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9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13
14 UNITED STATES OF AMERICA

No. CR 11-0488 RS

15 v.

**UNITED STATES' SENTENCING
MEMORANDUM RE EAGLE EYES
AND E-LITE**

16
17 EAGLE EYES TRAFFIC INDUSTRIAL
CO., LTD.; E-LITE AUTOMOTIVE,
18 INC.; HOMY HONG-MING HSU; and
YU-CHU LIN, aka David Lin,

Sentencing Date: **October 16, 2012**
(pending approval of defendants' request
for expedited sentencing)

19 Defendants.

Hon. Richard Seeborg
United States District Judge

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1 **I. INTRODUCTION**

2 Defendants Eagle Eyes Traffic Industrial Co., Ltd. (“Eagle Eyes”) and E-Lite
3 Automotive, Inc. (“E-Lite”) are scheduled for a change of plea on October 16, 2012. They are
4 expected to enter open pleas, without any Rule 11(c) plea agreement with the government. The
5 defendants have requested expedited sentencing to occur on the same day as the change of plea,
6 and the government does not oppose that request. The government respectfully submits this
7 Sentencing Memorandum before the change of pleas, in the event that the Court grants
8 defendants’ request for expedited sentencing.

9 On September 19, 2012, the parties participated in a settlement conference before
10 Magistrate Judge Joseph Spero. As a result of that settlement conference, the government wrote
11 a letter to counsel for Eagle Eyes and E-Lite dated September 25, 2012.¹ The letter indicated
12 that should the defendants seek a reduced fine of \$5 million based on an inability to pay a United
13 States Sentencing Guidelines (“Guidelines,” “Sentencing Guidelines,” or “U.S.S.G.”) fine, the
14 government would not contest or dispute the imposition of that fine. In their Sentencing
15 Memorandum, defendants have requested a reduced \$5 million fine. The government neither
16 contests nor disputes the imposition of that fine, to be paid jointly and severally. In addition to
17 the \$5 million fine, the government also recommends that the Court sentence Eagle Eyes and E-
18 Lite to a five-year term of probation consistent with the recommended five-year payment
19 schedule for the \$5 million fine, no restitution, and a \$400 special assessment for each defendant.

20 Eagle Eyes and E-Lite were charged with and are expected to plead guilty to participating
21 in a seven-year conspiracy to fix the prices of aftermarket auto lights sold in the United States
22 and elsewhere. The conspiracy was blessed and carried out by the two highest-ranking officers
23 of Eagle Eyes, its Chairman and Vice Chairman. It affected thousands of products and hundreds
24 of millions of dollars worth of sales. Seven corporations and over a dozen individuals
25 participated in the conspiracy. Eagle Eyes, E-Lite, and its co-conspirators carried out the
26 conspiracy through numerous, well-documented meetings that took place in person and over the
27

28 ¹ Declaration of Kenneth Julian in support of Eagle Eyes’ and E-Lite’s Sentencing Memorandum
 (“Julian Decl.”), Doc. 247-1, Ex. A.

1 phone and in Taiwan and the United States. The co-conspirators drafted and exchanged
2 hundreds of pages of meeting agendas, meeting minutes, price lists, price formulas, and emails,
3 all in furtherance of the conspiracy. And aware that their conduct was illegal, they took steps to
4 conceal the conspiracy.

5 The Sentencing Guidelines fine ranges—approximately \$28 to \$56 million for Eagle
6 Eyes and approximately \$8 to \$16 million for E-Lite—reflect the harm that this violation caused
7 American consumers. Nevertheless, the government recognizes that Eagle Eyes and E-Lite
8 cannot pay a Guidelines fine without impairing their ability to make restitution and without
9 substantially jeopardizing their continued viability. For these reasons, the government does not
10 contest the imposition of a \$5 million fine, payable in six installments over five years without
11 interest, to be imposed jointly and severally on Eagle Eyes and E-Lite.

12 **II. THE OFFENSE CONDUCT AND CHARGE**

13 Over a seven-year period starting in July 2001, the major manufacturers and distributors
14 of aftermarket auto lights conspired to fix prices. Eagle Eyes, through its officers and
15 employees, including its Chairman and Vice Chairman, participated in the conspiracy with TYC
16 Brother Industrial, Ltd. (“TYC”) and its U.S. distributor Genera Corp. (“Genera”), Depo Auto
17 Parts Industrial Co., Ltd. (“Depo”) and its U.S. distributor Maxzone Vehicle Lighting Corp.
18 (“Maxzone”), Eagle Eyes’ former U.S. distributor Sabry Lee (U.S.A.), Inc. (“Sabry Lee”), and
19 the defendant E-Lite, a U.S. distributor and indirect, wholly owned subsidiary of Eagle Eyes,
20 which joined the conspiracy in about March 2006. The conspiracy continued until about
21 September 2008.

22 In 2001, Chairman Yu-Chu Lin of Eagle Eyes, Chairman C.C. Wu of TYC, and
23 Chairman Shiu-Min Hsu of Depo met four times at a hotel in Taiwan and founded the
24 conspiracy. *See* United States’ Notice of Motion and Motion Regarding Co-conspirator
25 Statements, filed August 7, 2012, Declaration of May Lee Heye (“Heye Decl.”), Exs. L, M, N,
26 O. At the first meeting, the chairmen agreed that they would maintain a fixed spread between
27 each company’s prices. At the next three meetings, the chairmen confirmed the fundamental
28 agreement and negotiated additional details. Signed meeting minutes memorialize the agreement

1 to fix the prices of aftermarket auto lights. *Id.* Chairman Lin attended each of the four meetings
2 on behalf of Eagle Eyes and personally signed each of the meeting minutes. *Id.* His second-in-
3 command, Vice Chairman Homy Hsu, was also present, attending at least one of the four 2001
4 chairmen-level meetings. *See* Heye Decl., Ex. E at 7-8; Ex. B at 6-7.

5 Between 2001 and 2008, employees from Eagle Eyes, Depo, TYC, and their U.S.
6 distributors met when needed to refine the price agreement. These meetings took place in person
7 and via telephone in the United States and Taiwan. *See* Trial Exs. 19-58²; Heye Decl., Ex. G at
8 25. At times, they adjusted prices to accommodate changing market conditions. *See, e.g.,* Heye
9 Decl., Exs. Q, T, W. At other times, they coordinated price announcements and addressed
10 compliance and enforcement issues. *See, e.g.,* Heye Decl., Exs. P, Q, W. Vice Chairman Homy
11 Hsu represented Eagle Eyes in these meetings and received meeting agendas, meeting minutes,
12 price lists, price formulas, and other documents in connection with the meetings. *See, e.g.,* Heye
13 Decl., Ex. V; Trial Exs. 29, 49, 324, 327, 337, 343, 352, 354.

14 In 2005 and 2008, the conspirators agreed to change their prices significantly. *See* Heye
15 Decl., Ex. I at 10-11; Ex. A at 6, 9. Market conditions, such as new entrants, higher raw material
16 costs, and fluctuations in OEM prices, prompted these major price adjustments. *Id.* In order to
17 negotiate, reach consensus, and implement the new prices, Eagle Eyes representatives met with
18 co-conspirators numerous times. *Id.* The conspirators prepared and circulated price lists
19 reflecting new prices for hundreds of individual models of auto lights, documents setting out
20 formulas for calculating the new prices, and schedules for coordinating announcement of the new
21 prices to customers. *See* Heye Decl., Exs. S, T, W, AA, EE, GG.

22 Throughout the conspiracy, Eagle Eyes took affirmative steps to implement the price
23 agreement. For example, Vice Chairman Homy Hsu forwarded conspiracy-related documents,
24 including meetings minutes and agreed-upon price lists, to other Eagle Eyes employees. *See,*
25 *e.g.,* Heye Decl., Ex. Z. Homy Hsu also advised Eagle Eyes' U.S. distributor Sabry Lee about
26 the existence of a price agreement between Eagle Eyes, TYC, and Depo, and pressured Sabry
27

28 ² Trial exhibits were filed with the Court on August 7, 2012 in connection with the United States' motion regarding co-conspirator statements.

1 Lee to increase prices in accordance with the agreement. *See* Heye Decl., Ex. J at 5, 6; Ex. C. at
2 7, Exs. X, Y. Starting in 2006, Eagle Eyes implemented the price agreement through its wholly
3 owned U.S. distributor E-Lite.

4 The conspirators were aware that their price agreement was illegal, and they took steps to
5 conceal their actions. On occasion, notetakers used code names to refer to companies in meeting
6 minutes and other documents. *See, e.g.*, Heye Decl., Ex. W; Ex. D at 17. Conspirators created
7 personal email addresses to send and receive communications about the price agreement. *See,*
8 *e.g.*, Heye Decl., Ex. D at 21-22. At times, Eagle Eyes' Homy Hsu wrote "highly classified" on
9 emails containing evidence of the price agreement. *See, e.g.*, Heye Decl., Exs. DD, FF. Once
10 the conspiracy became public, some conspirators destroyed documents in an attempt to hide what
11 they had done. *See, e.g.*, Heye Decl., Ex. D at 22; Ex. I at 18. The conspiracy ended in 2008
12 when Sabry Lee filed a civil lawsuit against TYC, Genera, Depo, Maxzone, Eagle Eyes, and E-
13 Lite, and the Department of Justice initiated a criminal investigation.

14 On November 29, 2011, a grand jury charged Eagle Eyes and E-Lite with one count of
15 violation of the Sherman Antitrust Act, 15 U.S.C. § 1. The companies were charged in a
16 Superseding Indictment along with Chairman Yu-Chu Lin and Vice Chairman Homy Hsu. Lin,
17 who resides abroad in Taiwan, has not appeared to face the charges and he remains an
18 international fugitive. Hsu pleaded guilty to the Superseding Indictment on September 25, 2012
19 and is scheduled to be sentenced on January 22, 2013. The companies are expected to plead
20 guilty on October 16, 2012, and have requested same-day expedited sentencing. Trial against
21 Eagle Eyes, E-Lite, and Homy Hsu was scheduled to begin on October 29, 2012, but the Court
22 has vacated that date.

23 **III. LEGAL STANDARDS**

24 Although the Sentencing Guidelines are now advisory, a court nevertheless must consider
25 the Guidelines sentencing range along with the other sentencing factors set forth in 18 U.S.C. §
26 3553(a). *United States v. Booker*, 543 U.S. 220, 259-60 (2005). Even after *Booker*, a district
27 court should begin all sentencing proceedings by correctly calculating the applicable Guidelines
28

1 range. *United States v. Gall*, 552 U.S. 38, 49-50 (2007). Indeed, the Guideline range is itself a
2 section 3553(a) sentencing factor. *See* 18 U.S.C. § 3553(a)(4) and (5).

3 Along with the Guidelines, the other factors set forth in Section 3553(a) must be
4 considered. Section 3553(a) directs the Court to impose a sentence “sufficient, but not greater
5 than necessary” to comply with the purposes set forth in sub-paragraph two. That sub-paragraph
6 two identifies the need for the sentence imposed to:

- 7 (A) reflect the seriousness of the offense, to promote respect for the law, and
8 to provide just punishment for the offense;
- 9 (B) to afford adequate deterrence to criminal conduct;
- 10 (C) to protect the public from further crimes of the defendant; and
- 11 (D) to provide the defendant with needed educational or vocational training,
12 medical care, or other correctional treatment in the most effective
13 manner.

14 In addition to the Sentencing Guidelines and the statutory purposes noted above, section 3553(a)
15 further directs to Court to consider: the nature and circumstances of the offense and the history
16 and characteristics of the defendant; the need to avoid unwarranted sentencing disparities; and
17 the need to provide restitution to any victims of the offense.

18 Moreover, in considering whether to impose a fine and the amount, time for payment,
19 and method of payment, a court should also consider the factors set forth in 18 U.S.C. § 3572(a),
20 along with those in section 3553(a). Section 3572(a) directs a court to consider, among other
21 factors, the defendant’s income, earning capacity, and financial resources. Section 3572(b)
22 mandates that a court shall impose a fine only to the extent that such fine will not impair the
23 ability of the defendant to make restitution.

24 A district court “typically uses a preponderance of the evidence standard when finding
25 facts pertinent to sentencing.” *United States v. Berger*, 587 F.3d 1038, 1047 (9th Cir. 2009).

26 **IV. SENTENCING GUIDELINES**

27 As stated in U.S.S.G. §2R1.1(d)(1), the volume of affected commerce is the starting point
28 for calculating the base fine in cases involving corporations that have committed an antitrust

1 violation. The special instruction given in §2R1.1(d)(1) provides, “In lieu of the pecuniary loss
2 under subsection (a)(3) of §8C2.4 (Base Fine), use 20 percent of the volume of affected
3 commerce.” *See also* §8C2.4(b) (directing that “if the applicable offense guideline in Chapter
4 Two includes a special instruction for organizational fines, that special instruction be applied, as
5 appropriate,” to calculate the base fine); §2R1.1 application note 3 (explaining that “[t]he
6 purpose of specifying a percent of the volume of commerce is to avoid the time and expense that
7 would be required for the court to determine the actual gain or loss.”).

8 Determining the volume of affected commerce “does not require a sale-by-sale
9 accounting, or an econometric analysis, or expert testimony.” *United States v. SKW Metals &*
10 *Alloys, Inc.*, 195 F.3d 83, 91 (2nd Cir. 1999). Rather, courts have uniformly held that all sales
11 made by the defendant during the conspiracy period should be presumed affected. *United States*
12 *v. Giordano*, 261 F.3d 1134, 1146 (11th Cir. 2001) (presuming all sales within conspiracy period
13 were affected unless the conspiracy was wholly a “non-starter” or “ineffectual”); *see also United*
14 *States v. Andreas*, 216 F.3d 645, 678 (7th Cir. 2000); *United States v. Hayter Oil*, 51 F.3d 1265,
15 1273 (6th Cir. 1995).

16 **A. Eagle Eyes’ Guidelines Fine Range is \$28 to \$56 Million**

17 Eagle Eyes’ volume of affected commerce is at least \$88 million. *See* Declaration of
18 Christopher Ries in Support of United States’ Sentencing Memorandum re Eagle Eyes and E-
19 Lite (“Ries Decl.”) ¶ 8. Using \$88 million as the volume of commerce, Eagle Eyes’ base fine is
20 \$17.6 million (88 * 0.20). The company’s Guidelines fine range is further calculated by
21 determining a culpability score under §8C2.5 and then applying minimum and maximum
22 multipliers to the base fine under §§8C2.6 and 8C2.7. The Guidelines fine range is determined
23 as follows:

24 (a) Base Fine: As mentioned above, the base fine is 20% of the \$17.6 million
25 volume of affected commerce of at least \$88 million
26 (§2R1.1(d)(1) & §8C2.4(b)).

27 (b) Culpability Score

28 i. Base: Five points are assigned as a starting point for +5
calculating the culpability score (§8C2.5(a)).

- ii. Involvement in or Tolerance of Criminal Activity: Eagle Eyes had more than 200 employees, *see* Ries Decl. ¶ 2, and an individual within high-level personnel of the organization participated in, condoned, or was willfully ignorant of the offense (§8C2.5(b)(3)). +3
 - iii. Prior History: The government is unaware of any prior misconduct by Eagle Eyes (§8C2.5(c)). 0
 - iv. Violation of Order: The government is unaware that Eagle Eyes has violated any order (§8C2.5(d)). 0
 - v. Obstruction of Justice: The government is unaware of any conduct by Eagle Eyes that would warrant this upward adjustment (§8C2.5(e)). 0
 - vi. Effective Compliance and Ethics Program: The government is unaware of any compliance or ethics programs that would warrant this downward adjustment (§8C2.5(f)). 0
 - vii. Self-Reporting, Cooperation, and Acceptance of Responsibility: Eagle Eyes' highest-ranking officer, Chairman Yu-Chu Lin, has not appeared to face the charges and remains an international fugitive. This conduct is inconsistent with affirmative acceptance of responsibility (§8C2.5(g)). 0
- (c) Total Culpability Score 8
- (d) Minimum and Maximum Multipliers: Based on a culpability score of 8, the minimum multiplier is 1.60 and the maximum multiplier is 3.20 (§8C2.6). 1.60– 3.20
- (e) Minimum and Maximum Fine Range: Applying the minimum and maximum multipliers to the base fine of \$17.6 million, the fine range is between \$28.16 million and \$56.32 million (§8C2.7). \$28.16 – \$56.32 million

B. E-Lite's Guidelines Fine Range is \$8 to \$16 Million

While Eagle Eyes was charged with participating in the conspiracy from about July 2001 to about September 2008, E-Lite was charged with participating for a shorter duration, from

1 about March 2006 to September 2008. Accordingly, compared to Eagle Eyes, E-Lite's volume
2 of commerce and Guidelines fine range is smaller. E-Lite's base fine is \$6.8 million, or 20
3 percent of the volume of affected commerce of at least \$34 million. *See* Ries Decl. ¶ 8.

4 E-Lite's culpability score is identical to Eagle Eyes', but for one difference. While Eagle
5 Eyes had more than 200 employees, E-Lite had fewer than 50, but more than 10. *See* Ries Decl.
6 ¶ 2. Therefore, under §8C2.5(b)(5), E-Lite's culpability score is increased by only 1 point, not 3
7 points, for a total score of 6. E-Lite's minimum and maximum multipliers are 1.20 and 2.40. Its
8 fine range is \$8.16 million to \$16.32 million.

9 **V. RECOMMENDED SENTENCE**

10 Eagle Eyes and E-Lite have requested, based on the companies' inability to pay, that the
11 Court impose a \$5 million criminal fine, payable in six installments over five years, without
12 interest. As stated in a letter to the defendants dated September 25, 2012 (Julian Decl., Ex. A),
13 the government does not contest or dispute the imposition of this fine as appropriate. The
14 defendants have asked that the fine be imposed jointly and severally, and the government does
15 not oppose that request. In addition to a \$5 million fine, the government recommends a five-year
16 term of probation with conditions, no restitution, and a \$400 special assessment for each
17 defendant.

18 The recommended sentence is supported by the sentencing factors set forth in 18 U.S.C.
19 §§ 3553(a) and 3572(a). Because Eagle Eyes has an inability to pay a fine in the Guidelines
20 range without impairing its ability to make restitution and without jeopardizing its continued
21 viability, its fine should be reduced accordingly. The recommended sentence is not inconsistent
22 with the nature and circumstances of the offense, takes into account the history and
23 characteristics of the defendant, and complies with the purposes set forth in 18 U.S.C. §
24 3553(a)(2). As discussed further below, the recommended sentence is also supported by the
25 factors in section 3572(a), takes into account the need to provide restitution, and does not create
26 unwarranted sentence disparities.

27 //

28 //

1 **A. The Defendants' Financial Conditions Support a Criminal Fine Reduced for**
2 **Inability to Pay**

3 A court should consider in its fine determination a defendant's income, earning capacity,
4 and financial resources, among other factors, 18 U.S.C. § 3572(a), and shall impose a fine only
5 to the extent that such fine or penalty will not impair the ability of the defendant to make
6 restitution, 18 U.S.C. § 3572(b). Consistent with section 3572, U.S.S.G. §8C3.3 provides for a
7 reduction of a fine based on a corporation's inability to pay. Section 8C3.3 states:

8 (a) The court shall reduce the fine below that otherwise required . .
9 ., to the extent that imposition of such fine would impair its
 ability to make restitution to victims.

10 (b) The court may impose a fine below that otherwise required . . .
11 if the court finds that the organization is not able and, even
12 with the use of a reasonable installment schedule, is not likely
 to become able to pay the minimum fine required . . .

13 *Provided*, that the reduction under this subsection shall not be
14 more than necessary to avoid substantially jeopardizing the
15 continued viability of the organization.

16 The government does not contest or dispute that Eagle Eyes and E-Lite have an inability
17 to pay the minimum Guidelines fines calculated above. The government does not contest or
18 dispute that the defendants are unable to pay the minimum Guidelines fines without impairing
19 their ability to make restitution to victims, without substantially jeopardizing their continued
20 viability, and that even with the use of a reasonable installment schedule, they are not able and
21 will not likely become able to pay the minimum Guidelines fines. Moreover, the government
22 does not dispute that, pursuant to 18 U.S.C. §§ 3572(d)(1) and 3612(f)(3)(A), as well as U.S.S.G.
23 §8C3.2, the Court should, in the interests of justice, allow Eagle Eyes to pay a fine in
24 installments on a schedule established by the Court, and that interest be waived.

25 In 2011, the government retained an outside expert, Dale Zuehls, to conduct an analysis
26 of defendants' inability to pay a criminal fine. In a letter dated September 7, 2011, Mr. Zuehls
27 concluded that defendants were able to pay a \$5 million fine, in six installments over five years,
28 without interest. Julian Decl., Ex. B. The installment schedule recommended by Mr. Zuehls was

1 as follows: \$100,000 at the time of sentencing; \$300,000 one year from sentencing; \$600,000
2 two years from sentencing; \$1 million due three years from sentencing; \$1.5 million due four
3 years from sentencing; and \$1.5 million due five years from sentencing. Defendants have
4 recommended to the Court a reduced fine of \$5 million, payable without interest on the
5 installment schedule set forth by Mr. Zuehls. The government does not contest or dispute the
6 imposition of such a fine on such payment terms and recognizes that they are appropriate.

7 **B. Probation Should be Imposed to Safeguard Defendants' Ability to Make**
8 **Payments on an Installment Schedule**

9 Under 18 U.S.C. § 3561(a), an organization may be sentenced to a term of probation and,
10 for a felony, the term of probation is not less than one but not more than five years, 18 U.S.C. §
11 3561(c)(1). *See also* U.S.S.G. §8D1.1(a)(2) (requiring a term of probation “if the organization is
12 sentenced to pay a monetary penalty. . . , the penalty is not paid in full at the time of sentencing,
13 and restrictions are necessary to safeguard the organization’s ability to make payments”);
14 U.S.S.G. §8D1.2(a)(1) (term of probation for felony is between one and five years). Moreover,
15 18 U.S.C. § 3563 sets forth mandatory and discretionary conditions of probation. *See also*
16 U.S.S.G. §8D1.3 and §8D1.4 (conditions of probation).

17 In this case, the government recommends a five-year term of probation consistent with
18 the recommended five-year payment schedule. A term of probation will safeguard the
19 defendants’ ability to make payments. The government also recommends, as a condition of
20 probation, that Eagle Eyes and E-Lite be required to notify the Court immediately upon learning
21 of any material adverse change in its business or financial condition or prospects, or the
22 commencement of any proceedings or investigations regarding the organization.

23 **C. Restitution is Not Necessary**

24 The Court should consider “the need to provide restitution to any victims of the offense.”
25 18 U.S.C. § 3553(a)(7). Under the Mandatory Victim Restitution Act of 1996, restitution is not
26 required for Title 15 offenses such as the one at hand, but only for crimes of violence and certain
27 Title 18 and Title 21 offenses. 18 U.S.C. § 3663A(c)(1)(A). Moreover, under U.S.S.G.
28 §8B1.1(b)(2), if “the number of identifiable victims is so large as to make restitution

1 impracticable,” or “determining complex issues of fact related to the cause or amount of the
2 victim’s losses would complicate or prolong the sentencing process to a degree that the need to
3 provide restitution to any victim is outweighed by the burden on the sentencing process,”
4 restitution is not appropriate.

5 The United States does not recommend that restitution be imposed on Eagle Eyes and E-
6 Lite. Victims of antitrust offenses may recover treble damages in civil suits for violations of the
7 Sherman Act under provisions of the Clayton Act, 15 U.S.C. §§ 15, *et seq.* And as the Court is
8 aware, victims have filed civil suits seeking treble damages against Eagle Eyes, E-Lite, and its
9 co-conspirators. Those class actions are pending in the Central District of California before
10 Judge George Wu. *In re Aftermarket Automotive Lighting Products Antitrust Litigation*, No. 09-
11 ML-2007 GW. Because civil damages are available to victims and because imposing restitution
12 is neither required nor practicable, in this case, the government does not recommend restitution.

13 **D. The Recommended Sentence Does Not Result in Unwarranted Disparities**

14 The recommended sentence does not create “unwarranted sentencing disparities among
15 defendants with similar records who have been found guilty of similar conduct.” 18 U.S.C. §
16 3553(a)(6). While this factor seeks to promote national uniformity in sentencing by treating
17 similarly situated defendants similarly, it does not require uniformity of sentencing among co-
18 defendants within the same case. *United States v. Green*, 592 F.3d 1057, 1072 (9th Cir. 2010).
19 Nor is it designed to eliminate all sentence disparities, only *unwarranted* sentence disparities.
20 And even unwarranted disparities will “not render [defendants’] sentences unreasonable.”
21 *United States v. Marcial-Santiago*, 447 F.3d 715, 719 (9th Cir. 2006).

22 Two corporations have already pleaded guilty and have been sentenced by this Court in
23 connection with the aftermarket auto lights price-fixing conspiracy. Sabry Lee was sentenced to
24 pay a \$200,000 fine and Maxzone was sentenced to pay a \$43 million fine. *United States v.*
25 *Sabry Lee (U.S.A.), Inc.*, CR 11-0599 RS (Amended Judgment, Doc. 26); *United States v.*
26 *Maxzone Vehicle Lighting Corp.*, CR 11-0653 RS (Judgment, Doc. 22). The fines for both Sabry
27 Lee and Maxzone were reduced based on the respective companies’ inability to pay, just as the
28 recommended fine for Eagle Eyes has been reduced for Eagle Eyes’ inability to pay.

1 Sabry Lee and Maxzone are not necessarily similarly situated to Eagle Eyes. Sabry Lee
2 and Maxzone both pleaded guilty pursuant to plea agreements that required cooperation, and
3 they have in fact provided cooperation. *See United States v. Caperna*, 251 F.3d 827, 831-32 (9th
4 Cir. 2001) (“In most cases, it will be inappropriate for a sentencing court to give a non-
5 cooperating defendant the benefit of his co-defendant’s cooperation.”). Eagle Eyes, on the other
6 hand, is expected to plead open, without a plea agreement with the government, and without a
7 commitment to cooperate.

8 Moreover, high-ranking officers from both Sabry Lee and Maxzone have pleaded guilty
9 pursuant to cooperation agreements with the government. *United States v. Chien Chung Chen*,
10 CR 11-0166-RS; *United States v. Polo Shu-Sheng Hsu*, CR 11-0061 RS. In contrast, Eagle
11 Eyes’ highest-ranking officer, Chairman Yu-Chu Lin remains an international fugitive, and its
12 second-highest ranking officer, Vice Chairman Homy Hsu, has pleaded guilty, but with no
13 commitment to provide cooperation.

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1 **VI. CONCLUSION**

2 Eagle Eyes and E-Lite have requested that the Court impose a \$5 million fine, jointly and
3 severally on them both, to be paid in six installments over five years, without interest. The
4 government does not contest or dispute the imposition of such a fine. In addition, the
5 government recommends that the Court impose on Eagle Eyes and E-Lite a five-year term of
6 probation consistent with the recommended payment schedule, no restitution, and a \$400 special
7 assessment for each defendant.

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9 DATED: October 10, 2012

Respectfully submitted,

10 /s/ Jacklin Chou Lem

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