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10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12	UNITED STATES OF AMERICA,)	Case No. 06CR1380-BEN
)	
13	Plaintiff,)	GOVERNMENT’S MOTION FOR
)	DOWNWARD DEPARTURE
14	v.)	PURSUANT TO U.S.S.G. § 5K1.1
)	
15	STEVEN LYNWOOD HEAD,)	Date: September 28, 2007
)	Time: 9:00 a.m.
16	Defendant.)	
)	

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18 COMES NOW the United States of America, by and through its counsel, Karen P. Hewitt, United
19 States Attorney, Eric J. Beste and Steven E. Stone, Assistant United States Attorneys, and hereby files
20 its Motion for Downward Departure Pursuant to U.S.S.G. § 5K1.1.^{1/}

21 I
22 **SUMMARY OF INVESTIGATION**

23 Defendant Steven Lynwood Head (hereinafter “Defendant”) has pled guilty to one count of
24 wilfully falsifying the books, records and accounts of a publicly-traded company, in violation of the
25 Foreign Corrupt Practices Act (“FCPA”). Pursuant to this guilty plea, and even before entering into his
26 plea agreement, Defendant provided substantial assistance to the Government in the investigation and
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^{1/} Pursuant to the Court’s instructions on July 30, 2007, this motion for downward departure pursuant to U.S.S.G. § 5K1.1 has been publically filed.

1 prosecutions of others involved in criminal offenses. The nature, extent, significance and usefulness of
2 the Defendant's assistance are set forth below.

3 Defendant's assistance was instrumental in the prosecution of the Titan Corporation ("Titan") –
4 then a large contractor for the U.S. military and foreign countries – for felony violations of the Foreign
5 Corrupt Practices Act and federal tax laws. The Defendant provided additional information in the
6 investigation of other Titan employees who may have participated in these crimes. Despite Defendant's
7 assistance, however, no other individuals have been prosecuted to date. As a result of Defendant's critical
8 assistance in the prosecution of Titan, and his substantial assistance in the investigation of others, the
9 Government recommends a total downward departure of five levels from Defendant's adjusted offense
10 level.^{2/}

11 **A. INVESTIGATION AND PROSECUTION OF TITAN**

12 In February 2004, while conducting due diligence for their planned merger, Titan and the
13 Lockheed Martin Corporation ("LMC") notified the Department of Justice, Criminal Division, Fraud
14 Section ("DOJ") of evidence indicating that Titan and its subsidiaries had made corrupt payments to
15 foreign agents and that Titan employees had apparently created false records to justify some of these
16 payments. Based on these disclosures, the U.S. Attorney's Office and DOJ initiated a criminal
17 investigation into possible FCPA violations by Titan and certain current and former executives.

18 The criminal investigation focused on payments made to an agent in the African nation of Benin.
19 The project in Benin required Titan to build and operate a wireless telephone system in that country for
20 the government of Benin. As such, the support and cooperation of the government of Benin was critical
21 to the success of the project. The investigation focused on millions of dollars of questionable payments
22 made to an individual (referred to as the "Benin Agent"), who had been hired by Titan in 1999
23 purportedly as a "consultant" on the project. Because Defendant had been Titan's in-country project
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25 ^{2/} On July 30, 2007, attorneys for a non-party filed a document entitled "Victim Impact
26 Statement" making various accusations against the Defendant. The Court granted the parties' joint
27 motion to strike this filing finding that the non-party was not a victim. Nevertheless, the Government
28 subsequently addressed the issues raised in the non-party's filing with the United States Probation Officer
and provided him with additional materials. As pointed out to the Probation Officer by the Government,
many of the statements made in the non-party's filing were inaccurate and/or not supported by the
evidence. Consequently, the filing by the non-party has not influenced the Government's sentencing
recommendation for the Defendant.

1 manager for several years during which suspect payments were made, Titan asked Defendant (who no
2 longer worked for the company) to discuss the matter with counsel for Titan and LMC.

3 Prior to Defendant's first interview with counsel for Titan and LMC on February 26, 2004, most
4 of the senior executives at Titan involved with the Benin project were interviewed. All of these
5 executives denied knowing that Titan had engaged any agents in Benin or paid any commissions to sales
6 agents in Benin. However, when Defendant was asked about agents in Benin during his very first
7 interview, he immediately identified the Benin Agent as an agent hired "to smooth over government
8 relations and to help [Titan] get acquainted with the country and what [Titan] would need to do business."
9 Defendant also stated during that first interview that Titan paid the Benin Agent approximately \$2.5
10 million for his services. This information surprised the interviewing attorneys because of the prior
11 statements to the contrary by other Titan employees, and led them to schedule additional interviews with
12 Defendant.

13 During his subsequent interviews, Defendant outlined how Titan executives (including himself)
14 had paid funds to the Benin Agent knowing that some of the money would be used for corrupt purposes
15 in Benin (i.e., bribery) and were supported by false invoices. Defendant consistently maintained that
16 other executives at Titan knew that the payments to the Benin Agent in 2001 were intended to support
17 the Beninese presidential election, and that a senior officer of Titan directed that these payments be
18 initiated in response to falsified invoices from the Benin Agent. Defendant also indicated that the same
19 senior officer of Titan directed that these payments to the Benin Agent be tied to Benin's agreement to
20 increase Titan's management fee on the project from 5% to 20% – an increase resulting in millions of
21 dollars of additional revenue for Titan.

22 Based largely on statements and evidence provided by Defendant, the investigation revealed that
23 in 2001, Titan paid the Benin Agent approximately \$2 million, intending to make payoffs to Benin
24 government officials and to support the re-election efforts of the President of Benin.^{3/} The investigation
25 also revealed that Titan falsely invoiced the \$2 million as payments for the Benin Agent's alleged
26 consulting services.

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28 ^{3/} As discussed more fully in the PSR, it now appears that all of the payments made to the
Benin Agent between 1999 and 2001 (approximately \$3,350,000) included bribe money.

1 On March 1, 2005, Titan entered guilty pleas to a three-count information charging it with
2 violations of the anti-bribery provisions of the FCPA (15 U.S.C. § 78dd-1), Falsification of Books and
3 Records (15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(5)), and Aiding and Assisting in the Filing of a False
4 Income Tax Return (26 U.S.C. § 7206(2)). Titan was sentenced to three years' probation, placed on a strict
5 compliance program, and ordered to pay a criminal fine in the amount of \$13,000,000 and a \$1,200
6 special assessment. When combined with the approximately \$15.5 million in civil penalties and
7 disgorgement paid to the SEC to settle a related case filed that same day, Titan's resolution of these
8 allegations resulted in the largest combined criminal/civil penalty at that time stemming from violations
9 of the FCPA.

10 **B. PROSECUTION OF DEFENDANT**

11 After several interviews with counsel for Titan and LMC, Defendant agreed to a voluntary
12 interview with federal agents, on May 11, 2004. During this interview Defendant confirmed several facts,
13 including (1) at the time the payments were made to the Benin Agent in early 2001, "we all knew that
14 some of the money would go to the election campaign of [the Benin President]," (2) a senior officer of
15 Titan directed that the payments be supported by false invoices purporting to be from the Benin Agent,
16 purporting to claim reimbursement for consulting services, and (3) the same senior officer of Titan
17 directed that the payments be spread out over time in order to ensure that the Benin government agreed
18 to the increase in Titan's management fee. Significantly, Defendant admitted that he knew a \$1.9 million
19 invoice submitted to Titan in San Diego contained false information – that is, that some of the money was
20 for a presidential re-election campaign and not for the purposes stated on the invoice.

21 Defendant further advised that he had received a telephone call from a senior officer of Titan (by
22 then a former officer) immediately before Defendant's initial interview with counsel for Titan and LMC.
23 Although Defendant had not spoken to this former senior officer of Titan for years, this former senior
24 officer called Defendant and told him that lawyers for Titan and LMC would be asking him questions
25 about Titan's activities in Benin, and that Defendant should not say very much during these interviews.
26 This information was corroborated in part by other evidence.

27 On June 23, 2006, Defendant waived indictment and pled guilty to a one count information
28 charging him with Wilful Falsification of the Books and Records of the public company, in violation of

1 the FCPA (15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(5)). As part of his plea agreement, Defendant agreed
2 to cooperate and provided additional documents and information to the Government.

3 **C. INVESTIGATION OF OTHER FORMER TITAN OFFICIALS**

4 In addition to the statements outlined above, Defendant provided information relative to other
5 individuals involved with the instant offenses. After entering his guilty plea, the Government debriefed
6 Defendant on four occasions at the U.S. Attorney's Office. As Defendant resides in Carmel, California,
7 he traveled to San Diego for these debriefings at his own expense, and at times met with investigators and
8 attorneys without counsel present. Defendant also provided documents and items to the Government that
9 had not previously been available in the investigation. Many of these documents and items corroborated
10 Defendant's prior statements, and the statements he later provided in post-plea debriefs.

11 During his post-plea debriefs, Defendant made it clear that all of the Benin Agent invoices going
12 back to 1999 were false. He further clarified that all of the payments to the Benin Agent going back to
13 1999 included bribe money for different purposes. Defendant reiterated that a senior officer of Titan
14 directed him to falsify the Benin Agent invoices and that he approved the payment of bribe money to the
15 Benin Agent at various meetings and during various telephone calls. Defendant further claims that the
16 same senior officer of Titan knew the Benin Agent did not work on the technical aspects of the Benin
17 project, as claimed in the Benin Agent's invoices. Defendant further reiterated (as he did during his pre-
18 plea interviews) that a senior officer of Titan made the decision to book the corrupt payments as "agent
19 fees" to the Benin Agent. Most of Defendant's claims are corroborated in part by documents and items
20 he provided to the Government as part of his cooperation.

21 **II**

22 **MOTION FOR DOWNWARD DEPARTURE**

23 Under U.S.S.G. § 5K1.1, upon motion of the Government, the Court may depart downward from
24 a defendant's adjusted offense level based on Defendant's "substantial assistance in the investigation or
25 prosecution of another person who has committed an offense." In evaluating a Government motion for
26 downward departure under 5K1.1, the Court should consider, among other factors: "(1) the court's
27 evaluation of the significance and usefulness of the defendant's assistance, taking into consideration the
28 government's evaluation of the assistance rendered; (2) the truthfulness, completeness, and reliability of

1 any information or testimony provided by the defendant; (3) the nature and extent of the defendant's
2 assistance; (4) any injury suffered, or any danger or risk of injury to the defendant or his family resulting
3 from his assistance; (5) the timeliness of the defendant's assistance." U.S.S.G. § 5K1.1.

4 Based on Defendant's substantial assistance in the investigation and prosecution of Titan, and his
5 substantial assistance in the investigation of other Titan executives, the Government recommends a
6 downward departure of five levels.

7 In its plea agreement with Defendant, the Government agreed to recommend at least a four-level
8 departure pursuant to Section 5K1.1, based on Defendant's substantial assistance up to that point in time
9 in the investigation and prosecution of Titan. Specifically, Defendant's voluntary statements to Titan's
10 counsel and the Government (all prior to his being charged) demonstrated flagrant violations of the FCPA
11 by senior executives at Titan. Defendant's statements were corroborated by documents and records
12 obtained during the investigation. Based on conversations with counsel for Titan, the Government
13 believes that Defendant's information was a critical factor in the company's decision to plead guilty to
14 serious felony offenses in this case. Although Defendant was not required to testify against Titan in any
15 proceeding, the fact that he was willing to do so should be credited to him when considering the extent
16 of any downward departure under Section 5K1.1.

17 Defendant's post-plea cooperation also significantly advanced the investigation. Defendant spent
18 many hours with investigators, and many more hours reviewing documents obtained during the
19 investigation, in order to refresh his recollection and provide an accurate account of events leading to the
20 payment of funds to the Benin Agent. The Government submits that an additional departure below the
21 four levels already provided for under the plea agreement is warranted. Based on Defendant's substantial
22 assistance in the investigation of other individuals, the Government recommends an additional one-level
23 departure, resulting in a total downward departure of five levels.

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III

CONCLUSION

Pursuant to Section 5K1.1 of the United States Sentencing Guidelines, the Government recommends a five-level downward departure. Without this five-level departure, Defendant's resulting offense level would be 15 (18-24 months) pursuant to the terms of the plea agreement. As set forth in the Government's Sentencing Summary Chart, the Government's five-level departure recommendation pursuant to Section 5K1.1 would result in an offense level of 10, and guideline range of 6 to 12 months. While such a departure from the guidelines range is substantial, it is justified by Defendant bringing serious corruption offenses to the attention of authorities and causing a major publicly-traded corporation to accept criminal responsibility.

Dated: September 21, 2007.

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

s/ Eric J. Beste

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff

v.

STEVEN LYNWOOD HEAD,

Defendant.

Case No. 06CR1380-BEN

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT:

I, Steven E. Stone, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of GOVERNMENT'S AMENDED MOTION FOR DOWNWARD DEPARTURE PURSUANT TO U.S.S.G. § 5K1.1 on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them:

Michael J McCabe (Mccabeatty@aol.com)

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 21, 2007.

s/ Steven E. Stone

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