

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

4 DATED: May 7, 2008

Respectfully submitted,

5 THOMAS P. O'BRIEN  
United States Attorney

6 CHRISTINE C. EWELL  
7 Assistant United States Attorney  
8 Chief, Criminal Division

9 //S//

10 DOROTHY C. KIM  
11 SARAH J. HEIDEL  
Assistant United States Attorneys

12 Attorneys for Plaintiff  
13 United States of America

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.<sup>1</sup> 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.<sup>2</sup>

---

19  
20 <sup>1</sup>See 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 <sup>2</sup>A 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).



1 motion a proposed order that details the timing of the award  
2 payments.

3 DATED: May 7, 2008

Respectfully submitted,

4 THOMAS P. O'BRIEN  
United States Attorney

5 CHRISTINE C. EWELL  
6 Assistant United States Attorney  
7 Chief, Criminal Division

8 //S//  
9 DOROTHY C. KIM  
SARAH J. HEIDEL  
10 Assistant United States Attorneys

11 Attorneys for Plaintiff  
United States of America

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28