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

13 UNITED STATES OF AMERICA

14 v.
15

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

19 Defendants.
20

) No. CR 11-0488 RS
)
) **ADDENDUM TO UNITED**
) **STATES' OPPOSITION TO**
) **MOTION BY DEFENDANTS**
) **EAGLE EYES AND E-LITE TO**
) **DISMISS INDICTMENT FOR**
) **FAILURE TO ALLEGE**
) **ESSENTIAL ELEMENT OF**
) **CHARGED CRIME**
)
) Date: March 6, 2012
) Time: 2:30 p.m.
) Place: Rm. 3, 17th Floor
) Trial Date: June 18, 2012
)
) Hon. Richard Seeborg, United States
District Judge

1 Since filing its Opposition to Motion by Defendants Eagle Eyes and E-Lite to Dismiss
2 Indictment for Failure to Allege Essential Element of Charged Crime on February 21, 2012, the
3 government has become aware of a case that directly addresses the question of whether a
4 Sherman Act indictment must explicitly allege intent. The government submits this addendum to
5 bring the case to the Court's attention.

6 *United States v. Metropolitan Enterprises, Inc.*, 728 F.2d 444, 446 (10th Cir. 1984),
7 concerned a conspiracy among highway paving contractors to rig the bidding on contracts to
8 repave certain roads in Oklahoma. Defendants were indicted for violation of Section 1 of the
9 Sherman Act and found guilty at trial. *Id.* Prior to trial, defendants moved to dismiss the
10 indictment on the grounds that it failed to state an offense under Section 1 of the Sherman Act
11 because it failed to allege that they acted with the requisite anticompetitive intent or knowledge.
12 *Id.* at 452. In denying the motion, the district court found the requisite intent was implicit in the
13 overt acts charged. *Id.*

14 On appeal, the Tenth Circuit affirmed the district court: “[w]hile requisite intent must be
15 pled and proved in any criminal prosecution arising out of the Sherman Act, the charge of
16 conspiracy to violate a criminal law has implicit in it the elements of knowledge and intent.” *Id.*
17 at 453 (internal citations and quotation marks omitted). The indictment charged defendants with
18 a “conspiracy to restrain trade by discussing, and agreeing to rig bids on certain highway
19 projects.” *Id.* It recited the dates of the conspiracy, detailed the various illegal agreements that
20 the defendants made, and generally described the anticompetitive effects of the agreements. *Id.*
21 It did not explicitly allege any mens rea. *Id.* In finding the indictment sufficient, the court
22 stated, “[a]lthough the word ‘intent’ was not expressly used, we conclude that the Indictment,
23 reading it in its entirety, provides the appellants with sufficient information to adequately prepare
24 their defense and to protect their right not to be placed twice in jeopardy for the same offense.”
25 *Id.*

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1 *Metropolitan Enterprises* is directly on point and supports the conclusion that the
2 Superseding Indictment in this matter is sufficient. The government urges the Court to consider
3 this case when ruling on defendants' motion.
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5 DATED: February 23, 2012

Respectfully submitted,

6 /s/ Anna Tryon Pletcher
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