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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 OAKLAND DIVISION

14 UNITED STATES OF AMERICA,)	NO. 19 CR-00559 JST
15 Plaintiff,)	
16 v.)	UNITED STATES' MOTION FOR STATUTORY
17 UNIX LINE PTE, LTD.,)	AWARD PAYMENT PURSUANT TO 33 U.S.C. §
18 Defendant.)	1908(A) AND PROPOSED ORDER
19)	

20 The United States respectfully moves the Court to award \$825,000 (USD), attributable to Unix
21 Line PTE, LTD.'s ("Unix") violation of the Act to Prevent Pollution from Ships, 33 U.S.C. § 1908(a)
22 ("APPS"), to be distributed between two cooperating former crewmembers of the *M/T Zao Galaxy*.
23 Specifically, the United States moves the Court to award Gerwin Ferrer \$412,500 and Rogelio
24 Zinampan \$412,500. For the reasons explained below, the government believes these amounts
25 appropriately reward the crewmembers for the information that they provided in this prosecution.

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1 **I. DEFENDANT UNIX’S PENALTIES AND THE COURT’S AWARD AUTHORITY**

2 On February 26, 2020, defendant Unix pled guilty to one count of violating APPS. Dkt. 43.
3 Sentencing is scheduled for March 20, 2020. The maximum fine for that offense is \$1.65 million,
4 pursuant to the Alternative Fines Act, 18 U.S.C. § 3571(d). *See* Dkt. 43 at ¶¶ 1–2, 12; Dkt. 39
5 (Superseding Information). The parties entered into a plea agreement pursuant to Federal Rule of
6 Criminal Procedure 11(c)(1)(C) and are jointly recommending that Unix pay a fine of \$1.65 million as
7 part of its sentence. Dkt. 43 at ¶ 8. Unix has additionally agreed “that it will take no position if the
8 government exercises its option to move the sentencing court to grant a portion of the fine . . . as
9 payment to individuals that provided information that resulted in the charges in the captioned
10 Superseding Information.” *Id.* at ¶ 12.

11 APPS was designed to implement an international law treaty known as the MARPOL Protocol,
12 which sets forth standards to protect the marine environment. To further this purpose, APPS grants this
13 Court the discretionary authority to issue a monetary award for up to one-half of any criminal fine
14 imposed on Unix to those individuals who provided information that led to a conviction under APPS.
15 Specifically, section 1908(a) of APPS provides that:

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

20 33 U.S.C. § 1908(a). Assuming that the Court accepts the parties’ plea agreement and sentences Unix to
21 a fine of \$1.65 million, the maximum award available to the whistleblowers in this matter would be
22 \$825,000.¹

23 The APPS award provision serves a valuable law enforcement purpose by encouraging those
24 most likely to know of illegal conduct to report it and cooperate with law enforcement. Because the
25 discharge of oily waste typically takes place in the middle of the ocean in international waters, the only
26 people likely to know about the conduct and the falsification of a vessel’s Oil Record Book are the

27 ¹ Should the Court not accept the parties’ plea agreement and impose the agreed-upon sentence,
28 the United States would respectfully request the opportunity to amend this motion, if necessary, to
account for any changed circumstances.

1 crewmembers. Absent crewmembers with firsthand knowledge of the illegal conduct coming forward,
2 APPS violations are otherwise extremely difficult to uncover. Further, a crewmember who reports
3 illegal conduct faces potential reprisal, such as the likelihood that he will lose gainful employment and
4 be barred—whether formally or informally—from working in the marine shipping industry in the future.
5 A substantial monetary award, as provided by APPS, both rewards crew members for taking those risks
6 and provides an incentive for other crew members to come forward and report illegal conduct on vessels
7 in the future.

8 **II. ASSISTANCE PROVIDED BY THE CREWMEMBERS**

9 On February 11, 2019, examiners from the United States Coast Guard boarded the *M/T Zao*
10 *Galaxy* to conduct a Certificate of Compliance examination. During the course of that examination,
11 crewmember Rogelio Zinampan, who was an oiler aboard the vessel, handed a Coast Guard examiner a
12 handwritten note. The note requested that the examiner find Mr. Zinampan after the inspection so that
13 he could report something about a “magic pipe” and damage to the marine environment. As a result of
14 the note, additional examiners and Coast Guard investigating officers responded and ultimately
15 conducted an expanded MARPOL compliance examination to investigate the conduct alleged in the
16 note.

17 The inspection team interviewed Mr. Zinampan, and he showed them videos, taken on fellow
18 crewmember Gerwin Ferrer’s phone, that captured approximately four illegal overboard discharges from
19 the *Zao Galaxy*’s engine room between the last week of January 2019 and February 11, 2019. The
20 videos generally depicted oily waste being sent overboard through a configuration of drum containers,
21 flexible pipes, flanges, and the vessel’s soot eductor. Mr. Zinampan also led the investigation team to
22 various locations in the vessel where the drum containers, flexible pipes, and flanges that were used in
23 the illegal discharge arrangement were hidden. One of the flanges was hidden in Mr. Zinampan’s own
24 stateroom. In addition, Mr. Zinampan recreated the configuration of the equipment and demonstrated to
25 Coast Guard investigators how the illegal overboard discharge system was assembled.

26 The inspection team also interviewed Gerwin Ferrer, who was another oiler aboard the ship. Mr.
27 Ferrer confirmed that he had been ordered to perform several illegal overboard discharges in order to
28

1 facilitate the emptying, cleaning, and repainting of the vessel's Primary Bilge Tank, in anticipation of
2 the Certificate of Compliance examination. Mr. Ferrer additionally reported there was an already-
3 fabricated flange/hose configuration aboard the vessel that he then used, at the direction of the First
4 Engineer, to set up the discharge system. Mr. Ferrer confirmed that he had taken the videos of the
5 discharge system on his own phone, and he ultimately provided the contents of his phone to the Coast
6 Guard for analysis.

7 Mr. Ferrer and Mr. Zinampan are citizens of the Philippines and their families reside there.
8 However, since the time of their initial interviews in February 2019, Mr. Ferrer and Mr. Zinampan have
9 remained in the United States pending resolution of this case. They have submitted to multiple
10 interviews with Coast Guard investigators and federal prosecutors, have provided sworn testimony
11 regarding the events that took place aboard the *Zao Galaxy*, and have expressed their willingness to
12 testify at trial in this matter. Their cooperation was significant in initiating the Coast Guard's
13 investigation and in securing a guilty plea from Unix.

14 III. HISTORICAL APPS PAYMENTS

15 There have been many other cases in which a whistleblower award has been issued pursuant to
16 Section 1908 of APPS. The following are a sampling of such awards.

- 17 • *United States v. Portline Bulk International, S.A.*, No. 19-CR-00434 (D.S.C. 2019):
18 award of \$500,000, the maximum amount available, divided between three crewmembers
19 (\$200,000, \$150,000, and \$150,000).
- 20 • *United States v. Aegean Shipping Management, S.A.*, No. 16-CR-00551 (D.S.C. 2017):
21 award of \$500,000, the maximum amount available, divided between three crewmembers
22 (\$250,000, \$150,000, and \$100,000).
- 23 • *United States v. DSD Shipping, AS*, No. 15-CR-00102 (S.D.A.L. 2016): award of
24 \$750,000, the maximum amount available, divided equally between two crewmembers.
- 25 • *United States v. Marine Managers Ltd.*, No. 14-CR-00118 (E.D.L.A. 2015): award of
26 \$200,000, the maximum amount available, divided equally between two crewmembers.
- 27 • *United States v. Diana Shipping Services S.A.*, No. 13-CR-00040 (E.D.V.A. 2013): award
28

~~[PROPOSED]~~ ORDER

This matter comes before the Court upon the United States' Motion for Statutory Whistleblower Awards pursuant to 33 U.S.C. § 1908(a). Upon due consideration, the Motion is GRANTED. It is hereby ORDERED that, from the total fine paid by Unix Line PTE, LTD., an award of \$825,000 attributable to Count One of the Superseding Information shall be paid to the following individuals in the following amounts:

- Gerwin Ferrer--\$412,500
- Rogelio Zinampan--\$412,500

It is further ORDERED that the Clerk of the Court issue electronic payments directly to the bank accounts of Mr. Ferrer and Mr. Zinamapan. The United States Attorney's Office is directed to provide the Clerk of the Court with routing and bank account information for Mr. Ferrer and Mr. Zinamapan.

IT IS SO ORDERED.

DATED: March 20, 2020



HON. JON S. TIGAR
United States District Judge