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17 **UNITED STATES DISTRICT COURT**
18 **CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

19 UNITED STATES OF AMERICA,

20 Plaintiff,

21 vs.

22 STUART CARSON, HONG
23 CARSON, a/k/a "Rose Carson,"
24 PAUL COSGROVE, DAVID
25 EDMONDS, FLAVIO RICOTTI, and
26 HAN YONG KIM,

27 Defendants.

Case No. SA CR 09-0077-JVS

**OPPOSITION OF IMI plc AND
CONTROL COMPONENTS, INC.
TO DEFENDANTS' JOINT
MOTION TO COMPEL
DISCOVERY**

Assigned to: Hon. James V. Selna

Date: November 9, 2009

Time: 3:00 p.m.

Place: Courtroom 10C
411 West Fourth Street
Santa Ana, CA 92701-4516

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2
3 **I. INTRODUCTION**

4 Defendants have filed a Rule 16 motion to compel the discovery of millions
5 of pages of documents that are not in the government’s physical possession but are
6 instead in the possession of IMI plc (“IMI”), IMI’s wholly-owned subsidiary
7 Control Components Inc. (“CCI”) (collectively, “the Companies”), or Steptoe &
8 Johnson LLP (“Steptoe”), outside counsel to the Companies. The basis of
9 Defendants’ motion is a cooperation clause in CCI’s plea agreement with the
10 government, which Defendants claim gives the government “constructive
11 possession” over all non-privileged documents in CCI’s possession.

12 The Court should deny Defendants’ motion because it is based on a
13 mischaracterization of the cooperation clause, which permits the government to
14 request only “non-privileged” documents that relate to “corrupt payments to
15 foreign public officials or to employees of private customers” The vast
16 majority of documents sought by Defendants are completely unrelated to corrupt
17 payments, are protected by the attorney client privilege or work product doctrine,
18 or both. Further, the Court should interpret the cooperation clause narrowly
19 against the government, the drafter of the plea agreement, consistent with the
20 contractual parties’ understanding that CCI had already produced relevant
21 documents and was not expected or obligated to conduct a second, massive
22 production of documents.

23 The only materials in the government’s physical possession are four charts
24 that were created by Steptoe and produced to the government upon its request.
25 However, these charts constitute protected work product or contain privileged
26 information, and were produced to the government under a written Confidentiality
27 and Non-Waiver Agreement that expressly preserved these privileges. Moreover,
28 it is our understanding that the government provided Defendants with of all of the

1 underlying supporting documentation that Steptoe reviewed and analyzed to
2 prepare the charts.

3 Accordingly, the Court should deny Defendants' motion in its entirety.

4 **II. BACKGROUND**

5 CCI is a Delaware corporation headquartered in Rancho Santa Margarita,
6 California. CCI sells "severe service" valves designed to operate in harsh
7 operating conditions such as fossil fuel and nuclear power plants, oil and gas
8 facilities, and power generation facilities worldwide. Declaration of Brian M.
9 Heberlig in Support of the Opposition of IMI plc and Control Components, Inc. To
10 Defendants' Joint Motion To Compel Discovery ("Heberlig Decl.") ¶ 2. CCI is a
11 wholly-owned subsidiary of IMI, a corporation organized under the laws of
12 England and Wales with its headquarters in Birmingham, U.K. IMI's stock is
13 publicly traded on the London Stock Exchange. *Id.* ¶ 3.

14 **A. The Steptoe Investigation**

15 In mid-2007, CCI and IMI discovered evidence of possibly improper
16 payments made by CCI and its employees. *Id.* ¶ 5. In August 2007, IMI, through
17 its Board of Directors, retained Steptoe to investigate CCI's business practices and
18 potential violations of the Foreign Corrupt Practices Act ("FCPA") to determine
19 the relevant facts in order to provide IMI with legal advice. IMI contemplated that
20 the investigation would include interviews of CCI and IMI employees. IMI also
21 retained Steptoe to advise the company with regard to any interactions with U.S.
22 governmental authorities, including the Department of Justice ("DOJ" or "the
23 Department"), and to handle any enforcement action arising out of the events under
24 investigation. *Id.* ¶ 6. IMI, through its Board of Directors, directed Steptoe to
25 cooperate fully with the Department's investigation and to produce all relevant,
26 non-privileged documents reflecting potentially improper payments to employees
27 of state-owned and privately-owned CCI customers. On August 31, 2007, the IMI
28 Board of Directors created a Special Committee to supervise the Steptoe
investigation. *Id.* ¶ 7.

1 In August 2007, Steptoe retained forensic accountants at Ernst & Young
2 (“EY”) to act as counsel’s agents and assist with document collection and analysis.
3 At Steptoe’s direction, EY secured potentially relevant documents and electronic
4 records worldwide, including entire email servers and forensic images of over 200
5 computer hard drives. *Id.* ¶ 8. EY collected over 5.6 million documents that it
6 compiled into three searchable electronic databases stored on servers maintained in
7 the United States and the United Kingdom. The databases hold more than 1,500
8 gigabytes of data, which amounts to approximately 75 million pages of documents
9 in the three databases. *Id.* ¶ 9.

10 No one screened the documents compiled in these databases for relevancy.
11 Because the databases include entire company email and electronic document
12 servers, as well as the contents of entire computer hard drives, the vast majority of
13 documents in the EY databases are unrelated to corrupt payments to employees of
14 CCI’s state-owned and privately-owned customers. Rather than engage in the
15 time-consuming and expensive effort to review these millions of pages of
16 documents, which counsel believed contained many irrelevant documents, Steptoe
17 identified the relevant documents in the EY databases through targeted key word
18 searches. *Id.* ¶ 14.

19 Similarly, no one screened the documents compiled in these databases for
20 attorney-client privileged materials or attorney work product. It is apparent,
21 however, that the EY databases contain numerous privileged or work product
22 protected documents. For instance, one of the electronic databases contains the
23 entire content of the computer hard drive of IMI’s general counsel. In addition, a
24 search for all emails on which IMI’s general counsel and another IMI in-house
25 attorney were the authors, recipients or copied yielded 73,838 email messages and
26 23,588 email messages, respectively. *Id.* ¶ 15. Likewise, a search for emails
27 related to IMI’s outside counsel Steptoe, Allen & Overy, and Pinsent Masons,
28 resulted in hits of 1,810 emails for Steptoe, 3,617 emails for Allen & Overy, and
1,700 emails for Pinsent Masons. *Id.* ¶ 16. These examples reflect only the

1 obviously privileged documents in the databases, and do not account for other
2 documents that may contain privileged legal advice or work product
3 communicated by other employees.

4 In connection with its investigation, Steptoe interviewed numerous CCI and
5 IMI employees. Heberlig Decl. ¶ 10. Prior to most of the interviews, Steptoe
6 compiled relevant documents relating to the particular witness using key word
7 searches in the EY databases. These documents were typically placed into a
8 witness interview binder, which was used to interview the witness. *Id.* ¶ 13.
9 Steptoe attorneys instructed witnesses that the interviews were privileged and
10 administered “*Upjohn* warnings” to each witness. *Id.* ¶ 10. The attorney with
11 primary responsibility for taking notes during the interview drafted a non-verbatim
12 memorandum reflecting the attorney’s thoughts, impressions and opinions
13 regarding the interview. *Id.* ¶ 11. Steptoe maintained confidentiality over these
14 attorney notes and interview memoranda. The Department has not asked IMI or
15 CCI to produce them, and the Companies have not done so. *Id.* ¶ 12.

16 **B. The Department’s Investigation And Prosecution Of CCI**

17 On August 15, 2007, IMI made a voluntary disclosure to the Department in
18 which it advised the Department of potential FCPA violations committed by CCI
19 and its employees. Heberlig Decl. ¶ 17. On October 18, 2007, IMI and DOJ
20 entered into a Confidentiality and Non-Waiver Agreement. *Id.* ¶ 18 (Ex. A). The
21 agreement provided that by producing certain potentially privileged material, IMI
22 did not intend to waive the attorney-client privilege or work product protection as
23 to any third party. DOJ agreed that it would not assert that IMI’s production of this
24 material constituted a waiver as to any third party, or as to any materials not
25 provided by IMI. DOJ further agreed to maintain the confidentiality of the
26 information and not disclose it to any third party, except to the extent that DOJ
27 determined disclosure was “required by law.” *Id.*

28 Pursuant to the Confidentiality and Non-Waiver Agreement, Steptoe has
provided oral summaries of a subset of its witness interviews to DOJ. These oral

1 summaries were primarily factual in nature, and in some instances were high-level
2 overviews. *Id.* ¶ 19. Steptoe also produced witness interview binders for
3 individuals requested by the Department. *Id.* ¶ 20.

4 At the Department's request, Steptoe prepared several analyses and
5 produced them on behalf of the Companies in the investigation. Most
6 significantly, Steptoe produced a chart summarizing various information about the
7 improper payments identified during the investigation. For each payment
8 identified on the chart, Steptoe produced underlying supporting documentation. *Id.*
9 ¶ 22. Steptoe also produced a chart of gifts, travel and entertainment expenses
10 provided to customers and a chart of certain improper "training trips" provided by
11 CCI to employees of state-owned enterprises. Steptoe produced the underlying
12 supporting documentation for these analyses as well. *Id.* ¶ 23. Steptoe also
13 directed IMI employees to gather information about IMI's and CCI's revenue and
14 profits from 2003 to 2007, and produced a chart reflecting that information to the
15 Department. *Id.* ¶ 24. Each of these analyses was marked with privileged legends
16 and indicated that it was covered by the October 18, 2007 Confidentiality and Non-
17 Waiver Agreement. *Id.* ¶ 25. These documents are identified on a privilege log
18 that Steptoe prepared for the Department to provide to Defendants. *Id.* ¶ 26.

19 On July 31, 2009, CCI, represented by Steptoe, pled guilty before this Court
20 to an information charging a conspiracy to violate the FCPA and the Travel Act
21 and two substantive FCPA counts. *See United States v. Control Components, Inc.*,
22 No. SA CR 09-00162-JVS (C.D. Cal.). The Court imposed the agreed-upon
23 sentence in the plea agreement, including a criminal fine of \$18.2 million, which
24 CCI has already paid. Steptoe also negotiated with DOJ on IMI's behalf and
25 secured a letter in which DOJ agreed not to prosecute IMI based on the conduct
26 described in the Statement of Facts accompanying the CCI plea agreement or any
27 information disclosed by IMI or CCI to the Department.

28 Under CCI's plea agreement, CCI agreed to continue to cooperate with
DOJ's investigation by, among other things, producing to DOJ upon request "any

1 non-privileged document . . . relating to such corrupt payments to foreign public
2 officials or to employees of private customers.” Plea Agreement ¶ 6 (Ex. C to
3 Miller Decl., Docket #101-5). By its terms, the agreement does not obligate CCI
4 to provide the government with every document in its possession, but rather only
5 non-privileged documents relating to corrupt payments.

6 **III. ARGUMENT**

7 **A. Defendants Are Not Entitled To Any Material In Possession Of** 8 **CCI Because The Cooperation Clause Of CCI’s Plea Agreement** 9 **Does Not Cover Defendants’ Requests**

10 Aside from the handful of privileged charts at issue (addressed in Section
11 III.B below), the material sought by Defendants is not in the government’s
12 physical possession. Nonetheless, Defendants seek production of vast quantities of
13 material in the Companies’ possession based on the claim that CCI’s plea
14 agreement obligates it to disclose documents to the Department upon request,
15 supposedly rendering the material in the government’s constructive possession.
16 The Court should decline to order the production of any material in CCI’s
17 possession because Defendants’ claims about the scope of CCI’s plea agreement
18 are incorrect. Indeed, CCI is not obligated to produce material unrelated to
19 “corrupt payments” nor to produce any privileged documents, which disposes of
20 the vast majority of Defendants’ requests. Moreover, based on the parties’
21 understanding that CCI was fully cooperative and had produced the relevant
22 material sought by the government prior to execution of the plea agreement, the
23 Court should narrowly construe “documents relating to . . . corrupt payments” to
24 cover only the material already produced by the Companies.

25 **1. The Cooperation Clause Does Not Obligate CCI To** 26 **Produce Documents Unrelated To “Corrupt Payments”**

27 Defendants’ constructive possession argument rests on a fundamental
28 misrepresentation of CCI’s cooperation clause. Defendants falsely assert that
CCI’s cooperation clause requires it to provide the government with *all* non-
privileged documents in its possession. Defendants’ Joint Motion to Compel

1 Discovery (Docket # 101) (“Mot.”) at 6 (“CCI’s Plea Agreement gives the
2 government the *unqualified right* to demand from CCI the production of *any* non-
3 privileged documents within CCI’s control.”) (emphasis added); *id.* at 8 (“CCI’s
4 Plea Agreement reflects that the government has the legal right to demand
5 production by CCI of *any* of its non-privileged documents in connection with the
6 government’s case.”) (emphasis added). In fact, the cooperation clause expressly
7 limits DOJ to non-privileged documents that relate to “*corrupt payments to foreign*
8 *public officials or to employees of private customers . . .*” Plea Agreement ¶ 6
9 (emphasis added). Thus, the *only* CCI documents possibly in the government’s
10 constructive possession are those relating to “corrupt payments” (a term the Court
11 should define narrowly for the reasons set forth in Section III.A.3 below).

12 The overwhelming majority of the 5.6 million documents in the electronic
13 databases have nothing to do with corrupt payments. As noted above, the
14 electronic databases contain documents from entire CCI email servers and
15 hundreds of employee hard drives that were not screened before being placed into
16 the databases. *See* Heberlig Decl. ¶¶ 8-9. The databases therefore contain an
17 enormous amount of material completely unrelated to “corrupt payments.” Indeed,
18 the vast majority of these documents have never been reviewed by Steptoe or EY
19 because they were not responsive to the various key word searches conducted to
20 identify relevant documents relating to corrupt payments. *Id.* ¶ 14.

21 Thus, the Court should summarily reject Defendants’ request for the
22 production of the entire electronic databases. The Court should also deny several
23 of Defendants’ other requests that on their face seek documents unrelated to
24 “corrupt payments,” including: (1) documents relating to any unspecified
25 investigations, audits or inquiries into allegations of wrongdoing by Defendants
26 (Mot. at 27); (2) any “training materials” related to FCPA and Travel Act
27 compliance (Mot. at 27-28); and (3) Defendants’ personnel files (Mot. at 28).¹

28 ¹ In any event, the Companies have already produced all documents of
which they are aware relating to categories 2 and 3 above.

1 **2. The Cooperation Clause Does Not Obligate CCI To**
2 **Produce Privileged Documents, Including The Materials**
3 **Generated During The Steptoe Investigation**

4 The government is not possibly in constructive possession of any privileged
5 material not already in its physical possession, because the cooperation clause of
6 CCI's plea agreement does not require it to produce any privileged documents to
7 the Department. Plea Agreement ¶ 6. As a result, under no scenario can the Court
8 grant Defendants' motion with respect to any privileged or work product protected
9 documents in the electronic databases, even those related to corrupt payments.

10 Basic searches of the electronic databases have revealed voluminous
11 material that appears to be protected by the attorney-client privilege and/or the
12 work product doctrine, including nearly 100,000 emails authored or received by
13 IMI's general counsel and another IMI in-house attorney, the entire hard drive of
14 IMI's general counsel, and thousands of emails authored or received by IMI's
15 outside counsel. *See Heberlig Decl.* ¶¶ 15-16. None of this material is in the
16 government's constructive possession.

17 Likewise, Defendants have no basis to compel disclosure of the materials
18 Steptoe prepared during its investigation on behalf of IMI and the Special
19 Committee.² These materials are clearly protected by the attorney-client privilege,
20 since the purpose of the Steptoe investigation was to render legal advice to IMI and
21 gather information in anticipation of a possible criminal prosecution. *Heberlig*
22 *Decl.* ¶ 6. Further, witness interview memoranda, attorney notes and other
23 investigative materials reflect confidential communications between counsel and
24 company employees. *See Upjohn Co. v. United States*, 449 U.S. 383, 390-95
(1981); *United States v. Chen*, 99 F.3d 1495, 1502 (9th Cir. 1996).

25 The investigation materials are also protected opinion work product because
26 they contain "mental impressions, conclusions, opinions, [and] legal theories" of

27 ² Among other things, Defendants seek "Steptoe's report and supporting
28 documentation," and "interview memoranda or underlying notes." Mot. at 23-24.

1 counsel. *See SEC v. Schroeder*, No. C07-03798 JW (HRL), 2009 WL 1125579, at
2 *6 (N.D. Cal. Apr. 27, 2009) (quoting Fed. R. Civ. P. 26(b)(3)(B)). Materials
3 reflecting Steptoe’s conclusions, opinions, and theories regarding its findings, the
4 legal implications of those findings, and recommendations to IMI and the Special
5 Committee, are all core opinion work product. The interview memoranda are also
6 opinion work product whose disclosure would reveal counsel’s mental impressions
7 and analyses. *See SEC v. Talbot*, No. CV-04-4556-MMM (PLAx), 2005 U.S. Dist.
8 LEXIS 12603, at *3 (C.D. Cal. Apr. 21, 2005) (citation omitted) (“[n]otes and
9 memoranda of an attorney . . . from a witness interview are opinion work product
10 entitled to almost absolute immunity.”); *In re Cardinal Health, Inc. Sec. Litig.*, No
11 C2 04 575 ALM, 2007 WL 495150, at *6 (S.D.N.Y. Jan. 26, 2007) (law firm’s
12 witness interview memoranda constitute “classic, core work product”).

13 None of the Steptoe investigation materials are in the government’s physical
14 possession.³ Because those materials are privileged, they are not subject to the
15 cooperation clause of CCI’s plea agreement and not in the government’s
16 constructive possession.

17 Defendants do not contend that the Companies have waived the attorney-
18 client privilege or the work product doctrine with respect to the Steptoe
19 investigation materials. *See Mot.* at 23-25. Any such claim, moreover, would be
20 irrelevant for purposes of assessing whether the government has constructive
21 possession of the Steptoe investigation materials under Rule 16. Under the
22 Confidentiality and Non-Waiver Agreement, the Department agreed not to contend
23 that IMI waived privilege by producing any material to the Department. Heberlig
24 Decl. ¶ 18 (Ex. A). Therefore, with respect to the government at a minimum, the

25 ³ Pursuant to the Confidentiality and Non-Waiver Agreement, Steptoe gave
26 the Department oral summaries of a subset of its witness interviews but did not
27 disclose any attorney notes or interview memoranda. Heberlig Decl. ¶¶ 12, 19. To
28 the extent any of the information is discoverable under Rule 16 or *Brady*, it is
already in the government’s possession.

1 Steptoe investigation materials must be considered privileged and the government
2 may not contend otherwise. In sum, the government has no authority to obtain the
3 Steptoe investigation materials pursuant to the CCI plea agreement.

4 **3. The Court Should Construe “Corrupt Payments” Narrowly**

5 As set forth above, under no scenario may Defendants obtain privileged
6 documents or documents unrelated to “corrupt payments” under their novel
7 constructive possession theory. The remaining question is whether the CCI plea
8 agreement obligates CCI to produce to the government upon request some universe
9 of documents related to “corrupt payments to foreign public officials or to
10 employees of private customers” beyond the documents it has already produced to
11 the Department. Plea Agreement ¶ 6. For the reasons set forth below, the Court
12 should interpret the cooperation clause of the plea agreement narrowly to cover
13 only the material already produced by the Companies.

14 The CCI plea agreement was drafted by the government and should be
15 construed narrowly against the party that authored the document. It is well-settled
16 in the Ninth Circuit that “[p]lea agreements are contractual in nature and are
17 measured by contract law standards.” *United States v. De La Fuente*, 8 F.3d 1333,
18 1337 (9th Cir. 1993) (internal quotations and citation omitted); *see also Poslof v.*
19 *Yates*, No. ED CV 06-1418-AG (SH), 2009 U.S. Dist. LEXIS 58716, at *54-55
20 (C.D. Cal. Mar. 26, 2009). Given the government’s superior bargaining power in
21 plea negotiations, it “must ordinarily bear the responsibility for any lack of clarity”
22 in a plea agreement. *United States v. Transfiguracion*, 442 F.3d 1222, 1228 (9th
23 Cir. 2006) (internal quotations and citation omitted); *De La Fuente*, 8 F.3d at 1338.
24 Courts are to construe ambiguities in plea agreements in favor of the defendant.
25 *Transfiguracion*, 442 F.3d at 1228. The government should be held to the literal
26 terms of the plea agreement, so that it “gets what it bargains for but nothing more.”
27 *Id.* (internal quotations omitted). Moreover, the terms of the CCI plea agreement
28 are contractual in nature and should be interpreted according to the understanding
of the parties at the time they negotiated the agreement. *See De La Fuente*, 8 F.3d

1 at 1337 (“In construing an agreement, the court must determine what the defendant
2 reasonably understood to be the terms of the agreement when he pleaded guilty.”);
3 *Tribble v. Hernandez*, No. CV 06-3992-PSG (PLA), 2009 U.S. Dist. LEXIS
4 83485, at *32 (C.D. Cal. Sept. 3, 2009) (citation omitted).

5 In this case, CCI and the Department negotiated the plea agreement after a
6 long period of cooperation by the Companies. Indeed, although the voluntary
7 disclosure occurred on August 15, 2007, the Department did not approve the plea
8 agreement until July 2009. During the course of negotiating the plea agreement,
9 the Department indicated that it was fully satisfied with CCI’s cooperation in the
10 investigation, including with respect to its production of documents. Indeed, the
11 Department indicted Defendants prior to the entry of CCI’s plea agreement,
12 indicating that the government believed that the Companies had provided all of the
13 material it needed to prosecute this case. At no time during the plea negotiations
14 did the government indicate that it would ask CCI to search for and produce
15 additional documents -- particularly not the sort of burdensome and expansive
16 search contemplated by Defendants here.

17 The government required CCI to agree to an “ongoing cooperation” clause
18 in the plea agreement. CCI did not object to the clause in principle because it had
19 cooperated with the investigation and was willing to continue to assist the
20 government as appropriate. CCI understood, however, that the cooperation clause
21 was intended to cover unanticipated contingencies or discrete items that the
22 government might request in connection with its prosecution of this case. CCI did
23 not understand, and the government never suggested, that the cooperation clause
24 would be used as a mechanism to provide discovery to Defendants or to fulfill the
25 government’s *Brady* obligations. CCI would not have agreed to the cooperation
26 clause and the other terms of the plea agreement had it understood that the
27 government would ask it to conduct broad, additional searches of documents for
28 purposes of satisfying the government’s discovery or *Brady* obligations. CCI had
already spent millions of dollars in attorneys’ and accountants’ fees to cooperate

1 with the government's investigation and believed the plea agreement would give it
2 closure and end the active cooperation phase of the case, with the exception of
3 whatever discrete follow-up requests the government deemed necessary in
4 connection with this case. CCI also understood that if the prosecutors made any
5 unreasonable or burdensome requests for documents pursuant to the cooperation
6 clause, it could seek review of those requests from supervisors within the
7 Department and, if necessary, seek relief from the Court. *See* Plea Agreement ¶ 28
8 (permitting the Department the discretion to "characterize" certain conduct as a
9 breach of the plea agreement, making clear that the Court would resolve any such
10 claims).

11 The government also informed CCI that the cooperation clause was a
12 standard term of the DOJ Fraud Section's corporate deferred prosecution or plea
13 agreements and not subject to negotiation. At the hearing on the Motion to
14 Intervene, the Court inquired whether the Department had entered into corporate
15 plea agreements in other cases with similar terms. It appears that such terms are in
16 fact routine. *See* Plea Agreement ¶ 8(b), *United States v. Kellogg Brown & Root*
17 *LLC*, No. H-09-071 (S.D. Tex. Feb. 11, 2009) ("[Defendant's] cooperation requires
18 that Defendant . . . provide access to copies of non-privileged original documents
19 and records relating to [corrupt] payments [known to the Defendant or its outside
20 counsel as of the date of this Agreement] . . . if requested to do so."); Plea
21 Agreement ¶ 10, *United States v. Siemens Aktiengesellschaft*, No. 1:08-cr-367-RJL
22 (D.D.C. Dec. 15, 2008) ("[Siemens AG's] obligation of truthful disclosure includes
23 the obligation, consistent with applicable law or regulation including labor, data
24 protection, and privacy laws, to provide, upon request, any non-privileged
25 document, record, or other tangible evidence in the custody and control of Siemens
26 AG relating to such corrupt payments, books and records, and internal controls
27 about which [DOJ and other government regulators] shall inquire of Siemens AG
28 subject to the direction of the Department where appropriate."); Plea Agreement
¶ 8(b), *United States v. Aibel Group Ltd.*, No. 4:07-cr-00005 (LNH) (S.D. Tex.

1 Nov. 21, 2008) (“[Defendant’s] cooperation requires that Defendant . . . [p]rovide
2 access to copies of original documents relating to . . . [illegal] payments [described
3 in the attached Statement of Facts] if requested to do so.”); Deferred Prosecution
4 Agreement ¶ 5(a), *United States v. AGA Med. Corp.*, No. 0:08-cr-172 (JMR) (D.
5 Minn. June 3, 2008) (“[AGA’s] obligation of truthful disclosure includes the
6 obligation of AGA to provide to the Department, upon request, any document,
7 record or other tangible evidence relating to such corrupt payments, books and
8 records, and internal controls about which the Department may inquire of AGA.”);
9 Deferred Prosecution Agreement ¶ 5(a), *United States v. York International Corp.*,
10 No. 1:07-cr-00253-RJL (D.D.C. Oct. 15, 2007) (“[York’s] obligation of truthful
11 disclosure includes the obligation of York to provide to the Department, upon
12 request, any document, record or other tangible evidence relating to such corrupt
13 payments, books and records, and internal controls about which the Department
14 shall inquire of York.”); Deferred Prosecution Agreement ¶ 4(a), *United States v.*
15 *Baker Hughes Inc.*, No. 4:07-cr-00130 (S.D. Tex. Apr. 11, 2007) (“[Baker
16 Hughes’s] obligation of truthful disclosure includes the obligation of Baker
17 Hughes to provide to the Department, upon request, any document, record or other
18 tangible evidence relating to such corrupt payments, books and records, and
19 internal controls about which the Department shall inquire of Baker Hughes.”);
20 Deferred Prosecution Agreement ¶ 6(a), *United States v. Statoil, ASA*, No. 1:06-cr-
21 00960-RJH-ALL (S.D.N.Y. Oct. 10, 2006) (“[Statoil’s] obligation of truthful
22 disclosure includes the obligation of Statoil to provide to DOJ and the SEC, upon
23 request, any document, record or other tangible evidence relating to such corrupt
24 payments, books and records, and internal controls about which the DOJ shall
inquire of Baker Hughes.”).

25 CCI’s understanding that the cooperation clause of the plea agreement
26 would not obligate it to satisfy the government’s discovery and *Brady* obligations
27 was entirely reasonable. Aside from a single out-of-circuit, distinguishable case,
28 *United States v. Stein*, 488 F. Supp. 2d 350 (S.D.N.Y. 2007), no court has adopted

1 Defendants' novel position that documents in the actual possession of a third party
2 are within the government's constructive possession for purposes of Rule 16. As
3 stated in more detail in the Companies' reply memorandum in support of the
4 motion to intervene (Docket #114), the proper procedure for obtaining documents
5 in the possession of a third party in a criminal case is to issue a subpoena pursuant
6 to Federal Rule of Criminal Procedure 17, which generally limits such requests to
7 specific, relevant and admissible documents.

8 For these reasons, the Court should interpret the cooperation clause, and the
9 term "corrupt payments," narrowly to cover only the materials that the Companies
10 have already produced to the Department. The IMI Board of Directors directed
11 Steptoe to cooperate fully with the Department's investigation and to produce all
12 relevant, non-privileged documents reflecting potentially improper payments to
13 employees of state-owned and privately-owned CCI customers. Heberlig Decl.
14 ¶ 7. The Companies produced relevant documents relating to the payments alleged
15 in the indictment in this case in two principal ways. First, with respect to the
16 relevant witnesses, the Companies ran key word searches in the electronic
17 databases, using search terms designed to identify documents related to corrupt
18 payments that were associated with the particular witness. *Id.* ¶ 13. Steptoe
19 attorneys reviewed the search hits and manually culled the key documents into a
20 witness binder. Steptoe informed the Department of these search terms and
21 procedures during the course of the investigation. *Id.* At the Department's
22 request, the Companies produced the witness binders for a subset of the witnesses
23 interviewed. *Id.* ¶ 20.

24 Second, with respect to the payments chart, which contains all of the
25 payments alleged in the indictment, the Companies produced underlying
26 documentation. *Id.* ¶ 22. Through these efforts, the Companies have already
27 produced to the government the relevant documents relating to the payments
28 alleged in the indictment in this case.

1 The government has not requested any additional documents from CCI and
2 has consistently maintained that it is satisfied with CCI's cooperation, including in
3 the sentencing memorandum filed with the Court in connection with the CCI plea
4 agreement. Requiring the Companies to conduct any further broad search for an
5 unspecified universe of additional documents relating to "corrupt payments" would
6 be profoundly unfair at this stage of the proceedings and would cause the
7 Companies to incur significant burden and expense. Accordingly, the Companies
8 respectfully ask the Court to honor the parties' agreement and deny Defendants'
9 motion to the extent it seeks the production of additional documents related to
10 "corrupt payments" in CCI's possession.

11 **B. The Charts In The Government's Physical Possession Are**
12 **Protected From Disclosure By The Attorney-Client Privilege And**
13 **The Attorney Work Product Doctrine**

14 Defendants have also moved to compel production of four analyses
15 produced to DOJ upon request: (1) a payments chart identifying potentially
16 improper payments, (2) an analysis of potentially improper gifts, entertainment,
17 and travel expenses, (3) an analysis of potentially improper expenses for customer
18 "training" trips, and (4) a chart of CCI's and IMI's revenue and profits (and all
19 versions thereof). The Companies understand that the government has already
20 produced to Defendants all of the documents that Steptoe reviewed and analyzed to
21 prepare these analyses. Not satisfied with the documents that provide the
22 underlying raw material, Defendants seek the charts as well. But Defendants'
23 counsel are perfectly capable of reviewing the documents themselves and drawing
24 their own conclusions. Defendants' request does not constitute a demand for
25 "discovery" so much as an effort to lighten the defense workload. In any event, as
26 set forth below, the charts are protected by the work product doctrine and the
27 attorney-client privilege.

28 **1. The Analyses Constitute Attorney Work Product**

The attorney work product doctrine protects from discovery "documents and
tangible things prepared by a party or his representative in anticipation of

1 litigation.” *In re Grand Jury Subpoena*, 357 F.3d 900, 906 (9th Cir. 2004). It
2 establishes a qualified immunity for documents within its ambit that may only be
3 overcome upon a showing of necessity or good cause.⁴ *Admiral Ins. Co. v. United*
4 *States Dist. Court*, 881 F.2d 1486, 1494 (9th Cir. 1989). The work product
5 doctrine especially protects “opinion work product” consisting of “mental
6 impressions, conclusions, opinions, or legal theories” of counsel. *See Schroeder*,
7 2009 WL 1125579, at *6. Opinion work product is discoverable only where it is
8 “at issue in a case and the need for the material is compelling.” *Holmgren v. State*
9 *Farm Auto Ins. Co.*, 976 F.2d 573, 577 (9th Cir. 1992).

10 Steptoe’s analyses constitute opinion work product, as even Defendants do
11 not dispute. The work product doctrine protects materials that are created “with an
12 eye toward the anticipated litigation.” *Hickman v. Taylor*, 329 U.S. 495, 498
13 (1947); *see also United States v. Lee*, No. 5:06 CR 0424 JW, 2009 WL 724042, at
14 * 2 (N.D. Cal. Mar. 18, 2009) (“In the Ninth Circuit, the test for whether an
15 attorney’s work product is protected from disclosure turns on whether the attorney
16 would have generated the material but for the prospect of litigation.”) (citing *In re*
17 *Grand Jury Subpoena (Torf)*, 357 F.3d 900, 910 (9th Cir. 2004)). Here, Steptoe
18 attorneys prepared the analyses to cooperate with an ongoing criminal
19 investigation of their client and attempt to avoid or mitigate any criminal
20 prosecution. *See Heberlig Decl.* ¶¶ 22-24. In addition, the analyses reflect
21 counsel’s mental impressions, opinions and conclusions about the payments and
22 expenses at issue. *Id.*

27 ⁴ Given that they possess all of the underlying documents, Defendants surely
28 cannot establish necessity or good cause.

2. Portions Of The Charts Are Protected By The Attorney-Client Privilege

Certain aspects of the payments chart and the chart of improper training trips are also protected by the attorney-client privilege.⁵ The attorney-client privilege protects from disclosure confidential communications in which a client seeks legal advice from an attorney. *See United States v. Martin*, 278 F.3d 988, 999 (9th Cir. 2002). The privilege also “‘applies to communications between corporate employees and counsel, made at the direction of corporate superiors in order to secure legal advice.’” *McCoy v. Sw. Airlines Co.*, 208 F.R.D. 617, 621 (C.D. Cal. 2002) (quoting *United States v. Chen*, 99 F.3d 1495, 1502 (9th Cir. 1996)); *see also Upjohn*, 449 U.S. at 390-95.

Defendants argue that the charts are not protected by the attorney-client privilege because they were created with the intent to produce them to the Department and therefore were never intended to remain “confidential.” Mot. at 17-19. But CCI does not claim that all of the analyses are protected by the attorney-client privilege. Rather, some of the narrative entries on the charts contain references to statements from witnesses that Steptoe interviewed during its investigation. These interviews, in which CCI and IMI employees participated at the direction of their superiors for the purpose of enabling Steptoe to render legal advice, are protected by the attorney-client privilege. *Upjohn*, 449 U.S. at 390-95. The excerpts or references to the contents of employee interviews that are contained in the narrative entries are thus privileged.

This information was not generated or created for DOJ’s benefit. It was obtained during privileged interviews that IMI and CCI conducted for their own benefit, and which they later disclosed in part to DOJ pursuant to a Confidentiality

⁵ The privilege log also asserted the attorney-client privilege over the chart of the gifts, travel and entertainment expenses. Upon further review, the Companies withdraw this privilege claim but continue to maintain that this chart is protected work product.

1 and Non-Waiver Agreement. *See* Heberlig Decl. ¶ 10. Steptoe did not conduct the
2 witness interviews on DOJ’s behalf or with the intent to disclose them to DOJ.
3 Steptoe has not provided DOJ with its written notes and memoranda of the
4 interviews, and has disclosed only oral summaries of a subset of its witness
5 interviews, which were primarily factual and some of which were high-level
6 overviews. *See id.* ¶ 19. Thus, the portions of the charts reflecting information
7 from the interviews are protected from disclosure by the attorney client privilege.

8 **3. The Companies Have Not Waived The Attorney-Client 9 Privilege Or Work Product Doctrine**

10 The Companies did not waive the attorney-client privilege or the work
11 product doctrine, because they produced the analyses pursuant to a written
12 Confidentiality and Non-Waiver Agreement with DOJ that preserved these
13 privileges. Ordinarily, the voluntary disclosure of an attorney-client
14 communication to a third party waives privilege, and work product protection is
15 waived where there is disclosure of work product to a third party such that an
16 adversary gains access to the material. *See United States v. Planche*, 913 F.2d
17 1375, 1379 (9th Cir. 1990) (attorney-client privilege waiver); *United States v.*
18 *Bergonzi*, 216 F.R.D. 487, 497 (N.D. Cal. 2003) (work product waiver). However,
19 the confidentiality agreement in this case expressly acknowledges the parties’
20 intent *not* to effect a waiver of any applicable privilege with respect to third parties,
21 and prevents the government from disclosing any information shared by the
22 Companies unless disclosure is “required by law.” *See* Heberlig Decl. ¶ 18 (Ex.
23 A).

24 Several courts have held that confidentiality agreements of the type executed
25 here operate to prevent waiver of the attorney client and work product privileges.
26 *See, e.g., In re McKesson HBOC, Inc. Sec. Litig.*, No. C-00-20030 RMW, 2005
27 U.S. Dist. LEXIS 7098, at *45-46 (N.D. Cal. Mar. 31, 2005); *In re: Natural Gas*
28 *Commodities Litig.*, 232 F.R.D. 208, 211 (S.D.N.Y. 2005); *Maruzen Co., Ltd. v.*
HSBC USA, Inc., No. 00 Civ. 1079 (RO), 2002 U.S. Dist. LEXIS 13288, at *5

1 (S.D.N.Y. July 18, 2002); *In re The Leslie Fay Cos., Inc. Sec. Litig.*, 161 F.R.D.
2 274, 285 (S.D.N.Y. 1995). *See also In re Steinhardt Partners LP*, 9 F.3d 230, 236
3 (2d Cir. 1993) (“[e]stablishing a rigid rule [that litigants always waive work-
4 product protection by producing documents to a government adversary] would fail
5 to anticipate situations in which . . . the SEC and the disclosing party have entered
6 into an explicit agreement that the SEC will maintain the confidentiality of the
7 disclosed materials”); *In re Subpoenas Duces Tecum*, 738 F.2d 1367, 1375 (D.C.
8 Cir. 1984) (suggesting that “insist[ing] on a promise of confidentiality before
9 disclosure” is a means of avoiding waiver); *In re Sealed Case*, 676 F.2d 793, 824
10 (D.C. Cir. 1982) (“[t]he SEC or any other government agency could expressly
11 agree to any limits on disclosure to other agencies consistent with their
12 responsibilities under law”); *Dellwood Farms, Inc. v. Cargill, Inc.*, 128 F.3d 1122,
13 1127 (7th Cir. 1997) (finding “reasonabl[e]” courts’ finding of waiver where a
14 party has failed to “obtain an agreement by the person to whom they made the
15 disclosure not to spread it further.”); *Diversified Indus., Inc. v. Meredith*, 572 F.2d
16 596, 611 (8th Cir. 1977) (establishing blanket exception to the waiver rule for all
disclosures to the government).

17 Defendants cite *United States v. Bergonzi*, 216 F.R.D. 487, 493-94 (N.D.
18 Cal. 2003), which declined to give effect to a confidentiality agreement between a
19 company and law enforcement personnel from the United States Attorney’s Office
20 (“USAO”) and the Securities and Exchange Commission (“SEC”). But the
21 confidentiality agreement in *Bergonzi* allowed both the USAO and the SEC to
22 disclose the materials to third parties if either decided that disclosure “further[ed]
23 [the] discharge of its duties and responsibilities.” *Id.* at 494. In addition, the
24 company consented to disclosure of the documents to a federal grand jury “as the
25 [USAO] deems appropriate, and in any criminal prosecution that may result from
26 the USAO’s investigation.” *Id.* (alteration in original). The court found that the
27 broad discretion these provisions conferred upon the USAO and the SEC to
28 disclose the materials to others undermined any notion of confidentiality. *Id.* at

1 493-94; *see also United States v. Reyes*, 239 F.R.D. 591, 604 (N.D. Cal. 2006)
2 (where confidentiality agreement allowed government entities to disclose shared
3 information to “further” their “law enforcement objectives” and their “duties and
4 responsibilities,” agreement was “little more than [a] fig leaf[]” because it
5 “essentially leave[s] the agencies to manage the disclosed information as they see
6 fit.”). The confidentiality agreement in this case, by contrast, limits DOJ’s ability
7 to disclose information to the *maximum extent possible*: it allows DOJ to disclose
8 information to a third party *only* if disclosure is “required by law.”

9 **IV. CONCLUSION**

10 For the foregoing reasons, IMI and CCI respectfully request that the Court
11 deny all aspects of Defendants’ Joint Motion to Compel that seek production of
12 material in the Companies’ possession or over which the Companies have invoked
13 the attorney-client privilege and/or the attorney work product doctrine.

14
15 Dated: October 21, 2009

Respectfully submitted,

16 STEPTOE & JOHNSON LLP

17 By: /s/ Brian M. Heberlig

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20 Components, Inc.
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13
14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

16
17 UNITED STATES OF AMERICA,

18 Plaintiff,

19 vs.

20 STUART CARSON, HONG
21 CARSON, a/k/a "Rose Carson,"
22 PAUL COSGROVE, DAVID
EDMONDS, FLAVIO RICOTTI, and
23 HAN YONG KIM,

24 Defendants.

Case No. SA CR 09-0077-JVS

**DECLARATION OF
BRIAN M. HEBERLIG IN
SUPPORT OF THE OPPOSITION
OF IMI plc AND CONTROL
COMPONENTS, INC. TO
DEFENDANTS' JOINT MOTION
TO COMPEL DISCOVERY**

Assigned to: Hon. James V. Selna

Date: November 9, 2009
Time: 3:00 p.m.
Place: Courtroom 10C
411 West Fourth Street
Santa Ana, CA 92701-4516

1 Pursuant to 28 U.S.C. § 1746, I, Brian M. Heberlig, hereby declare:

2 1. I am a partner in the Washington, D.C. office of Steptoe & Johnson
3 LLP (“Steptoe”). I am counsel to IMI plc (“IMI”) and its wholly-owned
4 subsidiary, Control Components, Inc. (“CCI”) (collectively “the Companies). I
5 submit this declaration in support of the Opposition by Intervenors IMI plc and
6 Control Components, Inc. to Defendants’ Joint Motion to Compel.

7 **Background**

8
9 2. CCI is a Delaware corporation headquartered in Rancho Santa
10 Margarita, California (“RSM”). CCI sells “severe service” valves designed to
11 operate in harsh operating conditions such as fossil fuel and nuclear power plants,
12 oil and gas facilities, and power generation facilities worldwide.

13 3. CCI is a wholly-owned subsidiary of IMI, a corporation organized
14 under the laws of England and Wales with its headquarters in Birmingham, U.K.
15 IMI’s stock is publicly traded on the London Stock Exchange.

16 4. IMI owns additional subsidiaries organized in other jurisdictions that
17 sell severe service valves under the CCI trademark. These affiliated entities
18 include CCI AG, a Swiss corporation; CCI Valve Technology AB, a Swedish
19 corporation; CCI Valve Technology AG, an Austrian corporation; CCI KK, a
20 Japanese corporation; CCI Limited, a Korean corporation; Control Components
21 India Pty Ltd., an Indian corporation; and CCI (Shanghai) Co. Ltd., a Chinese
22 corporation. These CCI companies are commonly managed by a president and a
23 senior management team based in RSM. Although each CCI company has
24 developed business practices unique to its region, to a significant degree the
25 various affiliated CCI companies are operationally integrated under a common
26 business plan.

27
28

1 **The Steptoe & Johnson LLP Investigation**

2 5. In mid-2007, CCI and IMI discovered evidence of possibly improper
3 payments made by CCI and its employees.

4 6. In August 2007, IMI, through its Board of Directors, retained Steptoe
5 & Johnson LLP (“Steptoe”) to investigate CCI’s business practices and potential
6 violations of the Foreign Corrupt Practices Act to determine the relevant facts in
7 order to provide IMI with legal advice. IMI contemplated that the investigation
8 would include interviews of CCI and IMI employees. IMI also retained Steptoe to
9 advise the company with regard to any interactions with U.S. governmental
10 authorities, including the Department of Justice (“DOJ” or “the Department”), and
11 to handle any enforcement action arising out of the events under investigation.

12 7. IMI, through its Board of Directors, directed Steptoe to cooperate fully
13 with the Department’s investigation and to produce all relevant, non-privileged
14 documents reflecting potentially improper payments to employees of state-owned
15 and privately-owned CCI customers. On August 31, 2007, the IMI Board of
16 Directors created a Special Committee to supervise the Steptoe investigation.

17 8. In August 2007, Steptoe retained forensic accountants at Ernst &
18 Young (“EY”) to act as counsel’s agents and assist with document collection and
19 analysis. At Steptoe’s direction, EY secured potentially relevant documents and
20 electronic records worldwide, including entire email servers and forensic images of
21 over 200 computer hard drives.

22 9. EY compiled the documents it collected into searchable electronic
23 databases maintained by on EY’s servers. EY collected over 5.6 million
24 documents that it compiled into three searchable electronic databases stored on
25 servers maintained in the United States and the United Kingdom. The two U.S.-
26 based databases hold approximately 2.1 million and 1.7 million documents
27
28

1 respectively, amounting to approximately 925 gigabytes of data, while the U.K.-
2 based database holds approximately 1.8 million documents, which amounts to 582
3 gigabytes of data. The databases do not contain a precise page count of all of the
4 documents. According to EY, using a conservative estimate, there are 50,000
5 pages per gigabyte, which amounts to approximately 75 million pages of
6 documents in the three databases.

7 10. In connection with its investigation, Steptoe interviewed CCI and IMI
8 employees who were identified as having potential knowledge of the improper
9 payments at issue and other relevant issues. Steptoe attorneys conducting the
10 interviews always instructed the witness that the interview was confidential and
11 protected by the attorney-client privilege, and directed the employee to maintain
12 that confidentiality. Steptoe attorneys also provided “*Upjohn* warnings” to every
13 witness indicating that the contents of the interview were privileged, but that the
14 privilege and the decision whether to waive it belongs to IMI, not any individual
15 employee. Steptoe attorneys also informed every witness that they did not
16 represent the witness personally, but rather represented IMI.

17 11. Following the interviews, the attorney with primary responsibility for
18 taking notes during the interview drafted an interview memorandum based on the
19 attorney’s notes, recollection and impressions of the interview. These notes and
20 memoranda were not a verbatim transcript of the interview, but rather reflected the
21 attorney’s thoughts, impressions and opinions regarding counsel’s communications
22 with CCI and IMI employees. Some of these interview memoranda were
23 distributed in draft form to other attorneys who participated in the interview for
24 their comments based on their own notes, recollection and impressions of the
25 interview.

26 12. Steptoe intended for all of the attorney notes and interview
27 memoranda to remain confidential. Steptoe has not transmitted them to anyone,
28

1 including anyone at IMI or CCI. The Department has not asked IMI or CCI to
2 produce any attorney notes or memoranda summarizing the Steptoe interviews, and
3 IMI and CCI have not produced any such materials to the Department.

4 13. Prior to most of the interviews, Steptoe compiled relevant documents
5 relating to the particular witness. Steptoe identified these documents by running
6 key word searches in the EY databases. Steptoe attorneys reviewed the electronic
7 search results manually to identify the relevant documents for a particular witness.
8 These documents were typically placed into a witness interview binder, which was
9 used to interview the witness. Steptoe informed the Department of these search
10 terms and procedures during the course of the investigation.

11 14. Steptoe attorneys have not reviewed every document in the EY
12 databases to identify relevant documents. Because the databases include entire
13 company email and electronic document servers, as well as the contents of entire
14 computer hard drives, the vast majority of documents in the EY databases are
15 unrelated to corrupt payments to employees of CCI's state-owned and privately-
16 owned customers. Rather than engage in the time consuming and expensive effort
17 to review these millions of pages of documents, which counsel believed contained
18 many irrelevant documents, Steptoe identified the relevant documents in the EY
19 databases through targeted key word searches.

20 15. Steptoe has also not attempted to identify all of the documents in the
21 EY databases that are protected from disclosure by the attorney-client privilege and
22 attorney work product doctrine. It is apparent, however, that the EY databases
23 contain numerous privileged or work product protected documents. For instance,
24 one of the electronic databases contains the entire content of the computer hard
25 drive of IMI's general counsel. In addition, on September 29, 2009, I tasked an
26 associate at Steptoe to search in the electronic databases for all emails on which
27 IMI's general counsel and another IMI in-house attorney were the authors,
28

1 recipients or copied. The results of the searches yielded 73,838 email messages for
2 IMI's general counsel and 23,588 email messages for the IMI in-house attorney.

3 16. During the time period covered by the investigation, IMI was
4 represented in various matters by the outside law firms Steptoe, Allen & Overy,
5 and Pinsent Masons. On September 29, 2009, I also tasked an associate at Steptoe
6 to search the electronic databases for emails involving these three law firms. As
7 search for emails using the domain names of these law firms' email addresses in
8 the to, from or cc fields resulted in hits of 1,810 emails for Steptoe, 3,617 emails
9 for Allen & Overy, and 1,700 emails for Pinsent Masons.

10 **Cooperation with the Department of Justice's Investigation**

11 17. On August 15, 2007, IMI made a voluntary disclosure to the
12 Department in which it advised the Department of potential FCPA violations
13 committed by CCI and its employees.

14 18. On October 18, 1007, IMI and DOJ entered into a Confidentiality and
15 Non-Waiver Agreement. A true and correct copy of this agreement is attached as
16 Exhibit A.

17 19. Pursuant to the Confidentiality and Non-Waiver Agreement, Steptoe
18 has provided oral summaries of a subset of its witness interviews to DOJ. These
19 oral summaries were primarily factual in nature. Some of the oral summaries were
20 high-level overviews of the interviews.
21

22 20. Pursuant to the Confidentiality and Non-Waiver Agreement, Steptoe
23 also produced numerous documents, including a subset of the witness interview
24 binders described above. The documents in these witness interview binders were
25 Bates labeled with a prefix corresponding to the initials of the witness at issue --
26 such as "RC" for Rose Carson documents and "PC" for Paul Cosgrove documents.
27
28

1 It is our understanding that the government has produced all of these witness
2 binders to the defendants in discovery in this case.

3 21. In total, IMI and CCI produced approximately 36,930 pages of
4 documents to the Department during the investigation. In CCI's Sentencing
5 Memorandum filed on July 24, 2009, in *United States v. Control Components, Inc.*,
6 No. SA CR 09-00162-JVS (C.D. Cal.), CCI represented that Steptoe had produced
7 more than 42,000 pages of documents during the investigation. I have since
8 determined that this figure is erroneous. I regret this inadvertent error.

9 22. At the Department's request, in order to cooperate with the ongoing
10 criminal investigation and attempt to avoid or mitigate any prosecution of IMI and
11 CCI, Steptoe prepared and produced a chart summarizing various information
12 about the improper payments identified during the investigation. The chart
13 contains narrative descriptions of each payment containing counsel's mental
14 impressions, opinions and conclusions about the payments. Steptoe produced this
15 chart to the Department on April 18, 2008, and subsequently produced a few
16 revised versions of this chart. For each payment identified on the chart, Steptoe
17 produced underlying supporting documentation.

18 23. At the Department's request, in order to cooperate with the ongoing
19 criminal investigation and attempt to avoid or mitigate any prosecution of IMI and
20 CCI, Steptoe also produced a chart of gifts, travel and entertainment expenses
21 provided to customers and a chart of certain improper "training trips" provided by
22 CCI to employees of state-owned enterprises. Portions of the "training trips" chart
23 contains narrative descriptions reflecting counsel's mental impressions, opinions,
24 and conclusions about the matters at issue. Steptoe also produced to the
25 Department the supporting factual documentation upon which these analyses were
26 based.
27
28

EXHIBIT A

STEPTOE & JOHNSON LLP

ATTORNEYS AT LAW

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October 18, 2007

William B. Jacobson, Esq.
Assistant Chief
U.S. Department of Justice
Criminal Division, Fraud Section
1400 New York Avenue, NW
Washington, DC 20005

Re: IMI plc -- CCI Investigation

Dear Mr. Jacobson:

As you are aware, IMI plc of Birmingham, England, through a special Investigation Committee of its Board of Directors ("Company"), has retained Steptoe & Johnson LLP to conduct an internal investigation of certain transactions at its U.S. subsidiary, Control Components, Inc. ("CCP"). The Company has made a voluntary disclosure of the events at issue in the internal investigation to the Fraud Section of the Department of Justice ("DOJ") and intends to cooperate in your investigation. In light of the Company's interest in cooperating with DOJ's investigation, the Company has provided certain document compilations to DOJ and intends to provide additional information regarding the internal investigation to DOJ, including oral summaries of interviews, additional document and/or data compilations, and other investigative findings ("Confidential Information"). The Confidential Information may contain communications protected by the attorney-client privilege and material protected by the attorney work product doctrine.

Please be advised that by producing the Confidential Information pursuant to this agreement, the Company does not intend to waive any protection of the attorney-client privilege or the attorney work product doctrine that the Company could otherwise assert in the context of this investigation or with respect to third parties, government or non-government.

DOJ will not assert that the Company's production of Confidential Information pursuant to this agreement constitutes a waiver of the protection of the attorney-client privilege or the attorney work product doctrine as to any third party. Further, DOJ will not assert that the Company's production of Confidential Information to the U.S. government constitutes waiver of the attorney-client privilege or the attorney work product doctrine applicable to any other information, materials or communications not

STEPTOE & JOHNSON LLP

William B. Jacobson, Esq.
October 18, 2007
Page 2

so produced or provided. DOJ agrees not to assert that the fact that the Company has produced the Confidential Information provides additional grounds to obtain other documents or materials from the Company (although any such grounds that may exist apart from such production shall remain unaffected by this agreement). DOJ does not waive any other arguments it may have to seek to compel the production of materials or information that are not produced or provided pursuant to this agreement.

DOJ will maintain the confidentiality of the Confidential Information pursuant to this agreement and will not disclose it to any third party, except to the extent that DOJ determines in its sole discretion that disclosure is otherwise required by law.

DOJ's agreement to the terms of this letter is signified by your signature on the line provided below.

Sincerely,



Brian M. Heberlig

AGREED AND ACCEPTED:

The Department of Justice

By: 

William B. Jacobson
Assistant Chief
Fraud Section