

1 MANATT, PHELPS & PHILLIPS, LLP  
KENNETH B. JULIAN (State Bar No. 149840)  
2 MATT WILLIAMSON (State Bar No. 247627)  
CHRISTINA PARRISH (State Bar No. 271719)  
3 695 Town Center Drive, 14th Floor  
Costa Mesa, CA 92626-1924  
4 Telephone: (714) 371-2500  
Facsimile: (714) 371-2550  
5 [kjulian@manatt.com](mailto:kjulian@manatt.com)  
[mwilliamson@manatt.com](mailto:mwilliamson@manatt.com)  
6 [cparrish@manatt.com](mailto:cparrish@manatt.com)

7 *Attorneys for Defendants*  
Eagle Eyes Traffic Industrial Co., and Ltd; E-Lite  
8 Automotive, Inc.

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

12  
13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 vs.

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

19 Defendants.

Case No. CR-11-0488 RS

**NOTICE OF MOTION AND MOTION OF  
DEFENDANTS FOR BILL OF  
PARTICULARS; DECLARATION OF  
KENNETH B. JULIAN IN SUPPORT  
THEREOF**

Date: March 6, 2012  
Time: 2:30 p.m.  
Place: Rm. 3, 17th Floor  
Judge: Hon. Richard Seeborg

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21 TO PLAINTIFF THE UNITED STATES OF AMERICA AND TO DEPARTMENT OF  
22 JUSTICE ATTORNEYS JACKLIN LEM AND HOWARD J. PARKER, ITS ATTORNEYS OF  
23 RECORD:

24 Please take notice that, on March 6, 2012, at 2:30 p.m., or as soon thereafter as the matter  
25 may be heard, in Courtroom 3 of the above-captioned Court, located at 450 Golden Gate Avenue,  
26 San Francisco, California, defendants Eagle Eyes Traffic Industrial Co., Ltd. (“Eagle Eyes”) and  
27 E-Lite Automotive Inc. (“E-Lite”) (collectively “Defendants”) will and hereby do move, pursuant  
28 to Rule 7(f) of the Federal Rules of Criminal Procedure, for an order requiring the government to

1 file a bill of particulars with respect to the Indictment filed November 30, 2011.

2 By this Motion, Defendants request that the Court order the government to inform them in  
3 a bill of particulars of the following: (1) what conduct the government intends to rely upon in  
4 support of its contention that Defendants, individually or collectively, violated 15 U.S.C. § 1; (2)  
5 the substance of the alleged agreement and/or allegedly unlawful pricing formula; (3) the identity  
6 of the main coconspirators; (4) when the defendants allegedly participated in the conspiracy; (5)  
7 what prices the government claims were fixed; and (6) what specific legal theories the  
8 government intends to advance at trial in support of the one count Indictment.

9 This Motion is based upon this notice, the attached Memorandum of Points and  
10 Authorities, the attached Declaration of Kenneth B. Julian, the pleadings filed and prior  
11 proceedings herein, and such additional evidence and argument as may be presented at the  
12 hearing on this Motion.

13  
14 Dated: February 7, 2012

MANATT, PHELPS & PHILLIPS, LLP

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16 By: /s/ Kenneth B. Julian  
17 Kenneth B. Julian  
18 *Attorneys for Defendants*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND PROCEDURAL BACKGROUND**

3 In the operative superseding indictment (the “Indictment”), defendants are charged with  
4 participation in a purported seven-year-long international combination and conspiracy to fix  
5 prices of aftermarket auto lights in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. The  
6 Indictment broadly alleges that “defendants and other [unnamed] coconspirators” engaged in  
7 conduct that included:

8 (1) “participat[ion] in meetings, conversations, and communications among  
9 [unidentified] competitors in Taiwan and the United States to discuss the price  
10 structure for aftermarket auto lights”;

11 (2) “agree[ment], during those meetings, conversations, and  
12 communications, to set prices for aftermarket auto lights in accordance with  
13 pricing formulas jointly determined among [unnamed] competitors”;

14 (3) “authoriz[ation], order[ing], and consent[] to the participation of  
15 [unidentified] subordinate employees in the conspiracy”; and

16 (4) taking of “steps to conceal the conspiracy and conspiratorial contacts,  
17 conversations, and communications through various means.”

18 Indictment, Docket No. 30) at ¶ 4(a)-(f). The Indictment also alleges that “[v]arious corporations  
19 and individuals not made defendants to this Indictment participated as coconspirators in the  
20 offense charged in this Indictment.” *Id.* at ¶ 9.

21 The allegations of the Indictment are broad and generic, making it nearly impossible for  
22 defendants to prepare adequate defenses and avoid unfair surprise at the trial of this matter. The  
23 Indictment provides virtually no information about: (1) which of the Defendants or which  
24 unindicted coconspirators participated in what “meetings, conversations, and communications”;  
25 (2) when any of those meetings, conversations or communications occurred; (3) who was  
26 involved and in what capacity; (4) what pricing formula the alleged coconspirators supposedly  
27 agreed upon; or (5) if or when any of the allegedly jointly-determined pricing formulae were  
28 implemented or had any unlawful effect. Indeed, the Indictment is so generic that defendants

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1 cannot divine from it a fair understanding of the theory of the government's case against them or  
2 the scope of the alleged conspiracy to fix prices.

3 Often such issues can be ameliorated by reference to the government's discovery—but  
4 not in this case. The government's discovery is grossly voluminous and very poorly organized.  
5 The government has produced five tranches of discovery, which in the aggregate, total more than  
6 2.5 million pages of materials in electronic format. Julian Decl., ¶ 2. The discovery is not well  
7 organized and provides little to no information about what is contained therein.

8 Additionally, the government thus far has resisted defendants' requests for English-  
9 language translations—in the government's possession—of the hundreds, if not thousands, of  
10 documents in the Chinese language. Julian Decl., ¶ 2-3. This further frustrates defense counsel's  
11 efforts to navigate the voluminous discovery and discern the nature of the allegations against  
12 which Defendants will need to defend. Accordingly, Defendants respectfully request that the  
13 Court order the government to provide them with the requested bill of particulars.

## 14 II.

### 15 A BILL OF PARTICULARS IS WARRANTED

16 The inadequacy of the allegations in the Indictment, coupled with the voluminous  
17 inaccessible discovery, warrant a bill of particular under the facts of this case. That is, if the bare  
18 bones Indictment is compared with the 2.5 million page mish-mash of government discovery,  
19 Defendants do not have fair notice of what they must do to prepare to defend this case. This is  
20 especially so in light of the multiple actors alleged to have carried out a complex multilevel price-  
21 fixing scheme across several countries. See United States v. Long, 706 F.2d 1044, 1054 (9th Cir.  
22 1983) (“In determining if a bill of particulars should be ordered in a specific case, a court should  
23 consider whether the defendant has been advised adequately of the charges through the  
24 indictment and all other disclosures made by the government.”).

1           **A. Legal Standard Governing the Granting of a Bill of Particulars**

2           An indictment must fairly inform a defendant of the specific charges against him in order  
3 “to minimize the danger of surprise at trial, to aid in preparation[,] and to protect against double  
4 jeopardy.” Id.; see also United States v. Burt, 765 F.2d 1364, 1367 (9th Cir. 1985). While “the  
5 language of the statute may be used in the general description of the offense” in an indictment,  
6 the statutory language ““must be accompanied with such a statement of the facts and  
7 circumstances as will inform the accused of the specific offense, coming under the general  
8 description, with which he is charged.”” United States v. Chenaar, 552 F.2d 294, 301 (9th Cir.  
9 1977 (quoting United States v. Hess, 124 U.S. 483, 487 (1888)).

10           Where the allegations in an indictment are insufficient, Rule 7(f) of the Federal Rules of  
11 Criminal Procedure provides that the Court may direct the filing of a bill of particulars. Fed. R.  
12 Crim. P. 7(f). A bill of particulars “is intended to supplement the indictment by providing more  
13 detail of the facts upon which the charges are based. It normally responds to specific questions  
14 formulated by the defendant.” United States v. Inryco, Inc., 642 F.2d 290, 295 (9th Cir. 1981).  
15 The ultimate purpose of a bill of particulars is to make known to the defense the government’s  
16 theory of the case. Yeargain v. United States, 314 F.2d 881, 882 (9th Cir. 1963); see also United  
17 States v. Ryland, 806 F.2d 941, 942 (9th Cir. 1986). “In considering whether to require a bill of  
18 particulars, the court may consider the complexity of the charges, the clarity of the indictment,  
19 and the degree of discovery available to the defense absent a bill of particulars.” United States v.  
20 Vasquez-Ruiz, 136 F. Supp. 2d 941, 942-43 (N.D. Ill. 2001).

21           Due to the crucial functions served by a bill of particulars, the provisions authorizing them  
22 “should be liberally interpreted to carry out this purpose.” United States v. O’Connor, 237 F.2d  
23 466, 476 (2d Cir. 1956). The 1966 Amendment to Rule 7(f), which eliminated the cause  
24 requirement, was “designed to encourage a more liberal attitude by the courts toward a Bill of  
25 Particulars without taking away the discretion which courts may have in dealing with such  
26 motions in individual cases.” Notes of Advisory Committee on Rules, 39 F.R.D. 69, 170 (1966).  
27 “The net result of the change seems to have been to increase the instances in which particulars are  
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1 granted, thus contributing to a considerable decline in the `sporting theory' of criminal justice.”  
 2 United States v. Addonizio, 451 F.2d 49, 64 (3d Cir. 1971) (footnote omitted).

3 **B. A Bill of Particulars is Necessary in Order to Apprise Defendants of the**  
 4 **Specific Charges Against Them So That They May Prepare Appropriate**  
 5 **Defenses**

6 Where, as here, an indictment is highly abbreviated, vague, and imprecise, a motion for a  
 7 bill of particulars is appropriate and necessary. Long, 706 F.2d at 1054 (“A motion for a bill of  
 8 particulars is appropriate where a defendant requires clarification in order to prepare a defense.”).  
 9 Additionally, in light of the fact that the antitrust charges against Defendants, individually and  
 10 collectively, clearly involve allegations of a number of separate agreements entered into over a  
 11 period of several years and between and among a number of entities located in Taiwan, the  
 12 United States, and (apparently) other countries, a bill of particulars is needed in this case.

13 Where a case involves inherently complex charges, such as the antitrust violations charged  
 14 here, and an indictment plagued with overly broad allegations that fail to identify specific conduct  
 15 or actors, a bill of particulars should be granted. United States v. R. P. Oldham Co., 152 F. Supp.  
 16 818, 824 (N.D. Cal. 1957) (ordering bill of particulars in case charging conspiracy in restraint of  
 17 interstate and foreign commerce in Japanese wire nails: “Because of the complexities of this case  
 18 – particularly its foreign aspect – and the generality of the allegations in the indictment, I feel that  
 19 a bill of particulars is necessary here to enable the defendants to properly prepare their case and  
 20 avoid surprise at trial”); see also United States v. Greater Syracuse Bd. of Realtors, Inc., 438 F.  
 21 Supp. 376, 380 (N.D.N.Y. 1977) (in light of anticipated complexity of case charging conspiracy  
 22 in restraint of trade, the court ordered that “all overt acts, proof of which will be offered at trial,  
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1 be specified [in a bill of particulars] to an extent sufficient to allow the defendants to identify and  
 2 investigate them”).<sup>1</sup>

3 Here, the allegations in the Indictment fail to identify which of the Defendants or  
 4 coconspirators engaged in what allegedly unlawful conduct, and fail to provide any information  
 5 to Defendants, individually or collectively, about the timing of the alleged agreements and overt  
 6 acts for which they will be required to answer. Nor does the Indictment provide any identifying  
 7 information about the formation or terms of even one purported “agreement” to fix prices, the  
 8 identity of any of the alleged “other coconspirators” or “competitors in Taiwan,” any pricing  
 9 formulae agreed upon, or whether and how any such agreement was implemented. Instead, the  
 10 Indictment merely references a broad and vaguely delineated seven-year time period, unspecified  
 11 “meetings, conversations, and communications,” an unelaborated “agreement,” unspecified “price  
 12 announcements” and unidentified “various means” by which the unspecified “conspiratorial  
 13 contacts, conversations, and communications” were concealed. Accordingly, a bill of particulars  
 14 is necessary to permit Defendants to identify the charges against which they must defend.

15 Additionally, although adequate discovery can “obviate the need for a bill of particulars,”  
 16 Long, 706 F.2d at 1054, “overwhelming discovery may necessitate a bill of particulars because  
 17 the volume of material may be such that defendants will be unable to focus their investigation  
 18 toward particular facts and circumstances in order to be prepared for trial.” U.S. v. Salyer, Case

19 <sup>1</sup> In addition, courts in complex antitrust cases have exercised their discretion to require the  
 20 government to file bills of particular to specifically supplement information regarding (a) the  
 21 manner and means by which prices were allegedly fixed, (b) how the anti-competitive agreements  
 22 were formed and carried out, and (c) the date upon which the defendant is claimed to have  
 23 entered into the conspiracy. See United States v. Deerfield Specialty Papers, Inc., 501 F. Supp  
 24 796, 810 (E.D. Pa. 1980) (where indictment failed to adequately allege the manner and means by  
 25 which prices were fixed and trade restrained in violation of the Sherman Act, the court granted  
 26 defendants’ requests for such information pursuant to a bill of particulars); United States v.  
 27 Tedesco, 441 F. Supp. 1336, 1341 (M.D. Pa. 1977) (bill of particulars ordered regarding the  
 28 substance of alleged price-fixing agreement or combination); United States v. U.S. Gypsum Co.,  
 37 F. Supp. 398, 405-06 (D.D.C. 1941) (where indictment alleged an eleven-year conspiracy  
 period, government ordered to provide a bill of particulars informing each defendant, within  
 reasonable limits, of when each was alleged to have become a party to the combination or  
 conspiracy, or to otherwise provide defendants with information to enable them, through  
 investigation, to properly prepare a defense to the charge that each defendant did become a party  
 to the combination or conspiracy charged); United States v. Metro. Leather & Finding Ass’n, 82  
 F. Supp. 449, 455 (S.D.N.Y. 1949) (partially granting defendants’ motion for bill of particulars,  
 and requiring the government to inform each corporate and individual defendant of the earliest  
 date of any documentary proofs tending to connect it or him with the alleged conspiracy).

1 No. 10-0061 LKK (GGH), 2010 WL 6026119 at \*1 (E.D. Cal. Dec. 2, 2011) (citing United States  
 2 v. Bin Laden, 92 F. Supp. 2d 225, 234–35 (S.D.N.Y. 2000)); see also Bin Laden, 92 F.Supp.2d at  
 3 234 (“It is no solution to rely solely on the quantity of information disclosed by the government;  
 4 sometimes the large volume of material disclosed is precisely what necessitates a bill of  
 5 particulars”); United States v. Nachamie, 91 F. Supp. 2d 565, 573 (S.D.N.Y. 2000)  
 6 (government’s production of over 200,000 pieces of paper, in part, demonstrated “a need for the  
 7 production of the names of unindicted co-conspirators in order to prevent unfair surprise and  
 8 enable defendants to prepare for trial”).

9 In Salyer, the District Court for the Eastern District of California denied the defendants’  
 10 request for a bill of particulars, but noted that its decision to do so was made in light of the  
 11 existence of a detailed, specific indictment that “set[] forth the dates of the conspiracy and the  
 12 specific time periods each of the defendants are alleged to have participated in it, a description of  
 13 the type of antitrust conspiracy charged and the specific types of TFT–LCD covered by the  
 14 indictment, a description of the goals of the conspiracy, as well as a detailed description of the  
 15 means and methods by which those goals were to be accomplished.” Id. at \*3 (observing that “[t]  
 16 he indictment is far more detailed than other indictments that prior Ninth Circuit cases have found  
 17 to be sufficient.”).

18 Here, the Government’s massive production creates an even greater need for a bill of  
 19 particulars. The vast majority of the production consists of thousands of files, often with each  
 20 individual page of a document saved as a separate file and no indication of where a particular  
 21 document begins or ends. Julian Dec. ¶ 2. Many of those files are written in or otherwise contain  
 22 notations in the Chinese language, and no English-language translation has been produced for  
 23 those Chinese-language documents. Julian Dec. ¶ 3. Additionally, the lack of coherent indices or  
 24 any other apparent organizing principle for the Government’s discovery leaves defense counsel  
 25 wholly unable to discern the nature or source of huge numbers of the unnamed, undescribed files.

26 Comparing the Government’s brief Indictment and the massive document production  
 27 (over 2.5 million pages), vividly illustrates the fundamental unfairness of burdening defendants  
 28 with the enormous task of attempting to discern the theory of, and bases for, the government’s

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1 case against each defendant. Likewise the scant information in the Indictment makes it  
2 exceedingly difficult, if not impossible, for Defendants to begin to understand what is important  
3 within the Government’s voluminous discovery. Accordingly, a bill of particulars is necessary in  
4 order to ensure that Defendants are afforded an opportunity to identify the specific charges  
5 against which they must prepare to defend.

6 **III. CONCLUSION**

7 In light of the foregoing, Defendants respectfully request that this Motion be granted.

8 Dated: February 7, 2012

MANATT, PHELPS & PHILLIPS, LLP

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By: /s/ Kenneth B. Julian

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Kenneth B. Julian

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*Attorneys for Defendants*

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**DECLARATION OF KENNETH B. JULIAN**

I, Kenneth B. Julian, hereby declare:

1. I am a partner at the law firm of Manatt, Phelps and Phillips LLP, counsel for defendants Eagle Eyes Traffic Industrial Co. and Ltd, E-Lite Automotive, Inc.. I have knowledge of the matters set forth herein, and if called upon to do so, I could and would testify competently thereto.

2. The Government has produced five tranches of documents in this Action, which in the aggregate, total more than 2.5 million pages of materials in electronic format. This voluminous discovery is not organized and provides little to no information about what is contained therein. The vast majority of the production consists of thousands of files, often with each individual page of a document saved as a separate file and no indication of where a particular document begins or ends.

3. In addition, hundreds, if not thousands, of the documents produced by the Government are written in, or otherwise contain notations in, the Chinese language. The Government has not provided any English-language translations for these Chinese-language documents, nor has the Government indicated a willingness to do so.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Executed on February 7, 2012, at Costa Mesa, California.

/s/ Kenneth B. Julian  
Kenneth B. Julian