

1 THOMAS P. O'BRIEN
 United States Attorney
 2 CHRISTINE C. EWELL
 Assistant United States Attorney
 3 Chief, Criminal Division
 DOROTHY C. KIM (Cal. Bar No. 206333)
 4 SARAH J. HEIDEL (Cal. Bar No. 209886)
 Assistant United States Attorneys
 5 1100 United States Courthouse
 312 North Spring Street
 6 Los Angeles, California 90012
 Telephone: (213) 894-3779/2451
 7 Facsimile: (213) 894-6269
 E-Mail: dorothy.kim@usdoj.gov
 8 sarah.heidel@usdoj.gov

9 Attorney for Plaintiff
 United States of America

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,) CR No. 08-265-GPS
 14)
 Plaintiff,)
 15) GOVERNMENT'S MOTION TO AWARD
 v.) PORTION OF FINE; [PROPOSED]
 16) ORDER FILED CONCURRENTLY
 DIAMLEMOS SHIPPING CORP.,) HEREWITH
 17)
 Defendant.) NO HEARING REQUESTED
 18)
 19)

20 Plaintiff United States of America, by and through its
 21 counsel of record, the United States Attorney for the Central
 22 District of California, hereby files its motion for an award,
 23 pursuant to the Act to Prevent Pollution from Ships ("APPS"), to
 24 be paid to Vicente Joelito Adricula, Arnolfo Getones Solinap, and
 25 Jose Cubita Casidsid, in connection with the above-captioned
 26 matter.

27
 28

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 POTENTIAL APPLICABILITY OF WHISTLEBLOWER AWARD

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 a
8 international treaty known as the MARPOL Protocol setting forth
9 international standards to protect the marine environment. Upon
10 review of the evidence in this case, the government believes it
11 would be appropriate to make an award to Vicente Joelito
12 Adricula, Arnolfo Getones Solinap, and Jose Cubita Casidsid, crew
13 members of the Motor Tanker ("M/T") Georgis Nikolos. These crew
14 members were responsible for notifying federal authorities of the
15 activities upon which the instant prosecution was based. An
16 award would be consistent with the manifest purpose of the
17 statute of encouraging those with information about unlawful
18 conduct to come forward and disclose that information to
19 authorities -- information otherwise difficult, if not virtually
20 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 1/2 of such
fine may be paid to the person giving information
leading to conviction.

26 33 U.S.C. § 1908(a). The regulations implementing the statute
27 contain the same provision. 33 C.F.R. § 151.04(c).

28 Pursuant to the Court's judgment and commitment order,

1 defendant Diamlemos Shipping Corp., which managed the M/T Georgis
2 Nikolos, was convicted of two felony counts of violating 33
3 U.S.C. § 1908(a), and ordered to pay a total criminal penalty of
4 \$1 million, of which \$750,000 was treated as a criminal fine and
5 \$250,000 was treated as organizational community service.
6 Therefore, under Section 1908(a), the Court may award up to one
7 half of \$750,000, namely, \$375,000, to those witnesses who
8 provided information that resulted in defendant's convictions.

9 II.

10 THE WITNESSES' ASSISTANCE

11 On or about June 4, 2006, the M/T Georgis Nikolos arrived at
12 the port of Long Beach, California. The Coast Guard boarded the
13 vessel in order to conduct a Certificate of Compliance
14 examination. During that examination, Oiler Vicente Joelito
15 Adricula handed a note to a Coast Guard inspector. The note
16 stated that Adricula had evidence of a problem onboard the vessel
17 and recited three separate times that Adricula needed protection.
18 Finally, the note stated that Adricula would speak secretly with
19 the Coast Guard after the completion of the inspection.

20 Following the inspection, the Coast Guard met with Adricula,
21 who provided photographs of a hose (the "magic hose") that had
22 been used to bypass the oily water separator ("OWS," a pollution
23 prevention device) and discharge untreated oily bilge water and
24 oily sludge directly overboard. Adricula had taken the
25 photographs using his cellular phone. The photographs were date-
26 stamped June 2, 2006, and depicted the magic hose as it was
27 installed onto the overboard discharge valve. Adricula described
28 how the magic hose worked. Adricula also described how an

1 officer of the M/T Georgis Nikolos had ordered Adricula and
2 others to install and use the magic hose. Adricula admitted that
3 he did not get along with at least one of the crew members who
4 had directed him to use the magic hose.

5 Following the Coast Guard's meeting with Adricula, officers
6 also met with Oiler Arnolfo Getones Solinap. Solinap
7 corroborated Adricula's statements regarding the use of the magic
8 hose. Solinap described how one of the crew members had taught
9 him to use the magic hose and how Solinap had been directed to
10 paint the flanges around the overboard discharge valve in order
11 to conceal from the Coast Guard the use of the magic hose.
12 Solinap showed the Coast Guard a sounding log that depicted when
13 and how much bilge water and sludge was discharged overboard.

14 The Coast Guard also interviewed Fourth Engineer Jose Cubita
15 Casidsid. Casidsid described the mechanics of how the magic hose
16 was installed and used, including a description of the piping
17 system. He also described what was depicted in the photographs
18 from Adricula's telephone as well as the sounding logs.

19 Following the witnesses' interviews, the government
20 initiated a criminal investigation that resulted in the
21 prosecution and conviction of Chief Engineer Iaonnis Georgios
22 Vafeas (United States v. Iaonnis Georgios Vafeas, CR 06-585-GPS)
23 and the defendant company (United States v. Diamlemos Shipping
24 Corp., CR 08-265-GPS).

25 On April 29, 2008, Diamlemos Shipping Corp. pleaded guilty
26 to two counts of violating APPS, in violation of 33 U.S.C.
27 § 1908(a) and 33 C.F.R. §§ 151.25(a), (d), and (h). That same
28 day, pursuant to the parties' agreement, the Court imposed a \$1

1 million criminal penalty, with \$750,000 being imposed as a
2 criminal fine. Pursuant to the plea agreement and the judgment
3 and commitment order, defendant has already paid \$250,000 of the
4 criminal fine to the Clerk of the United States District Court.
5 Defendant has been ordered to pay the remainder of the fine,
6 namely, \$500,000, to the Clerk, on or before April 29, 2009.

7 Based on these facts, in the opinion of the United States,
8 it would be appropriate to consider the three named witnesses for
9 a total award of \$375,000, one half the \$750,000 fine imposed on
10 counts one and two. The United States submits that because
11 Adricula was the primary whistle-blower, he should receive a
12 total of \$187,500. Because Casidsid and Solinap also acted as
13 whistle-blowers, they should receive \$93,750 each.

14 As to the timing of the award payment, because defendant has
15 not yet paid the entirety of the fine, the government proposes
16 that the Court order that the Clerk of the Court disburse
17 \$125,000 of the award immediately (one half of the fine already
18 paid by defendant) and the remaining \$250,000 when defendant pays
19 it. The government further proposes that the Clerk immediately
20 pay: (1) \$62,500 to Adricula; (2) \$31,250 to Solinap; and (3)
21 \$31,250 to Casidsid. Then, when defendant pays the remainder of
22 the fine, on or before April 29, 2009, the Clerk should pay the
23 remainder of the award, namely: (1) \$125,000 to Adricula; (2)
24 \$62,500 to Solinap; and (3) \$62,500 to Casidsid.

25 The United States submits that such awards are properly
26 within the Court's discretion in this case and that such awards
27 are wholly consistent with the legislative intent of the APPS
28 award provision. Moreover, the APPS whistleblower award

1 provision serves a valuable law enforcement purpose. Deliberate
2 violations of MARPOL and United States law are far too common.
3 Criminal conduct that takes place within the small community of
4 those living and working aboard a vessel is difficult to detect.
5 The reward provision is not unique to APPS.¹ The availability of
6 the APPS award aptly reflects the realities of life at sea and
7 the pollution of the oceans. Because the pollution takes place
8 in the middle of the ocean and usually at night, the only people
9 likely to know about the conduct and the falsification of ship
10 records used in port are the employees in the engine room.
11 Employees in this case, like those in other similar prosecutions,
12 have indicated that they fear retaliation not just by their
13 employer, but by manning agencies and other companies. They have
14 a palpable fear of being blacklisted from future employment in
15 the maritime industry. A substantial monetary award will reward
16 crew members for taking a risk and leading to the prosecution of
17 criminal actors. For these reasons, significant whistleblower
18 awards have been awarded in prior cases.²

19
20 ¹See e.g. Refuse Act, 33 U.S.C. § 411; CERCLA, 42 U.S.C.
21 § 9609(d); Endangered Species Act of 1973, 16 U.S.C. § 1540(d);
22 Bald and Golden Eagle Protection Act, 16 U.S.C. § 668(a);
Internal Revenue Code, 26 U.S.C. § 7623; and Tariff Act, 19
U.S.C. § 1619.

23 ²A review of similar cases involving marine vessel pollution
24 and whistleblowers indicates the following awards have been
25 given: United States v. Irika Maritime, S.A., (W.D. WA. 2007)
26 (court awarded one-half of \$500,000 criminal fine to second
27 engineer who reported illegal discharges and falsified records to
28 Coast Guard); United States v. Wallenius, (D.N.J. 2006) (court
awarded one-half of \$5 million fine to be divided among four crew
members who sent a fax to an international seafarers' union
alleging that they were being ordered to engage in deliberate
acts of pollution); United States v. Sun Ace Shipping Company et
al., (D.N.J. 2006) (court awarded half of a \$200,000 fine to be
divided among three whistleblowers, two Oilers and a Wiper, who

1 III.

2 CONCLUSION

3 Based on the foregoing, the government respectfully requests
4 that the amounts specified above be awarded to the three named
5 witnesses. The government has filed concurrently with this

6
7
8 lodged complaints with a religious organization that they were
9 being forced to bypass pollution control equipment); United
10 States v. MK Shipmanagement Company, Ltd., (D. N.J. 2006) (court
11 awarded half of a \$200,000 fine to be split between two
12 whistleblowers, \$75,000 was awarded to the Third Engineer for
13 presenting photos and records documenting illegal discharges;
14 \$25,000 was awarded to the ship's cook who contacted the
15 government); United States v. DST Shipping, Corp., 04-1728-FMC
16 (C.D. CA. 2005) (Judge Cooper awarded one half of the \$500,000
17 fine to four crew members); United States v. OMI, (D.N.J. 2004)
18 (court awarded one-half of a \$4.2 million criminal fine to a
19 Second Engineer who upon arrival asked for directions to local
20 police department and reported illegal discharges and falsified
21 records); United States v. Sabine Transportation, (D. Iowa;
22 August 2004) (court awarded three employee whistleblowers one-
23 half of \$2 million criminal fine); United States v. Botelho
24 Shipping Corp., (D. Oregon 2003) (court awarded crew member who
25 passed note to investigators disclosing overboard discharges of
26 oil contaminated waste water \$225,000, or one-half of the
27 criminal fine issued for an APPS violation); United States v.
28 Norwegian Cruise Lines (S.D. Fla. 2002) (court awarded a former
employee whistleblower \$250,000, which was one quarter of the \$1
million criminal fine, for informing the EPA about unlawful
discharges and false statements in the Oil Record Book of the
S.S. Norway cruise ship); United States v. D/S Progress (D. Md.
2002) (court awarded two employee whistleblowers with half of the
\$250,000 criminal fine under APPS for slipping a handwritten note
to a U.S. Coast Guard inspector that disclosed a crack in the
hull of an oil tanker and which resulted in the discovery of
other violations); United States v. Holland America, (D. Alaska;
1999) (court awarded a whistleblower crew member with one half of
the \$1 million criminal fine for informing the government of the
unlawful discharges of waste oil in violation of APPS); United
States v. Crescent Ship Services, (E.D. La. 1995) (court rewarded
a company whistleblower with one-half of the \$250,000 fine for
conspiracy to violate APPS); United States v. Regency Cruises,
Inc., (M.D. Fla. 1995) (court split one half of the \$250,000 fine
among two different witnesses who reported the pollution to the
government); United States v. Princess Cruise Lines, (S.D. Fla.
1993) (court awarded cruise ship passenger with one half of the
\$500,000 criminal fine for providing the government with a video
tape of crew members dumping plastic bags of garbage into the
ocean).

