

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**Case No. 08-CR-20675-SEITZ**

**Case No. 08-CR-20676-SEITZ**

**UNITED STATES OF AMERICA**

**vs.**

**CARLOS DE CESPEDES,**

**JORGE DE CESPEDES,**

**Defendants.**

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**UNITED STATES' SENTENCING MEMORANDUM FOR  
DEFENDANTS CARLOS DE CESPEDES AND JORGE DE CESPEDES**

The United States of America, through the undersigned Assistant United States Attorneys, respectfully submits this memorandum to address the factors enumerated in 18 U.S.C. §3553 (a), and to assist the Court in fashioning a just and appropriate sentence in this case.

**I. NATURE AND CIRCUMSTANCES OF THE OFFENSE; HISTORY AND CHARACTERISTICS OF THE DEFENDANTS**

**A. The Offenses Were Neither Aberrational Nor Impulsive; Instead, The Defendants Executed Two Distinct Crime Schemes Over Extended Time Periods.**

The Defendants' misconduct was not spontaneous and their resulting crimes were neither isolated nor impetuous. The De Cespedes brothers authored two entirely separate and distinct schemes; there was no interdependency between them and the commission of one did not functionally or logically lead to the other. The Defendants simply embarked on two entirely separate criminal ventures; the multiplicity of their wrongdoing tends to undermine the claim that their misconduct was aberrant.

Moreover, both schemes were carefully planned by the Defendants, and involved sophisticated means. The fraud scheme against Kendall Regional Hospital started with the diversion of medical supplies, but then evolved into a more complex scheme to create bogus purchase orders for medical supplies that were never delivered. The De Cespedes brothers carefully extracted the fraud proceeds from

Pharmed using a series of shell corporations, and then paid kickbacks to the hospital employees that handled the details of the scheme. The tax evasion scheme was likewise complex, and entailed the diversion of corporate funds through the creation of fictitious expenses and thereafter, the channeling of those funds through ostensibly independent companies in order to disguise the embezzlements from internal and external audit. Such premeditation and planning belies any claim that the misconduct was impulsive.

Finally, in this regard, the scheme persisted over substantial time periods. The fraud against Kendall Hospital lasted at least fourteen years, and became more pronounced and lucrative to the Defendants as time progressed. The tax scheme ran from about 2000 to 2004 and, like the hospital fraud, was embroidered and perfected over time. Both schemes were terminated not due to the Defendants' remorse or pangs of conscience, but because they were uncovered by third parties. At the time of their unmasking, both schemes were active and proceeding apace.

In sum, the meticulous planning and execution of the separate schemes over an extended period of time reveals a certain mind-set, or an established pattern of misbehavior rather than a sudden and short-lived departure from an otherwise law-abiding life.

**B. The Offenses Were Not Justified By Some Legitimate Need or Sympathetic Cause; Instead, They Were Motivated by Pure Greed.**

The offenses were not undertaken out of a misplaced desire to preserve Pharmed or to fund any legitimate personal or business need. To the contrary, the schemes reached their zeniths at the time when Pharmed was prospering and earning record profits. Nor did the Defendants need or require those additional proceeds; the Defendants were amply compensated and each had amassed considerable personal fortunes which more than provided for their lifestyles.

In this regard, it should be noted that the misappropriated monies were not used for any corporate purpose: in the fraud case, the illicit proceeds were promptly siphoned away from Pharmed (and its

minority shareholders), channeled to shell companies controlled exclusively by the Defendants, and then used for the benefit of the Defendants and their coconspirators. Pharmed did not derive any benefit from the fraud which was conducted by the Defendants under the company's auspices. Likewise, in the tax case, the Roche profits were regularly and surreptitiously removed from the Pharmed treasury and thereafter expended on the Defendants' personal affairs, including financing the Defendants' own investment company and underwriting their enjoyment of their lavish lifestyles.

In sum, their crimes were not committed to sustain a threatened business or to fund some other understandable or even sympathetic cause. Rather, they were motivated by pure greed and the desire for personal wealth and influence.

**C. The Offenses Victimized Others**

The offenses here were undertaken not only in disregard of the law, but with a specific purpose to damage other persons and institutions. In the fraud case, the Defendants knowingly and intentionally extracted \$5.4 million from a hospital serving the medical needs of South Florida patients. In doing so, the Defendants increased their personal wealth at the expense of the hospital and its patients.

The tax offense was specifically motivated by the Defendants' desire to withhold the benefits of the Roche contract from their fellow shareholders, whom they regarded as passive and unworthy of benefits from their efforts and risk-taking, notwithstanding that their fellow shareholders had served the company through economically difficult times and had received their shares in lieu of other compensation. That grudging attitude contrasts sharply with some of their charitable works: while they were willing to benefit strangers, they were, at the same time, stealing from persons whom they knew and worked with and with whom they jointly owned Pharmed. Their charity, it seems, did not begin at home.

Ultimately, the offenses resulted in destroying Pharmed and victimizing its several hundred employees. The Roche contract had long been manipulated and abused by the Defendants for their

personal benefit; when the contractual violation was discovered, the loss of the Roche relationship, together with the prior removal of a substantial portion of its profits, led to Pharmed's bankruptcy and the loss of employment by some 300 individuals.

**D. Mitigating Factors, Including the Defendants' Charitable and Philanthropic Works, Should be Viewed in the Appropriate Context.**

The Defendants have invited the Court to depart from the advisory guideline range based, in large part, upon their charitable and philanthropic endeavors. To be sure, the De Cespedes brothers have donated millions of dollars to various charitable organizations in South Florida and elsewhere. The De Cespedes' have also supported the community by donating their time, support, knowledge, and enthusiasm.

The United States does not seek to contest the De Cespedes brothers' charitable and philanthropic works; instead, it merely implores the Court to consider these good works in the appropriate context. Specifically, when evaluating the significance of their charitable donations, the Court should consider the De Cespedes brothers' contemporaneous criminal activity. In one character letter, for example, a supporter notes that the De Cespedes brothers donated more than \$5,000,000 to Jackson Hospital, a facility that provides medical services to the poor. This charitable donation is quite ironic, and is symptomatic of a troubling dichotomy that the Court will observe throughout the sentencing hearing. While the De Cespedes brothers donated \$5,000,000 to Jackson Hospital, they looted \$5,400,000 from Kendall Regional Hospital. Thus, taken in the appropriate context, the De Cespedes brothers' charitable efforts are less compelling and may, in fact, reflect negatively on their personal character. After all, charity is about personal sacrifice, not personal transgression.

The United States recognizes, of course, that the De Cespedes brothers also donated substantial sums of money to other educational and charitable organizations, including Florida International University and the Cuban American National Foundation, just to name a few. But again, when evaluating

these contributions, the Court should consider that the De Cespedes brothers implemented an elaborate scheme to siphon \$30 million of Roche contract profits away from Pharmed. In connection with that scheme, the De Cespedes brothers lined their pockets at the expense of Pharmed's minority shareholders, Roche, the IRS, and the American people. Put simply, the De Cespedes brothers donated millions, but also stole millions, thereby leaving some doubt as to who really funded their charities.

The De Cespedes brothers' charitable activities must also be viewed in the context of their extraordinary personal wealth and affluence. Quite simply, the Defendants enjoyed the resources, both financial and social, to make donations that pack far more notoriety than most people residing in this community. It would be manifestly unfair and unjust to substantially mitigate the Defendants' sentences based on their charitable donations, at least to the extent it would resemble a sentencing advantage based on wealth. Various co-defendants, including Joanna Delfel and Victor Garcia, had neither the financial wherewithal nor the social affluence to make extravagant charitable contributions, yet they are certainly less culpable than the De Cespedes brothers, and warrant a lesser sentence.

Moreover, a meaningful analysis of the De Cespedes brothers' "history and characteristics" should not be limited to their charitable contributions; the Court should also consider their conduct towards their victims, their subordinate employees, and their business partners. In that regard, the Court should consider the Defendants' conduct when their fraud scheme was unmasked during an internal investigation by HCA, Inc. (the parent company of Kendall Regional Hospital). When questioned about the apparent fraud, the Defendants attempted to shift blame onto their deceased brother, and onto a subordinate employee, Erika Urquiza, who they had personally recruited into the scheme. Likewise, in the tax investigation, the Defendants initially denied to the IRS any intent to evade the payment of taxes, albeit the avoidance of that obligation was a principal advantage to them of the scheme. These incidents demonstrate that the Defendants' character included a proclivity to deny criminal conduct with righteous

indignance, and to protect themselves at the expense of others.

Moreover, in considering the Defendants' request to mitigate their sentences based upon their charitable donations, the Court should recognize that the Defendants already have obtained important benefits from their charitable activities. For example, Florida International University named its athletic arena after Pharmed in 2004, thereby boosting the notoriety of the De Cespedes brothers and their company. The defendants' charitable activities also helped build their reputation as pillars of the community, from which they no doubt derived both marketing and psychological benefits.

For example, in May 1998, Carlos De Cespedes joined as a signatory on a letter sent to the then-Chairman and Publisher of the Miami Herald, Dr. David Lawrence, Jr. *See* Exhibit A (Letter and Accompanying News Article). The letter, which was signed by 25 local business leaders, bemoaned a then-perceived culture of corruption afflicting the Miami area. A portion of the letter follows:

“We have had it! We are outraged at what has happened in our beloved community. Once regarded as the crime capital of America, we are now perceived as its corruption capital

.....

We trust and hope you share our anger and outrage. We believe there is much we can do as a community to clean up our act. We need your help. We are asking you to join us for a Community Leadership Summit on June 19<sup>th</sup>.”

The letter illustrates several important points. The fact that Carlos De Cespedes was one of the signatories to this letter no doubt resulted at least in substantial part from the De Cespedes brothers' carefully built public reputation that permitted Carlos De Cespedes to represent himself as a paragon of commercial virtue. His inclusion as a signatory on the letter necessarily identified him as a community pillar, which could only have added value to the De Cespedes brand. Unfortunately, when Carlos De Cespedes was representing himself to the public as a paragon of commercial virtue, he was simultaneously engaged in a fraud against Kendall Regional Hospital. Indeed, the same year that Carlos De Cespedes signed the letter, 1998, the De Cespedes brothers made massive payments to contractors who were

remodeling the home of coconspirator Sylvia Oramas. Oramas was, of course, being compensated for generating bogus purchase orders for Pharmed supplies.

The United States offers these facts to underscore that, regrettably, the De Cespedes brothers governed themselves according to two distinct and irreconcilable codes of conduct. While they were in the public eye, the De Cespedes brothers carefully cultivated their reputation as philanthropists and incorruptible business leaders. In the privacy of their offices, however, the De Cespedes brothers turned to crime, deciding repeatedly to line their pockets at the expense of shareholders, vendors, customers, and others. The United States respectfully suggests when judging the DeCespedes brothers' character, the Court should consider their private conduct, when they believed no one was watching.

**II. THE NEED FOR THE SENTENCE TO REFLECT THE SERIOUSNESS OF THE OFFENSE, TO PROMOTE RESPECT FOR THE LAW, AND TO PROVIDE JUST PUNISHMENT.**

The United States believes that a substantial prison sentence is warranted in this case to promote respect for the law, and to properly reflect the seriousness of the De Cespedes brothers' offenses. In that regard, the United States notes that the guideline prison sentence is actually shorter in duration than the crime itself. The fraud scheme against KRMC lasted at least fourteen years; the guidelines prison sentence is approximately eight years. The United States is not promoting a "tit for tat" theory of sentencing. Instead, it believes that the guideline sentence is "sufficient, but not greater than necessary" to reflect the egregious and longstanding nature of this particular fraud.

The De Cespedes brothers suggest that they have already been adequately punished for their crimes because they lost their business (Pharmed), a substantial portion of their personal assets, and have suffered a highly-publicized "fall from grace" in the business community. These arguments are unavailing, and do not warrant a substantial departure from the guideline sentence. The De Cespedes brothers' reputational damage was self-inflicted and, in any event, does not obviate the need for formal

punishment within the confines of the criminal justice system.

While the defendants' reputations have taken the hits that ordinarily inflict well-known individuals who commit serious and long-running frauds, the defendants' own sentencing presentation firmly underscores that they are not societal outcasts and, to the contrary, retain a deep and loyal reservoir of support among their friends and backers. The defendants have amassed dozens of letters from a wide array of people— from priests, to business leaders, to former employees. The letters illustrate that the defendants have not been banished to some proverbial island. Instead, the letters indicate that these defendants likely enjoy a far more extensive network of support than most defendants who appear before this Court.

### **III. ADEQUATE DETERRENCE TO CRIMINAL CONDUCT**

General deterrence is a critical sentencing concern in this case. With increasing numbers of people being squeezed out of the health care system due to rising costs, health care related fraud is a matter of prime public importance. This certainly is the case in South Florida, which unfortunately is keenly afflicted by health care fraud. Moreover, events of recent months and recent years have shown repeatedly that commercial frauds extract a great toll not only upon the actual victims, but also upon uninvolved third parties left to question the security of their money.

This case presents these concerns and does so in a backdrop in which the public will take notice. Just as the defendants' notoriety has allowed them to tap into their network of supporters to weigh in their favor, their notoriety likewise will attract the attention of a broader spectrum of the community. The United States in no way suggests that the Court should "make an example" out of these defendants for the benefit of the public at large. Rather, the point is more nuanced. The notion of "general deterrence" relies on the view that the public as a whole internalizes the message delivered by sentences in criminal cases. In this case, the message that emerges from the sentence will be heard by a much broader range of the

public than in most cases. When the crimes under consideration inflict such real harms upon individual victims and society collectively, there is real reason why the sentence in this case needs to provide meaningful assurance that the criminal justice system provides appropriate punishment for these crimes.

#### **IV. THE NEED TO AVOID UNWARRANTED SENTENCING DISPARITY**

Avoiding unwarranted sentencing disparities is another important concern in this case. In that regard, the Court should consider that this case involves three coconspirators– Erika Urquiza, Joanna Delfel, and Victor Garcia– who are substantially less culpable than the De Cespedes brothers.

In asking the Court to mitigate their sentence because of their charitable activities and their network of supporters, the De Cespedes brothers are asking the Court to confer upon them benefits that are not reasonably accessible to the co-defendants. The co-defendants do not have the financial wherewithal to donate millions of dollars to charity. Nor do they have reservoir of connections and influence that oftentimes accompanies affluence.

Unjustifiably lenient treatment for the De Cespedes brothers likely will lead to one of two undesirable outcomes. If the Court were to grant a substantial variance based upon the De Cespedes brothers' charitable activities and letters of support, their sentences would edge too closely downwards towards the sentences of the substantially less culpable coconspirators, thus creating what amounts to unwarranted sentencing disparities. If the Court alternatively were to respond by reducing the sentences of less culpable conspirators in similar proportions, it would resolve disparity problems – but at an unfortunate cost. Five defendants in a 14-year health care fraud conspiracy that has attracted considerable

public attention would receive sentences substantially lower than merited. This would significantly undermine the general deterrence component that is so important in this case.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on December 20, 2008, the undersigned electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

“s/ Ryan K. Stumphauzer”  
RYAN K. STUMPHAUZER  
ASSISTANT UNITED STATES ATTORNEY