

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA

v.

PANALPINA, INC.

Defendant.

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Criminal No. 10-cr-765

GOVERNMENT’S MOTION FOR DOWNWARD DEPARTURE

The United States of America, by and through its counsel, the United States Department of Justice, Criminal Division, Fraud Section (the “Department”), by its undersigned attorneys, respectfully submit this Motion for Downward Departure pursuant to United States Sentencing Guidelines (USSG or “Sentencing Guidelines”) Section 8C4.1 for the Court’s consideration in resolving the corporate plea of guilty in the case captioned above. For the reasons set forth below and further described in the Agreed Motion to Waive the Presentence Report (Docket No. 7), the Department respectfully requests the Court accept the guilty plea of Panalpina, Inc. (“Panalpina U.S.”) pursuant to the Federal Rule of Criminal Procedure 11(c)(1)(C) and exercise its sentencing authority under Title 18, United States Code, Section 3553, and impose a \$70,560,000 penalty on Panalpina U.S. The Department respectfully submits that the information contained in the record of this case, together with the information included herein, supports a downward departure from the Sentencing Guidelines resulting in a fine of \$70,560,000.

I. INTRODCUTION

United States Sentencing Guidelines Section 8C4.1(a), the corporate analogue to USSG Section 5K1.1, provides, in relevant part,for downward departures from the advisory sentencing

guideline range based on the defendant's "substantial assistance in the investigation or prosecution of another organization that has committed an offense." Section 8C4.1(b) provides that the Court may consider the following non-exclusive factors in determining whether a departure is appropriate under this guideline provision: (1) "the significance and usefulness of the organization's assistance, taking into consideration the government's evaluation of the assistance rendered"; (2) "the nature and extent of the organization's assistance"; and (3) "the timeliness of the organization's assistance." For the reasons set forth below, the Department believes that the record demonstrates that Panalpina U.S.'s assistance to the government in its investigation of other corporations has been (1) significant and useful and (2) exemplary and extensive.

II. SENTENCING GUIDELINES CALCULATION

In the Plea Agreement (Docket No. 6), the parties stipulate that the following Sentencing Guidelines calculation is the proper application of the Sentencing Guidelines to the criminal charges alleged in the Information. The Sentencing Guidelines analysis in this case results in a Guidelines fine range of \$72,000,000 – \$144,000,000.

A. Calculation of the Offense Level

Based upon USSG § 2C1.1,² the total offense level is 36, calculated as follows:

(a)(2) Base Offense Level	12
(b)(1) Specific Offense Characteristic (More than one bribe)	+2
(b)(2) Specific Offense Characteristic (Value of bribe paid greater than \$20 million but less than \$50 million)	<u>+22</u>
TOTAL	36

² Pursuant to USSG § 1B1.2(a), including Application Note 1, the Department and Panalpina U.S. agree that the applicable fine under this Agreement shall be calculated pursuant to USSG § 2C1.1.

Base Fine. Based upon USSG Section 8C2.4(a)(1), the base fine is \$45,500,000 (fine corresponding to the Base Offense level as provided in Offense Level Table).

B. Calculation of the Culpability Score

Based upon USSG § 8C2.5, the culpability score is 8, calculated as follows:

(a)	Base Culpability Score	5
(b)(3)	The relevant organization had 5,000 or more employees and tolerance of the offense by substantial authority personnel was pervasive throughout the organization.	+5
(g)	The organization fully cooperated in the investigation and clearly demonstrated recognition and affirmative acceptance of responsibility for its criminal conduct.	-2
	TOTAL	<u>8</u>

C. Calculation of the Fine Range

Base Fine	\$45,500,000
Multipliers (USSG § 8C2.6):	1.6 – 3.2
Fine Range (USSG § 8C2.7):	\$72,800,000 – \$145,600,000

II. A DOWNWARD DEPARTURE IN THIS MATTER IS APPROPRIATE

The Department initiated its investigation of Panalpina U.S. and its parent, subsidiaries, and affiliates (collectively “Panalpina”) in or around mid-2006 based on conduct disclosed by Panalpina customers. Panalpina learned of the investigation in or around late-2006 from its customers. Despite knowledge of the investigation, Panalpina did not voluntarily disclose the conduct to the Department and did not stop the illegal payment of bribes that was occurring on multiple continents. In or about early-2007, the Department requested documents and

information from Panalpina; however, at that time, Panalpina exhibited a reluctance to cooperate with the investigation.

Thereafter, Panalpina engaged and instructed its legal counsel (“Counsel”) to conduct a comprehensive internal investigation, and ultimately authorized Counsel to report the findings to the Department and the United States Securities and Exchange Commission (“SEC”). From that point onward, as further described in the Agreed Motion to Waive the Presentence Report (Docket No. 7), Panalpina exhibited exemplary cooperation with the Department and SEC, and conducted a comprehensive internal investigation that fully supported and paralleled the Department’s investigation. Specifically, Panalpina engaged Counsel to lead investigations encompassing 46 jurisdictions and hired an outside audit firm to perform forensic analysis and other support tasks.

As a part of its overall cooperation efforts, Panalpina developed and timely provided detailed and significant information regarding third parties, including Panalpina’s customers who knowingly consented to Panalpina’s payment of bribes on their behalf and knowingly consented to Panalpina’s false characterization of those bribes in invoices submitted to them. Panalpina’s assistance included providing proffers of witness statements, financial records, and correspondence that documented the knowledge and involvement of third parties. The information provided by Panalpina was voluminous and helpful. Moreover, the information provided by Panalpina assisted the Department because the extent of Panalpina’s customers’ knowledge and complicity was unknown by the Department. It was through the extensive, worldwide investigative efforts of Panalpina that these complex criminal activities were better understood and ultimately pursued by the Department. Further, the cooperation aided the Department in an industry-wide investigation, which assisted in securing the acceptance of

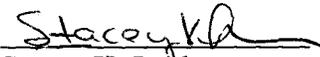
responsibility by three companies, the payment of monetary penalties, and a commitment to changing their practices.

III. CONCLUSION

For the foregoing reasons, the government respectfully requests that the Court grant a downward departure from the sentencing guideline range of \$72,000,000 – \$144,000,000, and that the Court impose a criminal penalty of \$70,560,000.

Respectfully submitted,

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