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 11 United States of America

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 MAR - 7 2005
 CENTRAL DISTRICT OF CALIFORNIA
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12 UNITED STATES DISTRICT COURT

13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14
 15 UNITED STATES OF AMERICA,
 16 Plaintiff,
 17 v.
 18 DST SHIPPING, INC.,
 19 Defendant.

) No. CR 04-1728-FMC
)
) GOVERNMENT'S MOTION TO AWARD
) PORTION OF FINE; [REDACTED]
) ORDER
)
)
)

21 Plaintiff United States of America, by and through its
 22 counsel of record, the United States Attorney for the Central
 23 District of California, hereby files its motion for an award,
 24 pursuant to the Act to Prevent Pollution from Ships ("APPS"), to
 25 Jonathan S. Sanchez, Florencio M. Tolentino, Jimmy T. Piamonte,
 26 and Richard O. Santillan, in connection with the above-captioned
 27 matter.
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 CENTRAL DISTRICT OF CALIF.
 LOS ANGELES
 BY *[Signature]*

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1 This motion is based upon the attached memorandum of points
2 and authorities, the record in this case, and any evidence or
3 argument that the Court may consider.

4 DATED: March 3, 2005

5 Respectfully submitted,

6 DEBRA W. YANG
7 United States Attorney

8 STEVEN D. CLYMER
9 Special Assistant United States Attorney
10 Chief, Criminal Division



11 WILLIAM W. CARTER
12 DOROTHY C. KIM
13 Assistant United States Attorney

14 Attorneys for Plaintiff
15 United States of America

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 AWARD AUTHORITY

4 The Act to Prevent Pollution From Ships ("APPS") grants a
5 Court discretion to issue a monetary award of up to one half of
6 any fine imposed to those who provide information that leads to a
7 conviction under the Act. The purpose of APPS is to implement an
8 international law treaty known as the MARPOL Protocol setting
9 forth international standards to protect the marine environment.
10 Upon review of the evidence in this case, the government believes
11 it would be appropriate make an award to Jonathan S. Sanchez,
12 Florencio M. Tolentino, Jimmy T. Piamonte, and Richard O.
13 Santillan, crew members of the Motor Vessel ("M/V") Katerina.
14 These crew members were responsible for notifying federal
15 authorities of the activities upon which the instant prosecution
16 was based. An award would be consistent with the manifest
17 purpose of the statute of encouraging those with information
18 about unlawful conduct to come forward and disclose that
19 information to authorities -- information otherwise difficult, if
20 not virtually impossible -- to obtain.

21 Section 1908(a) of APPS provides that:

22 A person who knowingly violates the MARPOL Protocol,
23 this chapter, or the regulations issued thereunder
24 commits a class D felony. In the discretion of the
25 Court, an amount equal to not more than ½ of such fine
26 may be paid to the person giving information leading to
27 conviction.

28 The regulations implementing the statute contain the same
provision. 33 C.F.R. § 151.04(c).

II.

THE WITNESS' ASSISTANCE

The M/V Katerina is a Maltese-flagged bulk-cargo ship, approximately 600 feet in length and weighing 16,320 gross tons. The M/V Katerina is owned by Katerina Navigation, Inc. and operated by DST Shipping, Inc., both of which are based in Greece. On September 10, 2004, the M/V Katerina arrived at outer anchorage in the Port of Long Beach, California.

On or before September 13, 2004, three crew members, Sanchez, Tolentino, and Piamonte, agreed to notify the U.S. Coast Guard about the unlawful activities occurring on the vessel. Specifically, the three crew members, who had knowledge of the bypassing of the Oil Water Separator ("OWS") through an "elbow pipe," wrote letters to the U.S. Coast Guard, describing the unlawful activities that were occurring on the vessel. They also explained how the OWS was being bypassed and drew a diagram describing where the elbow pipe had been hidden. The three crew members, who, in the government's view are the primary whistle-blowers, also recruited the cook of the vessel, Richard O. Santillan, to type another letter to the U.S. Coast Guard, which listed additional unlawful activities on the vessel. That letter also explained that the OWS did not work.

Based on these letters, the U.S. Coast Guard conducted an inspection of the vessel, which lead to the prosecution and conviction of three crew members, Captain Ioannis Kallikis, Chief Engineer Edgardo Guinto, and Second Engineer Rolan Sullesta. The

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1 letters also lead to the prosecution and conviction of DST
2 Shipping, Inc. Following the initiation of the U.S. Coast Guard
3 investigation, Sanchez, Piamonte, Tolentino, and Santillan
4 continued to assist in the government's investigation and
5 prosecution.

6 On February 28, 2005, DST Shipping, Inc., pleaded guilty to
7 one count of obstructing justice, in violation of 18 U.S.C.
8 § 1512(c)(1) and one count of violating APPS, in violation of 33
9 U.S.C. § 1908(a) and 33 C.F.R. §§ 151.25(a), (d), and (h). That
10 same day, pursuant to the parties' agreement, the Court imposed a
11 \$1 million fine, with \$500,000 being imposed on count two, the
12 APPS violation count.

13 Based on these facts, in the opinion of the United States,
14 it would be appropriate to consider the four named witnesses for
15 an award of \$250,000 total, half the \$500,000 fine imposed on
16 count two. The United States submits that because Sanchez,
17 Tolentino, and Piamonte were the primary whistle-blowers, they
18 should receive \$75,000 each. In addition, because Santillan
19 assisted the other three whistle-blowers in providing information
20 to the U.S. Coast Guard, he should receive \$25,000. The United
21 States further submits that such awards are properly within the
22 Court's discretion in this case and that such awards are wholly
23 consistent with the legislative intent of the APPS award
24 provision.

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1 III.

2 CONCLUSION

3 Based on the foregoing, the government requests that the
4 amounts specified above be awarded to the four named witnesses.

5 DATED: March 3, 2005 Respectfully submitted,

6 DEBRA W. YANG
7 United States Attorney

8 STEVEN D. CLYMER
9 Special Assistant United States Attorney
10 Chief, Criminal Division



11 WILLIAM W. CARTER
12 DOROTHY C. KIM
13 Assistant United States Attorneys

14 Attorneys for Plaintiff
15 United States of America

16 O R D E R

17 IT IS HEREBY ORDERED that pursuant to the Act to Prevent
18 Pollution from Ships, 33 U.S.C. § 1908(a), that (1) a payment in
19 the amount of \$75,000 be awarded to Jonathan S. Sanchez; (2) a
20 payment in the amount of \$75,000 be awarded to Florencio M.
21 Tolentino; (3) a payment in the amount of \$75,000 be awarded to
22 Jimmy T. Piamonte; and (4) a payment in the amount of \$25,000 be
23 awarded to Richard O. Santillan, to be disbursed from the
24 \$500,000 fine to be paid by DST Shipping, Inc., as to Count 2, to
25 the Clerk's Office of the Central District of California. The
26 Clerk's Office is ordered to endorse four separate cashier's
27 check in the names of the above witnesses and to transfer custody
28 of such checks to the U.S. Attorney's Office, specifically,

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1 Assistant United States Attorneys William W. Carter and Dorothy
2 C. Kim, who will coordinate with counsel for Sanchez, Tolentino,
3 Piamonte, and Santillan, Deputy Federal Public Defender Lara
4 Bazelon, and make arrangements with the U.S. Embassy in Manila,
5 Philippines, for the disbursement of such payments to the four
6 witnesses, who are residing in the Philippines.

7 In the event this order is signed before payment by DST
8 Shipping, Inc., of the \$500,000, which is scheduled to occur on
9 March 9, 2005, DST Shipping, Inc., is ordered to obtain four
10 cashier's checks in the names of the above witnesses and in the
11 amounts specified above, and transfer such checks to the custody
12 of the United States Attorney's Office, who will make
13 arrangements as set forth in the above paragraph. Such cashier's
14 checks will be deemed a \$250,000 payment on the fine on count 2.

15 *Mar. 7, 2005*

16 *Florence-Marie Cooper*
17 HONORABLE FLORENCE-MARIE COOPER
18 UNITED STATES DISTRICT JUDGE
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CERTIFICATE OF SERVICE

SCANNED

I, **Sandy Ear**, declare:

That I am a citizen of the United States and resident or employed in Los Angeles County, California; that my business address is the Office of United States Attorney, United States Courthouse, 312 North Spring Street, Los Angeles, California 90012; that I am over the age of eighteen years, and am not a party to the above-entitled action;

That I am employed by the United States Attorney for the Central District of California who is a member of the Bar of the United States District Court for the Central District of California, at whose direction I served a copy of: **GOVERNMENT'S MOTION TO AWARD PORTION OF FINE; [PROPOSED] ORDER**

service was:

Placed in a closed envelope, for collection and interoffice delivery addressed as follows:

Placed in a sealed envelope for collection and mailing via United States Mail, addressed as follows:

By hand delivery addressed as follows:

By facsimile as follows:

By messenger as follows:

By federal express as follows:

**LARA BAZELON
OFFICE OF FEDERAL PUBLIC DEFENDER
321 East Second Street
Los Angeles, California 90012**

This Certificate is executed on **March 3, 2005**, at Los Angeles, California.

I certify under penalty of perjury that the foregoing is true and correct.



SANDY EAR

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