

BRIGID S. MARTIN (CA Bar No. 231705)  
JACKLIN CHOU LEM (CA Bar No. 255293)  
MAY LEE HEYE (CA Bar No. 209366)  
Antitrust Division  
U.S. Department of Justice  
450 Golden Gate Avenue  
Box 36046, Room 10-0101  
San Francisco, CA 94102  
Telephone: (415) 436-6660

Attorneys for the United States

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA

v.

POLO SHU-SHENG HSU,

Defendant.

No. CR 11-0061 RS

**UNITED STATES' AND  
DEFENDANT POLO SHU-SHENG  
HSU'S JOINT SENTENCING  
MEMORANDUM, MOTION  
FOR DEPARTURE, AND REQUEST  
FOR EXPEDITED SENTENCING  
UNDER L.R. 32-1(b)**

DATE: March 29, 2011

TIME: 2:30 p.m.

COURT: Hon. Richard Seeborg

**JOINT SENTENCING MEMORANDUM**

The United States of America and Polo Shu-Sheng Hsu ("Defendant") file this Joint Sentencing Memorandum in support of their recommendation that this Court: (1) sentence the Defendant to pay a fine of \$25,000, payable in full before the fifteenth (15<sup>th</sup>) day after the date of judgment; (2) sentence the Defendant to a period of incarceration of one hundred eighty (180) days; (3) recommend, pursuant to a request by the Defendant that is not opposed by the United States, that the Defendant be placed in a Federal Minimum Security Camp, and specifically the Federal Minimum Security Camp at Taft, California; (4) release the Defendant on his own recognizance under 18 U.S.C. § 3142(b) following imposition of sentence to allow

1 the Defendant to self-surrender to the designated institution on April 25, 2011; and (5) impose  
2 no period of supervised release (“the recommended sentence”).

3 The parties have separately filed a motion under Criminal Local Rule 32-1(b)  
4 requesting that the sentence be imposed immediately upon acceptance of the plea presently  
5 contemplated to be entered on March 29, 2011, or as soon thereafter as possible, based on the  
6 current record and without need of an evidentiary sentencing hearing or a presentence report.

7 **INTRODUCTION**

8 On February 8, 2011, the United States filed an Information charging that from on or  
9 about April 2000 until on or about September 3, 2008, the Defendant and coconspirators  
10 entered into and engaged in a combination and conspiracy in the United States and elsewhere  
11 to suppress and eliminate competition by fixing the prices of aftermarket auto lights, in  
12 violation of the Sherman Antitrust Act, 15 U.S.C. § 1. Defendant is scheduled for a change of  
13 plea and possible sentencing on March 29, 2011. Defendant will waive Indictment and plead  
14 guilty under Fed. R. Crim. P. 11(c)(1)(C). A copy of the Defendant’s 11(c)(1)(C) Plea  
15 Agreement is attached to this Joint Sentencing Memorandum.

16 **MATERIAL TERMS OF PLEA AGREEMENT**

17 The material terms of the Plea Agreement include:

18 1. The Defendant will waive Indictment, waive all rights enumerated in the Plea  
19 Agreement, and plead guilty to a one-count Information charging him with participating in a  
20 conspiracy to suppress and eliminate competition by fixing the prices of aftermarket auto  
21 lights sold in the United States and elsewhere from on or about April 2000, to on or about  
22 September 3, 2008 (the “relevant period”), in violation of the Sherman Antitrust Act, 15  
23 U.S.C. § 1.

24 2. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and the Defendant  
25 agree that the recommended sentence in this case is a fine of \$25,000; a period of  
26 incarceration of one hundred eighty (180) days; a special assessment of \$100; and no term of  
27 supervised release.

28 //

1           3.       The United States will not seek restitution in this case in light of the civil cases  
2 filed against Defendant's corporate employer. Those suits, including *In re Aftermarket*  
3 *Automotive Lighting Products Antitrust Litigation*, No. 09-ML-2007 GW, consolidated in the  
4 United States District Court, Central District of California, potentially provide for a recovery  
5 of a multiple of actual damages. Additionally, the United States agrees that, pursuant to  
6 U.S.S.G. §5E1.1(b), Defendant should not be ordered to pay restitution because: (1) the courts  
7 in the related civil cases referred to above are best suited to determine which parties, if any,  
8 are entitled to recover in this matter and are best suited to compensate those parties who may  
9 be aggrieved and would otherwise receive restitution; (2) the victims are well-represented  
10 companies that have ample ability to recover in the civil cases; and (3) any amount of  
11 restitution Defendant could reasonably be ordered to pay would be negligible in comparison to  
12 the amount of potential claims in the civil matters. Therefore, under the unique circumstances  
13 of this case, determining restitution would complicate or prolong the sentencing process to a  
14 degree that the need to provide restitution is outweighed by the burden on the sentencing  
15 process. U.S.S.G. §5E1.1(b)(2)(B).

16           4.       The United States will move for a downward departure under §5K1.1 of the  
17 Guidelines based on the Defendant's substantial assistance in the investigation. The  
18 recommended terms of incarceration and fines are below the Guidelines ranges. The United  
19 States' motion for a downward departure at the time of sentencing does not cancel or negate  
20 Defendant's continuing obligation under the Plea Agreement to cooperate in the United  
21 States' ongoing antitrust investigation of the aftermarket auto lights industry.

22           5.       The United States will not oppose Defendant's request that this Court make a  
23 recommendation to the Bureau of Prisons that it designate the Defendant be assigned to a  
24 Federal Minimum Security Camp to serve his sentence, and specifically recommend  
25 placement to the Federal Minimum Security Camp at Taft, California. Placement in that  
26 facility will permit reasonable access by Defendant's counsel, family, and by the government  
27 in connection with the ongoing obligation to cooperate in the government's investigation. The  
28 United States also will not oppose the Defendant's request that he be released on his own

1 personal recognizance under 18 U.S.C. § 3142(b) following imposition of sentence to allow  
 2 Defendant to self-surrender to the designated institution on April 25, 2011.

3 6. If the Court does not accept the sentence provided for in the Plea Agreement,  
 4 Defendant will be free to withdraw his guilty plea, and the Plea Agreement will be rendered  
 5 void.

6 **UNITED STATES SENTENCING GUIDELINES CALCULATIONS**

7 Defendant and the United States agree that the Court should consider the United States  
 8 Sentencing Guidelines in effect at the time of sentencing. The parties agree to the following  
 9 Guidelines calculations for the Defendant. Further, the parties agree that the recommended  
 10 sentence is reasonable. The United States and the Defendant agree that the volume of affected  
 11 commerce attributable to the Defendant for the purpose of calculating the Guidelines under  
 12 §2R1.1 is more than \$250 million.

13	(a) Base Offense Level (§2R1.1(a))	12
14	(b) Volume of Affected Commerce (§2R1.1(b)(2)(E))	+10
15	(c) Total Adjusted Offense Level	22
16	(d) Victim-Related Adjustments (§3A)	+0
17	(e) Role in the Offense Adjustments (§3B1.1(b))	+3
18	(f) Obstruction Adjustments (§3C)	+0
19	(g) Acceptance of Responsibility (§3E1.1(a) and (b))	-3
20	(h) Total Offense Level	22
21	(i) Criminal History Category (§4A1.1)	I

22 The appropriate range of sentence under the Guidelines for Defendant is 41-51  
 23 months, no term of probation (§5B1.1), supervised release of three years (§§ 5D1.1,  
 24 5D1.2(a)(2)), restitution (§5E1.1), a statutory maximum fine of \$1 million pursuant to 15  
 25 U.S.C. § 1, and a special assessment of \$100 (§5E1.3).

26 **MOTION FOR DOWNWARD DEPARTURE**

27 Based on the Defendant's substantial assistance to the United States, and the  
 28 requirement of cooperation in the future under the Plea Agreement, the United States moves

1 under §5K1.1 of the United States Sentencing Guidelines for a downward departure from the  
2 minimum Guidelines incarceration and fine ranges to an incarceration of one hundred eighty  
3 (180) days, and a \$25,000 fine.

4 Defendant has already cooperated by providing information to the government that has  
5 been accepted by the United States as truthful and candid. The United States has determined  
6 that such cooperation constitutes substantial assistance in the investigation and prosecution of  
7 another person who has committed an offense, and is the basis for the downward departure  
8 pursuant to U.S.S.G. §5K1.1. Additionally, Defendant has agreed to continue assisting the  
9 United States in its ongoing aftermarket auto lights investigation, including making himself  
10 available for additional interviews and testimony at the United States' request. The United  
11 States believes that Defendant intends to be completely candid and cooperative with the  
12 United States' ongoing criminal investigation.

13 **CRIME VICTIMS' NOTIFICATION**

14 Pursuant to the procedures ordered by this Court on February 10, 2011 (CR 11-0061  
15 RS, Docket No. 4), the United States will notify crime victims about the Defendant's Plea  
16 Agreement and sentence under the Crime Victims' Rights Act, 18 U.S.C. § 3771.

17  
18 Dated: March 15, 2011

19 Respectfully submitted,

20  
21 BY: 

22 Ed Swanson  
23 Swanson, McNamara & Haller LLP  
24 300 Montgomery Street, Suite 1100  
25 San Francisco, CA 94104  
26 Tel: (415) 477-3800  
27 Counsel for Polo Shu-Sheng Hsu  
28

BY: 

Brigid S. Martin  
Jacklin Chou Lem  
May Lee Heye  
Trial Attorneys  
U.S. Department of Justice  
Antitrust Division  
450 Golden Gate Avenue  
Box 36046, Room 10-0101  
San Francisco, CA 94102