

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

**UNITED STATES OF AMERICA**

v.

**PRIDE FORASOL S.A.S.**

**Defendant.**

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**CRIMINAL NO.:**

**JOINT MOTION TO WAIVE PRESENTENCE INVESTIGATION AND  
CONSOLIDATE PLEA AND SENTENCING**

The United States of America, by and through its undersigned attorneys, ~~Stacey K. Luck, Senior Trial Attorney, United States Department of Justice, Criminal Division, Fraud Section (“the Department” or the “Fraud Section”), and~~ the defendant, Pride Forasol S.A.S. (“Pride Forasol”), by and through its undersigned attorneys, Willkie Farr & Gallagher LLP and Baker Botts LLP, respectfully file this Joint Motion to Waive Presentence Investigation and Consolidate Plea and Sentencing pursuant to Federal Rule of Criminal Procedure 32(c)(1)(A)(ii) and Criminal Local Rule 32.1.

The parties respectfully submit that the information contained in the record of this case, together with the agreed information included herein, is sufficient to enable the Court to meaningfully exercise its sentencing authority under Title 18, United States Code, Section 3553 without a presentence investigation report.

Accordingly, the parties request that the Court waive the preparation of such a report and consolidate the plea and sentencing into one hearing.

**I. The Presentence Report Should Be Waived**

Federal Rule of Criminal Procedure 32(c)(1)(A)(ii) permits the Court to impose sentence without the preparation of a presentence report if the Court finds that the information in the record is sufficient to enable it to exercise its sentencing authority meaningfully under Title 18, United States Code, Section 3553, and the Court explains this finding on the record. Fed. R. Crim. P. 32(c)(1)(A)(ii); *see also* Criminal Local Rule 32.1. The parties submit that the information contained in the Information, Plea Agreement, and Statement of Facts filed in this matter and the additional information contained herein satisfy the requirements of Rule 32(c)(1)(A)(ii) and provide a basis for the Court to exercise its sentencing authority meaningfully under Title 18, United States Code, Section 3553. The following information is submitted pursuant to Criminal Local Rule 32.1.

**II. Factual Summary**

**A. The Foreign Corrupt Practices Act**

1. The Foreign Corrupt Practices Act of 1977 (hereinafter the “FCPA”), as amended, Title 15, United States Code, Sections 78dd-1 *et seq.*, prohibited certain classes of persons and entities from corruptly making payments to foreign government officials to assist in obtaining or retaining business. Pertinent to the charges herein, the FCPA prohibited any person other than an issuer or domestic

concern, while in the territory of the United States, from making use of the mails or any means or instrumentality of interstate commerce, or doing any other act, corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of money or anything of value to any person, while knowing that all or a portion of such money or thing of value would be offered, given, or promised, directly or indirectly, to a foreign official for the purpose of obtaining or retaining business for, or directing business to, any person. 15 U.S.C. § 78dd-3(a). Furthermore, the FCPA required issuers to make and keep books, records, and accounts that accurately and fairly reflect transactions and disposition of the company's assets and prohibited the knowing falsification of an issuer's books, records, or accounts. 15 U.S.C. §§ 78m(b)(2)(A), 78m(b)(5), and 78ff(a). The FCPA's accounting provisions also required that issuers maintain a system of internal accounting controls sufficient to provide reasonable assurances that: (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to (I) permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals, and appropriate action is

taken with respect to any differences. 15 U.S.C. § 78m(b)(2)(B).

**B. The Defendant's Relevant Conduct**

The Information alleges that the defendant conspired to violate the FCPA and that it violated the anti-bribery and books and records provisions of the FCPA by authorizing payments intended for the benefit of an administrative judge in India to secure favorable treatment in customs-related litigation. The Department and the defendant agree to all of the facts alleged in the Information and contained in the detailed Statement of Facts at Appendix B to the Plea Agreement.

Pride Forasol is a wholly-owned French subsidiary of Pride International, a publicly traded company incorporated under the laws of Delaware with its principal place of business in Houston, Texas. Pride Forasol is engaged in the business of owning and operating oil and gas drilling rigs around the world, including in India. Pride Forasol operates in India through its local branch, Pride Foramer India ("Pride India").

In or around September 2001, India's customs service initiated an administrative action against Pride India, alleging that Pride India had intentionally understated the value of a drilling rig during the importation process. Pride India disputed the allegations, arguing that its valuation of the rig had been proper, but the Indian Customs Commissioner found against Pride India. In June 2002, Pride India appealed the Customs Commissioner's determination to an administrative

tribunal, the Customs, Excise, and Gold Appellate Tribunal (the "CEGAT").

While the appeal was pending before the CEGAT, in or around late 2002 or early 2003, the Director of Legal Affairs for Pride Forasol, who was responsible for overseeing the India customs litigation, received indications from a customs consultant hired by Pride India to advise it in the matter (the "India Customs Consultant") that Pride India could facilitate a favorable decision by making a corrupt payment for the benefit of one of the two CEGAT administrative judges hearing the matter. In or around January 2003, Pride India's Base Manager emailed his supervisor, the Asia Pacific Area Manager (the "Area Manager"), detailing a plan to make a payment for the benefit of one of the judges. The Area Manager forwarded the email describing the bribery scheme to Pride International's Houston-based Eastern Hemisphere Finance Manager (the "Finance Manager").

From in or around January 2003 to in or around July 2003, the defendant, through the Legal Director and others, authorized three payments totaling approximately \$500,000 to third-party bank accounts, based on false invoices purportedly for agent and/or consulting services, intending that some or all of the funds would be for the benefit of an administrative CEGAT judge. Specifically, on or about January 27, 2003 and May 19, 2003, the defendant caused two payments of \$150,000 to be wire-transferred from non-U.S. bank accounts of Pride

International subsidiaries to third-party bank accounts with the intent that the payments would benefit the CEGAT judge. On or about June 30, 2003, the CEGAT issued a ruling in favor of Pride India, overturning the Customs Commissioner's prior undervaluation determination. On or about July 21, 2003, the defendant caused a payment of \$200,000 to be wire transferred from a non-U.S. bank account of a Pride International subsidiary to a third-party bank account with the intent that it would benefit the CEGAT judge.

The U.S.-based Finance Manager for Pride International, knowing that all or a portion of the payments were intended for the benefit of a foreign official, authorized the recording of the payments under a newly created accounting code for "miscellaneous expenses."

### **III. Defendant's Cooperation**

The parties agree that the defendant and its parent company, Pride International (together, "the Companies"), have provided exemplary cooperation with the Department and the SEC in this matter and have substantially assisted in ongoing Department investigations.

#### **A. Timely Disclosure and Extensive Investigation**

After evidence of improper payments to foreign government officials was discovered during the course of an internal audit, the Companies made a timely, voluntary disclosure to the Department and the SEC. They conducted a thorough

internal investigation and fully cooperated with the Department and the SEC in their investigations of the conduct. Pride International, which had already begun to enhance its anti-bribery compliance program before discovering the conduct at issue, undertook of its own accord substantial, additional anti-bribery compliance enhancements and other remedial measures.

The Companies conducted an expansive, multi-country internal investigation into allegations of misconduct. They also voluntarily initiated a comprehensive, worldwide anti-bribery compliance review of Pride International's business operations in a number of high-risk countries, including Angola, Brazil, Kazakhstan, Libya, Nigeria, the Republic of Congo, and Saudi Arabia. Together, the internal investigation and anti-bribery compliance review, conducted by outside counsel with assistance from forensic accounting professionals, involved the review of approximately 20 million pages of electronic and hard copy documents gathered from approximately 350 custodians, and more than 200 interviews of employees and agents. Further, because many the Companies' documents were in Spanish, French, and other foreign languages, the Companies routinely provided English language translations of documents produced, thereby saving the Department significant time and expense.

The Companies kept the Department and the SEC apprised of the progress of the investigation and findings of the investigation and the compliance review.

They made witnesses from all over the world available to the Department and the SEC, as requested. They have also agreed, through the Plea Agreement and Pride International's Deferred Prosecution Agreement, to continue to cooperate with the Department and the SEC going forward.

**B. Substantial Assistance**

If the plea agreement were being filed pursuant to Fed. R. Crim. P. 11(c)(1)(B) instead of pursuant to Fed. R. Crim. P. 11(c)(1)(C), the Department believes that the facts contained in this motion would merit a motion for downward departure with respect to Pride Forasol. Section 8C4.1 of the Sentencing Guidelines, the corporate analogue to U.S.S.G § 5K 1.1, provides 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, or in the investigation or prosecution of an individual not directly affiliated with the defendant who has committed an offense."

As part of its overall cooperation efforts, the Companies (primarily through its outside counsel) developed and timely provided detailed and significant information regarding third parties, including Panalpina World Transport (Holding) Ltd. a Swiss international freight forwarding company with subsidiaries and affiliates throughout the world (collectively "Panalpina"), that was used to pay



bribes to foreign government officials by numerous companies around the world. The information provided by the Companies substantially assisted the Department because the extent of Panalpina's conduct was unknown by the Department at the time of the Companies' disclosure. It was only through the extensive, worldwide investigative efforts of the Companies that these complex criminal activities were uncovered and reported to the Department.

### **C. Extensive Remediation**

The Companies took significant remedial actions in response to the misconduct at issue. They took appropriately swift action against culpable employees and third-party agents, including, where appropriate, high-level employees. In these and other ways, Pride International's Board of Directors and the Companies' current management teams have repeatedly demonstrated a strong compliance "tone at the top" to reinforce among their employees, agents, and business partners the Companies' unwavering commitment to ethics and compliance.

Although Pride International had already taken steps to upgrade its anti-bribery compliance program before the allegations of misconduct surfaced, when evidence of improper payments was discovered, the company redoubled its efforts to enhance its compliance program. These enhancements have touched many aspects of the company's compliance program. First, the company updated and

modified its Anti-Bribery Policy in order to reinforce its commitment to ethical business practices. Employees and directors receive annual copies of the Code of Conduct and Anti-Bribery Policy in one or more of six languages.

Second, over time Pride International has strategically increased the involvement and oversight of upper-level management over anti-bribery compliance. The Audit Committee of the Board of Directors has oversight responsibility for the compliance program and receives reports at least quarterly on the implementation and enforcement of the program. An Executive Compliance Committee, comprised of Pride International's Chief Executive, Operating, Legal, Marketing, Financial, Human Resources, Accounting, and Compliance Officers, establishes and amends corporate compliance policies, oversees enterprise risk assessment and compliance risk assessment processes, and supervises the work of an Anti-Bribery Committee. The Anti-Bribery Committee, comprised of senior managers from a broad spectrum of departments, administers and enforces the company's anti-bribery policy. Among other things, this committee meets regularly to consider any proposed engagement of a third-party agent or joint venture partner.

Third, the company has placed a particular emphasis on enhancing its anti-bribery compliance procedures as related to third-party agents and joint venture partners. All agents and joint venture partners are subject to a detailed due

diligence review and must be approved by the Anti-Bribery Committee, as referenced above. All agent contracts contain robust anti-bribery protections, including anti-corruption representations and warranties, contractual safeguards, and audit rights. Pride International has also substantially reduced its use of third-party marketing agents.

Fourth, the company has enhanced and increased its anti-bribery training. It has expanded the reach of live training programs and requires online training for every employee with a company email address. All bonus-eligible employees are required to participate in both in-person and online training in order to be eligible to receive a bonus. Additionally, top management-level employees are required to certify annually that they have reported any actual or potential violations of law or policy, including anti-bribery related issues. The company also provides anti-bribery compliance training to agents and joint venture partners.

#### IV. Guidelines Calculations

It is agreed that the 2004 edition of the United States Sentencing Guidelines (“USSG”) is the appropriate manual to be used. It is agreed that the calculations below are accurate:

(1) Base Offense.

(a) Base Level Offense §2C1.1(a)(2) Offering,  
Giving, Soliciting or Receiving a Bribe: 12

(b)(1) Specific offense characteristic:  
(more than one bribe) +2

(b)(2) Specific offense characteristic: + 2  
(total value of benefit greater than \$7,000,000)

(b)(3) Specific offense characteristic: + 4  
(involvement of a public official)

Total Offense Level 38

(2) Base Fine. Based upon USSG §8C2.4(a)(1), the base fine is \$72,500,000 (fine corresponding to the Base Offense level as provided in Offense Level Table).

(3) Culpability Score. Based upon USSG § 8C2.5, the culpability score is 5, calculated as follows:

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| (a) Base Culpability Score   | 5  |
| (b)(1) The 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 self-reported, fully cooperated in the investigation, and clearly demonstrated recognition and affirmative acceptance of responsibility for its criminal conduct. | -5 |

Total Culpability Score 5

(4) Calculation of Fine Range. Based upon USSG § 8C2.6 and § 8C2.7, the applicable fine range is summarized as follows:

Base Fine	\$72,500,000
Multipliers (Culpability Score of 5)	1.0(min)/2.0 (max)
Fine Range (Culpability Score of 5)	\$72,000,000/\$145,000,000

#### V. **Agreed-Upon Fine and Organizational Probation**

The parties have agreed, pursuant to Fed. R. Crim. P. 11(c)(1)(C), that the imposition of a fine of \$32.625 million is appropriate. This fine amount is more than twice the profit gained by Pride Forasol from the illegal conduct to which the company is pleading guilty, and represents a fifty-five percent (55%) reduction from the low end of the fine range, reflecting, as discussed above: (i) the

defendant's accurate, complete, and timely voluntary disclosure; (ii) the defendant's exceptional cooperation and substantial assistance with the Department and the SEC, including cooperation relating to illegal conduct committed by other companies; (iii) the expansive nature of the internal investigation and compliance review undertaken on the defendant's own initiative; and (iv) the defendant's significant remediation, including disciplining culpable employees and enhancing its anti-bribery compliance program. The parties agree that a three (3) year term of organizational probation is appropriate and should include as a condition the maintenance of a corporate compliance program meeting the elements described in Appendix C to the Plea Agreement and annual reporting to the Department.

In addition to Pride Forasol's guilty plea, Pride International has entered into a Deferred Prosecution Agreement with the Department. That agreement requires Pride International to: pay a fine of \$32.625 million (such amount to be offset by any fine imposed by this Court upon Pride Forasol); maintain and, as appropriate, enhance its anti-bribery compliance program; cooperate with the Department in ongoing investigations related to FCPA matters; and report annually to the Department on its progress and experience in maintaining and enhancing its compliance program. Pride International also has agreed to settle related civil FCPA charges with the SEC and to pay disgorgement and prejudgment interest

totaling approximately \$23.5 million.

## **VI. The Record Contains Sufficient Information for the Court to Impose Sentence**

Under Federal Rule of Criminal Procedure 32(c)(1)(A)(ii), the Court may proceed to sentencing without the benefit of a presentence report if “the court finds that the information in the record enables it to meaningfully exercise its sentencing authority under Title 18, United States Code, Section 3553, and the court explains its finding on the record.” Fed. R. Crim. P. 32(c)(1)(A)(ii). Courts imposing sentence on corporate defendants for violations of the FCPA have combined the plea and sentencing hearings into a one proceeding. *See, e.g., Kellogg Brown & Root LLC*, 4:09-cr-00071 (S.D. Tex. Feb. 11, 2009); *United States v. Siemens Aktiengesellschaft, et al.*, 08-CR-367 (D.D.C. Dec. 15, 2008); *United States v. Baker Hughes*, No. 4:07-cr-00129 (S.D. Tex. April 26, 2007).

The parties respectfully submit that the record presently before the Court contains sufficient information to allow the Court to impose sentence without additional presentence investigation and a report. The facts described in the Informations and Statement of Facts, coupled with this Agreed Sentencing Memorandum, detail Pride International’s and Pride Forasol’s violations of law, but also Pride International’s and Pride Forasol’s timely and voluntary investigation into the violations, their extensive cooperation with the Department and the SEC, and their remedial actions. This information satisfies the

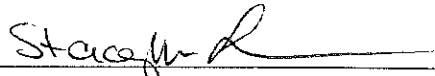
requirements of Rule 32(c)(1)(A)(ii) and permits the Court to impose sentence under Title 18, United States Code, Section 3553. A presentence investigation and report is not likely to uncover any additional information relevant to the imposition of sentence.

WHEREFORE, for all of the foregoing reasons, the parties respectfully urge the Court to grant their Joint Motion to Waive Presentence Investigation and Consolidate Sentencing.

Respectfully submitted,

**FOR THE DEPARTMENT:**

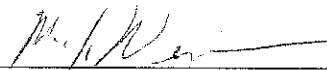
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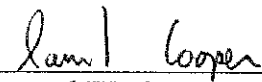
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Dated this 4 day of November, 2010.

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

**UNITED STATES OF AMERICA**

**v.**

**PRIDE FORASOL S.A.S.**

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**CRIMINAL NO.:**

**ORDER**

On this day, came on to be heard the Joint Motion to Waive Presentence Investigation and Consolidate Sentencing, and the Court, after due consideration of same, is of the opinion that said motion be GRANTED/DENIED.

SIGNED and ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
United States District Judge