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

12 UNITED STATES OF AMERICA

13 v.

14 SHIU LUNG LEUNG, aka CHAO-LUNG
15 LIANG and STEVEN LEUNG,

16 Defendant.

) No. CR-09-0110 SI

) UNITED STATES' SENTENCING
17) MEMORANDUM

) Date: April 29, 2013
) Time: 11:00 a.m.
) Court: Hon. Susan Illston
) Place: Courtroom 10, 19th Floor
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1 **I. INTRODUCTION**

2
3 On December 18, 2012, a jury sitting in the Northern District of California returned a
4 guilty verdict against defendant Steven Leung for his involvement in a conspiracy to fix the
5 prices of TFT-LCD panels in violation of 15 U.S.C. §1. Leung participated in the conspiracy on
6 behalf of AU Optronics Corporation (AUO) from May 2002 until it ended in December 2006.
7 The conspiracy lasted more than five years and was carried out largely through monthly “crystal
8 meetings” of the competing companies in Taiwan and through one-on-one contacts, during
9 which the competing companies agreed on the prices they would charge their customers. The
10 conspiracy was blatant and systematic, and it inflicted enormous harm on U.S. companies and
11 consumers.

12 Leung started attending crystal meetings in 2002 and was vital to the success of the
13 crystal meeting conspiracy for AUO. Leung organized and coordinated the crystal meetings,
14 hosted and led the meetings on behalf of AUO, actively engaged in the process of reaching
15 agreements during the meetings, produced highly detailed reports of pricing agreements reached
16 at crystal meetings and in one-on-one communications with competitors, distributed those
17 reports to other business units within AUO, and, finally, implemented the agreements reached at
18 crystal meetings by directing his staff to charge the agreed-upon prices to large U.S. customers
19 like Hewlett-Packard Company (HP) and Dell Computers (Dell).

20 Based on the egregiousness of the conspiracy, Steven Leung’s role in it, and the relative
21 sentences imposed on his co-defendants, the government recommends that the Court sentence
22 Leung to a 30-month term of incarceration and a \$50,000 fine. This is a significant departure
23 from the near statutory maximum sentence advised by the Sentencing Guidelines. Moreover, the
24 factors the Court used to depart for Leung’s co-defendants are fully incorporated into the
25 recommended sentence as is the only other factor, Leung’s relative role in the offense. Any
26 further reduction in Leung’s sentence would negate his significant role in the offense.

27 **II. PROCEDURAL BACKGROUND**

28 On June 9, 2010, a San Francisco grand jury returned a Superseding Indictment charging
Steven Leung and others with a one-count violation of the Sherman Act, 15 U.S.C. §1. The first

1 trial on the indictment began on January 9, 2012. Seven defendants were tried: AUO, its U.S.
2 subsidiary AUO America (AUOA), and executives H.B. Chen, Hui Hsiung, Lai Juh Chen,
3 Steven Leung, and Hubert Lee. Richard Bai, the sixth AUO executive charged in the indictment,
4 failed to appear for trial. After an eight-week trial, the jury found the two corporations and the
5 two highest-level executives guilty. The jury could not reach a unanimous verdict on Steven
6 Leung, who was retried. After a three-week retrial, which began on November 26, 2012, Leung
7 was convicted after three hours of deliberations.

8 **III. LEUNG'S ROLE AT AUO**

9 From the time AUO was formed in September 2001, Leung was a key sales executive
10 within the newly formed company. *See* Trial Exhibit (Tr. Ex.) 249 Leung's August 29, 2001
11 email to the President of AUO, Dr. Hsing Tuan, outlining Leung's proposal for structuring the
12 newly created company). In 2002, he became a sales manager in the Monitor Business Unit, and
13 in 2003, he was promoted to director of the sales division responsible for U.S. accounts.

14 In that role, Leung was responsible for selling AUO's most important and biggest selling
15 product, monitor panels. Tr. Ex. 905. Monitor panel sales accounted for a majority of all AUO
16 sales. *Id.* Leung's sales division within the Monitors Business Unit, Sales Division 1, was
17 responsible for over \$2 billion on annual sales. Tr. Ex. 273. Leung's division was also
18 responsible for AUO's most important U.S. customers, such as Dell and HP. Tr. Exs. 251T, 270,
19 269. He had as many as twelve direct reports and dozens of indirect reports, including reports
20 located in the United States supporting his U.S. customers. Tr. Exs. 878, 1A.

21 **A. Leung Had Pricing Authority**

22 As Director of Sales Division 1, Leung was involved in setting the price of LCD panels.
23 He was among a select group of AUO executives responsible for setting the target and bottom
24 price of AUO's LCD panels. Tr. Ex. 244 (Email from Hsiung, AUO's Executive Vice President
25 of Sales, announcing AUO's new pricing authorization procedure and naming Leung as one of
26 the people who will be involved in setting prices).

27 Leung provided his staff with the bottom price that they were permitted to charge
28 customers. If Leung's sales staff wanted to charge below the bottom price, they needed Leung's

1 authorization to do so. *See* Tr. Exs. 139 (Leung writes, “[p]lease talk to me for pricing issues. I
2 will usually provide a bottom-line and price range for account managers to negotiate
3 Effective immediately, I will not support any pricing decisions if I am not properly consulted or
4 informed.”); 281 (“Steven’s Bottom-Line – Aug. Price Proposal”), Trial Transcript (Trial Tr.)
5 vol. 4 at 559 (Wong) (testifying that U.S. account reps could not offer prices without input from
6 Leung). Ultimately, Leung had broad authority to decide what prices his sales representatives
7 would quote to his customers such as Dell and HP. Trial Tr. vol. 12 at 1846.

8 **B. U.S. Sales Representatives Indirectly Reported to Steven Leung**

9 In the United States, the conspiracy was implemented in large part through employees of
10 defendant AUOA, many of whom took direction from and reported their activities to Leung.
11 Michael Wong, AUOA’s U.S. manager, testified that AUOA was a “tentacle” or “extension of
12 AUO” for the purpose of promoting and selling AUO’s LCDs to major U.S. customers Dell, HP,
13 and Apple. Trial Tr. vol. 4 at 513-14. AUOA account managers received pricing approval from
14 Leung for the prices they offered to U.S. monitor customers. Trial Tr. vol. 4 at 519. AUOA’s
15 facilities and employees were strategically located near these major customers in Houston, Texas
16 (HP), Austin, Texas (Dell), and Cupertino, California (HP and Apple). AUOA account
17 managers located in the U.S. negotiated the price and volume of LCD panels sold to these major
18 U.S. customers on a monthly basis. These account representatives reported on their negotiations
19 with these major U.S. accounts to Leung on a daily basis. Trial Tr. vol. 4 at 518-19.

20 As director of the largest sales division within AUO’s most profitable business unit,
21 Leung had the authority to set panel prices to key customers such as HP and Dell. Trial Tr. vol.
22 12 at 1846. And Leung used his participation in the crystal meetings to advance the goals of the
23 LCD conspiracy by charging the prices agreed upon at those meetings to his U.S. accounts.

24 **IV. LEUNG’S PARTICIPATION IN THE CONSPIRACY**

25 The evidence at trial showed that the major manufacturers of LCD computer panels
26 secretly met in hotel rooms around Taipei, Taiwan on a monthly basis to set the prices of
27 standard-sized LCDs sold worldwide. For more than five years, the manufacturers met monthly
28

1 – over 60 times – to fix LCD prices. In May 2002, a few months after the crystal meetings
2 began, Leung joined that conspiracy.

3 From the beginning, Leung took an active role in the conspiracy. Among his many roles,
4 he was responsible for collecting information from competitors before crystal meetings. Tr. Ex.
5 181. He coordinated AUO's participation in the meetings. Tr. Exs. 6T, 7T. He personally
6 attended many of these meetings on behalf of AUO. At times, he even hosted the crystal
7 meetings (Tr. Exs. 21, 13) and created PowerPoint presentations to help him lead the discussions
8 (Tr. Exs. 150, 152, 153). Leung entered into agreements on behalf of AUO at crystal meetings
9 (Trial Tr. vol. 7 at 1118), he took detailed and meticulous notes of the meetings (Tr. Exs. 4A,
10 5A), and he implemented the agreed-upon prices to his major U.S. accounts (*See, e.g.*, Tr. Ex. 19
11 (“General Consensus • Must hold 17" JUN/JUL pricing to maintain overall pricing stability.”);
12 *and* Tr. Ex. 193 (Leung emails his sales representatives with the price directive: “17” -- Target
13 maintain pricing.”)). Finally, he, like all the crystal meeting participants, took steps to conceal
14 the crystal meetings. *See, e.g.*, Tr. Exs. 6T, 134.

15 **A. Leung's Crystal Meeting Reports and Reminders**

16 Leung was responsible for coordinating AUO's participation in the crystal meetings. He
17 sent meeting reminders to key executives within the company. Tr. Exs. 6T, 8T, 9T, 10T, 11T,
18 13T, 20T, 22T, 24T, 26T, 29T, 211T, 212T, 215T. He attended crystal meetings on behalf of
19 AUO and took detailed and meticulous notes, which he later distributed to the business unit
20 heads. Tr. Exs. 7T, 12T, 13T, 16T, 19, 21, 23. In late 2003, when Leung began attending crystal
21 meetings with subordinates, he had the subordinates take notes of the meetings. *See, e.g.*, Tr.
22 Exs. 30T, 31. When Leung did not attend meetings or draft the reports himself, he *always*
23 received the reports. *See* Tr. Exs. 7T, 12T, 13T, 16T, 19, 21, 23, 25T, 27, 31, 40T, 49, 50, 51,
24 210, 216T, 134. Even after the meeting participants were warned against leaving a paper trail of
25 the existence of the crystal meetings, AUO did not stop attending the meetings. *See* Tr. Ex.
26 431T (crystal meeting report warning “more care” must “be given to security both within and
27 without, and that Written Communication, which leaves traces, be refrained from as much as
28

1 possible.”) Rather, the AUO representatives orally reported within a day or two of the crystal
2 meeting. Tr. Exs. 218, 219T, 220T, 221T, 222T, 223T.

3 Leung’s notes of what occurred at crystal meetings were some of the most important
4 evidence introduced at both trials. Leung’s notes typically use the word “consensus” to describe
5 the price-fixing agreements the participants reached at the crystal meetings. For instance, Trial
6 Exhibit 19, a June 2003 crystal meeting report authored by Leung and designated as “**
7 Extremely Confidential – Must NOT Distribute, **” states, in part:

8 **General Consensus**

- 9
- *Must hold 17 [inch panel] JUN/JUL pricing to maintain overall pricing stability.*
 - *17 [inch panel] pricing is most important single factor to market now.*
 - *Must fix 17 [inch panel] pricing even if faced with customer volume reduction. . . .*

11 Similarly, Trial Exhibit 18, a report of a May 14, 2003 crystal meeting authored by Leung
12 and designated by him as “** Extremely Confidential – Must NOT Distribute, **” states, in part:

13

14 ***General MAY-JUNE [Monitor] Panel Pricing Adjustment Consensus:***

15 *17 [inch] – Keep May Price Into June, 15 [inch] – Maintain US\$190 Target from May*

16 Trial Exhibits 18 and 19 are but two examples of the many crystal meeting reports that
17 reflect pricing agreements among the competing companies. Exhibit 4A, which was admitted at
18 trial, is a chart summarizing the AUO crystal meeting reports authored or received by Leung that
19 use the word “consensus.”

20 **B. Leung’s Active Participation in Crystal Meetings**

21 Steven Leung was an active participant in the LCD conspiracy. Documents introduced at
22 trial as well as testimony about his conduct during the meetings illustrate his active role in the
23 conspiracy.

24 Using the March 20, 2003 crystal meeting as an example, for that particular meeting,
25 Leung: (1) organized the meeting and AUO’s participation in it; (2) collected competitor prices
26 before the meeting; (3) sent out a meeting reminder and invitation to a select group of AUO
27 executives; (4) developed an agenda for the meeting; (5) hosted the meeting; (6) reached pricing
28 agreements at the meeting; (7) prepared a report of the meeting that he circulated to key

1 executives in AUO; and (8) then held a sales meeting where he gave his staff pricing directives
 2 based on the prices established at the crystal meeting. At trial, this was proven by a series of five
 3 trial exhibits, all outlined by Leung:

- 4 • Exhibit 181: “As the Industry Crystal Operation Meeting is scheduled for next
 5 week, I have communicated in advance with our competitor counterparts in
 6 advance to discuss April 2003 pricing trends and intentions. Please note the
 7 following information for our Pricing Directions Meeting this afternoon.”
- 8 • Exhibit 13: Crystal meeting reminder, listing the participants, the date/time, and
 “Meeting Host: AUO (Steven Leung)”
- 9 • Exhibit 153: Leung’s PowerPoint presentation entitled “Crystal Operation
 10 Meeting, Discussion Agenda” and dated March 20, 2003; lists his discussion
 11 points for that meeting and the purpose of the meeting as: “Pricing Increase or
 Stabilization” and “Pricing – MAR Review, Q2 Plan”
- 12 • Exhibit 14: Leung’s notes of the March 20, 2003 crystal meeting, including the
 13 warning, “** Extremely Confidential – Must Not Distribute **.” The report
 14 also includes an attachment that records the group’s consensus on panel prices for
 15 the upcoming month. For monitors, Steven Leung’s product, the group decided to
 charge:

Display Size	Vendor	Apr
15" XGA	CPT	185 (180 SIP)
	AUO	180~185
	CMO	180~185
	HSD	185~188 SIP
	SEC	190
17" SXGA	LGP	180~185
	AUO/TN	273
	CMO/TN	270~273
	SEC/TN	285

- 20 • Exhibit 198: A PowerPoint presentation for Leung’s internal sales meeting.
 21 Leung gives his sales team the target price for the Dell account for the following
 22 month of April.

Sales Status & Issues Highlights
DELL Business/Project Issues
<ul style="list-style-type: none"> • DELL Releases BenQ 17" Model to EMEA (Previously Samsung Only) • New Project Kick-Off (E172FP – SEP MP) – M170ES05 • REQUEST AU 15" Volume Support Improvement • Current BenQ HUB Inventory: 7 Days • APR Original Original Planned HUB Pickup: 75K • APR Updated Planned HUB Pickup: 60K • Weakening 17" Demand in Market? (Confirming All DELL Models) • APR Pricing Target – 15" US\$185, 17" US\$273

1 That Dell target price came directly from the crystal meeting Steven Leung hosted:

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Sales Status & Issues Highlights

DELL Business/Project Issues

- DELL Releases BenQ 17" Model to EMEA (Previously Samsung Only)
- New Project Kick-Off (E172FP – SEP MP) – M170ES05
- REQUEST AU 15" Volume Support Improvement
- Current BenQ HUB Inventory: 7 Days
- APR Original Original Planned HUB Pickup: 75K
- APR Updated Planned HUB Pickup: 60K
- Weakening 17" Demand in Market? (Confirming All DELL Models)
- APR Pricing Target – 15" US\$185, 17" US\$273

TFT-LCD Price Trend for Monitor Application 2003

Display Size	Vendor	Apr
15" XGA	CPT	185 (180 SDP)
	AUO	180~185
	CMO	180~185
	HSD	185~188 SDP
	SEC	190
17" SXGA	LGP	180~185
	AUO/TN	272
	CMO/TN	270~272
	SEC/TN	285

Steven Leung's notes reflect an agreed-upon price of \$180 – \$185 for 15" panels and an agreed-upon price of \$273 for 17" panels. Both prices came directly from the crystal meeting agreements and were exactly what Leung instructed his sales team to charge to Dell. He did the same for HP. *Compare* Tr. Ex. 14T (crystal meeting notes record AUO's price for 15" as \$180-\$185), *with* Tr. Ex. 198 (Leung's Weekly Business Update under "HP Business/Project Issues" states "April Price in 15" is \$185").

Leung's active participation in the crystal meetings is also corroborated by witness testimony. C.C. Liu testified about Leung's participation in crystal meetings. On cross-examination, he testified:

Q. So you're assuming that Steven Leung was at the meetings, in order to actually set prices?

A. It's not an assumption. It's a fact. Imagine this. If someone always comes to the meeting and says, "Hold on. I have to report to my supervisor. I'll come to you later." I would pick up the phone and call Kuma and say, "Send someone else who has authority to the meeting." How can you save the industry, like that?

Trial Tr. vol. 3 at 459. Stanley Park also confirmed Leung's participation. He testified that Leung was sometimes the most senior AUO person or only AUO representative present at the crystal meetings. He also confirmed that Leung spoke at the meetings and that lower-level employees typically do not speak in Asian culture. Trial Tr. vol. 6 at 957.

1 Brian Lee also testified about Steven Leung's participation in crystal meetings:

2 Q. Mr. Lee, from time to time, did Mr. Leung share his views
3 on whether pricing should go up or down or stay the same?

4 A. Yes.

5 Q. And how did he express that during the Crystal Meetings?

6 A. Typically, he would make some oral statements.
7 Sometimes he would refer to the table on the whiteboard.
8 Of course sometimes he smoked, and he would smoke
9 while he was making oral statements.

10 Q. Did he make any gestures indicating the way he wanted
11 pricing to go during the Crystal Meetings?

12 A. Typically, he would use his gestures to help him express
13 his opinions toward the price.

14 Trial Tr. vol. 7 at 1125. And later:

15 Q. Mr. Lee, would you describe Steven Leung as an active or
16 inactive participant during the Crystal Meetings?

17 A. Every representative would take turns to express his
18 opinion towards the price. So we're about the same in terms
19 of activeness during the meeting.

20 Trial Tr. vol. 7 at 1125. Steven Leung knew that, within AUO, the crystal meetings were a way
21 to distinguish oneself from the pack. Leung even leveraged his participation in the crystal
22 conspiracy when he submitted his self-evaluation to his superior. In his "Self Assessment of
23 2003 Performance Highlights," he listed as an achievement for the year that he "[c]oordinated
24 TFT industry communications and price stabilization." Tr. Ex. 261.

25 Leung was essential to the LCD conspiracy. He used the crystal meetings to further his
26 career within AUO and he used his position within AUO to further the goals of the conspiracy by
27 fixing the price of LCD panels sold to his major U.S. accounts such as HP and Dell.

28 **C. Confidentiality**

Finally, Leung, like the other crystal meeting participants, kept the conspiracy secret.
Knowing the illegal nature of their alliance, the crystal meeting participants rotated the locations
of their secret meetings to different hotels around Taipei, and they took additional steps to
conceal the existence of the crystal meetings. For example, the hotels at which the meetings
were to be held often were not identified until shortly before the meeting in order to limit
knowledge of the fact and location of the meetings. Tr. Ex. 6T (Steven Leung writes, "*Location

1 not specified here for confidentiality reasons. I will confirm to you as well as ALL OTHER
2 attendees by phone on Monday AM.”) (emphasis in original). Attendees also staggered their
3 arrivals and departures to avoid being seen together. Trial Tr. vol. 2 at 315-16 (C.C. Liu); Trial
4 Tr. vol. 7 at 1079 (Brian Lee); Trial Tr. vol. 6 at 918 (Stanley Park). The hotels would not post a
5 sign indicating where the competitors were meeting. As C.C. Liu testified, “A thief would not
6 announce his activity when he was trying to steal something.” Trial Tr. vol. 2 at 316-17. At
7 AUO, Steven Leung’s reports all were designated as “Extremely Confidential – Must NOT
8 Distribute.” Leung and others at AUO who reported on the meetings instructed recipients of the
9 crystal meeting reports to keep the meetings confidential and not disclose the pricing agreements
10 reached at the crystal meetings. *See, e.g.*, Tr. Ex. 134.

11 **D. Leung Also Participated in Collusive One-on-One Meetings and**
12 **Communications**

13 In addition to the sixty crystal meetings, the conspirators, including Leung, engaged in
14 collusive one-on-one meetings and telephone communications in Asia and in the United States to
15 police and carry out their conspiracy. Considerable evidence of the agreements that were
16 reached during one-on-one meetings was introduced at trial, as well as evidence that such
17 agreements were implemented by Leung. For example, Trial Exhibit 90 is an email Leung sent
18 in February 2005 in which he wrote:

19 Last night, I have discussed with [competitor Chunghwa Picture
20 Tubes (CPT)] to align action for price increase to DELL/HP (CPT
21 is currently US\$155-17” and US\$188-15” and original plan to
22 keeping flat for MAR in 17” + possible further reduction in 15”). I
23 will have conclusion in this discussion with CPT within today.

24 Tr. Ex. 90. In another email, after getting a request for authorization to offer a price to HP,
25 Leung directs his subordinates:

26 Basically the numbers seem OK. But do align with other TFT
27 vendors to ensure we are not quoting too low or much too high.

28 Tr. Ex. 108. At Leung’s instruction and with his approval, his direct and indirect reports
coordinated prices to their major customers such Dell and HP. Michael Wong, who reported
indirectly to Leung, testified at trial that account managers in the U.S. communicated with their

1 competitor counterparts to discuss and align their pricing to Dell, HP, and Apple. The U.S.
2 account managers at the competing companies would encourage one another to increase prices,
3 and oftentimes confirm their mutual understanding to increase or maintain prices to their shared
4 U.S. customers. Trial Tr. vol. 4 at 534. Those pricing communications were then reported to
5 Leung and others at AUO.

6 In Trial Exhibit 88, for example, Wong wrote to L.J. Chen, Leung, and others on
7 November 11, 2004 that he had spoken to LG about the prices that LG was offering to Dell in
8 November negotiations. The prices were \$145 for 15” panels; \$160 for 17” panels; and \$260 for
9 19” TN panels. Just days later, Wong, with Leung’s support and approval, quoted these exact
10 prices to Dell. *See* Tr. Ex. 822.

11 Trial Exhibit 5A summarizes these bilateral contacts by Leung and his subordinates.
12 These contacts continued all the way until November 23, 2006 – just weeks before the FBI
13 raided AUOA’s offices.

14 Leung’s imprint is on all levels of the conspiracy. He attended crystal meetings and
15 reached agreements at those meetings, he reported those agreements to others in the company, he
16 implemented the agreements through his Taiwan staff, he aligned pricing with competitors
17 during one-on-one meetings and communications, and he worked with U.S. subordinates in
18 coordinating with competitors to implement pricing agreements to major U.S. customers. He
19 was a full, voluntary, and necessary participant in the LCD conspiracy.

20 **V. SENTENCING GUIDELINES AND RECOMMENDED SENTENCE FOR** 21 **STEVEN LEUNG**

22 **A. Guidelines Calculations**

23 On September 20, 2012, the Court sentenced AUO, AUOA, H.B. Chen, and Hui Hsiung
24 for their participation in the same conspiracy for which Steven Leung was charged and
25 convicted. In connection with those sentencings, the Court accepted the Sentencing Guidelines
26 (Guidelines) calculations recommended by the Probation Office and the government, including
27 that \$2.34 billion of U.S. commerce was affected by the conspiracy and that a four-level
28 enhancement was appropriate for H.B. Chen and Hsiung due to their role in the offense. Based
on those findings, the Sentencing Guidelines sentences for H.B. Chen and Hsiung were at the

1 statutory maximum of 120 months and a \$1 million fine. The Probation Office recommended a
2 120-month jail term for both Chen and Hsiung. Although the Court accepted the Probation
3 Office's Guidelines calculation, it relied on sentencing factors under 18 U.S.C. §3553(a) to
4 depart from the Guidelines sentence and imposed a 36-month sentence for both defendants.

5 The applicable Sentencing Guidelines provision is §2R1.1. Because Leung participated
6 in the same conspiracy as H.B. Chen and Hsiung, his bosses at AUO, and because he participated
7 for almost as long, the Court's Guidelines findings regarding H.B. Chen and Hsiung are relevant
8 to Leung. The Guidelines calculation for Leung differs from that of H.B. Chen and Hsiung only
9 in that the government believes that he should receive a three-level enhancement under
10 §3B1.1(b) for his role in the offense, rather than the four-level enhancement that the Court found
11 appropriate for Chen and Hsiung under that provision.

12 A role in the offense enhancement under section 3B1.1(b) is warranted for Leung because
13 the evidence overwhelmingly shows that he was "a manager or supervisor" of the conspiracy.
14 Courts have upheld upward adjustments under section 3B1.1 in "cases involv[ing] defendants
15 who, the evidence showed, exercised some degree of control or organizational authority over
16 others." *United States v. Avila*, 95 F.3d 887, 890 (9th Cir. 1996) (citing cases). Here, Leung not
17 only directly participated in the conspiracy, but he supervised others and directed their
18 participation in the conspiracy. At all times during the conspiracy, Leung managed a sales team
19 of approximately seven to twelve AUO employees, and he directed them to communicate about
20 and align prices with competitors. *See, e.g.*, Tr. Exs. 91, 106, 108, 166. Likewise, certain
21 AUOA employees working in the United States reported indirectly to Leung and obtained from
22 him the prices they could offer to customers for monitor panels. Trial Tr. vol. 4 at 519. Leung
23 also instructed those U.S.-based employees to align pricing with competitors and used pricing
24 information he received from those employees in making pricing decisions. *See, e.g.*, Tr. Exs.
25 168, 185. This conduct is more than sufficient to justify a three-level adjustment for Leung's
26 role in the offense. Accordingly, Leung's Guidelines calculation is as follows:

27 ///

28 ///

1	i.	Base Offense Level (§2R1.1(a))	+12
2	ii.	Volume of Affected Commerce (§2R1.1(b)(2)(H))	+16 ¹
3	iii.	Total Adjusted Offense Level	28
4	iv.	Victim-Related Adjustments (§3A)	0
5	v.	Role-in-the-Offense Adjustment (§3B1.1(a))	+3
6	vi.	Obstruction Adjustment (§3C)	0
7	vii.	Acceptance of Responsibility (§3E1.1(a) and (b))	0
8		Total Offense Level	31

9 A Total Offense Level of 31 supports a Guidelines prison range of 108 to 135 months.

10 **B. Section 3553(a) Factors**

11 Although the Guidelines support a term of incarceration for Leung at or near the statutory
 12 maximum of 10 years, the government acknowledges that the application of equitable factors
 13 under 18 U.S.C. §3553(a) warrants a substantial reduction in the Guidelines term of
 14 incarceration. Co-defendants H.B. Chen and Hsiung received 36-month sentences after their
 15 conviction at trial for participating in the same conspiracy. Those 36-month sentences are an
 16 equitable factor that should be considered in sentencing Leung.

17 The Sentencing Guidelines Total Offense Levels applicable to both H.B. Chen and
 18 Hsiung were comparable to Leung's Total Offense Level, and both of those defendants were
 19 potentially subject to sentences at the ten-year statutory maximum term of incarceration
 20 allowable under the Sherman Act. H.B. Chen and Hsiung were at a Total Offense Level of 32
 21 (121-151 months), while, as noted above, Leung is at a Total Offense Level of 31 (108-135
 22 months) and also potentially subject to a statutory maximum term of incarceration.

23 At the sentencing of H.B. Chen and Hsiung, the Court identified a number of factors
 24 regarding the nature and seriousness of the offense that weighed in favor of imposing significant
 25 jail sentences on both executives: (1) that financial hardship is no defense to a Sherman Act

26 ¹ The volume of affected AUO commerce during the time period that Leung participated in
 27 the conspiracy (May 2002 until December 2006) was approximately \$2.3 billion, which is only
 28 slightly less than the volume of commerce attributed to H.B. Chen and Hsiung by the Court and
 far exceeds the volume of commerce necessary to impose the maximum sentencing enhancement
 under U.S.S.G. §2R1.1(b)(2)(H).

1 violation; (2) that this was a serious crime broadly affecting American consumers; and (3) that
2 the defendants were keenly aware that they were breaking the law. *See* Tr. of Proc. (9/20/12) at
3 17-20. Nonetheless, the Court made factual findings regarding other factors that it believed
4 supported a downward departure of their sentences from 120 months to 36 months: (1) that the
5 conspiracy involved a fledgling industry; (2) the industry was in financial distress; (3) the
6 defendants produced a beneficial product; and (4) H.B. Chen and Hsiung did not personally
7 benefit from the conspiracy. *Id.*

8 Although the government respectfully disagrees that the enumerated factors supported the
9 departures given to H.B. Chen and Hsiung, it recognizes that the resulting 36-month sentences
10 will be viewed as a benchmark in setting Leung's term of incarceration based on section
11 3553(a)(6), which addresses "the need to avoid unwarranted sentence disparities among
12 defendants within similar records who have been found guilty of similar conduct." 18 U.S.C.
13 §3553(a)(6). In using those sentences as a benchmark to reduce Leung's sentence from near the
14 120-month statutory maximum to 36 months, the factors already identified by the Court in
15 sentencing H.B. Chen and Hsiung are fully incorporated in reaching the 36-month sentence that
16 is now essentially a ceiling for Leung. Accordingly, these factors would not justify any further
17 reduction in Leung's sentence. The question for the Court's consideration, therefore, is whether
18 any *other* factual or equitable factors exist that would warrant a further reduction of Leung's
19 sentence to below 36 months.

20 The government believes that the only additional factor warranting a further reduction in
21 Leung's sentence is his role in the offense, which is one level lower than that of H.B. Chen and
22 Hsiung. Because H.B. Chen and Hsiung were sentenced at a Total Offense Level of 20, in part
23 based on a four-level enhancement for their role in the offense, the government recommends
24 sentencing Leung at a Total Offense Level of 19 (30-37 months), based on his very significant
25 but slightly lesser role in the offense. No other factors have been identified by the Probation
26 Office that would justify a further reduction in Leung's sentence.

27 The presentence report notes that Leung suffered a heart attack in the past, currently
28 suffers from hypertension and gout, and that his daughter is suffering from congenital kidney

1 problems that require periodic medical examinations. Presentence Investigative Report (PSR) at
2 ¶ 86. These physical and personal characteristics do not warrant a further departure. Under the
3 Guidelines, the physical condition of a defendant may be relevant in determining whether a
4 departure is warranted, only where the condition is “present to an unusual degree.” U.S.S.G.
5 §5H1.4. At present, Leung does not appear to be experiencing any significant health issues, and
6 certainly there is no indication that he is suffering health problems to an “unusual degree.” *See*,
7 *e.g.*, *United States v. Bates*, 2007 WL 2780551, at *10 (E.D. Mich. 2007) (refusing to grant a
8 departure or variance where the defendant suffered from “diabetes, acid reflux, high blood
9 pressure, and arthritis,” who had been “diagnosed with an enlarged heart,” and who had been
10 “treated for prostate cancer” because the defendant had not identified “anything ‘extraordinary’
11 about his conditions or necessary treatments.”) In any event, any medical care necessary for
12 Leung will be available through the Bureau of Prisons. *See id.* (“[The defendant] does not
13 present evidence (or even argue) that the Bureau of Prisons (‘BOP’) could not adequately meet
14 his needs.”); *United States v. Mapp*, 2007 WL 485513, at *8 (E.D. Mich. 2007) (declining to
15 depart from the Guidelines for a defendant suffering from diabetes in part because BOP could
16 “adequately meet these needs regardless of the length of his sentence”). Likewise, because
17 Leung’s spouse will be available to take Leung’s daughter to medical examinations as necessary,
18 his daughter’s health needs do not justify a downward departure of Leung’s sentence. *See*
19 *United States v. Bistline*, 665 F.3d 758, 767 (6th Cir. 2012) (finding a sentence unreasonably
20 lenient on appeal, in part because the trial court failed to consider that others could assume the
21 defendant’s caregiver role: “[T]he court overlooked that [the defendant] has four adult children
22 who live not far from his home and who presumably could help care for his wife.”).

23 For these reasons, the government respectfully disagrees with the Probation Office’s
24 recommendation of a 24-month term of incarceration for Leung. The sentence recommended by
25 the Probation Office, reflecting a Total Offense Level of 16 or 17, would entirely and
26 inappropriately negate Leung’s role in the offense. Although H.B. Chen and Hsiung were more
27 culpable than Leung, their greater culpability is reflected in their role in the offense
28 enhancement, as envisioned by the Guidelines. Leung undeniably fits the definition of a

1 “manager or supervisor” of the conspiracy, while H.B. Chen and Hsiung fit in the “leader or
2 organizer” category. The purpose of the distinction between a manager/supervisor, on the one
3 hand, and a leader/organizer, on the other, under the Guidelines is to account for relative degrees
4 of criminal responsibility. *See* U.S.S.G. §3b1.1 cmt. background (“This section provides a range
5 of adjustments to increase the offense level based upon . . . the degree to which the defendant
6 was responsible for committing the offense. This adjustment is included primarily because of
7 concerns about relative responsibility.”). In determining whether an individual should get a 3 or
8 4-level enhancement, courts are instructed to consider:

9 the exercise of decision making authority, the nature of
10 participation in the commission of the offense, the recruitment of
11 accomplices, the claimed right to a larger share of the fruits of the
12 crime, the degree of participation in planning or organizing the
offense, the nature and scope of the illegal activity, and the degree
of control and authority exercised over others.

13 U.S.S.G. §3B1.1 cmt. n. 4. Thus, the only reasons identified by the Probation Office as grounds
14 to depart from the Guidelines— Leung’s slightly lesser role in the offense—are reflected in his
15 Guidelines calculation relative to H.B. Chen and Hsiung and, accordingly, in the government’s
16 recommended sentence. These same factors should not be used to further reduce the defendant’s
17 sentence under section 3553. Doing so would nullify Leung’s significant role in the offense,
18 which was overwhelmingly established by the documentary and testimonial record in the case.

19 Because the government’s 30-month sentencing recommendation takes into account both
20 Leung’s lesser role in the offense and the sentencing disparity issue raised by the sentencing of
21 H.B. Chen and Hsiung, there are no additional section 3553(a) factors that would justify a greater
22 downward departure.

23 **VI. RECOMMENDED SENTENCE**

24 Based on the application of the Guidelines and the section 3553(a) factors already taken
25 into account by the Court, the government recommends sentencing Leung at an Offense Level of
26 19 and, specifically, a term of incarceration of 30 months. This sentence would be consistent
27 with the 36-month sentences imposed on defendants Chen and Hsiung because it takes into
28

1 account that Leung's lesser role in the offense warrants a sentence that is one level lower than
2 that of H.B. Chen and Hsiung.

3 Leung's conduct in this case certainly warrants a term of incarceration of 30 months,
4 whether considered standing alone or in comparison to H.B. Chen and Hsiung. Leung was an
5 important member of the conspiracy and made contributions that were key to its success. He
6 joined the conspiracy shortly after it started, and his role increased during the course of the
7 conspiracy. As the conspiracy progressed, Leung increasingly took a lead role in the crystal
8 meetings, including the preparation of meeting agendas, hosting and leading meetings,
9 participating in meetings as the senior-most AUO participant, reaching agreements,
10 communicating those agreements within AUO, and ensuring that the agreements were
11 implemented.

12 Far from being a reluctant participant in the conspiracy, Leung embraced the conspiracy,
13 embraced his opportunity to take a leading role within AUO, and worked hard to ensure its
14 success. Although H.B. Chen and Hsiung were more responsible for the formation of the
15 conspiracy and had the authority to end AUO's participation in it, Leung played a more
16 significant role in the day-to-day operation of the conspiracy. In addition, he played a key role in
17 the conspiracy beyond the crystal meetings by participating (and directing others to participate)
18 in bilateral pricing communications with competitors that were vital to the conspirators' ability
19 to successfully implement agreements reached at the crystal meetings. H.B. Chen and Hsiung
20 were integrally involved in setting the conspiracy in motion, but Leung was more important in
21 the process of implementing the agreements reached during the conspiracy. For that reason, a
22 significant term of incarceration is warranted and no more than a one-level reduction from the
23 sentence imposed on H.B. Chen and Hsiung is appropriate, in recognition of Leung's important
24 albeit lesser role in the offense.

25 The government agrees with the Probation Office's recommendation of a \$50,000 fine
26 for Leung. He has the financial wherewithal to pay the fine, and it is significantly lower than the
27 \$200,000 fines imposed on H.B. Chen and Hsiung.

28 ///

1 **VII. CONCLUSION**

2 The government recommends a 30-month term of incarceration for Leung, a fine of
3 \$50,000, and a three-year term of supervised release.

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5 Dated: April 19, 2013

Respectfully submitted,

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/s/ Heather S. Tewksbury

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Heather S. Tewksbury

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Brent Snyder

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Antitrust Division

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U.S. Department of Justice

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