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

12 UNITED STATES OF AMERICA)	No. CR-09-0110 SI
)	
13 v.)	UNITED STATES' PROPOSED
)	PRELIMINARY JURY
14 STEVEN LEUNG;)	INSTRUCTIONS
)	
15 Defendant.)	Trial Date: November 26, 2012
)	Jury Selection: November 20, 2012
)	Judge: Hon. Susan Illston
)	Place: Courtroom 10, 19th Floor

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18 The United States submits the following proposed preliminary jury instructions to be
19 given before opening statements. The defendant, through his counsel, has indicated that he
20 agrees with all of the preliminary instructions, except for Preliminary Instruction No. 2: The
21 Charge Presumption of Innocence. The defendant objects to Preliminary Instruction No. 2 on
22 the ground that he believes the Rule of Reason should be applied in this case, and he intends to
23 request preliminary and final jury instructions regarding the Rule of Reason. The government
24 contends that this Court has already considered and rejected on multiple occasions defense
25 arguments regarding the applicability of the Rule of Reason, and the government submits that the
26 Court's rejection of the application of the Rule of Reason is the law of the case. Accordingly, the
27 government proposes that the Court give Preliminary Instruction No. 2, which was the exact
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1 instruction given by the Court at the end of the last case.

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3 DATED: _____

Respectfully Submitted,

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INSTRUCTION NO. 1

DUTY OF JURY

(PRELIMINARY INSTRUCTION)

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4 Jurors: You now are the jury in this case, and I want to take a few minutes to tell you
5 something about your duties as jurors and to give you some preliminary instructions. At the end
6 of the trial I will give you more detailed written instructions that will control your deliberations.
7 When you deliberate, it will be your duty to weigh and to evaluate all the evidence received in
8 the case and, in that process, to decide the facts. To the facts as you find them, you will apply the
9 law as I give it to you, whether you agree with the law or not. You must decide the case solely
10 on the evidence and the law before you and must not be influenced by any personal likes or
11 dislikes, opinions, prejudices, or sympathy. Please do not take anything I may say or do during
12 the trial as indicating what I think of the evidence or what your verdict should be that is entirely
13 up to you.

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28 AUTHORITY: Ninth Circuit Manual of Model Criminal Jury Instructions § 1.1 (2010).

INSTRUCTION NO. 2

THE CHARGE PRESUMPTION OF INNOCENCE

(PRELIMINARY INSTRUCTION)

This is a criminal case brought by the United States government. The United States charges the defendant with violating Title 15 of the United States Code, Section 1, known as Section 1 of the Sherman Antitrust Act. The defendant on trial is Steven Leung, whose Chinese name is Shiu Lung Leung and Chao-Lung Liang. The United States charges that representatives from corporations that manufacture thin-film transistor liquid crystal display panels (“TFT-LCDs”) and certain of their employees engaged in a conspiracy to fix the prices of TFT-LCDs. TFT-LCDs are used in notebook computers, desktop computer monitors and televisions. The United States charges that the defendant joined the conspiracy. The charge against the defendant is contained in the indictment. The indictment simply describes the charge the government brings against the defendant. The indictment is not evidence and does not prove anything. The defendant has denied joining any conspiracy to fix prices and has pleaded not guilty to the charge. In addition, the defendant has the right to remain silent and never has to prove innocence or present any evidence.

In order to help you follow the evidence, I will now give you a brief summary of the elements of the crime which the government must prove to make its case:

First, that the conspiracy existed at or about the time alleged in the indictment;

Second, that the defendant knowingly that is voluntarily and intentionally became a member of the conspiracy charged in the indictment, knowing of its goal and intending to help accomplish it;

and

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

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

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

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

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

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15 DEFENDANT'S POSITION: The defendant objects to this instruction on the ground that the
16 Rule of Reason should be applied to this case.

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18 GOVERNMENT POSITION: The Court has rejected defense arguments on the applicability of
19 the Rule of Reason to this case on multiple occasions. *See, e.g.*, Order Denying Defendants'
20 Motions to Dismiss the Indictment and For a Bill of Particulars, Dkt. 250; Order Denying
21 Motions for Judgment of Acquittal and for a New Trial, Dkt. 920.

22
23 AUTHORITY: Ninth Circuit Manual of Model Criminal Jury Instructions § 1.2 (2010); *United*
24 *States v. AU Optronics, Inc. et al.*, Dkt. No. 829 (March 1, 2012), CR-09-0110 (SI); *United*
25 *States v. Alston*, 974 F.2d 1206, 1210 (9th Cir. 1992); *Animal Science Prods. Inc. v China*
26 *Minmetals Corp.*, 654 F.3d 462, 466, 471 n.11 (3d Cir. 2011); *In re TFT-LCD (Flat Panel)*
27 *Antitrust Litig.*, No. 07-1827, 2011 WL 4634031, *9 (N.D. Cal. Oct. 5, 2011).

INSTRUCTION NO. 3

DISPOSITION OF CHARGES AGAINST COCONSPIRATORS

(PRELIMINARY INSTRUCTION)

For reasons that do not concern you, the case against several coconspirators of the defendant is not before you. Do not speculate why. The fact should not influence your verdict with respect to the defendant, and you must base your verdict solely on the evidence against the defendant.

AUTHORITY: Ninth Circuit Manual of Model Criminal Jury Instructions § 2.14 (2010).

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INSTRUCTION NO. 4
WHAT IS EVIDENCE
(PRELIMINARY INSTRUCTION)

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

- (1) the sworn testimony of any witness;
- (2) the exhibits which are received in evidence; and
- (3) any facts to which the parties agree.

AUTHORITY: Ninth Circuit Manual of Model Criminal Jury Instructions § 1.3 (2010).

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INSTRUCTION NO. 5
WHAT IS NOT EVIDENCE
(PRELIMINARY INSTRUCTION)

The following things are not evidence, and you must not consider them as evidence in deciding the facts of this case:

- (1) statements and arguments of the attorneys;
- (2) questions and objections of the attorneys;
- (3) testimony that I instruct you to disregard; and
- (4) anything you may see or hear when the court is not in session even if what

you see or hear is done or said by one of the parties or by one of the witnesses.

AUTHORITY: Ninth Circuit Manual of Model Criminal Jury Instructions § 1.4 (2010).

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INSTRUCTION NO. 6
DIRECT AND CIRCUMSTANTIAL EVIDENCE
(PRELIMINARY INSTRUCTION)

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

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

AUTHORITY: Ninth Circuit Manual of Model Criminal Jury Instructions § 1.5 (2010).

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INSTRUCTION NO. 7
RULING ON OBJECTIONS
(PRELIMINARY INSTRUCTION)

There are rules of evidence that control what can be received in evidence. When a lawyer asks a question or offers an exhibit in evidence and a lawyer on the other side thinks that it is not permitted by the rules of evidence, that lawyer may object. If I overrule the objection, the question may be answered or the exhibit received. If I sustain the objection, the question cannot be answered, or the exhibit cannot be received. Whenever I sustain an objection to a question, you must ignore the question and must not guess what the answer would have been.

Sometimes I may order that evidence be stricken from the record and that you disregard or ignore the evidence. That means that when you are deciding the case, you must not consider the evidence that I told you to disregard.

AUTHORITY: Ninth Circuit Manual of Model Criminal Jury Instructions § 1.6 (2010).

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INSTRUCTION NO. 8
CREDIBILITY OF WITNESSES
(PRELIMINARY INSTRUCTION)

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

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

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

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify about it.

AUTHORITY: Ninth Circuit Manual of Model Criminal Jury Instructions § 1.7 (2010).

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3 INSTRUCTION NO. 9
4 CONDUCT OF THE JURY
5 (PRELIMINARY INSTRUCTION)

6 I will now say a few words about your conduct as jurors.

7 First, keep an open mind throughout the trial, and do not decide what the verdict should
8 be until you and your fellow jurors have completed your deliberations at the end of the case.

9 Second, because you must decide this case based only on the evidence received in the
10 case and on my instructions as to the law that applies, you must not be exposed to any other
11 information about the case or to the issues it involves during the course of your jury duty. Thus,
12 until the end of the case or unless I tell you otherwise:

13 Do not communicate with anyone in any way and do not let anyone else communicate
14 with you in any way about the merits of the case or anything to do with it. This includes
15 discussing the case in person, in writing, by phone or electronic means, via email, text
16 messaging, or any Internet chat room, blog, website or other feature. This applies to
17 communicating with your fellow jurors until I give you the case for deliberation, and it applies to
18 communicating with everyone else including your family members, your employer, the media or
19 press, and the people involved in the trial, although you may notify your family and your
20 employer that you have been seated as a juror in the case. But, if you are asked or approached in
21 any way about your jury service or anything about this case, you must respond that you have been
22 ordered not to discuss the matter and to report the contact to the court.

23 Because you will receive all the evidence and legal instruction you properly may consider
24 to return a verdict: do not read, watch, or listen to any news or media accounts or commentary
25 about the case or anything to do with it; do not do any research, such as consulting dictionaries,
26 searching the Internet or using other reference materials; and do not make any investigation or in
27 any other way try to learn about the case on your own.

28 The law requires these restrictions to ensure the parties have a fair trial based on the same
evidence that each party has had an opportunity to address. A juror who violates these
restrictions jeopardizes the fairness of these proceedings, and a mistrial could result that would

1 require the entire trial process to start over. If any juror is exposed to any outside information,
2 please notify the court immediately.

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AUTHORITY: Ninth Circuit Manual of Model Criminal Jury Instructions § 1.8 (2010).

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INSTRUCTION NO. 10
NO TRANSCRIPT AVAILABLE TO JURY
(PRELIMINARY INSTRUCTION)

At the end of the trial you will have to make your decision based on what you recall of the evidence. You will not have a written transcript of the trial. I urge you to pay close attention to the testimony as it is given.

AUTHORITY: Ninth Circuit Manual of Model Criminal Jury Instructions § 1.9 (2010).

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INSTRUCTION NO. 11

TAKING NOTES

(PRELIMINARY INSTRUCTION)

If you wish, you may take notes to help you remember the evidence. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. Do not let note-taking distract you from being attentive. When you leave court for recesses, your notes should be left in the jury room. No one will read your notes.

Whether or not you take notes, you should rely on your own memory of the evidence. Notes are only to assist your memory. You should not be overly influenced by your notes or those of your fellow jurors.

AUTHORITY: Ninth Circuit Manual of Model Criminal Jury Instructions § 1.10 (2010).

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INSTRUCTION NO. 12
OUTLINE OF TRIAL
(PRELIMINARY INSTRUCTION)

The next phase of the trial will now begin. First, each side may make an opening statement. An opening statement is not evidence. It is simply an outline to help you understand what that party expects the evidence will show. A party is not required to make an opening statement.

The government will then present evidence and counsel for the defendant may cross-examine. Then, if the defendant chooses to offer evidence, counsel for the government may cross-examine.

After the evidence has been presented, I will instruct you on the law that applies to the case and the attorneys will make closing arguments.

After that, you will go to the jury room to deliberate on your verdict.

AUTHORITY: Ninth Circuit Manual of Model Criminal Jury Instructions § 1.11 (2010).

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INSTRUCTION NO. 13
JURY TO BE GUIDED BY
OFFICIAL ENGLISH
TRANSLATION/INTERPRETATION
(PRELIMINARY INSTRUCTION)

Languages other than English will be used for some evidence during this trial. When a witness testifies in another language, the witness will do so through an official court interpreter.

The evidence you are to consider and on which you must base your decision is only the English-language interpretation provided through the official court interpreters. Although some of you may know the non-English language used, you must disregard any meaning of the non-English words that differs from the official interpretation.

You must not make any assumptions about a witness or a party based solely upon the use of an interpreter to assist that witness or party.

AUTHORITY: Ninth Circuit Manual of Model Criminal Jury Instructions § 1.12 (2010).