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UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
KEOJE MARINE CO. LTD.,)
)
Defendant.)
_____)

CR. NO. 11-01258LEK

PLEA AGREEMENT

Count 1: 33 U.S.C. § 1908(a)
Count 2: 18 U.S.C. § 1519
Count 3: 33 U.S.C. §§ 1319(c)(2)(A)
1321(b)(3)

MEMORANDUM OF PLEA AGREEMENT

Pursuant to Fed. R. Crim. P. 11(c), the United States of America, by Florence T. Nakakuni, United States Attorney for the District of Hawaii, and the Environmental Crimes Section of the United States Department of Justice (collectively “the United States” or “the Government,” and the defendant, KEOJE MARINE CO. LTD. (“KEJOE”), and the attorney for the defendant, Michael Purpura, Esq., mutually agree as follows:

A. **Particularized Terms**

1. **Counts**

The defendant shall enter a plea of guilty to Counts One through Three of the Information filed in this case. Count One charges the defendant with failing to accurately maintain an Oil Record Book, in violation of 33 U.S.C. § 1908(a). Count Two charges the defendant with obstruction of justice for falsifying an Oil Record Book in violation of 18 U.S.C. § 1519. Count Three charges the defendant with knowingly discharging oil into the exclusive economic zone of the United States in such quantities as may be harmful to the natural resources of the United States, in violation of 33 U.S.C. §§ 1319 (c)(2)(A) and 1321(b)(3).

2. **Maximum Penalties**

The defendant understands and agrees that the statutory penalties applicable to a corporate defendant for each felony count to which it is entering a plea of guilty are a maximum fine of either Five Hundred Thousand (\$500,000.00) dollars, or twice the gross gain or loss resulting from the unlawful conduct, pursuant to 18 U.S.C. § 3571(e) and (d); a term of probation of five (5) years, pursuant to 18 U.S.C. § 3561(c)(1); and a special assessment of Four Hundred (\$400.00) dollars for each count, pursuant to 18 U.S.C. § 3013(a)(2)(B).

3. Elements of the Offenses

The defendant acknowledges understanding the nature and elements of the offenses with which the defendant has been charged and to which defendant is pleading guilty. Under well-established principles of corporate liability and respondeat superior, as these principles apply in this case, the corporate defendant is liable for the actions of its agents and employees acting within the scope of their employment and for the benefit of the corporation. The elements of Count One (Act to Prevent Pollution from Ships - Failure to Accurately Maintain An Oil Record Book, 33 U.S.C. § 1908(a)) are:

- First: That the Motor Tanker ("*M/T*") *Keoje Tiger* was a tank ship of more than 150 gross tons, and was registered in a country other than the United States;
- Second: The defendant was responsible for maintaining the Oil Record Book on the *M/T Keoje Tiger*;
- Third: The defendant knowingly failed to fully and accurately maintain an Oil Record Book in which the required operations involving oil, oily mixtures, oily residues, or disposals of bilge waste that had accumulated in machinery spaces were recorded without delay;
- Fourth: The failure to maintain an accurate Oil Record Book occurred while the *M/T Keoje Tiger* was in or at a port or terminal of the United States.

The elements of Count Two (Obstruction of Justice, 18 U.S.C. § 1519) are:

- First: The defendant knowingly;
- Second: Falsified or made a false entry in any record or document; and
- Third: Did so with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of and department or agency of the United States.

The elements of Count Three (Clean Water Act, 33 U.S.C. §§ 1319(c)(2)(A) and 1321(b)(3)) are:

- First: That the defendant knowingly discharged oil;
- Second: Into the Exclusive Economic Zone of the United States; and
- Third: In such quantities as may be harmful to the natural resources of the United States .

4. Indictment Waiver

The defendant agrees to waive the right to be charged by way of indictment before a federal grand jury.

5. Applicability of Sentencing Guidelines

The defendant understands and acknowledges that, at sentencing, the Court is required to consider the United States Sentencing Guidelines, together with the other sentencing goals set forth in Title 18, United States Code, Section 3553(a). The parties agree that Chapter 8 of the United States Sentencing Guidelines Manual governs the case with regard to any payment of restitution, community service, and probation. Regarding determinations of an appropriate fine, however, pursuant to Commentary for U.S.S.G. § 8C2.1, the provisions of § 8C2.2 and § 8C2.9 do not apply to counts for which the applicable guideline offense level is determined under Chapter Two, Part Q (Offenses Involving The Environment). For such cases, § 8C2.10 (Determining the Fine for Other Counts) is applicable on an advisory basis. U.S.S.G. § 8C2.10, in turn, directs the Court to apply the provisions of Title 18, United States Code, Sections 3553 and 3572 to determine the appropriate fine.

6. Joint Sentencing Recommendation

Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the

United States and the defendant agree to jointly recommend that the sentence to be imposed by the Court shall include the following components. The parties understand that such a recommendation is not binding on the Court and that, if not accepted by this Court, this entire Agreement shall be null and void at the option of any party.

A. **Penalty:** The defendant agrees to pay a total criminal penalty of One Million, One Hundred and Fifty Thousand (\$1,150,000.00) dollars of which the criminal fine will be Nine Hundred Thousand (\$900,000.00) dollars. The parties stipulate for the purposes of settlement that the criminal fine of Nine Hundred Thousand (\$900,000.00) dollars for Counts One, Two, and Three is appropriate pursuant to 18 U.S.C. § 3571(d), and that the Nine Hundred Thousand (\$900,000.00) dollars be equally apportioned between the counts - Three Hundred Thousand (\$300,000.00) dollars per count.

B. **Community Service Payment:** The defendant agrees to pay a total of Two Hundred and Fifty Thousand (\$250,000.00) dollars in the form of an organizational community service payment pursuant to §8B1.3 of the Federal Sentencing Guidelines and in furtherance of satisfying the sentencing principles provided for under 18 U.S.C. § 3553(a), as follows:

1. The defendant shall pay Two Hundred and Fifty Thousand (\$250,000.00) dollars to the National Fish and Wildlife Foundation ("NFWF"). The community service payment shall be applied by NFWF to fund projects for the preservation and restoration of coral reefs in and around the District of Hawaii.

NFWF is a charitable and nonprofit organization established pursuant to 16 U.S.C. §§ 3701-3710. Its purposes include the acceptance and administration of "property . . . to further the conservation and management of fish, wildlife, plants, and other natural resources," and the

performance of "such other activities as will further the conservation and management of the fish, wildlife, and plant resources of the United States, and its territories and possessions for present and future generations of Americans." 16 U.S.C. § 3701(b)(1), (2). NFWF is empowered to "do any and all acts necessary and proper to carry out" these purposes, including, specifically, solicitation, acceptance, administration, and use of "any gift, devise or bequest . . . of real or personal property." 16 U.S.C. § 3703(c)(1), (11). NFWF's Congressional charter mandates that it be governed by a Board of Directors that includes the Director of the United States Fish and Wildlife Service, the Under Secretary of Commerce for Oceans and Atmosphere, and various individuals educated or experienced in fish, wildlife, ocean, coastal, or other natural resource conservation. 16 U.S.C. § 3702(b)(1), (2). NFWF is also required by its charter to submit to Congress annually a report of its proceedings and activities during such year, including a full and complete statement of its receipts, expenditures, and investments. 16 U.S.C. § 3706(a), (b).

The explicit goal of the defendant's required community service is to fund environmental projects and initiatives designed for the benefit, preservation and restoration of the coral reefs in and around the District of Hawaii. The community service monies should build on ongoing coral reef conservation efforts in Hawaii, and the funded project shall be determined in coordination with the NOAA Coral Reef Conservation Program, the local NOAA management offices in Hawaii, and the State of Hawaii Division of Land and Natural Resources. Because the community service payment is designated as community service by an organization, the defendant further agrees that it will not seek any reduction in its tax obligations as a result of its community service payment. In addition, since this payment constitutes community service, the defendant will not characterize, publicize or refer to the community service payment as a

voluntary donation or contribution.

C. **Mandatory Special Assessment:** The defendant shall pay a special assessment for each count of conviction for a total aggregate special penalty amount of One Thousand Two Hundred (\$1,200.00) dollars.

D. **Payments:** The defendant agrees to pay the monetary penalty specified above according to the following schedule: (1) \$225,000.00 towards the criminal fine due on the date of sentencing; (2) \$250,000.00 for the community service payment to NFWF payable as set forth above, due on date of sentencing; (3) \$225,000.00 towards the criminal fine due at the end of the first year of probation; and (4) \$225,000.00 towards the criminal fine due at the end of the second year of probation; and (5) \$225,000.00 towards the criminal fine due at the end of the third year of probation. Fine payments are to be made in the form of a check payable to "United States District Court Clerk." The Community Service Payment is to be made in the form of a check payable to the "National Fish and Wildlife Foundation" and make reference to the "*MT Keoje Tiger case*" with its corresponding court docket number.

E. **Probation:** The parties jointly recommend that the defendant be placed on organizational probation for a period of three (3) years from the date of sentencing pursuant to 18 U.S.C. § 3561(c)(1) and USSG §§ 8D1.1 and 8D1.2. The parties recommend that the terms of probation be as follows:

1. No Further Violations. The defendant agrees that it shall commit no further violations of MARPOL 73/78, the Clean Water Act, or any other federal, state, or local law, including those laws and regulations for which primary enforcement has been delegated to the state authorities, and shall conduct all its operations in accordance with the environmental

laws of the United States.

2. Payments. Payment in full of the monetary amounts as set forth herein including all special assessments, fines, restitution, and community service.

3. Environmental Compliance Plan. The defendant agrees to fund and implement the environmental remedial measures set forth in the Environmental Compliance Plan (“ECP”), attached hereto as Attachment A, during its term of probation, consistent with sentencing policies set forth in USSG §8D1.4. As the ECP constitutes a special condition of probation, a violation of the ECP is a violation of probation.

F. **Maintenance of Crew**: The defendant agrees to provide full maintenance for certain crewmembers in the District of Hawaii until final disposition of this matter and closely related matters. The parties have previously identified which specific crewmembers will remain in the District of Hawaii and the extent of their maintenance requirements.

7. Application of the Agreement

This Agreement shall bind the defendant and its subsidiaries, including all subsidiaries that technically manage and/or man vessels, including but not limited to KEOJE, and all successors-in-interest, if applicable, and all successors and assigns. The defendant shall provide immediate notice to the Environmental Crimes Section of the U.S. Department of Justice, the United States Attorney’s Office for the District of Hawaii, and the United States Coast Guard of any of the following: any corporate name changes; any purchase or sale of vessels; any purchase, sale or reorganization or divestiture; or any other change impacting upon or affecting this Agreement or the ECP. No change in name, change in corporate or individual control, business reorganization, change in ownership, merger, change in legal status, sale or

purchase of assets, or similar action shall alter the defendant's responsibilities under this Agreement or the ECP. The defendant understands and agrees that it shall not engage in any action to seek to avoid the obligations and conditions set forth in this Agreement.

8. Cooperation

As part of this Agreement, the defendant agrees that it will continue to cooperate with the United States regarding any further investigation of this matter.

9. Corporate Defendant

The undersigned corporate officer or representative of the defendant hereby certifies that he is authorized by the defendant corporation to act on its behalf, to plead guilty to the charges alleged in the Information, and to enter into this Agreement, and that a corporate resolution so empowering said officer or representative has been duly made and approved by said corporation. A copy of the resolution will be presented to the court at the entry of the plea in this case. Said defendant corporation has agreed to implement an Environmental Compliance Plan ("ECP"), as set forth in Attachment A. The defendant corporation further agrees that such a program is a condition of probation.

B. Standard Terms and Conditions

1. Restitution, Special Assessment and Fine

The defendant understands that the Court, in addition to or in lieu of any other penalty, may order the defendant to make restitution to any victim of the offense(s), pursuant to 18 U.S.C. § 3663A, for all offenses described in 18 U.S.C. § 3663A(c)(1) (limited to offenses committed on or after April 24, 1996); and the Court may order the defendant to make restitution to any victim of the offense(s), pursuant to 18 U.S.C. § 3663 (limited to offenses committed on

or after November 1, 1987), including restitution as to all counts charged, whether or not the defendant enters a plea of guilty to such counts, and whether or not such counts are dismissed pursuant to this Agreement. On each count to which a plea of guilty is entered, the Court shall impose a special assessment, to be payable to the Clerk's Office, United States District Court, and due on date of sentencing. The parties are not aware of any victims or restitution due.

2. Sentencing Information

The United States reserves its right and obligation to report to the Court and the United States Probation Office all information concerning the background, character, and conduct of the defendant, to provide relevant factual information, including the totality of the defendant's criminal activities, if any, not limited to the count(s) to which defendant pleads, to respond to comments made by the defendant or defendant's counsel, and to correct any misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject to any limitations set forth herein, if any.

Pursuant to 18 U.S.C. § 3664(d)(3) and Fed. R. Crim. P. 32(d)(2)(A)(ii), if directed by the court, the defendant agrees to complete and submit, upon execution of this Agreement, an affidavit reflecting the defendant's financial condition. The defendant further agrees, and by the execution of this Agreement, authorizes the United States Attorney's Office to provide to, and obtain from, the United States Probation Office or any victim named in an order of restitution, or any other source, the financial affidavit, any of the defendant's federal, state, and local tax returns, bank records and any other financial information concerning the defendant, for the purpose of making any recommendations to the Court and for collecting any assessments,

fines, restitution, or forfeiture ordered by the Court.

A. Sentencing Recommendations

The parties agree that this Agreement was negotiated and agreed upon pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C). Should the Court refuse to accept this Agreement for any reason, the entire Agreement shall become null and void at the option of either party.

3. Defendant's Waiver of Right to Appeal and Right to Collaterally Challenge the Sentence

The defendant agrees that this Court has jurisdiction and authority to impose any sentence up to the statutory maximum and expressly waives the right to appeal defendant's sentence or to challenge it collaterally on any ground, including the ground that the Court erred in determining the applicable guidelines range pursuant to the United States Sentencing Guidelines, except (a) the ground that the sentence exceeds the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines; (b) the ground that the sentence exceeds the statutory maximum penalty; or (c) the ground that the sentence violates the Eighth Amendment to the Constitution; provided, however, that if the government exercises its right to appeal the sentence imposed, as authorized by 18 U.S.C. § 3742(b), then the defendant is released from his waiver and may appeal the sentence as authorized by 18 U.S.C. § 3742(a).

4. District of Hawaii and Environmental Crimes Section

This Agreement binds only the United States Attorney's Office for the District of Hawaii, the Environmental Crimes Section of the U.S. Department of Justice, and the defendant. As part of this Agreement and solely because of the promises made by the defendant in this

Agreement, the government agrees not to criminally prosecute the defendant in the District of Hawaii for any environmental offenses or related offenses involving the *M/T Keoje Tiger*, including but not limited to the discharge of oil, the failure to report the discharge of oil, false statements or related acts of obstruction that are related to the offense set forth in the Information in this matter and /or arise out of the conduct giving rise to the investigation of *M/T Keoje Tiger*, that occurred before the date of this Agreement and are known to the Government at the time of the signing of this Agreement. The defendant understands and agrees that neither this paragraph nor this Agreement limits the prosecuting authority of any other sections or divisions of the U.S. Department of Justice, including the U.S. Attorney of any other judicial district, or any other federal, state or local regulatory or prosecuting authorities. Furthermore, this Agreement does not provide or promise any waiver of any civil or administrative actions, sanctions, or penalties that may apply, including but not limited to: fines, penalties, claims for damages to natural resources, suspension, debarment, listing to restrict rights and opportunities of the defendant to contract with or receive assistance, loans, and benefits from United States agencies, licensing, injunctive relief, or remedial action to comply with any applicable regulatory requirement. This Agreement applies only to crimes committed by the defendant and has no effect on any proceedings against any other defendant not expressly mentioned herein. The government agrees to bring the defendant's cooperation to the attention of other prosecuting offices or others, if any.

5. Filing of Agreement

This Agreement shall be presented to the Court, in open court or in camera, in whole or in part, upon a showing of good cause, and filed in this cause, at or before the time of the defendant's entry of a plea of guilty pursuant hereto.

6. Voluntariness

The defendant acknowledges that the defendant is entering into this Agreement and is pleading guilty freely and voluntarily without reliance upon any discussions between the attorney for the government and the defendant and the defendant's attorney and without promise of benefit of any kind (other than the concessions contained herein), and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges the defendant's understanding of the nature of the offense or offenses to which the defendant is pleading guilty and the elements thereof, including the penalties provided by law, and the defendant's complete satisfaction with the representation and advice received from the defendant's undersigned counsel. The defendant also understands that the defendant has the right to plead not guilty or to persist in that plea if it has already been made, and that the defendant has the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against the defendant, the right against compulsory self-incrimination, and the right to compulsory process for the attendance of witnesses to testify in the defendant's defense; but, by pleading guilty, the defendant waives or gives up those rights and there will be no trial. The defendant further understands that if the defendant pleads guilty, the Court may ask the defendant questions about the offense or offenses to which the defendant pleaded, and if the defendant answers those questions under oath, on the record, and in the presence of counsel, the defendant's answers may later be used against the defendant in a prosecution for perjury or false statement.

7. Factual Basis

The defendant is pleading guilty because the defendant is in fact guilty. The defendant does hereby admit that the facts set forth below are true, and were this case to go to trial, the United States would be able to prove those specific facts and others beyond a reasonable doubt:

FACTS

A. Defendant was a Korean corporation with offices at 4th Floor, Woolim Building, 12, Daepyeong-dong 1-ga, Yeongdo-gu, Busan, 150-968, South Korea. Defendant KEOJE, acting through its agents and employees, who were acting within the scope of their agency and employment and on behalf of defendant, owned and operated the motor tank vessel Keoje Tiger (hereinafter "*M/T Keoje Tiger*") at all times relevant to this Information.

B. The *M/T Keoje Tiger*, a 4,228 gross ton oil tanker vessel, was registered under the flag administration of the Republic of Korea and bore the International Maritime Organization number 9106340. The *M/T Keoje Tiger* was engaged in international commercial maritime operations and provided diesel fuel and supplies from Honolulu, Hawaii, Barbers Point, Hawaii, and other locations, to fishing vessels in the South Pacific.

C. The defendant, acting through the senior engineers and other crewmembers on board the *M/T Keoje Tiger*, who acted within the scope of their employment and for the intended benefit of defendant, was responsible for the operation and supervision of the Engine Department on board the *M/T Keoje Tiger*, including the management, treatment, storage, and disposal of oil residue, oily mixtures and machinery space operations.

D. The senior engineers on board the *M/T Keoje Tiger* were also responsible

for recording the movement, discharge, and disposal of oil residue, oily mixtures, and machinery space bilge water, including any non-accidental overboard discharges of oily waste, in the vessel's machinery space Oil Record Book.

E. The United States is a party to an international treaty, the International Convention for the Prevention of Pollution from Ships, as modified by the Protocol of 1978 ("MARPOL"). MARPOL was implemented in the United States by the Act to Prevent Pollution from Ships ("APPS"), 33 U.S.C. § 1908, et. seq. APPS regulations require that tank vessels of more than 150 gross tons, such as the *M/T Keoje Tiger*, maintain an Oil Record Book ("ORB") while in U.S. Waters. The ORB must fully reflect (1) transfers of oil, on a tank to tank basis, (2) the disposal of sludge and waste oil, discharges of water from slop tanks, and (3) overboard discharges of bilge waste. MARPOL, Annex 1 Regulation 20 and 33 CFR § 151.25(h). APPS regulations require that a discharge in excess of fifteen (15) parts per million of oil to water, or a probable discharge resulting from damage or failure of the ship's equipment, be reported to the nearest United States Coast Guard Captain of the Port. 33 U.S.C. 1906(b); 33 C.F.R. 151.15(c). APPS regulations also mandate that any discharge of machinery space bilge waste that is within 12 nautical miles of the United States contain no more than 15 parts per million of oil to water, and that the vessel have in operation properly functioning oil-water separating equipment. The United States Coast Guard routinely inspects ORBs on board vessels to determine whether the vessel has been discharging any oil or oily mixtures in violation of MARPOL and APPS. 33 CFR § 151.23. The ORB must be maintained on board the vessel for three (3) years and be readily available for inspection at all times. MARPOL, Annex I, Regulation 17; 33 CFR § 151.25(i).

F. From on or about March 2011 until on or about October 2011, senior engineering officers and other crewmembers aboard the *M/T Keoje Tiger*, acting for the intended benefit of defendant, discharged oily bilge waste from the vessel on a regular and routine basis. Engineers would connect a hose between the bilge pump and the boiler blowdown overboard discharge valve, and then use the bilge pump to suction off oily bilge waste from the vessel's bilge tank and bilge wells and pump it directly overboard without the use of required pollution prevention equipment, including a properly functioning Oil Water Separator and Oil Content Meter.

G. During a voyage ending in Honolulu, Hawaii, on or about October 12, 2011, senior engineers on board the *M/T Keoje Tiger* discharged oil in the form of oily bilge waste into the Exclusive Economic Zone of the United States in such quantities as may be harmful to the natural resources of the United States.

H. On or about October 12, 2011, the United States Coast Guard conducted a Port State Control boarding and examination of the *M/T Keoje Tiger* after the vessel arrived in Honolulu, Hawaii, a port or terminal of the United States.

I. On or about October 12, 2011, during a Port State Control examination, senior engineers on board the *M/T Keoje Tiger* knowingly presented and caused the presentation of the vessel's falsified Oil Record Book to representatives of the United States Coast Guard, when the engineers then and there well knew that the Oil Record Book failed to state, and omitted the fact, that oily bilge waste had been discharged from the vessel on multiple occasions, and that the required pollution prevention equipment was not being used, thereby giving the false and misleading impression that the vessel was being operated properly.

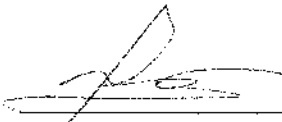
8. Entire Agreement

This Agreement constitutes the entire agreement between the government and the defendant with respect to the aforementioned guilty plea and no other promises, agreements, or representations exist or have been made to the defendant or the defendant's attorney with regard to such guilty plea.

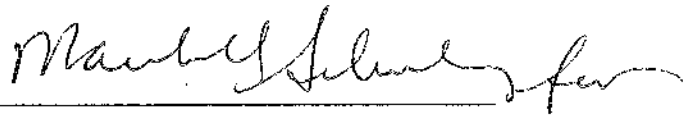
9. Certification

The defendant and the defendant's counsel certify that this Agreement has been read in its entirety by (or has been read to) the defendant and that the defendant fully understands its terms.


DATED this 10 day of January, ~~2011~~ ²⁰¹².



Corporate Officer or Authorized
Representative of
KEOJE MARINE CO. LTD.
Defendant



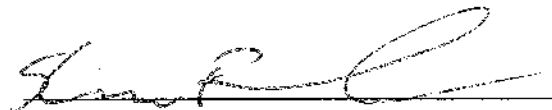
FLORENCE T. NAKAKUNI
United States Attorney



MICHAEL PURPURA, ESQUIRE
Attorney for Defendant



MARSHALL SILVERBERG
Assistant United States Attorney



KENNETH E. NELSON
Trial Attorney
Environmental Crimes Section
Environment and Natural Resources Division
U.S. Department of Justice

ATTACHMENT A
Environmental Management System/Compliance Plan

PURSUANT TO PLEA AGREEMENT

United States v. Keoje Marine Co Ltd.

The following standards and requirements for an ENVIRONMENTAL COMPLIANCE PROGRAM (ECP) have been prepared pursuant to the Plea Agreement between Keoje Marine Co Ltd (hereinafter "Keoje Marine") and the United States (hereinafter "Government") filed in the United States District Court for the District of Hawaii. Compliance with all of the standards and requirements of the ECP is an essential term of the Plea Agreement. The vessels currently covered under this ECP are known as:

- (1) *T/V KEOJE TIGER*, IMO Number 9106340
- (2) *T/V WOO JEONG*, IMO Number 8865121
- (3) *T/V WOO BONG*, IMO Number 9036387
- (4) *T/V WOO YEON*, IMO Number 9118757
- (5) *T/V WOO SUN*, IMO Number 9230335

The ECP includes various provisions to ensure that all vessels directly or indirectly operated, managed, manned and/or controlled by Keoje Marine which call or are scheduled to call at ports or places in the United States, comply with all maritime environmental requirements established under applicable international, flag state and port state law, including, but not limited to the International Convention for the Safety of Life at Sea (SOLAS), the International Safety Management (ISM) Code, the International Convention for Prevention of Pollution from Ships (MARPOL) and all applicable Federal and state statutes and regulations including, but not limited to, the Ports and Waterways Safety Act (PWSA), the Act to Prevent Pollution from Ships (APPS), the Clean Water Act (CWA), and the Oil Pollution Act (OPA), and with the requirements of this agreement itself. The auditing requirements of this ECP apply to those vessels that call or are scheduled to call at ports or places in the United States, specifically including American Samoa. As more fully set forth below, this ECP and its requirements will also apply to vessels that Keoje Marine acquires or assumes management of that call or are scheduled to call at ports or places in the United States.

A. APPLICABILITY/PURPOSE

- (1) This ECP shall cover and apply to all of Keoje Marine's operations, including all subsidiaries, affiliated business entities, and agents (owned wholly or partially by Keoje Marine), involved in the operation of seagoing vessels calling in United States ports which are operated, managed and/or manned by Keoje Marine on the date of sentencing or at any time during the period of probation. It shall also include all persons working for Keoje Marine, its subsidiaries, affiliated business entities, agents, and any other individuals or organizations who are involved in the operation, maintenance and repair of aforesaid seagoing vessels, operated, managed and/or manned by Keoje Marine, as direct employees or independent contractors on the date of sentencing or at any time during the period of probation.
- (2) The ECP is not intended to replace the ISM Code, or any other applicable international legal requirement or United States statute and regulation. The purpose of this ECP is to augment the requirements of existing law by increasing and improving inspections, reviews, and audits of Keoje Marine's operated and/or managed vessels which call or are scheduled to call at ports or places in the United States, shoreside facilities, and operations involving said vessels; increase training of all of Keoje Marine's personnel involved with said vessels; develop and implement management and engineering controls to better manage, detect and prevent environmental violations; and require periodic reports to the United States Probation Office for the District of Hawaii, the United States Attorney's Office for the District of Hawaii, the Environmental Crimes Section of the United States Department of Justice, the Environmental Protection Agency, and the United States Coast Guard (collectively hereinafter "the United States") to ensure that Keoje Marine's is following the requirements of this ECP and that all of its vessels comply with all maritime environmental requirements established under applicable international, flag state, and port state law and all applicable Federal and state statutes and regulations, and that an effective environmental management system is in place to prevent recurrence of violations.

B. CORPORATE COMPLIANCE MANAGER

- (1) Within sixty (60) days of entry of the Plea Agreement, Keoje Marine shall designate a senior corporate officer as Corporate Compliance Manager (hereinafter "CCM") who shall report directly to the President and/or Managing Director of Keoje Marine. Keoje Marine shall provide the name of the CCM to the United States. The CCM should be the same individual as Keoje Marine's "designated person" under the ISM Code unless reasons are provided to the United States justifying why the "designated person" should not also be the CCM. The CCM shall be responsible for coordinating with the Independent ECP Consultant (hereinafter "IC"), as more fully described below, developing and implementing all of the procedures and systems required herein, establishing and implementing training programs for the officers and crew of Keoje Marine operated and/or managed vessels, ensuring that reviews, audits and surveys are carried out as required and ensuring that all documents are properly maintained and that reports are made on a timely basis to the IC and the United States. All reports required under this ECP shall be reviewed by the CCM and signed under the penalty of perjury.
- (2) Keoje Marine shall establish a procedure and reporting system that requires and enables all officers, crewmembers and employees, and shoreside personnel involved in the manning and/or operation of Keoje Marine's seagoing vessels, including all persons working for Keoje Marine, its subsidiaries, affiliated business entities (owned wholly or partially by Keoje Marine) and agents of Keoje Marine as either direct employees or independent contractors, to notify the CCM of all violations of any applicable environmental requirements or other requirements of this ECP and to cooperate fully with the IC and the United States in carrying out their reviewing, auditing and oversight functions required by applicable law and this ECP. Keoje Marine agrees to establish a procedure that makes failure to notify the CCM of any violations of any applicable environmental requirements and failure to cooperate fully with the Classification Societies, the IC and the United States in carrying out their auditing and oversight functions required by applicable law and this ECP, grounds for dismissal. Keoje Marine agrees not to retaliate against any officer, crewmember, employee, or shoreside personnel involved in the manning and/or operation of Keoje Marine's seagoing vessels, including all persons working for Keoje Marine, its subsidiaries, affiliated business entities (owned wholly or partially by Keoje Marine) and agents of Keoje Marine as either direct employees or independent contractors or entity making any such report.
- (3) The CCM shall be authorized to access all records and personnel regarding all vessels subject to the ECP for the purpose of ensuring compliance with the ECP. The CCM shall be authorized to implement all requirements of the ECP on all vessels subject to the ECP. The CCM shall ensure that audits and surveys are carried out as required, that all documents are properly maintained and that reports are made on a timely basis to the U.S. Probation Office, IC, the designated representative of the Coast Guard, and Keoje Marine's. The CCM position will be filled by an individual(s) with significant maritime vessel operational background, who possesses auditing experience and is thoroughly familiar with the requirements of this ECP, and is knowledgeable about domestic and international maritime environmental laws and regulations.

CCM Responsibilities:

(a) Development and Maintenance of Effective Training Programs

-To the extent not already completed, the CCM will be responsible for developing training programs to educate and train Keoje Marine's employees of their environmental commitment, the requirements of the ECP, the policies and procedures for complying with the ECP, and the possible consequences to Keoje Marine and to individuals for failure to comply with environmental laws.

-Provide environmental consultants and contractors of Keoje Marine with documents and training to make them aware of the ECP.

(b) Auditing and Compliance Assessment

-Ensure that the IC conducts the review and audits required by the ECP and that the required reports are prepared.

(c) Fleet Reviews

-Supervise annual overall reviews of the environmental compliance programs and "focused" reviews of key environmental areas to promote the adoption of "best practices".

(d) Reporting of Non -Compliance by Employees and Crew Members

-Establish a means by which employees may report (anonymously if so desired) issues of non-compliance with this ECP and any other procedure, policy, or regulation associated with environmental protection.

C. MASTER AND CHIEF ENGINEER

(1) The Master of each of Keoje Marine's vessels subject to this ECP, with the assistance of the CCM, shall ensure that prompt reports are made to the United States Coast Guard of any non-compliant condition of any of Keoje Marine's vessels that call upon any port or place in the United States or sail into any waters under the jurisdiction of the United States.

(2) The Chief Engineer on board all vessels subject to this ECP shall perform the following duties regarding this ECP:

-To daily measure, monitor and manage shipboard generated wastes;

-Report to the CCM and cooperate with Keoje Marine to resolve environmental concerns, such as inoperative or ineffective pollution prevention equipment and document all efforts to do so in a log that is available for review and audit at all times.

D. INDEPENDENT ECP CONSULTANT AND INITIAL ENVIRONMENTAL REVIEW

(1) No later than thirty (30) days following the District Court's final imposition of sentence in United States v. Keoje Marine Co Ltd., Keoje Marine shall nominate an IC who meets the qualifications below to conduct an Initial Environmental Review, and a Report of Findings for all of Keoje Marine's operations as defined below. The United States will notify Keoje Marine in writing of its approval or disapproval as expeditiously as possible. The United States' approval shall not be unreasonably withheld.

(2) Qualified candidates for the IC position must have expertise and competence in the regulatory programs under U.S. and international environmental laws, and have expertise and competence in waste stream evaluation, monitoring and control technologies, with a primary emphasis on engine room and machinery space operations, used by Keoje Marine to achieve and maintain compliance in respect to Keoje Marine's seagoing vessels. The IC shall also have sufficient expertise and competence to assess whether Keoje Marine has an adequate Environmental Management System in place to assess regulatory and ECP compliance, to correct non-compliance, and to prevent future non-compliance. Keoje Marine and the United States acknowledge that the functions of the IC may, by mutual agreement, be fulfilled by one or more individuals.

(3) The IC must not directly own any stock in Keoje Marine, any of its subsidiaries, affiliated business entities (owned wholly or partially by Keoje Marine) or any agents of Keoje Marine, and must have no other direct financial stake in the outcome of duties conducted Pursuant to this Plea Agreement. The IC must be capable of exercising the same independent judgment and discipline that a certified public accounting firm would be expected to exercise in auditing a publicly held corporation. If Keoje Marine has any other contractual relationship with the IC, both Keoje Marine and the IC shall disclose to the United States such past or existing contractual relationships.

(4) If the United States determines that the proposed IC does not reasonably meet the qualifications set forth in the previous paragraphs, or that past or existing relationships with the IC would affect the IC's ability to exercise the independent judgment and discipline required to conduct the ECP review and evaluation, such IC shall be disapproved

and another IC shall be proposed by Keoje Marine within thirty (30) days of Keoje Marine receipt of the United States' disapproval.

- (5) The IC shall conduct an Initial Environmental Review of Keoje Marine's operations (vessel and shoreside) and Keoje Marine's seagoing vessels may be reviewed while the vessels are in port or while the vessels are underway and operating on voyages of short duration. Keoje Marine and the IC shall coordinate the underway inspections to accommodate, as much as practicable, the vessels' operations and schedule. The Initial Environmental Review shall be performed to ascertain and evaluate various aspects of Keoje Marine's vessels: their systems, equipment and components; current practices whether documented or not; and the knowledge, skills, and abilities of ship and shoreside personnel as they relate to the requirements of this ECP, and other maritime environmental protection requirements.
- (6) The Initial Environmental Review may be considered as a discovery action in that its purpose is to review all areas of the operations that may impact various elements of pollution prevention and environmental protection. It will exceed a typical SMS audit in scope and will be used to determine practices, procedures and equipment conditions not typically documented during a routine inspection by the classification society, port or flag state inspection processes. The results of the Initial Environmental Review will be used to shape and revise the Environmental Management System established by this ECP.
- (7) The Initial Environmental Review shall meet the following specific requirements:
 - (a) It shall assess all waste streams developed from any system, equipment and components found in each machinery space on board Keoje Marine's vessels. This will include observation and documentation describing the leakages apparent on each system that can contribute to bilge loading. The audit will determine the status and quantify leakages stemming from:
 - (i) all pump and valve seals and glands during operation,
 - (ii) all piping systems, flanges, gaskets, fittings and joints,
 - (iii) all equipment casings such as main and auxiliary engines, and reduction gears,
 - (iv) operation of engines, boilers, incinerators, and evaporators, and
 - (v) all other mechanical components found aboard Keoje Marine's vessels.
 - (b) It shall assess the adequacy and performance of the Oily Water Separator (OWS) and Incinerator, Sewage System, and any other pollution prevention equipment to handle the quantities and types of wastes developed during normal operations. To assess the performance of the OWS, the auditor shall conduct an operational test using the normal tank or bilge well supply as would be used in normal operations. The supply tank or bilge well must not be diluted. It will include an evaluation of the capacities for all tanks or containers associated with the management of sludges, bilges and oily wastes or other Wastes. It will include an evaluation of documentation tracking, maintenance and repair, and modifications of all pollution prevention equipment, and notification of equipment failure to the ECM or other shoreside personnel.
 - (c) It shall assess each vessel's crew and their current workloads relating to all work performed on the vessel's systems, equipment and components, in an effort to ascertain that even the least significant leakages contributing to waste streams are remedied in a prompt and effective manner.
 - (d) It shall assess the adequacy of the policy, procedures, current practices and equipment, including storage capabilities used to manage shipboard solid wastes generated in all areas of the vessel and the effectiveness of garbage management plans.
 - (e) It shall assess the adequacy of the policy, procedures, current practices and equipment associated with cargo management developed during all evolutions of cargo operations.
 - (f) It shall assess the ability of each vessel's crewmembers to create, devise or implement an unauthorized process to

dispose of a shipboard waste including regular garbage, machinery space and cargo-generated wastes.

(g) It shall assess the adequacy of each vessel's responsible crewmembers to maintain the following records and shall include a complete comparative analysis (against each other where possible) of the following records:

- (i) Oil Record Book,
- (ii) Engine room Alarms,
- (iii) Tank sounding sheets,
- (iv) Personal work records and lists,
- (v) Maintenance records,
- (vi) Vendor service records,
- (vii) Bilge waste and sludge receipts,
- (viii) Deck Log,
- (ix) Garbage Record Book,
- (x) Wastewater Discharge Log,
- (xi) Oil to Sea Equipment Interface Logs,
- (xii) Hazardous waste manifests,
- (xiii) Solid waste discharge receipts,
- (xiv) Content Monitor (OWS) calibration logs,
- (xv) Training records,
- (xvi) Vetting documents,
- (xvii) Inspection Documents, and
- (xviii) SMS or SQE Audit documents

(h) It shall assess the adequacy of the policy, procedures, and current practices used to store and dispose of:

- (i) Solvents,
- (ii) Degreasers,
- (iii) Cleaning wastes,
- (iv) Batteries,
- (v) Paints,
- (vi) Oily rags,
- (vii) Fluorescent and incandescent bulbs,
- (viii) Expired boiler and engine chemicals,
- (ix) Used boiler and engine chemicals,
- (x) Galley greases,
- (xi) Pyrotechnics,
- (xii) Medical supplies,
- (xiii) Contaminates fuels,
- (xiv) Used Oil and greases,
- (xv) Incinerator ash.
- (xvi) Transformer oils,
- (xvii) Contaminated refrigerants, and
- (xviii) Hazardous materials.

(i) It shall assess and evaluate documentation containing the certifications that each vessel's officers understand the requirements of this ECP and shall require signed statements by all vessel officers attesting that they understand false entries in the Oil Record Book for machinery space operations is a violation of law.

(j) It shall assess the policy, procedures, and current practices associated with the Master and Chief Engineer's capability to communicate with shoreside personnel, including the CCM and designated persons, and shall review such communications.

(k) It shall assess the frequency and adequacy of, through interviews of crewmembers, shipboard pollution prevention and environmental protection meetings and training.

(l) It shall assess the policy, procedures, and current practices used on vessels and ashore to track crewmember environmental training, as well as the availability of and access to training resources.

(m) It shall assess the adequacy of existing methods for employees to report environmental concerns and evaluate the capability of a reporting individual to remain anonymous, and review processes of handling environmental complaints from crewmembers and shoreside personnel.

(n) It shall assess the policy, procedures, and current practices to ensure that vessel vendors, technicians, and other non-crewmembers follow Keoje Marine's requirements regarding pollution prevention and environmental protection.

(o) It shall assess the policy, procedures, and current practices used to manage the existing seal tracking and valve locking program, including the storage of seals and preventing the use of duplicate seals.

(p) It shall assess the policy, procedures, current practices, and equipment used to maintain refrigeration units, including availability and status of refrigerant recovery units, procedures for recovering refrigerants, and maintenance of a leak log.

(q) It shall assess the policy, procedures, current practices, and equipment related to Oil Transfer Procedures, including slops discharges, conditions of hoses, connections and transfer equipment, and shall include reviews of Declarations of inspections.

(r) It shall assess the policy, procedures, current practices, and equipment used to handle emergency releases of hazardous fluids or pollutants on deck or within machinery spaces of vessels, including a review of the Shipboard Oil Pollution Emergency Plan and evaluation of personnel performing such duties.

(s) It shall assess the policy, procedures, and current practices associated with ballast water management and invasive species requirements.

(t) It shall include a survey of all fleet engineers at all levels for information on how to make the OWS, OCM, associated systems and waste management processes tamperproof and for methods on reducing or handling waste accumulations within machinery spaces. Participation shall be mandatory for all engineering personnel. The survey shall request the opinions of the vessels' engineers into their ability to adequately maintain the vessel systems, equipment and components. The survey will emphasize non-retaliation for open and honest opinions and reports of current noncompliant circumstances. The responses will be maintained in original format and made available to the IC. The original survey responses shall be included in the Report of Findings.

(8) At the conclusion of the Initial Environmental Review, but in no event later than one hundred twenty (120) days following imposition of sentence, the IC shall prepare a Report of Findings. If the IC believes that additional time is needed to analyze available information, or to gather additional information, or to complete the Report of Findings, Keoje Marine may request that the Government grant the IC such additional time, as required, which request shall not be unreasonably denied. If necessary, the Government may grant additional time in thirty (30) day increments for completion of the Report of Findings. The Report of Findings shall be provided to Keoje Marine and the United States. Based on the Report of Findings, Keoje Marine shall develop an Environmental Management System and Manual as described below. The IC shall conduct a second audit using the above criteria during the second year of probation in order to ascertain if Keoje Marine has continued to implement the EMS system and whether the vessels are in compliance with environmental requirements.

E. ENVIRONMENTAL MANAGEMENT SYSTEM

(1) The CCM shall be responsible for establishing an Environmental Management System (EMS). To the extent possible, the EMS shall be based upon the ISO 14001 / 2004 standards. The EMS shall include the following core requirements:

(2) Environmental Policy:

The EMS should be based upon a documented and clearly communicated policy. This policy should set out the Keoje Marine commitment towards a cleaner marine environment. It should include:

- (i) provision for compliance with environmental requirements;
- (ii) commitment to continuous improvement in environmental performance, including those areas required by this ECP;
- (iii) commitment to pollution prevention that emphasizes source reduction, to include funding and human resources necessary to effectively maintain and repair the systems, equipment and components found in machinery spaces of vessels;
- (iv) commitment to continuous reduction of environmental risks; and
- (v) commitment to sharing information with external stakeholders on environmental performance.

(3) Communication of Environmental Requirements:

The EMS must provide a means to identify, explain, and communicate all environmental requirements, and any additional best practices or industry norms which Keoje Marine may choose to adopt, to Keoje Marine's employees, and other vendors, technicians or non-crewmembers engaged in the waste-stream management of Keoje Marine's operated vessels. The EMS must also specify procedures for incorporating changes in operations or environmental requirements into the communication plan.

(4) Objectives and Targets:

(a) The EMS shall establish specific objectives and targets for:

- (i) achieving and maintaining compliance with all marine environmental protection requirements and the requirements of this ECP;
- (ii) environmental performance demonstrating continuous improvement in regulated and non-regulated areas;
- (iii) pollution prevention that emphasizes source reduction with respect to machinery space waste streams and effective management of cargo related wastes; and
- (iv) sharing information with external stakeholders on environmental performance against all EMS objectives and targets.

(b) The EMS shall establish appropriate time frames to meet these objectives and targets. These must be documented and updated as environmental requirements change or as modifications occur in activities and structures within organizations in a manner that affects environmental performance or as a result of recommendations made by the IC or other Auditor.

(5) Structure, Responsibility and Resources:

Keoje Marine will ensure that it is equipped with sufficient personnel and other resources to meet its objectives and targets. The EMS will describe in detail the procedures and steps for achieving those objectives and targets. The EMS will define the compliance roles and responsibilities of all vessel and shoreside personnel involved with the operation maintenance and repair of Keoje Marine's vessels, and will indicate how they and other corporate personnel will be held accountable for achieving and maintaining compliance with this EMS, and other requirements of that EMS, and other marine environmental protection requirements. The EMS will also establish procedures for receiving and addressing concerns raised by Keoje Marine's employees and others regarding environmental performance and compliance.

(6) Operational Control:

The EMS will identify and provide for the planning and management of all of Keoje Marine's operations and activities with a view to achieving the ECP objectives and targets. For example, vessel deck department and engine room machinery space maintenance and repair will be an important aspect in achieving and maintaining compliance and enhancing environmental performance.

(7) Corrective and Preventive Action and Emergency Procedures:

- (a) Keoje Marine, through its EMS, will establish and maintain documented procedures for preventing, detecting, investigating, promptly initiating corrective action, and reporting (both internally and externally) any occurrence that may affect the organizations ability to achieve the ECP objectives and targets.
- (b) Such measures must address incidents that may have an effect on compliance with environmental requirements as well as on environmental performance in regulated and non-regulated areas, including requirements of this ECP, or other marine environmental protection requirements. Examples of such situations include incinerator or oily water separator malfunctions, overflows of fuel or slop tanks, overflow of tanks within machinery spaces, fuel oil, lube oil, saltwater line failures, operator errors and other accidental releases.
- (c) The EMS must also establish documented procedures for mitigating any adverse impacts on the environment that may be associated with accidents or emergency situations. If the environmental violation or incident resulted from a weakness in the system, the EMS should be updated and refined to minimize the likelihood of such problems recurring in the future. The EMS should also, to the extent possible, provide for the testing and evaluation of emergency procedures.

(8) Training, Awareness and Competence:

The EMS must establish procedures to ensure that all personnel (including vendors, technicians, and other non-crewmembers) whose job responsibilities affect the ability to achieve the ECP objectives and targets, have been trained and are capable of carrying out these responsibilities. In particular, the training should highlight means to enhance the ability of such personnel to ensure compliance with environmental requirements and voluntary undertakings, the requirements of the ECP, and other marine environmental protection requirements.

(9) Organizational Decision-making and Planning:

The EMS must describe how these elements will be integrated into the Keoje Marine's overall decision-making and planning, in particular, decisions on capital improvements, training programs, and vessel operations, maintenance, and repair activities.

(10) Document Control:

The EMS must establish procedures to ensure maintenance of appropriate documentation relating to its objectives and targets and should also ensure that those records will be adequate for subsequent evaluation and improvement of the operation of the EMS. Additionally, all records will be maintained and made available to the IC, auditors and port and flag state personnel.

(11) Continuous Evaluation and Improvement:

- (a) The EMS must include methods to perform periodic, documented and objective internal auditing of the organization's performance in achieving these objectives and targets, and on how well the ECP assists the organization in achieving those objectives and targets. This requirement is independent from the auditing requirements detailed elsewhere in this plan. The goal of these internal audits and reviews will be to allow management to continuously monitor and assess vessel systems, equipment and components, and the ability and proficiency at which vessel crew members and personnel ashore comply to the policies and procedures established by this ECP.
- (b) The EMS will identify an ongoing process for assessing when a vessel is to be taken out of service for an environmental discharge related repair, such as when a discharge is caused by leaking stern tubes, thrusters or other equipment.

- (c) The EMS will include organization charts, as appropriate, that identify shoreside and vessel individuals having environmental performance, risk reduction, and regulatory compliance responsibilities. The charts shall also specify responsibilities of Port Captains, Port Engineers, and Engineering Superintendents to report information related to environmental releases or inadequate performance of environmental pollution protection equipment, casualties causing internal spills, excessive waste development and leaking equipment with oil-to-sea interfaces.
- (d) The EMS will promote non-retaliatory practices and ensure that employees are not punished or otherwise suffer negative consequences for reporting violations of environmental laws, regulations, or policies.
- (e) The EMS will describe potential consequences for departure from specified operating policies and procedures, including possible termination of employment, as well as criminal/civil/administrative penalties as a result of noncompliance.
- (f) The EMS will make employee compliance with environmental policies of the ECP, and other marine environmental protection requirements a positive factor, and failure to comply a negative factor, in all evaluations undertaken for the performance of all its employees.
- (g) The EMS will include policies against any incentive or bonus programs based on minimizing operational costs associated with the operation, maintenance and repair of machinery space systems, equipment and components to ensure that employees do not avoid such costs and thereby sacrifice environmental compliance.
- (h) The EMS will describe a confidential non-compliance reporting system that is adopted to ensure that employees may quickly and confidentially report discharges, spills, environmental incidents and other environmental performance data.
- (i) The EMS will identify all operations and activities where documented standard operating practices (SOPs) are needed to prevent potential violations or unplanned waste stream releases, with a primary emphasis on vessel engine room operations, systems, equipment and components and cargo residue management.
- (j) The EMS will identify the types of records developed and maintained in support of the ECP such as reports, audit working papers, correspondence, communications, reports from the confidential system for non-compliance reporting, and identify personnel responsible for their maintenance, and procedures for responding to inquiries and requests for release of information. The EMS shall provide a system for conducting and documenting routine, objective self-inspections by Keoje Marine's internal auditors, supervisors, and trained staff to check for malfunctions, deterioration, and inadequate maintenance of pollution prevention equipment, worker adherence to SOPs, unusual situations, and unauthorized releases.

F. COURT APPOINTED MONITOR

As part of the ECP, Keoje Marine agrees to pay for a Court Appointed Monitor (hereinafter "Monitor") that will be appointed by and report to the Court during the entire period of probation. The Monitor can, at Keoje Marine's option, serve concurrently in the additional capacity of Third Party Auditor (hereinafter "TPA") under the terms of this Agreement. Within thirty (30) days of the entry of the imposition of sentence Keoje Marine will submit a list of three qualified candidates for the Monitor from which the United States and the Court will appoint one of the candidates. In the event that the United States or the Court does not find one of the candidates satisfactory, or if they do not find the work of the Monitor satisfactory, at any time they may request Keoje Marine to supply additional candidates. Further, if an agreement cannot be reached regarding the selection, the decision shall be left up to the Court. The Monitor must have staff with the following experience:

- (a) Expertise and competence in the regulatory programs under United States and international marine safety and environmental laws; expertise and competence to assess whether Keoje Marine has adequate management systems in place to ensure regulatory compliance, correct non-compliance, and prevent future non-compliance;

and demonstrated capability to evaluate Keoje Marine's required effort and commitment in satisfying the requirements of this ECP and the EMS. Keoje Marine shall ensure that the Monitor is provided all reports and notifications as established in this plan.

(b) The Monitor shall be assigned the following tasks and responsibilities and provide written submissions to the Court as set forth below:

-Review the relationship between Keoje Marine and the IC and TPA and evaluate the adequacy of measures taken to ensure that the IC and TPA act with independence.

-Conduct a review and submit an annual report to the U.S. Probation Office, Keoje Marine, designated representative of the Coast Guard, and the Environmental Crimes Section, United States Department of Justice regarding each of the audits conducted by the IC and TPA pursuant to the Plea Agreement and the ECP. The Monitor's reports shall provide a summary of the findings regarding the adequacy of any audits required by this ECP and adequacy of recommendations for change, as found necessary.

-The annual report shall also include and address any other information that the Monitor is aware of which pertains to Keoje Marine's capabilities to meet the objectives of this ECP or any other marine environmental protection requirements.

-All known inadequacies of the IC, the TPA or with respect to Keoje Marine's performance whether personnel based or related to any of its vessels, systems, equipment, or components shall be reported in the annual report.

-If the Monitor receives information regarding a direct violation of any existing marine environmental protection requirement or requirement of this ECP, the Monitor must immediately report the occurrence to the U.S. Probation Office and to the United States. At any time during the probationary period the Monitor may inspect or investigate any aspect of the IC or TPA activities as they relate to the requirements of this plan or with respect to Keoje Marine's operations, and shall be provided full access to all records, audit personnel, vessels and shore side facilities as is necessary to perform its duties.

-Provide any additional reports, in both electronic and hard copy form, to the U.S. Probation Office, Keoje Marine, designated representative of the Coast Guard and the Environmental Crimes Section, United States Department of Justice, as requested by the Court or as appropriate and to include inadequacies in the audit process, violations of the terms and conditions of the ECP and EMS and any other findings of significant problems or deficiencies.

G. ENVIRONMENTAL MANAGEMENT SYSTEM MANUAL

- (1) Within six (6) months of receiving the Report of Findings on the Initial Environmental Review from the IC, Keoje Marine shall prepare an EMS Manual, which shall describe and document the EMS and contain any additional EMS implementation schedules as needed to ensure complete compliance in all operations and procedures. If Keoje Marine believes that additional time is needed to analyze available information or to gather additional information to prepare the EMS Manual, Keoje Marine may request that the Government grant it such additional time as needed to prepare and submit the EMS Manual, which request shall not be unreasonably denied. If necessary, the United States may grant additional time in thirty (30) day increments for completion of the EMS Manual.
- (2) Keoje Marine shall submit a proposed final EMS Manual to the CCM, the IC and the United States immediately upon its completion. The IC and the United States shall provide comments on the proposed EMS Manual within ninety (90) days of receipt unless additional time for review is requested in writing. Keoje Marine shall submit a supplement to the EMS or a written response, as appropriate, within sixty (60) days of receipt of the comments. The EMS is subject to final approval from the United States, which approval shall not be unreasonably withheld.
- (3) All elements of the EMS Manual shall be fully implemented no later than nine (9) months following final approval by the United States. Upon receipt of final approval, Keoje Marine shall immediately commence implementation of the EMS in accordance with the schedule contained in the EMS Manual. Keoje Marine shall submit reports to the

designated representative of the Coast Guard, and the Environmental Crimes Section, United States Department of Justice beginning no later than one hundred twenty (120) days following the publication of the Report of Findings by the IC, regarding the status of the development and implementation of the EMS and the results of the Review and evaluation of Keoje Marine's operations or audits conducted pursuant to the EMS. These reports shall be made on an annual basis.

H. FINAL EMS/ECP COMPLIANCE AUDIT

- (1) Beginning no later than twelve (12) months following implementation of the EMS, Keoje Marine shall arrange for, fund and complete a Final EMS/ECP Compliance Audit of Keoje Marine's fleet management offices and all vessels subject to this ECP, to verify compliance with applicable environmental laws and regulations and the requirements of this EMS and ECP. All such vessels must be examined while the vessels are underway and operating on voyages of short duration. Keoje Marine and the TPA shall coordinate the underway examinations to accommodate, as much as practicable, the vessel's operations and schedule. These underway examinations will be conducted, to the extent practical, on voyages of short duration (i.e. four (4) days). The TPA will have full access to Keoje Marine's facilities, records, employees and officers at all times. During this final audit phase Keoje Marine shall immediately advise the TPA of any issue that comes to its attention that adversely impacts Keoje Marine's compliance with all applicable laws and regulations and the EMS/ECP.
- (2) The TPA will be certified by the American National Standards Institute -Registration Accreditation Board or will have compatible credentials and experience in performing EMS/ECP audits. Selection of the TPA is subject to the same conditions identified in Section C above regarding selection of the IC. Selection of the TPA will be approved by the United States. The United States will notify Keoje Marine in writing of its approval or disapproval as expeditiously as possible.
- (3) The Final EMS/ECP Compliance Audits shall be conducted, as much as is practicable under the circumstances, in accordance with the principles set forth in ISO 9000 and ISO 14011, using ISO 14012 as supplemental guidance. The TPA shall assess conformance with the elements covered in the Initial Environmental Review, with all additional requirements presented in the EMS and with the additional requirements of this plan. Designated United States representatives may participate in the audits as observers at Government expense. Keoje Marine shall make timely notification to the United States regarding audit scheduling in order to make arrangements for observers to be present.
- (4) The TPA shall deliver each vessel's and facility's audit report to the appropriate company official upon completion. In addition, the TPA will deliver an Audit Report to the U.S. Probation Office, designated representative of the Coast Guard, and Environmental Crimes Section, United States Department of Justice within thirty (30) days after the completion of each audit. If the TPA believes that additional time is needed to analyze available information or to gather additional information, Keoje Marine may request that the Government grant the TPA such additional time as needed to prepare and submit the Audit Report. If necessary, the Government may grant additional time in thirty (30) day increments for completion of the Audit Report. Should the Government or the United States Probation Office seek to revoke Keoje Marine's probation based on the TPA failure to file a timely EMS/ECP Final Compliance Audit Report, Keoje Marine shall have the right to contest the reasonableness of such revocation in the appropriate U.S. District Court.
- (5) The Final EMS/ECP Compliance Audit Reports shall present the Audit Findings and shall, at a minimum, contain the following information:
 - (a) Audit scope, including the time period covered by the audit;
 - (b) The date(s) the on-site portion of the audit was conducted;
 - (c) Identification of the audit team members;
 - (d) Identification of the company representatives and regulatory personnel observing the audit;
 - (e) The distribution list for the Final EMS/ECP Compliance Audit Report;
 - (f) A summary of the audit process, including any obstacles encountered;

- (g) Detailed Audit Findings, including the basis for each finding and the Area of Concern identified;
 - (h) Identification of any Audit Findings corrected or Areas of Concern addressed during the audit, and a description of the corrective measures and when they were implemented;
 - (i) Certification by the TPA that the Final EMS/ECP Compliance Audit was conducted in accordance with this document and general audit principles.
- (6) Within sixty (60) days from completion of the Final EMS/ECP Compliance Audit of a particular facility or vessel, Keoje Marine shall develop and submit to the United States, for review and comment, an Action Plan for expeditiously bringing Keoje Marine into full conformance with all applicable laws and regulations and the EMS/ECP Manual. The Action Plan shall include the result of any root cause analysis, specific deliverables, responsibility assignments, and an implementation schedule. Keoje Marine may request that the United States permit a brief extension of the time limit stated above on a case by case basis. Such permission shall not be unreasonably withheld.
- (7) The Action Plan shall be reviewed by the United States which shall provide written comments within thirty (30) days of receipt. After making any necessary modifications to the Action Plan based on the comments, Keoje Marine shall implement the Action Plan in accordance with the schedules set forth therein. Within thirty (30) days after all items in the Action Plan have been completed, Keoje Marine shall submit a written Action Plan Completion Certification to the United States.

I. NON-COMPLIANCE

- (1) This EMS/ECP does not in any way release Keoje Marine from complying with any applicable international conventions and treaties, State or Federal statutes and/or regulations, the ISM Code, or other international maritime conventions or treaties and does not limit imposition of any sanctions, penalties, or any other actions, available under those international conventions and treaties, State or Federal statutes and regulations, the ISM Code, or other international maritime safety conventions or treaties.
- (2) The EMS/ECP shall be part of the Plea Agreement and adherence to it will be a condition of probation. Failure to comply with any part of this EMS/ECP (including but not limited to refusal to pay valid charges for the IC or TPA and failure to provide the IC or TPA access to vessels, facilities, personnel or documents) shall be a violation of the Plea Agreement and shall be grounds for the revocation or modification of Keoje Marine's probation. Should the United States or the U.S. Probation Office seek to revoke or modify Keoje Marine's probation based on Keoje Marine's refusal to pay valid charges for the IC or TPA and/or its failure to provide the IC or TPA access to vessels, facilities, personnel, or documents, and/or as the result of any disagreement regarding any of the provisions of this EMS/ECP, Keoje Marine shall have the right to contest the reasonableness of such revocation before the appropriate U.S. District Court.

J. CCM/VESSEL MASTER RESPONSIBILITIES

- (1) The Master of any of Keoje Marine vessels covered under this ECP, with the assistance of the CCM, shall ensure that timely reports are made to the United States Coast Guard of any non-compliant condition of any of Keoje Marine operated and/or managed vessels that calls upon any Port or Place in the United States or sails into any waters under the jurisdiction of the United States. Keoje Marine shall establish that enforcement of and employee compliance with the EMS/ECP, ISM Code, MARPOL, and all applicable State and Federal safety and environmental statutes and regulations is an important positive factor and that failure to comply with such policies, regulations, and laws will be a negative factor in all appropriate personnel evaluations.

K. BOARD OF DIRECTORS

Keoje Marine shall ensure that at least twice yearly its Board of Directors or equivalent governing structure receive and review reports from the CCM and any applicable report from the IC concerning the implementation of this EMS/ECP, including environmental compliance, EMS implementation, and manager, officer, and crew training. Copies of those portions of the meeting agendas and internal company reports concerning these items shall be included in the reports to the United States.

L. TRAINING REQUIREMENTS

- (1) The CCM will be responsible for developing training programs to educate and train Keoje Marine's vessel and shoreside employees associated with the operation and management of its vessels. The CCM may name a Corporate Training Officer to ensure that the requirements of this section are met.
- (2) Training shall occur annually for all employees and be performed by qualified instructors at a training facility before an employee assumes his or her duties. The training shall consist of pertinent sections of this ECP, the EMS, and existing marine environmental protection requirements. The training shall include shipboard-related technical and practical information associated with pollution prevention and the operation, maintenance and repair of pollution prevention equipment and systems, and be appropriate for the work responsibilities and department in which an employee works. The training must include discussion of the consequences to Keoje Marine and its employees for failure to comply with the requirements of this ECP, EMS, and existing marine environmental protection requirements.
- (3) Where possible, a basic initial training program shall be provided to vessel employees currently onboard vessels in an effort to promptly mitigate pollution risk and ensure environmental protection. However, such employees must receive the shore side training prior to returning to a vessel on a new contract.
- (4) Additionally, the training shall include instruction regarding:
 - (a) Corporate environmental compliance structure, including the CCM and contact information.
 - (b) Comprehensive overview of this ECP, the EMS, and other marine environmental protection requirements.
 - (c) The reporting system used to report non-compliance.
 - (d) Sanctions and consequences for violations such as remedial training, suspension, termination, and civil and criminal liability.
 - (e) Pollution prevention and minimization programs specifically relating to steward, deck, and engine department procedures and operations.
 - (f) All requirements set forth in the Engineering section of this ECP.
 - (g) Position specific training in the operation, maintenance and repair of oily water separators, incinerators, oil content discharge monitoring equipment, and other pollution prevention equipment.
 - (h) Procedures for solid and hazardous waste segregation and storage, disposal, and reporting of releases.
 - (i) All other shipboard environmental protection related procedures examined and described in the required initial review.
- (5) All new crewmembers hired to work on Keoje Marine vessels shall receive training within seven (7) days of beginning to work on board the vessel. Keoje Marine shall maintain documentation onboard each of its operated and/or managed vessels verifying that all officers and crewmembers working on the vessel have received the required training. Such documentation shall be made available to the IC and the United States Coast Guard upon request.
- (6) The Chief Engineer onboard each of Keoje Marine's operated and/or managed vessels listed shall prepare independent written verification that all engineroom crew members have received the training required by this EMS/ECP. All engineroom crewmembers shall sign and date a statement acknowledging completion of the training. This written verification, together with the signed acknowledgment, shall be completed semi-annually and maintained in the engine control room of each vessel.

M. ENGINEERING REQUIREMENTS

(1) Unless otherwise stated, all of the requirements set forth below, if not in contravention of any Classification Society, Treaty or other Flag State requirement, shall be implemented on the vessels covered under this ECP as soon as practicable, as determined by the CCM and not later than one year from the date of the signing of the plea agreement.

(2) Bilge Main Cross -Connections:

- (a) Keoje Marine shall immediately notify all of its vessels regarding the prohibition against non-emergency use of cross connections from engine room bilge mains to the suction piping of larger pumps which may be referred to as the "fire and general service pump" or "fire, bilge and ballast" pump. The message shall state that the usage of these crossovers is similar to bypassing the OWS equipment and strictly prohibited.
- (b) The deck plates above or near the locations of these cross connections and the valves' bodies and associated hand wheels shall be painted international orange. A brightly colored sign with three inch letters shall be permanently fixed nearby reading, "Bilge System Piping Crossover-Emergency Use Only."
- (c) To prevent unauthorized usage, Chief Engineers shall place numbered seals on these valves.
- (d) The seal numbers shall be tracked in a seal number logbook and explanations shall be given any time a crossover to the bilge main is opened. Seals shall be used in other areas of the machinery space. The Master of the vessel shall retain the replacement seals in the vessel's safe. The Master will keep an additional log documenting when seals are replaced and their respective numbers. The CCM will be responsible for ensuring fleet wide that no duplication of seal numbers occur and will have a master tracking document indicating which series were supplied to each vessel.
- (e) If the valves are remotely operated from the engine control room, the control must also be disabled and notice made near the associated push buttons or switches. They shall also be sealed.
- (f) All other bilge suction valves not connected to the bilge main, including independent emergency suction to the vessel's engine room bilges like those that may be connected to sea water circulating pumps, will be painted brightly and labeled similarly "Emergency Bilge Suction -Emergency Use Only," Their valve wheels will also have a numbered and logged seal capable of breakaway during emergency. Seal numbers shall be kept in the Chief Engineer's official seal log book and explanations given for breakage or replacement.

(3) Blank Flanges:

- (a) To prevent unauthorized connections within the engineroom and machinery spaces of Keoje Marine's vessels; every blank flange associated with any piping leading overboard, on systems such as salt water service, main engine raw water cooling or other systems, shall be permanently secured, removed or fitted with numbered seals through the flange bolts to prevent unauthorized connections and discharges. The seals used shall be numbered and records kept in the previously mentioned log.
- (b) The blank flange securing the bilge and sludge transfer system and the shore connection discharge valve at the discharge stations shall also require a numbered seal that will be maintained. Seal numbers shall be kept in the Chief Engineer's official seal log book.

(4) Tank Sounding Log:

The CCM shall ensure the immediate usage of Tank Sounding Log Books on all vessels. Engine room crewmembers shall be required to sound all waste, sludge, and bilge tanks associated with bilge water, oil wastes, or sludge during each watch for vessels having a manned engine room or twice daily for those having an unmanned engineroom. The Tank Sounding Log shall be initialed by the crewmember that obtained the reading. The Tank Soundings Log shall be maintained in the engine control room and made available during all inspections and audits required by this agreement.

(5) Oil-to-Sea Interfaces:

- (a) Keoje Marine agrees to immediately develop for each vessel a log book relating to equipment having oil-to-sea interfaces. Such systems may be oil lubricated stem lubes, bow or stern thrusters, stabilizers, hydraulically operated controllable pitch propellers, and similar equipment whereby the leakage of a sealing component may cause a loss of operating medium into the surrounding waters of the vessel. Any replenishment of oil into the head tanks, operating systems reservoirs or other receivers associated with this equipment shall be logged regardless of quantity. Ingress of water into these systems must also be logged.
- (b) When known, an explanation of the loss shall be provided, along with dates and time and signature. Routine stem tube lube oil loss must be logged and reported to the CCM immediately on each occasion. Keoje Marine agrees to remove from employment any Chief Engineer who fails to report these conditions.

(6) Record Keeping:

All Soundings and Logs required by this section shall be maintained onboard the vessel for a period of three years from the date of the final entry.

N. DOCUMENTATION AVAILABLE FOR INSPECTION

The CCM shall ensure that all documentation required by this EMS/ECP is maintained and available for inspection by the IC, TPA, and the United States Coast Guard. The Master of each of Keoje Marine's covered vessel under this ECP, shall maintain on board the vessel, all records required by International conventions and treaties including SOLAS, the ISM Code, and MARPOL and applicable State and Federal statutes and regulations and any additional documents required under this EMS/ECP, such as crew training records, and will make these records available to the IC, TPA, and the United States Coast Guard upon request. A summary of this information and any explanation, where appropriate, shall be included in the reports to be submitted to the United States by the IC and TPA.

O. CHANGES IN OWNERSHIP/MANAGEMENT

The parties recognize that during the term of probation, the number and identity of vessels operated, managed, manned and/or controlled by Keoje Marine that call on ports or places in the United States may increase or decrease. Any vessel, the operation, management, manning or control of which is assumed by Keoje Marine's, and which calls on ports or places in the United States shall be subject to the terms and conditions of this EMS/ECP. Any vessel removed from the operation, management, manning or control by Keoje Marine, or which stops calling in the United States, shall be excluded from the scope of the EMS/ECP. Keoje Marine agrees that it will immediately (but in no event later than 21 days following a change) notify the United States of any change in name, flag of registry, recognized organization, ownership or class society of any such of Keoje Marine's vessels, to include any vessel the operation, management, manning or control of which is assumed by Keoje Marine and which calls in the United States. Keoje Marine agrees that this EMS/ECP shall remain in effect for all of the aforesaid vessels regardless of changes in the vessels' flag of registry, recognized organizations, name, or class society, so long as the vessels are managed, operated or manned by Keoje Marine. Keoje Marine shall notify the United States before any vessel is released from the requirements of the EMS/ECP due to a change in ownership, management, manning or control, or if such vessels cease calling on ports or places in the United States.

P. SELF-ENFORCEMENT

Keoje Marine further agrees that it will undertake and implement the necessary procedures to ensure that this EMS/ECP is diligently complied with by the officers and crew of each of Keoje Marine's operated and/or managed vessels, as well as by all shore side employees, managers and other employees of Keoje Marine subsidiaries, affiliated business entities (owned wholly or partially by Keoje Marine) and agents of Keoje Marine engaged wholly or partially in the manning, and/or operation of aforesaid seagoing vessels or contracted to do the same, on the date of sentencing or at any time during the period of probation.

Q. REVISIONS/MODIFICATIONS

The requirements of this EMS/ECP, including the dates and time periods mentioned herein, shall be strictly complied with. Should Keoje Marine be unable to comply with any of the deadlines, Keoje Marine shall immediately notify the United States in writing of the reason(s) for non-compliance, and propose a revised timetable. The United States shall then determine as to whether the revised timetable should be accepted.

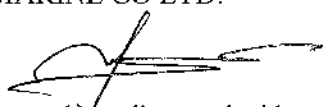
R. REPORTS

All reports, documents and correspondence required under this EMS/ECP to be sent to the United States shall be sent to the following offices:

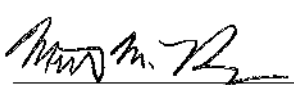
- (a) U.S. Attorney's Office
District of Hawaii
Attn: Marshall Silverberg
Room 6-100 PJKK
300 Ala Moana Blvd
Federal Building
Honolulu, HI 96850
- (b) U.S. Department of Justice
Environmental Crimes Section
Attn: Ken Nelson
601 "D" Street, NW, Suite 2814
Washington, D.C. 20004
- (c) U.S. Environmental Protection Agency, CID
Attn: Anne Sangiovanni
300 Ala Moana, Suite 7-235
Prince Kuhio Federal Building
Honolulu, HI 96850
- (d) U.S. Coast Guard Commandant (CG-543)
Office of Vessel Activities
Attn: Designated Representative of the Coast Guard
2100 Second Street, SW
Washington, D.C. 20593-0001
- (e) U.S. Probation Department
District of Hawaii

Defendant has read this ECP carefully and understands it thoroughly. Defendant enters into this ECP knowingly and voluntarily, and therefore agrees to abide by its terms. By its signatures below, the corporate representative agrees that he/she is duly authorized by the corporation's Board of Directors or equivalent governing structure pursuant to the same notarized legal document filed in United States v. Keoje Marine Co Ltd certifying that Defendant company is authorized to enter into and comply with all of the provisions of this Plea Agreement.

DATED: 1/10/12 KEOJE MARINE CO LTD.

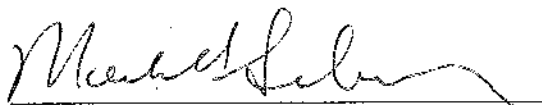
By: 

As counsel for Defendant, we represent that we have discussed with our corporate client and its duly authorized representative(s) the terms of this EMS/ECP and have fully explained its requirements. We have no reason to doubt that our client is knowingly and voluntarily entering into this EMS/ECP.

DATED: 1/10/12 
MICHAEL PURPURA
Carlsmith Ball, LLP
Counsel for Keoje Marine Co. Ltd

On behalf of the United States, the following agree to the terms of the EMS/ECP:

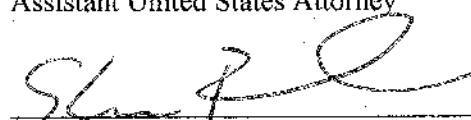
DATED:



MARSHALL SILVERBERG
Assistant United States Attorney

DATED:

1/10/12



KENNETH NELSON
Trial Attorney