencing recommendation of
13 imprisonment for 10 *years*—nearly ten times the longest sentence imposed on any other
14 executive—and a half-million-dollar fine—exactly ten times the largest fine paid by any other
15 executive. Indeed, the recommended sentence here exceeds the sentences imposed on the ten other
16 executives *combined*; their ten terms of imprisonment add up to 89 months, and their ten fines to
17 \$310,000. These disparities are arbitrary and unjust. This Court, after all, has already recognized
18 that the similar conduct among these ten executives in this single conspiracy warrants similar
19 sentences. Only a single defendant—JY Ho—was sentenced to a term greater than a year, and his
20 14-month sentence just barely inched across that line. Every other executive received a year or
21 less, with eight of them all bunched between six and nine months of imprisonment. And not a
22 single executive was ordered to pay more than a \$50,000 fine.
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26 In recommending this unprecedented sentence, the Probation Office did not dispute that,
27 under binding Ninth Circuit precedent, “[t]he need to avoid unwarranted sentencing disparities
28 among codefendants involved in the same criminal activity has long been considered a legitimate
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1 sentencing concern.” *United States v. Ray*, 930 F.2d 1368, 1373 (9th Cir. 1990). But the
2 Probation Office excused itself from having to conduct any disparity analysis among the executives
3 involved in the TFT-LCD prosecution because it “was unable to locate a notice of related case
4 order pertaining to the defendant and others charged in the same conspiracy.” Addendum to PSR
5 ¶ 3. But fairness, proportionality, and equity should not turn on the whim of a case caption. This
6 Court, as well as the government, all defendants, and their counsel, have always understood that
7 these TFT-LCD prosecutions were all of a piece.¹ To impose a sentence on Dr. Hsiung that is
8 exponentially greater than that imposed on any other executive would work an extraordinary
9 inequity, violate binding precedent, and tarnish confidence in the fairness of our sentencing system.
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12 Of course, as important as these common elements are to calibrating a fair and appropriate
13 sentence, so too are the individual elements unique to Dr. Hsiung. He is someone who, from
14 modest beginnings in war-torn Taiwan, studied tirelessly and worked even harder to achieve a
15 brilliant career in both the academy and the private sector. Indeed, the many letters appended to
16 this memorandum attest to Dr. Hsiung’s professional and civic achievements and his reputation for
17 candor and integrity in the business community. The letters reveal that people he has known from
18 all facets of his life—from childhood friends to professional peers, subordinates, customers, and
19 even supposed victims in this case—hold him in extremely high regard. And the letters also
20 demonstrate that Dr. Hsiung is close to his family, who have remained loving and supportive
21 throughout the prosecution and trial.
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25 The important point is that Dr. Hsiung—measured by any metric—does not merit the
26 grossly disproportionate 10-year term of imprisonment and \$500,000 fine that the Presentence
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28 ¹ Indeed, these individuals all entered into agreements to cooperate against Dr. Hsiung in this
29 case, all were debriefed, and three of them testified against him at trial.

1 Report (PSR) recommends. Under the Guidelines, the sentence is wrong because the PSR assigns
2 an erroneous role enhancement and grossly miscalculates the volume of commerce attributable to
3 AUO and Dr. Hsiung (as explained in AUO's sentencing memorandum, which Dr. Hsiung adopts
4 to spare this Court the repetition). But even if the PSR had applied the Guidelines correctly, the
5 disparities and inequity that such a sentence would create would warrant a significant departure.
6 The Guidelines, after all, are only the "starting point and the initial benchmark" of a sentencing
7 decision, not the end. *Gall v. United States*, 552 U.S. 38, 49 (2007). A trial court therefore "may
8 not presume" that the Guidelines range is reasonable. *Id.* at 50. The Supreme Court's recent
9 sentencing cases, in short, have "breathe[d] life into the authority of district court judges to engage
10 in individualized sentencing," *United States v. Whitehead*, 532 F.3d 991, 993 (9th Cir. 2008)
11 (quoting *United States v. Vonner*, 516 F.3d 382, 392 (6th Cir. 2008) (en banc)), and confirmed the
12 power of district courts to depart from the Guidelines in appropriate cases. This is such a case.

16 I. Hui Hsiung

17 Because any sentencing proceeding must include an "individualized assessment" of a
18 defendant and the offense, *see Gall*, 552 U.S. at 50, the story of Hui Hsiung himself is a proper
19 starting point. Dr. Hsiung was born on August 21, 1953 in Taipei, Taiwan. He was the second
20 youngest of five children born to his parents. The letters submitted to the Court demonstrate that
21 the family is very close and that Dr. Hsiung is loved and admired by his siblings.

22 The Taiwan where Dr. Hsiung was born and grew up was very different from the vibrant,
23 prosperous, and technologically advanced nation of today. Following World War II, China was
24 torn by civil war and Taiwan was mired in poverty. Dr. Hsiung's parents separated when the
25 children were young and they were brought up by their single mother on a modest income. All
26 have thrived as adults. Dr. Hsiung excelled in school and was active in extra-curricular school and
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1 community activities. From his youth he displayed a thirst for knowledge and a desire to learn
2 both in school and through reading and studying on his own.

3 Through his academic promise and accomplishments, Dr. Hsiung gained admission to
4 Taiwan's prestigious National University, where he excelled in science. Following his graduation
5 in 1975 with a Bachelor of Science degree in physics, Dr. Hsiung had the opportunity to attend
6 graduate school. After weighing the benefits of several first-rate universities, including Harvard,
7 he chose to enter U.C. Berkeley. Between 1978 and 1985 he was engaged in intensive scientific
8 study, receiving a Ph.D. in physics. He became deeply interested in LCD technology in its infancy,
9 and wrote his Ph.D. dissertation on that subject. Dr. Hsiung ultimately returned to Taiwan to join
10 the predecessor of AUO Corporation, where he remained with AUO until August 2007, having
11 attained the position of Executive Vice President.² And until this proceeding, Dr. Hsiung had
12 never been charged with or convicted of any crime.
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16 Although these historical facts provide a glimpse into Dr. Hsiung's considerable abilities,
17 they do not fully convey the level of his accomplishment or the extraordinary esteem in which he is
18 held by all who have been associated with him, whether as an employee, colleague, or competitor.
19 Dr. Hsiung's counsel have participated in countless sentencing proceedings over their careers, but
20 have not seen an outpouring of genuine admiration, affection, and respect in a "business" case that
21 approaches the testimonials on behalf of Dr. Hsiung here. He is a brilliant scientist and an
22 effective business executive, but he is much more than this. He has built relationships and forged
23 bonds that have lasted for many years, and he has worked consistently to improve the lives of
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26 ² Dr. Hsiung also served as the nominal President of AUOA. AUOA was—and is—a wholly
27 owned subsidiary of AUO. Dr. Hsiung never drew a salary from AUOA or issued any directive as
28 an AUOA officer. He interacted with employees only in his capacity as an executive of AUO in
29 Taiwan.

1 others, particularly those less fortunate than himself. His family has been completely supportive,
2 including his wife of thirty-four years, Wen-Hsin Kang, and his children, Jennifer Wellbaum, a
3 research scientist, and Timothy Hsiung, a freelance film producer. This prosecution and trial have
4 been very difficult for the family, but Dr. Hsiung and his wife remain deeply committed to the
5 welfare of their children, to whom they have been drawn even closer during this turbulent period.
6

7 **II. The Sentencing Factors Listed In 18 U.S.C. § 3553(a)**

8 We recognize that the Sentencing Guidelines are the “starting point” for determining a
9 sentence in a typical case. *Gall*, 552 U.S. at 49. But this is anything but a typical case. For one
10 thing, the Probation Office recommends a term of imprisonment and fine for Dr. Hsiung that
11 exceeds by a substantial margin the *combined* sentences of all ten other corporate executives
12 involved in the TFT-LCD prosecution. That disparity is so stark—so palpably inequitable—that it
13 makes sense to turn first to the statutory factors in 18 U.S.C. § 3553(a). Starting there is
14 particularly appropriate because the principal error in the PSR’s Guidelines analysis—the error that
15 accounts for adding at least a half decade of prison time to Dr. Hsiung’s sentence—is the volume-
16 of-commerce calculation. Because AUO’s sentencing memorandum thoroughly explains the
17 empirical and methodological errors in the PSR’s calculations, we do not belabor the point;
18 instead, we formally adopt those arguments and simply summarize the main points at the end of
19 this brief.
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24 This case, in short, underscores why the Supreme Court has admonished lower courts that
25 they “may not presume” that the Guidelines range is reasonable. *Gall*, 552 U.S. at 50. At bottom,
26 sentencing remains very much an “individualized assessment based on the facts presented” by each
27 case. *Id.* at 50. The unique facts and circumstances of this prosecution confirm the wisdom of that
28 approach. By scrutinizing the “nature and circumstances of the offense,” the “characteristics of the
29

1 defendant,” the need for the sentence selected to achieve the purposes of punishment, and—most
2 importantly here—the “need to avoid unwarranted sentence disparities,” 18 U.S.C. § 3553(a)(1)-
3 (7), this Court will avoid the gross inequity that the PSR invites. As we explain below, the Court
4 should exercise its considerable discretion to sentence Dr. Hsiung to a term of imprisonment
5 roughly in line with the sentence imposed on CC Liu, whose offense conduct as the well-reputed
6 “godfather of the industry” easily exceeded Dr. Hsiung’s. Lee Proffer at 1 (May 13, 2008).

8 **A. The Need To Avoid Unwarranted Sentence Disparities**

9 “The need to avoid unwarranted sentencing disparities among codefendants involved in the
10 same criminal activity has long been considered a legitimate sentencing concern.” *Ray*, 930 F.2d
11 at 1373. Indeed, Congress has converted this concern into a mandate: Section 3553(a)(6) *requires*
12 “[t]he court, in determining the particular sentence to be imposed, [to] consider . . . the need to
13 avoid unwarranted sentence disparities among defendants with similar records who have been
14 found guilty of similar conduct.” 18 U.S.C. § 3553(a)(6) (emphasis added).

15 Here, ten individuals have already been found guilty of the *same* (and not just similar)
16 conduct as Dr. Hsiung—and their sentences compel a downward departure to avoid unwarranted
17 disparities. To facilitate a meaningful comparison between these individuals and Dr. Hsiung,
18 Table 1 summarizes information regarding the co-conspirators’ position in their companies,
19 involvement in the offense, and the role enhancements applied at sentencing. Table 2 lists the
20 volume-of-commerce enhancement and sentence imposed on each TFT-LCD co-conspirator:
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Table 1

Name	Position	Number of Crystal Meetings Attended	Role Information	Role Increase at Sentencing
CS Chung	LG Vice President of Monitor Sales	0	Had phone calls and meetings with competitors at which agreements were reached as to pricing; knew about Crystal Meetings. (Sentencing Tr. in No. 3:09-cr-00044, pp. 15-18)	+ 3
JY Ho	CMO President	3 to 5	Attended Crystal Meetings, including one of the very first such meetings; took initiative to encourage competitors to meet to stabilize prices; encouraged secrecy regarding meetings; authorized subordinates to participate in conspiracy. (DOJ Interview of Ho, May 28, 2010, pp. 5-6, 12; Sentencing Tr. in No. 3:10-cr-00355, pp. 12-15)	+ 3
Amigo Huang	CMO Director of Sales	6	Attended Crystal Meetings; authorized subordinates to participate in conspiracy; encouraged contact with competitors; had pricing authority. (Sentencing Tr. in No. 3:10-cr-00579, pp. 12-14; Huang Proffer, Dec. 22, 2009, p. 1; Apr. 5, 2010 Proffer, p. 1)	+ 3
CL Kuo	CMO Associate Vice President and Vice President of Sales	1	Attended Crystal Meeting; authorized subordinates to participate in conspiracy. (Sentencing Tr. in No. 3:10-cr-00591, pp. 11-13)	+ 3
Bock Kwon	Various, including LG Executive Vice President and Chief Marketing and Sales Officer	4	Attended Crystal Meetings; instructed employees to attend meetings; had ultimate pricing authority when he served as Executive Vice President and Chief Marketing and Sales Officer. (DOJ Interview of Kwon, Sept. 5, 2009, p. 9; Sentencing Tr. in No. 3:09-cr-00437, pp. 15-18)	+ 3
Brian Lee	Various, including CPT Vice President of Sales	29	Attended Crystal Meetings; was involved in pricing discussions and felt comfortable with pricing decisions; helped instigate Crystal Meetings by approaching competitors; was involved in the destruction of documents when DOJ investigation came to light. (DOJ Interview of Kwon, Feb. 5, 2009, p. 10; DOJ Interview of Lee, Sept. 4 & 5, 2008, p. 3; Lee Proffer, Aug. 9, 2007, pp. 1-2; Lee Proffer, Sept. 27, 2007, pp. 11-14; Lin Proffer, Mar. 13, 2008, pp. 4-6; Sentencing Tr. in No. 3:09-cr-00045, pp. 17-20)	+ 0

Table 1 Continued

Name	Position	Number of Crystal Meetings Attended	Role Information	Role Increase at Sentencing
Frank Lin	CPT Chairman and CEO	0	Knew about and encouraged CPT executives to participate in Crystal Meetings; received reports from those meetings; was one of “the most senior executive[s] involved in the LCD conspiracy;” had final pricing authority at CPT; approved the destruction of documents when DOJ investigation came to light. (DOJ Interview of Lin, Oct. 9, 2008, pp. 6-8, 15; DOJ Interview of Lee, Aug. 27, 2007, p. 4; Lee Proffer, Aug. 9, 2007, pp. 1-2; Lee Proffer, Aug. 27, 2007, pp. 2-3)	+ 3
CC Liu	CPT Vice President of Sales	24	Attended Crystal Meetings; helped instigate Crystal Meetings by approaching competitors; was one of the “3 most important people in determining price at CPT;” led implementation of Crystal Meeting prices; was one of “the most senior executive[s] involved in the LCD conspiracy;” was “the senior sales person at the Crystal [M]eetings;” “organized and supervised” CPT’s bilateral contacts; “had an ‘iron grip’ . . . over the sales department;” was “viewed as the godfather of the industry.” (DOJ Interview of Liu, Aug. 22, 2008, pp. 6-9; DOJ Interview of Kwon, Feb. 5, 2009, p. 10; DOJ Interview of Lee, Aug. 27, 2007, p. 4; Lee Proffer, Aug. 27, 2007, p. 8; Lee Proffer, May 13, 2008, p. 1)	+ 3
Sam Wu	HannStar Executive Director for Global Sales and Marketing	23	Attended Crystal Meetings; was “the main contact person at [HannStar] for the other suppliers to contact” and “attend[ed] all of the meetings so the competitors could contact [him].” (DOJ Interview of Wu, Nov. 15, 2010, p. 8; Sentencing Tr. in No. 3:10-cr-00781, pp. 10-12)	+ 0
James Yang	CMO Director of Sales	10	Attended Crystal Meetings; “supervised employees who participated in communications and attended meetings.” (Sentencing Hearing Tr. in No. 3:10-cr-00335, pp. 12-15)	+ 3

Table 2

Name	Company	Volume-of-Commerce Enhancement	Sentence Received
CS Chung	LG	+ 12 for \$500 million to \$1 billion	7 months + \$25,000 fine
JY Ho	CMO	+ 12 for \$500 million to \$1 billion	14 months + \$50,000 fine
Amigo Huang	CMO	+ 12 for \$500 million to \$1 billion	9 months + \$25,000 fine
CL Kuo	CMO	+ 12 for \$500 million to \$1 billion	9 months + \$35,000 fine
Bock Kwon	LG	+ 12 for \$500 million to \$1 billion	12 months + \$30,000 fine
Brian Lee	CPT	+ 10 for \$250 to \$500 million	6 months + \$20,000 fine
Frank Lin	CPT	+ 10 for \$250 to \$500 million	9 months + \$50,000 fine
CC Liu	CPT	+ 10 for \$250 to \$500 million	7 months + \$30,000 fine
Sam Wu	HannStar	+ 8 for \$100 to \$250 million	7 months + \$20,000 fine
James Yang	CMO	+ 12 for \$500 million to \$1 billion	9 months + \$25,000 fine

Measured against Dr. Hsiung's proper Guidelines range of 46-57 months, *see infra* at 19, the sentences imposed on these co-conspirators are striking: No person has received a term of imprisonment exceeding 14 months, and eight of the ten corporate executives were sentenced to terms of 9 months or less. Nor can these sentences be explained away by suggesting that the individuals were unimportant to the conspiracy or its success. For example, CC Liu was "viewed as a godfather of the industry," attended 24 Crystal Meetings, and approached competitors to help instigate the meetings—yet he received only a 7-month sentence. Brian Lee attended 29 Crystal

1 Meetings, brought competitors into the conspiracy, and helped destroy documents to thwart the
2 DOJ investigation—yet he served only a 6-month sentence. Frank Lin was Chairman and CEO of
3 Chunghwa Picture Tubes during the conspiracy and approved the destruction of documents once
4 the DOJ investigation came to light—yet his sentence was only 9 months.

5
6 In contrast, Dr. Hsiung attended only nine Crystal Meetings. He did not attend the first
7 three Crystal Meetings that established the entire framework for the companies' actions. And he
8 attended only one Crystal Meeting after 2002, and no meetings after 2004. It would contravene the
9 goal of uniformity in sentencing to impose a term of imprisonment on Dr. Hsiung that is *thousands*
10 of days longer than the time served by these co-conspirators.

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12 These disparities cannot be excused, as the PSR suggests, simply because “[t]he probation
13 officer . . . was unable to locate a notice of related case order pertaining to the defendant and others
14 charged in the same conspiracy.” Addendum to PSR ¶ 3. No decision holds that a court’s duty to
15 avoid unwarranted sentencing disparities turns on the existence of a ministerial document like a
16 “notice of related case.” And for good reason: This Court, the prosecutors, the defense counsel,
17 and the defendants themselves have all understood that these TFT-LCD prosecutions arose from a
18 single conspiracy. Decisions about someone’s life and liberty should not—and do not—turn on
19 empty formalism. This Court should therefore ignore the approach adopted by the PSR and
20 conduct a full disparity analysis that ensures that Dr. Hsiung is not sentenced to a term of
21 imprisonment that is grossly out of line with the ten other executives already sentenced.

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25 It is true, of course, that the co-conspirators pleaded guilty and cooperated with the
26 government³—and so some disparity in the bottom-line sentence may be appropriate. *See* U.S.S.G.

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28 ³ Not all of the cooperators were required to plead guilty. Although Brian Lee testified that
29 Samsung instigated the price-fixing conspiracy with Chunghwa Picture Tubes, neither Samsung nor

1 § 5K1.1. But the Ninth Circuit has expressly rejected the government’s argument that disparities
2 are irrelevant if one individual has cooperated with the government and the other has not. *See,*
3 *e.g., United States v. Caperna*, 251 F.3d 827, 830-832 (9th Cir. 2001). In this circumstance,
4 district courts continue to have an obligation to consider “the need to avoid unwarranted sentence
5 disparities among defendants with similar records who have been found guilty of similar conduct.”
6 18 U.S.C. § 3553(a)(6). And courts frequently grant downward departures to minimize—if not
7 wholly eliminate—sentencing disparities between defendants who pleaded and those who put the
8 government to its proof at trial. *See, e.g., United States v. Corona-Verbera*, 509 F.3d 1105, 1120
9 (9th Cir. 2007) (noting that the district court had imposed a sentence 76 months below the
10 Guidelines range to account for the sentences given to co-conspirators, even though they, unlike
11 the defendant, had pleaded guilty, accepted responsibility, and cooperated with the government).

12 Applying these principles here, Dr. Hsiung should not be subjected to a tenfold increase in
13 both his prison term and fine just because he elected to exercise his constitutional right to go to
14 trial. *See United States v. Capriola*, 537 F.2d 319, 320 (9th Cir. 1976) (noting that, if “more
15 severe sentences were imposed upon the [defendants] because they exercised their right to stand
16 trial . . . the[ir] constitutional rights . . . have been infringed”). To vindicate section 3553(a)(6)’s
17 mandate, we suggest that Dr. Hsiung should be treated similarly to CC Liu. Although Liu
18 cooperated with the government, his conduct was far more culpable than Dr. Hsiung’s: Liu was
19 intimately involved in a prior price-fixing conspiracy involving cathode ray tubes; during that
20 prior conspiracy, he introduced Chunghwa Picture Tubes CEO Frank Lin to the co-conspirators
21 and invited him to his first price-fixing meeting, *see* Lin Interview at 1 (Apr. 1, 2009); he was
22 any of its executives were prosecuted. In addition, LG executive Stanley Park received complete
23 immunity despite attending numerous Crystal Meetings and other bilateral meetings.
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1 known as the “godfather of the industry”; and he attended almost three times as many Crystal
2 Meetings as Dr. Hsiung, including the first two during which the conspiracy was supposedly
3 formed. These factors offset Liu’s cooperation and render his seven-month sentence an
4 appropriate guide to Dr. Hsiung’s.

6 **B. The Nature And Circumstances Of The Offense**

7 Several characteristics of this offense warrant a substantial downward departure. *See* 18
8 U.S.C. § 3553(a)(1). First, there is no evidence that Dr. Hsiung was motivated by a desire to
9 enrich himself personally from the alleged scheme. As the First Circuit has recently observed, that
10 fact is highly relevant in assessing his culpability. *See United States v. Prosperi*, 686 F.3d 32, 44
11 (1st Cir. 2012). The defendants in *Prosperi* were convicted of various fraud offenses for failing to
12 comply with specifications for a construction project and for concealing that failure. Although
13 their Guidelines range was 87 to 108 months of incarceration, the district court sentenced them to
14 only six months of home monitoring. The First Circuit affirmed this substantial departure in part
15 because the “defendants did not seek to enrich themselves personally and did not personally benefit
16 from the scheme.” *Id.* at 44.

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20 The First Circuit also accepted the district court’s conclusion that the loss amount of \$5.2
21 million—which increased the offense level by 18—“was imprecise and did not fairly reflect the
22 defendants’ culpability.” *Id.* at 34. Just so here. Dr. Hsiung is threatened with a staggering 16-
23 level enhancement based on the government’s erroneous volume-of-commerce calculation. In this
24 case, as in *Prosperi*, the volume of commerce—whether this Court accepts the government’s
25 figures or Dr. Hsiung’s—is “imprecise” and does not “fairly reflect [Dr. Hsiung’s] culpability.” *Id.*

26
27 That is particularly so given the evidence at trial that suggested that the motivation for the
28 initial Crystal Meetings was not greed for excess profits by gouging consumers. According to the
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1 government's own expert, the LCD industry was in crisis at the beginning of the last decade. LCD
2 manufacturers were facing failure due to a looming inability to sustain the enormous capital costs
3 of modernization. RT 2974:7-2976:1; 3289:15-3292:18; 4533:2-15; *see* 320:6-321:23 (opening
4 statement). The government's expert acknowledged that the conspiracy that allegedly resulted was
5 imperfect, RT 4517:25-4518:1, and that AUO's panel prices were below the prices discussed, RT
6 4517:15-17, 4574:23-4575:17. And the price of LCDs and their end products to the consumer
7 actually *fell* dramatically over the life of the charged conspiracy. RT 3341:22-3342:6. The large
8 volume of commerce, therefore, should not necessarily lead to a high sentence in this case.
9
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11 A downward departure is also justified because nearly all of the conduct that led to this
12 conviction occurred abroad. The individual defendants were all residents of Taiwan and every one
13 of the Crystal Meetings occurred there. Throughout this case Dr. Hsiung has argued that the
14 Sherman Act should not be applied extraterritorially in these circumstances. Underlying that
15 argument is a sound moral instinct: It is unfair to severely punish, by a long prison sentence in the
16 United States, actions taken abroad in a country where there was little foreseeable prospect of
17 being subjected to U.S. criminal law. That is especially so in a country like Taiwan that only
18 deploys the criminal law against antitrust offenses as a "measure of last resort." Taiwan Fair Trade
19 Comm'n, *Explanatory Material Relevant to the Revised Articles of the Fair Trade Act*, § 3.1
20 (1999), *available at* <http://www.apeccp.org.tw/doc/Taipei/Policy/comemrra.html>. Indeed, the
21 Taiwanese authorities investigated this case but chose ultimately not to pursue charges.
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25 **C. The History And Characteristics Of The Defendant**

26 Section 3553(a)(1) also requires that the sentencing court consider "the history and
27 characteristics of the defendant" in selecting an appropriate sentence; to this end, the letters
28 submitted on behalf of Dr. Hsiung are striking. They illuminate a man loved by his family for his
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1 devotion and guidance; valued by his friends for his support and encouragement; and admired by
2 his colleagues for his brilliant mind, his honesty and integrity in professional and business
3 relationships, and his concern for those less fortunate than himself.

4 Assessing the history and characteristics of Dr. Hsiung should begin with the sentiments
5 expressed by his family, which portray a devoted husband, a selfless father, and loyal brother.

6 Dr. Hsiung's sister, Yen Hsiung, speaks of being raised by a single mother on a limited
7 income. From this humble beginning, Dr. Hsiung grew to be an intelligent, hardworking, and
8 modest man. She describes her brother as "simple and honest with a warm heart," and "a silent
9 and quiet person; he puts more energy into real actions." Ex. 1 at 1. Yen discusses the time when
10 she and Dr. Hsiung immigrated to the United States to further their education:
11

12 Although Hui faced challenges in the new environment and hardships in his studies,
13 he still took care of me and was able to resolve all kinds of issues. Without his
14 assistance, I could not possibly graduate from university so smoothly.

15 *Id.* Yen's letter also comments on the dedication and love that Dr. Hsiung has shown his mother
16 and his children. She explains that after beginning a promising career in the United States, Dr.
17 Hsiung returned to Taiwan to be near their ailing mother, visiting her often during the final years of
18 her life. Yen likewise describes a supportive and engaged father, who encouraged his son to
19 follow his passion in life in cinema, a field so different from Hui's own.
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21 Yen's testament is entirely consistent with the portrait painted by Dr. Hsiung's other sister,
22 Chao Hsiung. *See* Ex. 2. Like her brother, Chao received a Ph.D. in the United States. She now
23 works as the Director of the Institute of Population Health Sciences, National Health Research
24 Institute, in Taiwan. Chao describes her brother as a man of integrity and sincerity, and as a
25 responsible husband, father, and friend. She explains that he is actively involved in his children's
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1 lives, and strives to be a role model for them. And she also remembers with admiration the love
2 and compassion Hui showed to their mother (and their mother's lifelong friends) in her latter years.

3 Dr. Hsiung's daughter, Jennifer Wellbaum, graduated from the University of Michigan,
4 Ann Arbor, and works in San Diego as a research biologist. She describes her father as a true role
5 model, a source of inspiration and support, an active parent, and the rock of the family. *See* Ex. 3.
6 Jennifer speaks especially about how her father instilled in her a strong commitment to education
7 and emphasized the importance of honesty in all things. She notes that her father is passionate
8 about his work and that he believes firmly that his labors and innovations help people. She too
9 portrays Dr. Hsiung as a modest and humble person and an excellent father.
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11
12 Wen-Hsin, Dr. Hsiung's wife of 34 years, has written a heartfelt letter to the Court
13 describing her husband's kindness, generosity, and commitment to his family, friends, and
14 community. Ex. 4. After recounting several instances demonstrating these qualities, Mrs. Hsiung
15 emphasizes that, "although [Dr. Hsiung's] role has changed significantly over the past decade, his
16 personality, his attitude, his moral standards, and in particular his humbleness and respect toward
17 everyone has never changed." *Id.* at 3. She concludes, "I believe this is exactly why I love him
18 more than ever as we age together." *Id.*
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21 These eloquent family testimonials are entirely consistent with the praise given to Dr.
22 Hsiung by his friends. Patrick Liu, Ph.D., and Professor Han-Ping David Shieh have known Dr.
23 Hsiung for over 40 years, having met him as students at the National Taiwan University. They
24 each remark on Dr. Hsiung's extraordinary achievement, attained by diligence and hard work, and
25 his commitment to his family. Speaking of their time at the University together, Dr. Liu remarks:
26 "Hui Hsiung spent most of his time in the laboratory and library and strived for best performance.
27 As his friend, I witnessed how much effort he put in work and how down to earth he was to reach
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1 his goal step by step.” Ex. 5 at 2. Professor Shieh says: “Hui is a person I respect the most not just
2 for his academic performance but also for his intelligence, capability and integrity.” Ex. 6 at 1.

3 Stephen Ming Chun Chen, a lifelong friend residing in Hong Kong, echoes these
4 sentiments. *See* Ex. 7. Mr. Chen writes “the contributions [Dr. Hsiung] has made toward the
5 scientific world in the course of his academic and professional pursuits have never been short of
6 excellence, but he is likely most recognized for his professional integrity and exemplary character,
7 which to this retired accountant are sacred traits.” *Id.* at 1. Mr. Chen concludes with this plea:
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10 Words cannot describe the devastation the conviction has brought upon his family.
11 There is little a friend could do but to respectfully request Your Honor’s utmost
12 leniency while considering the terms of his sentencing. As much as I am sure that
13 Hui has the courage to bear the burden befalling him, society would be better served
14 with the resumption of his endeavors in the province of sustainable energy research
15 and development. *Id.*

16 Those who have worked alongside Dr. Hsiung validate these same qualities, describing
17 how Dr. Hsiung has been a great asset to the companies he has work for, a committed executive
18 who has kept the needs of the rank-and-file employees always at the forefront, and a trusted
19 colleague with whom to conduct business. For example, Ying Wang, Ph.D., a Technical Fellow of
20 the DuPont Company, emphasizes “Dr. Hsiung’s impeccable track record of achievement and
21 integrity, his contribution to the Global Display industry, and the tens of thousands of jobs he
22 created throughout his career.” Ex. 8 at 1. Dr. Wang first met Dr. Hsiung 25 years ago while
23 working in DuPont’s central research department. He knew Dr. Hsiung as a brilliant young
24 scientist and has closely followed his career and reputation since then. He emphasizes Dr.
25 Hsiung’s status as “one of the pioneers who launched the Taiwanese LCD industry,” *id.*, a
26 development of enormous importance for Taiwan and for the industry in general. He concludes:
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28 I am making a strong petition to you the Honorable Judge Illston, to take into
29 consideration of these facts. Standing in front of you is an accomplished scientist, a

1 successful entrepreneur, a devoted family man, and a man of principle and integrity.
2 He had lived an exemplary life and his work helped to create tens of thousands of
3 jobs across both continents. This is a man who has contributed tremendously to
4 society. Yet, he is facing the possibility of incarceration at the later stage of his
5 career. This is something very difficult to reconcile for those of us who have known
6 Dr. Hsiung for a long time. If there is a time for leniency, this is it. *Id.* at 1-2.

7 Tony Tong, CEO of the BenQ Foundation of Taiwan, a charitable organization providing
8 help to underprivileged children in the rural areas of Taiwan, has known Dr. Hsiung since 1996.
9 Dr. Hsiung has been a generous donor to the BenQ Foundation. And Mr. Tong writes that Dr.
10 Hsiung is not only a “kind leader” deeply concerned for the health and welfare of employees and
11 persons less fortunate than himself, but also “a consistently honest and decent person.” Ex. 9 at 1-2.
12 Tong recounts an episode when one of Qisda’s product designers suffered a sudden illness and fell
13 into a coma. The young designer was not married and her ailing mother was depending on her.
14 Learning of the situation, “Dr. Hsiung immediately proposed that a fund be raised, with his own
15 donation as an initiation, to help the unfortunate mother and daughter.” *Id.* at 1. In the same vein,
16 when a devastating earthquake struck Mexicali in 2010, many of Qisda’s Mexican workers suffered
17 severe damage to their homes. As Mr. Tong recalls, “Dr. Hsiung immediately asked Qisda’s
18 headquarters in Taiwan to raise an emergency relief fund for helping those workers and their
19 families, and again he was the first to make a generous donation to the fund.” *Id.*

20 Eric Korman was formerly employed by Dell Corporation, a large customer of AUO during
21 Dr. Hsiung’s tenure. He writes that he “never heard a negative word about Mr. Hsiung from any of
22 his employees, peers, or competitors,” and concludes:
23

24 I have lived in many places during my lifetime and have met people from various
25 backgrounds. From my personal and professional interactions with Mr. Hsiung, I
26 have always found him to be a man of his word, extremely humble and a caring
27 individual. Regardless of the outcome of his trial, my opinion of him remains
28 unchanged. I am a better person for having had the opportunity to work and know
29 Mr. Hsiung. Ex. 10 at 1-2.

1 The letters written to the Court bear witness to Dr. Hsiung's integrity, compassion, and
2 capabilities. Throughout his personal and professional life, he has earned the respect and admiration
3 of those who have known him. We respectfully urge the Court to consider these letters in
4 determining a fair sentence for Dr. Hsiung.
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6 **D. The Need For The Sentence Imposed To Serve The Traditional Goals Of Sentencing**
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8 Section 3553(a) also directs a district court to consider whether a sentence is needed to serve
9 the purposes of punishment—retribution, deterrence, incapacitation, and rehabilitation. 18 U.S.C.
10 § 3553(a)(2). These purposes all point toward a lenient sentence for Dr. Hsiung. Not only do the
11 nature and circumstances of the offense, described above, temper the need for retribution, but the
12 effect of the lengthy prosecution and guilty verdict on Dr. Hsiung has been profound. While none
13 of the cooperators was sanctioned by his employer for his crime—indeed, several received
14 promotions—Dr. Hsiung submitted his resignation as CEO of Qisda shortly following the guilty
15 verdict. Even without a term in prison, he will be “punished the rest of [his] li[fe] through collateral
16 effects, such as unemployment, financial hardship, and disqualification from participating in the
17 economic affairs of the nation.” Donald C. Klawiter & Jennifer M. Driscoll, *Sentencing Individuals*
18 *in Antitrust Cases: The Proper Balance*, 23 *Antitrust* 75, 79 (2009). Those same collateral effects,
19 along with the fact of conviction, will “afford adequate deterrence” to future violations of the
20 antitrust laws for both Dr. Hsiung himself and other potential white-collar offenders. *Id.*
21 § 3553(a)(2)(B); *see United States v. Edwards*, 595 F.3d 1004, 1016 (9th Cir. 2010) (affirming
22 sentence where the district court concluded that probation plus “the fact of a felony conviction”
23 would serve as adequate deterrence). He is also facing a tremendous fine. Moreover, to the extent
24 that punishment should “protect the public from further crimes of the defendant,” we think it
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1 clear—and the government does not seriously contest—that Dr. Hsiung does not pose a danger of
2 any future offenses of this nature. *Id.* § 3553(a)(2)(C). Finally, neither “vocational training” nor
3 “correctional treatment” would be of any use in Dr. Hsiung’s case. *Id.* § 3553(a)(2)(D).

4 **III. The Applicable Guidelines Range**

5 The Report’s recommended sentence hinges on a fundamentally flawed Guidelines
6 calculation. First, the government vastly overstates the volume of commerce affected by the
7 conspiracy—triggering an erroneous 16-level increase in Dr. Hsiung’s offense level. Second, the
8 government inappropriately urges a 4-level role enhancement, which would create a significant
9 sentencing disparity between Dr. Hsiung and co-conspirators whose involvement in the offense
10 exceeded Dr. Hsiung’s role. Properly calculated, the Guidelines dictate a total offense level of 23,
11 and a range of 46-57 months. For the reasons discussed above, this is still a much longer sentence
12 than the section 3553(a) factors warrant. But it is at least an accurate starting point from which this
13 court should then depart downward, as federal law provides.
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17 **A. Volume Of Commerce**

18 As explained in detail in AUO’s sentencing memorandum, the government’s proposed
19 volume of commerce runs contrary to its own expert’s trial testimony, its treatment of all other
20 defendants in the TFT-LCD proceedings, and basic economic theory. Dr. Hsiung fully adopts and
21 incorporates AUO’s arguments here.
22

23 Notably, this Court need only look to the calculations used for the ten co-conspirators who
24 have already been sentenced to see that the PSR grossly overstates the volume of commerce
25 attributable to Dr. Hsiung and unfairly tags him with a 16-level enhancement. As shown in Table
26 2, *supra*, CS Chung and Bock Kwon, high-level executives at LG, stipulated with the government
27 to a volume of commerce between \$500 million and \$1 billion. LG is a behemoth compared to
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1 AUO. *See* Hall Decl. fig. 5; RT 3296:3-9, 3370:2-6. It is ludicrous to propose a higher volume-of-
2 commerce calculation for Dr. Hsiung than for any LG executive. And the LG executives received
3 only a 12-point enhancement; neither logic nor fairness warrants the colossal 16-level increase that
4 the PSR recommends for Dr. Hsiung.

5
6 Turning to the merits of the PSR's calculations, AUO's sentencing memorandum explains
7 the flaws in exacting detail. We offer the following summary:

- 8
- 9 • *The government counts sales that occurred after the conspiracy ended in January 2006.* In
10 an about-face from trial, the government's economic expert, Keith Leffler, inflates AUO's
11 volume of commerce by including panel sales through December 2006. *See* Decl. of Keith
12 Leffler Regarding AUO's U.S. Volume of Commerce ¶ 2 (Leffler Decl.). But Leffler himself
13 testified at trial that the overcharge ended in January 2006. RT 3320:10-12. Indeed, Leffler
14 supported his opinions on liability and gross gain by comparing AUO's average margins
15 from August 2005 to January 2006—the final six months of the conspiracy, he testified—to
16 the six months immediately thereafter. RT 3356:16-3361:5; 3363:4-18; 3370:18-3372:15;
17 3373:22-3374:10; 3472:15-3473:1; 4559:19-4560:6; 4585:19-4586:13. Because AUO's
18 volume of commerce must be confined to the time period when there was a price-fixing
19 agreement among co-conspirators, this Court should disregard all sales after January 2006.
 - 20 • *The government counts sales of panel types during months when they were not discussed at
the Crystal Meetings.* As courts have recognized, only “sales of the specific type of goods
21 that were price-fixed” should be included in the volume-of-commerce calculation. *See*
22 *United States v. Hayter Oil Co.*, 51 F.3d 1265, 1276 (6th Cir. 1995). The government
23 ignores this principle by adding up the sales of all panels named in the indictment, even
24 during months when a particular type of panel was not discussed at the Crystal Meetings. As
25 a matter of both economic logic and legal doctrine, this Court must exclude sales of specific
26 panel sizes during months when they were not mentioned at competitor meetings.
 - 27 • *The government counts panels sold to other cartel members.* According to basic economic
28 theory, sales to co-conspirators cannot factor into the volume of commerce because “[i]t
29 would make no economic sense for transactions among cartel members to occur at cartel
prices incorporating overcharges.” Hall Decl. ¶ 34. Accordingly, AUO's sales to Samsung
and LG must be excluded from the volume-of-commerce calculation. *See United States v.*
Giordano, 261 F.3d 1134, 1146 n.16 (11th Cir. 2001) (when “a defendant comes forward
with evidence that a particular sale was uninfluenced by the illegal agreement, even though
that sale occurred during a period when the agreement was otherwise effective, that sale
should not be counted in the volume of commerce”).
 - *The government counts sales to Dell after 2004.* Dell's economic expert reviewed Dell's
data and concluded that it suffered no overcharges after December 31, 2004. Accordingly,
post-2004 sales to Dell should be excluded from the volume-of-commerce calculation.

1 As AUO's sentencing memorandum explains, correcting these and other flaws in the government's
2 analysis yields a volume of commerce below \$250 million. *See* Hall Decl. Appendix I. Pursuant
3 to U.S.S.G. § 2R1.1(b)(2)(D), Dr. Hsiung should be subject to an 8-level enhancement, rather than
4 the 16 levels the government urges.

6 **B. Adjustment For Dr. Hsiung's Role In The Offense**

7 Despite the government's stipulations that none of the cooperating co-conspirators should
8 receive more than a three-level enhancement, *see supra* Table 1, the PSR recommends a four-level
9 role enhancement for Dr. Hsiung on the theory that he was "an organizer or leader of a criminal
10 activity that involved five or more participants." U.S.S.G. § 3B1.1(a). The Probation Office's
11 justifications for this enhancement do not withstand scrutiny. The PSR says that Dr. Hsiung
12 "attended meetings" with other co-conspirators. PSR ¶ 35. But merely attending meetings is not
13 evidence that Dr. Hsiung *organized* the crime. In fact, Dr. Hsiung did not even attend the first
14 three Crystal Meetings, where the conspiracy was formed. The PSR also claims that Dr. Hsiung
15 "exercised decision-making authority." *Id.* Again, even if that were true, it does not show that he
16 "organized" the crime; at most it suggests that he was a "manager or supervisor," a lower-level
17 enhancement. The PSR also claims that Dr. Hsiung "claimed right to a larger share of the fruits of
18 the offense," but this is completely unsupported by the record. Based on the information contained
19 in the PSR, Dr. Hsiung should, at most, receive a three-level enhancement, not four.

20 Critically, imposing a four-level role enhancement here would violate Congress's
21 instruction that a court must avoid unwarranted sentence disparities. 18 U.S.C. § 3553(a)(6). This
22 mandate applies not only to the bottom-line sentence, but also to the application of the individual
23 Guidelines factors: It would be inappropriate to subject defendants to different role enhancements
24 when their offense conduct was comparable. *See, e.g., United States v. Gil*, 58 F.3d 1414, 1424 &
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1 n.6 (9th Cir. 1995) (suggesting that a district court might have created an unwarranted disparity
2 when it attributed different drug amounts to co-conspirators even though evidence establishing the
3 amount was “equally applicable to both”); *United States v. Williams*, 605 F.3d 556, 572 (8th Cir.
4 2010).

5
6 Many of the ten co-conspirators who have already been sentenced in the TFT-LCD
7 proceedings held high positions within their companies and played an important role in instigating,
8 attending, and implementing pricing agreements from the Crystal Meetings—yet no defendant has
9 been subject to more than a three-level manager/supervisor role enhancement under U.S.S.G.
10 § 3B1.1(b), and two defendants received no role enhancement at all. As the information
11 summarized in Table 1, *supra*, makes clear, several of these corporate executives played a more
12 active role in the conspiracy than Dr. Hsiung. The following facts are particularly significant:
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- 14 • Many co-conspirators had extensive contact with competitors during the period of the
15 conspiracy. For example, Brian Lee attended 29 Crystal Meetings; CC Liu attended 24; and
16 Sam Wu attended 23. Dr. Hsiung attended only 9 Crystal Meetings.
- 17 • Many co-conspirators held high positions within their companies. For example, JY Ho was
18 President of Chi Mei Optoelectronics during the relevant period, and Frank Lin was
19 Chairman and CEO of Chunghwa Picture Tubes.
- 20 • Many co-conspirators played an active role in implementing the conspiracy. For example,
21 CC Liu and Brian Lee helped instigate the Crystal Meetings by approaching competitors,
22 and JY Ho took initiative to encourage competitors to stabilize prices and to maintain
23 secrecy regarding their activities. Several co-conspirators—including Amigo Huang and
24 Sam Wu—attended one or more of the first three Crystal Meetings at which the conspiracy
25 was formed; in contrast, Dr. Hsiung did not attend any of these meetings, nor is there any
26 evidence that he even knew about them. And a number of the executives enjoyed pricing
27 authority within their companies and took action to adhere to Crystal Meeting prices.

28 This comparison demonstrates that Dr. Hsiung should receive, at most, a three-level role
29 enhancement at sentencing. Nor can the government escape that conclusion by pointing out that
the co-conspirators listed above pleaded guilty; although their cooperation with the government
may justify some disparity in selecting an ultimate term of imprisonment, it has no relevance to

1 determining the appropriate role enhancement. After all, a district court cannot create a sentencing
2 disparity simply to “punish [a defendant] for exercising his trial rights.” *United States v. Bischel*,
3 61 F.3d 1429, 1437 (9th Cir. 1995); *see United States v. Capriola*, 537 F.2d 319, 320-21 (9th Cir.
4 1976). Imposing a higher enhancement on a co-conspirator whose role was identical to or less
5 central than defendants who pleaded guilty would appear to do just that. Accordingly, this Court
6 should reject the government’s bid for a four-level role enhancement for Dr. Hsiung.
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8 **IV. Objections To Offense Conduct/Price-Fixing Conspiracy Sections Of The PSR**

9 In addition to the objections listed above and those offered by Dr. Hsiung’s co-defendants
10 (which he joins in full), we object to the entirety of the description of Dr. Hsiung and the offense
11 conduct in paragraphs 8 to 20 of the PSR. We highlight some of the factual errors below:
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- 13 • The PSR states that Dr. Hsiung was the Executive Vice President and “second-in-
14 command” at AUO when he attended Crystal Meetings. PSR ¶¶ 9, 16. However, AUO
15 organization charts demonstrate that Dr. Hsiung was head of the Desktop Display Business
16 Unit through at least March 26, 2002. *See Exs. 15-17*. Thus, for five of the nine total
17 Crystal Meetings he attended, Dr. Hsiung was *not* Executive Vice President.
- 18 • The PSR asserts that Crystal Meetings were held regularly between September 2001 and
19 December 2006. PSR ¶ 13. This is wrong because there was no evidence that employees
20 attended any of these meetings after the summer of 2006. Moreover, the PSR fails to
21 adequately recognize that Dr. Hsiung attended only one Crystal Meeting after 2002, in July
22 2004, and no pricing agreements were reached at that meeting.
- 23 • The PSR claims that Dr. Hsiung gave directions to sales teams “after each meeting.” PSR
24 ¶ 16. The evidence does not support this. Indeed, there was evidence that Dr. Hsiung gave
25 instructions to *undercut* Crystal Meeting Prices. Trial Exhibit 115 is a clear example. In
26 this October 27, 2001 e-mail, Dr. Hsiung instructed his team to charge \$205 for 15-inch
27 monitors to Dell in November. But notes of the Crystal Meeting held on October 19, 2001
28 indicate that attendees intended to charge at least \$220 for 15-inch monitors that November.
29 • The PSR’s allegation that AUOA employees were instructed to reach pricing agreements
with competitors is wholly unsubstantiated. PSR ¶¶ 18, 19. Michael Wong, the only
AUOA witness to testify, stated that he was never told to fix prices with competitors and
that he did not do so. RT 1061; 1094.

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CONCLUSION

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This memorandum has attempted to illuminate the truly outstanding qualities of Hui Hsiung as a human being. The materials presented show him to be not only a brilliant and dedicated scientist, but a warm and compassionate individual who has improved the lives of many people in his personal and professional life. These personal qualities are highly relevant to the Court's sentencing determination, and we respectfully ask that they be given appropriate weight.

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It also bears emphasis that Dr. Hsiung has conducted himself throughout the case in a manner that demonstrates his respect for the Court and for the legal process. Although he could not have been extradited, he voluntarily submitted himself to the Court's jurisdiction, and he has carefully and meticulously adhered to every requirement imposed by the Court and its representatives. He and his co-defendants put the government to its proof at trial so that important and novel issues could be litigated and preserved, but he conducted himself with honor and dignity throughout and is fully prepared to accept the judgment of the Court, subject of course to his appellate rights.

Any term of imprisonment for Dr. Hsiung is painful to contemplate. As Dr. Wang lamented in his letter to the Court, such a possibility "is something very difficult to reconcile for those of us that have known Dr. Hsiung for a long time." Ex. 8 at 2. Yet we recognize that sentences of various lengths have been imposed on other individuals who participated in the TFT-LCD conspiracy. We have included tables summarizing those sentences, and we believe that the selection of Dr. Hsiung's sentence is best guided by a comparison to CC Liu, who was viewed as the "godfather of the industry" and served as Vice President of Chungwha Picture Tubes. Liu was sentenced to a seven-month term of imprisonment and fined \$30,000. Other executives

1 comparable to Dr. Hsiung received higher terms, but none exceeding the 14-month sentence given
2 to JY Ho. To the extent that Dr. Hsiung must be sentenced to confinement, we respectfully urge
3 the Court to give serious weight to the terms imposed on these similarly situated individuals, and
4 to temper the sentence with leniency and compassion due to all of the factors discussed herein.
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6 For the same reasons, this Court should reject the PSR's recommendation that Dr. Hsiung
7 serve three years of supervised release following imprisonment. PSR Sentencing
8 Recommendation at 3. This recommendation creates an egregious disparity compared to the
9 sanctions imposed on the ten co-conspirators who have already been sentenced. The government
10 stipulated that none should serve any period of supervised release, and the Court so ordered. Dr.
11 Hsiung merits the same treatment in view of his unbroken record of court appearances and faithful
12 returns following multiple international trips.
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14 One final and important point: We are certain that Dr. Hsiung will never again be brought
15 before any court accused of criminal conduct. He still has enormous contributions to make to the
16 community at large, based on his proven brilliance and his desire to improve the world in which
17 we live. We ask that the Court fashion a sentence that will permit him to return to his work and his
18 family as soon as possible.⁴
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26 ⁴ The PSR correctly recognizes that Dr. Hsiung "is viewed as a good candidate for voluntary
27 surrender." PSR Sentencing Recommendation at 3. As the Report acknowledges, Dr. Hsiung "has
28 kept all court appearances, complied with the conditions of pretrial release, and is not viewed as a
29 flight risk or a danger to the community." *Id.*

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Date: September 11, 2012

Respectfully submitted,

/s/ William L. Osterhoudt, Esq.
WILLIAM OSTERHOUDT, ESQ.

/s/ Brian P. Berson, Esq.
BRIAN BERSON, ESQ.

/s/ Christopher T. Handman, Esq.
CHRISTOPHER T. HANDMAN, ESQ.
Admitted Pro Hac Vice

ATTORNEYS FOR HUI HSIUNG