

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-20239CR-HUCK/O’SULLIVAN

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| UNITED STATES OF AMERICA, | | : | |
| | | : | |
| | Plaintiff | : | CRIMINAL |
| | v. | : | |
| | | : | |
| LATIN NODE, INC., | | : | |
| | | : | |
| | Defendant | : | |
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GOVERNMENT’S SENTENCING MEMORANDUM

The United States of America, by and through its counsel, the United States Department of Justice, Criminal Division, Fraud Section (the “Government”), hereby submits in the above-captioned matter the Government’s Sentencing Memorandum. For the reasons outlined below, the Government respectfully submits that the Court should accept the guilty plea of Latin Node, Inc. (“Latinode”), and sentence it in accordance with the parties’ agreement.

1. Background

Latinode, a privately held Florida corporation, provided wholesale telecommunications services using internet protocol technology in a number of countries throughout the world, including Honduras and Yemen. Latinode, by virtue of its incorporation in Florida, was a “domestic concern” subject to the United States Foreign Corrupt Practices Act (“FCPA”). eLandia International, Inc. (“eLandia”) acquired Latinode in June 2007, and subsequently discovered potentially corrupt payments to government officials in connection with Latinode’s business in Honduras. In November 2007 – within three months of discovering the misconduct –

counsel for eLandia and Latinode, Holland & Knight LLP (“Holland & Knight”), voluntarily disclosed the improper payments to the Government. Holland & Knight conducted an investigation, which ultimately expanded to Latinode's operations in Yemen, and provided the Department with key emails, payment records, and access to witnesses for interviews. The disclosure and internal investigation undertaken by eLandia and Latinode substantially assisted the Department in its investigation.

2. Summary of Facts

The investigation revealed that from in or about March 2004 through in or about June 2007, Latinode paid or caused to be paid approximately \$1,099,889.73 in questionable payments to third parties, knowing that some or all of those funds would be passed on as bribes to officials of Hondutel, the Honduran state owned telecommunications company. Many of these payments were facilitated by sham consulting agreements with companies created solely for the purpose of funneling bribes to officials. Latinode made these payments in exchange for obtaining an interconnection agreement with Hondutel, as well as for reducing the rate per minute under the interconnection agreement. Each of the payments was made from Latinode's Miami, Florida bank account, and each payment was approved by senior executives of Latinode. The intended payment recipients included, but were not limited to, a member of the evaluation committee responsible for awarding Hondutel interconnection agreements, the Deputy General Manager (who later became the General Manager) of Hondutel, a lawyer for Hondutel, and two billing officials of Hondutel.

The investigation further revealed that from in or about July 2005 to in or about April 2006, Latinode made a total of seventeen payments totaling approximately \$1,150,654.36 either

directly to Yemeni officials or to a third party consultant with the knowledge that some or all of the money would be passed on to Yemeni officials in exchange for favorable interconnection rates in Yemen. Each of those payments was made from Latinode's Miami, Florida bank account. The consultant through whom Latinode made some of the payments is a dual Egyptian-United States citizen. Company emails indicate that the payment recipients included, but were not limited to, the son of the Yemeni President, the Vice President of Operations at TeleYemen (the government owned telecommunications company in Yemen), other officials of TeleYemen, and officials from the Ministry of Telecommunications.

3. Disposition With Latinode

a. Summary of Criminal Charges

The Department and Latinode agree that the appropriate resolution of this matter consists of a guilty plea pursuant to a plea agreement with Latinode. The Latinode information charges a violation of the FCPA's antibribery provisions under 15 U.S.C. §§ 78dd-2(a) (Count One).

b. Summary of Plea Agreements

The proposed plea agreement contains the following core terms: (a) agreement to plead guilty to the charge in the information in the Southern District of Florida, the factual allegations of which Latinode agrees not to contest; (b) a total criminal penalty of \$2,000,000 payable over a period of three years; and (c) the continued obligation to provide full, complete, and truthful cooperation to the Government and any other law enforcement agency, domestic or foreign, with which the Government directs Latinode to cooperate.

In accordance with the Principles of Federal Prosecution of Business Organizations, the Government considered a number of factors in its decisions regarding the overall disposition.

The Government balanced factors including, but not limited to, the nature and seriousness of the offense, the pervasive knowledge of the misconduct within Latinode’s senior management, and the genuine cooperation efforts by eLandia and Latinode throughout the investigation.

4. Sentencing Guidelines Calculation and Criminal Penalties

a. Sentencing Guidelines Calculation

As set forth in paragraph 15 of the plea agreement, the parties agree that the following Sentencing Guidelines provisions, using the 2007 Sentencing Guidelines Manual, apply based on the facts of this case, for purposes of determining an advisory guideline range:

I. Calculation of Offense Level :

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| Base Offense Level (U.S.S.G. § 2C1.1(a)): | 12 |
| More than one bribe (U.S.S.C. § 2C1.1(b)(1)): | +2 |
| Value of payments approximately \$2.2 million (U.S.S.G. §§ 2C1.1(b)(2), 2B1.1(b)(1)(I)): | <u>+16</u> |
| TOTAL OFFENSE LEVEL: | 30 |

ii. Calculation of Culpability Score:

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| Base Score (U.S.S.G. § 8C2.5(a)): | 5 |
| The organization had 50 or more employees and an individual within substantial authority personnel of the organization participated in, condoned, or was willfully ignorant of the offense (U.S.S.G. § 8C2.5(b)(4)): | +2 |
| Self-reporting, cooperation, acceptance of responsibility (U.S.S.G. § 8C2.5(g)(1)): | <u>-5</u> |
| TOTAL CULPABILITY SCORE: | 2 |

iii. Calculation of Fine Range:

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| Base Fine: Based on U.S.S.G. § 8C2.4(a)(1), the base fine is the amount corresponding to offense level of 30 (\$10,500,000) in U.S.S.G. § 8C2.4(d): | <i>\$10,500,000</i> |
| Multipliers, culpability score of 5 (U.S.S.G. § 8C2.6): | 0.40 - 0.80 |
| Fine Range (U.S.S.G. § 8C2.7): | <i>\$4,200,000 – \$8,400,000</i> |

c. **Criminal Penalty**

Pursuant to Fed. R. Crim. P. 11(c)(1)(B), the Government believes, and the Government and Latinode agreed to recommend to the Court, that the appropriate sentence in this case is a criminal fine in the amount of \$2,000,000, the statutory maximum, and a special assessment of \$400, after consideration of: (i) Latinode's recognition and affirmative acceptance of responsibility for its criminal conduct; (ii) the voluntary disclosure made by Latinode and its parent corporation eLandia, through their counsel, to the Government beginning in November 2007, and the disclosure of evidence obtained as a result of the investigation their attorneys subsequently conducted; (iii) the fact that the criminal payments charged in the information were made entirely prior to eLandia's acquisition of Latinode on June 28, 2007; (iv) the fact that Latinode has been dissolved from an operational perspective and currently exists only as a corporate entity for purposes of entering into this Agreement; and (v) the virtual impossibility of conducting an analysis of profits or loss for purposes of the Alternative Fines Act. The Government and Latinode further agreed to recommend to the Court that \$500,000 of the total criminal fine shall be paid as a lump sum within five (5) business days after imposition of sentence in this matter, and that the remaining \$1,500,000 shall be paid in three installments of \$500,000 by January 31, 2010; January 31, 2011; and January 31, 2012, respectively.

The statutory maximum for a violation of 15 U.S.C. § 78dd-2 is \$2,000,000, or twice the gross gain or gross loss resulting from the offense, whichever is greatest, 15 U.S.C. § 78dd-2(g)(1)(A), 18 U.S.C. § 3571(d); five years' probation, 18 U.S.C. § 3561(c)(1); and a mandatory special assessment of \$400, 18 U.S.C. § 3013(a)(2)(B). Latinode, in its current "shell" state, has few assets and minimal capital, and none of the employees or officers involved in the relevant conduct remain employed by Latinode or eLandia International, Inc. The former Latinode officers and employees who may have information about profitability forecasts are no longer accessible to company counsel, and counsel has not located any documents showing either forecasted or actual profitability analyses of the Honduras and Yemen contracts. Attempting to conduct such an analysis of actual profits now is essentially impossible because those contracts were terminated as a result of the investigation. For the above reasons, the Government and Latinode agree that a calculation of the gross gain or loss resulting from the offense would be unduly onerous, if not impossible. Because a calculation of twice the gross gain or loss under 18 U.S.C. § 3571(d) would unduly complicate or prolong the sentencing process, the appropriate maximum penalty is the statutory maximum of \$2,000,000. Latinode's parent corporation, eLandia, has agreed to provide the funds necessary for the recommended fine.

For the above reasons, the Government believes the proposed penalty of \$2,000,000 is appropriate.

5. Latinode's Cooperation and Remediation Efforts

The Government believes the above-proposed penalty is appropriate based on Latinode's and eLandia's commendable efforts to uncover evidence of corrupt activities, its authentic cooperation with the Government throughout the investigation, and its significant remedial

efforts upon discovery by eLandia of the misconduct.

Latinode and its corporate parent, eLandia, initiated an internal investigation of the corrupt payments immediately upon discovery of the potential problems. This investigation included numerous witness interviews and the review of thousands of documents. Within three months of discovering the improper payments, counsel for Latinode and eLandia visited the Government to make a voluntary disclosure of the FCPA violations. Latinode and eLandia provided timely, thorough, and exemplary cooperation in connection with the investigation of Latinode's past corporate conduct. Through counsel, Latinode and eLandia produced thousands of non-privileged documents to the Government and responded promptly and productively to all requests by the Government. The cooperation provided by Latinode and eLandia substantially aided the Government in developing its investigation. Almost immediately upon determining the culpability of senior Latinode officers and employees, eLandia terminated those individuals. Although there was no evidence of misconduct by eLandia employees, eLandia took steps to strengthen its own anti-corruption compliance program, including training its employees in the FCPA and related laws and committing to anti-corruption due diligence in future acquisitions. Perhaps the greatest evidence of eLandia's remedial efforts is that it has dissolved Latinode from an operational perspective, at a cost to eLandia of millions of dollars, and has ceased doing business relating to the tainted contracts.

6. Procedure for Accepting Plea and Imposing Sentence

The Court has granted the Government's Unopposed Motion for Consolidated Hearing and has ordered that the initial appearance, arraignment, entry of guilty plea, and sentencing will all take place in a consolidated hearing on April 7, 2009 at 1:00. The parties, having carefully

negotiated the proposed resolution over a number of months, believe that the record being placed before the Court is sufficient for the Court to accept the plea and impose the sentence without further investigation. *See* Fed. R. Crim. P. 32(c)(1)(A) (authorizing the judge "to dispense with a presentence report . . . when the court finds sufficient information in the record to enable it to exercise its statutory sentencing authority meaningfully and explains its finding on the record."). *See also* U.S.S.G. § 6A1.1. Nevertheless, the Government has communicated fully with the Probation Office regarding the details of the proposed penalties and the facts and circumstances of these cases, to allow the Probation Office to advise the Court with respect to its decisions in this matter should the Court desire.

CONCLUSION

For the foregoing reasons, the Government respectfully recommends that the Court sentence Latinode to a fine in the amount of \$2,000,000 and a special assessment of \$400 as set forth above.

STEVEN A. TYRRELL
Chief
Fraud Section, Criminal Division

By:

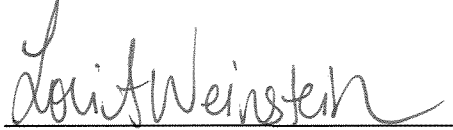


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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of April, 2009, a copy of the foregoing Government's Sentencing Memorandum was served to LATIN NODE, INC., through its counsel, Peter Prieto and Don Zarin of Holland & Knight LLP, via email.



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