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 UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA, ) CR No. 08-59(B)-GW  
 14 )  
 Plaintiff, ) GOVERNMENT'S MEMORANDUM IN  
 15 ) RESPONSE TO DEFENDANTS'  
 v. ) SUPPLEMENTAL SENTENCING  
 16 ) INFORMATION FILED ON AUGUST 10,  
 GERALD GREEN and ) 2010  
 17 PATRICIA GREEN, )  
 ) Sent. Date: August 12, 2010  
 18 Defendants. ) Sent. Time: 9:30 a.m.  
 )  
 19 )  
 )  
 20 )

21 Plaintiff United States of America, through its counsel of  
 22 record, the United States Attorney's Office for the Central  
 23 District of California, and the Fraud Section, United States  
 24 Department of Justice, Criminal Division, hereby files the

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1 attached memorandum in response to defendants' Supplemental  
2 Sentencing Information filed on August 10, 2010.

3 DATED: August 11, 2010 . Respectfully submitted,

4 ANDRÉ BIROTTE JR.  
United States Attorney

5 ROBERT E. DUGDALE  
6 Assistant United States Attorney  
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7

8 \_\_\_\_\_/s/

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1 MEMORANDUM IN RESPONSE TO DEFENDANTS' SENTENCING INFORMATION

2 I.

3 INTRODUCTION

4 In a supplemental sentencing brief filed on August 10, 2010  
5 ("Def. 8/10/10 Br."), defendants GERALD GREEN and PATRICIA GREEN  
6 make two last attempts to persuade the Court to disregard the  
7 significant prison sentences that have been imposed in recent  
8 years, months, and weeks for violations of the anti-bribery  
9 provisions of the Foreign Corrupt Practices Act ("FCPA").

10 First, defendants attempt to improperly cast doubt on the  
11 relevancy of the recent sentencing of FCPA defendant Juan Diaz in  
12 United States v. Diaz, 09-CR- 20346 (S.D. Fla. 2010), claiming  
13 incorrect guidelines were used, his sentence is solely a place-  
14 holder, and that it somehow illustrates disparate treatment among  
15 FCPA cases. These arguments are factually incorrect and  
16 constitute yet another attempt to shift the Court's focus away  
17 from defendants' conduct, the posture of their case, and where it  
18 fits in within the contours of the FCPA sentencing landscape.

19 Second, defendants once gain compare apples to oranges by  
20 looking to government resolutions (including of civil claims) of  
21 FCPA-related investigations involving corporate defendants.  
22 Defendants' arguments have no place in an analysis under 18  
23 U.S.C. § 3553(a)(6) to avoid unwarranted sentencing disparities.

24 The Court should reject defendants' arguments and, as the  
25 government has previously argued, the should sentence each  
26 defendant tomorrow to 10 years in prison.

1 II.

2 DISCUSSION

3 A. DEFENDANTS DISCUSSION OF THE DIAZ CASE IS FACTUALLY  
4 INCOMPLETE AND INACCURATE

5 In their most recent filing, defendants attempt to cast the  
6 Diaz sentence as an example of disparate treatment in the FCPA  
7 landscape, and claim that the 57 months sentence he received is  
8 simply a "place-holder, a fictional sentence" not to be relied  
9 upon by the Court. (Def. 8/10/10 Br., at 4). Defendants'  
10 arguments are not only factually incomplete, they are also  
11 factually incorrect. The Diaz case is well within the FCPA  
12 sentencing landscape outlined for the Court in the government's  
13 Sentencing Memorandum Re: Three Most Instructive FCPA cases,  
14 filed May 6, 2010 (Docket Entry 346, the "Gov FCPA Landscape  
15 Memorandum").

16 Defendants' analysis of the Diaz case ignores its  
17 significance of three essential points, namely, that Diaz:

- 18 1. Promptly accepted responsibility for his actions  
19 (indeed, defendant Diaz agreed to waive indictment and  
proceed by information);
- 20 2. Promptly plead guilty after the filing of the charging  
21 document and gave a full account of his misconduct; and
- 22 3. Is cooperating with the government.

23 Defendants have done none of these things, yet they are  
24 asking for probation. On the other hand, in the Diaz case,  
25 despite doing all of these things, Diaz currently has a sentence  
26 of close to 5 years. This sentence, which does not reflect  
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1 credit Diaz may ultimately receive for cooperation, is well  
2 within the range of other individual FCPA sentences in the  
3 category of "Plea, No Cooperation", as pointed out in the Gov  
4 FCPA Landscape Memorandum at 7-11. For example, in United States  
5 v. Jumet, 09-CR-397 (E.D. Va. 2009), the defendant received 87  
6 months imprisonment, in United States v. Shu Quan Sheng, 08-CR-  
7 194 (E.D. Va. 2008), the defendant received 51 months  
8 imprisonment, and in United States v. Warwick, 09-CR-449 (E.D.  
9 Va. 2009), the defendant received 51 months imprisonment. The  
10 Diaz case is a prime example of how the FCPA sentencing landscape  
11 has developed defined contours, with defendant Diaz, falling in  
12 the mid to lower range of those contours for having promptly  
13 accepted responsibility for his actions.

14 While defendant Diaz may get a further reduction in sentence  
15 due to cooperation, as previously discussed in Gov FCPA Landscape  
16 Memorandum at 11-13, those defendants who plea and cooperate  
17 typically get lighter sentences than those who plea and do not  
18 cooperate. This entirely consistent with the well-accepted and  
19 well-reasoned principle that there would be considerably less  
20 cooperation -- and thus more crime -- if those who assist  
21 prosecutors could not receive lower sentences compared to those  
22 who fight to the last. U.S. v. Bartlett, 567 F.3d 901, 907 (7th  
23 Cir. 2009) (disparity was justified by material differences in  
24 offenders' conduct and acceptance of responsibility). Defendant  
25 Diaz's sentence is only a "place-holder" to the extent that it  
26 will be his sentence if he does not continue to cooperate with  
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1 the government and to possibly justify a lighter sentence in the  
2 future.

3 In light of the sentences other defendants have received  
4 after accepting responsibility for less egregious conduct,  
5 defendants' request for probation flies in the face of any  
6 semblance of similarity in sentencing.

7 Moreover, defendants' claim that the government neglected to  
8 use the sentencing guideline for public corruption applicable to  
9 the FCPA (U.S.S.G. § 2C1.1) in its calculation of defendant  
10 Diaz's total offense level is plain wrong. While the offense  
11 level was calculated through the application of the money  
12 laundering guideline (U.S.S.G. § 2S1.1), defendants chose to  
13 ignore the fact that in order to calculate a money laundering  
14 offense level under that section, one first calculates the base  
15 level for the underlying offense -- that is, the offense level  
16 for the FCPA violations under § 2C1.1. Therefore, the  
17 defendant's conduct for his FCPA violations has been properly  
18 taken into account and is reflected in his total offense level.  
19 Contrary to defendants' suggestion, the Diaz sentence is a proper  
20 and appropriate data point for the Court to consider --  
21 especially given that defendants here were likewise charged with  
22 (and convicted of) money laundering.

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1 B. THIS COURT SHOULD NOT COMPARE THIS CASE TO DISPOSITIONS  
2 AGAINST CORPORATE DEFENDANTS OR ENGAGE IN SPECULATION AS TO  
3 INDIVIDUALS NOT CHARGED OR SENTENCED

4 In arguing for non-custodial sentences in this case,  
5 defendants GERALD GREEN and PATRICIA GREEN once again point to  
6 pre-trial settlements in cases brought under the FCPA against  
7 corporate entities. (Def. 8/10/10 Br., at 5-8). Aside from the  
8 patent incomparability of civil settlements by the Securities and  
9 Exchange Commission, defendants' arguments are also misplaced  
10 under controlling criminal sentencing law. Defendants'  
11 discussion of apples and oranges has no place in a proper  
12 statutory analysis to avoid unwarranted sentencing disparities.

13 The penalties section of the FCPA's anti-bribery provisions  
14 sets forth criminal penalties as follows:

15 (1)(A) Any domestic concern that is not a  
16 natural person and that violates subsection  
17 (a) or (i) of this section shall be fined not  
18 more than \$2,000,000.

19 \* \* \*

20 (2)(A) Any natural person that is an officer,  
21 director, employee, or agent of a domestic  
22 concern, or stockholder acting on behalf of  
23 such domestic concern, who willfully violates  
24 subsection (a) or (i) of this section shall  
25 be fined not more than \$100,000 or imprisoned  
26 not more than 5 years, or both.

27 15 U.S.C. § 78dd-2(g).

28 Defendants cannot reasonably compare sentences imposed on  
business entities that may only be fined for violations of the  
FCPA's anti-bribery provisions, to sentences imposed on natural  
persons who may be fined and imprisoned for willful violations.

1           Moreover, the Court must decline defendants' remarkable  
2 invitation to join the wholesale speculation of FCPA "pundits" as  
3 to whether corporate settlements are "shielding" top corporate  
4 executives from punishment. (Def. 8/10/10 Br., at 5-8). Aside  
5 from being pure conjecture, such a question has no bearing on  
6 "the need to avoid unwarranted sentence disparities among  
7 defendants with similar records who have been found guilty of  
8 similar conduct." 18 U.S.C. § 3553(a)(6). A defendant cannot  
9 frame an unwarranted sentence disparity argument by comparing his  
10 case to someone who was "never convicted of any conduct and was  
11 never sentenced." United States v. Spoerke, 568 F.3d 1236, 1252  
12 (11th Cir. 2009).<sup>1</sup>

13           Defendants' speculation about lenient treatment of guilty  
14 executives in corporate settlements is not only baseless and  
15 false,<sup>2</sup> it is belied by defendant's own reference to some of the  
16 individual prosecutions that have occurred alongside corporate  
17 dispositions. (Def. 8/10/10 Br., at 6). It is the sentences of  
18 the individuals in those cases that are appropriate here for  
19 consideration and comparison.

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23           <sup>1</sup> This rule makes eminent sense given the myriad factors  
24 that could lead to a wrongdoer not having been sentenced, from  
25 the pendency of a non-public investigation, to jurisdictional and  
statute of limitations problems, to evidentiary problems.

26           <sup>2</sup> The Department of Justice's corporate resolutions  
27 generally include language making clear that they do not protect  
28 the officers, directors, and employees of the corporation or  
entity from prosecution.



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III.

CONCLUSION

The Court should disregard defendants' efforts to obscure the landscape of FCPA sentencing, which generally reflects significant prison terms for convicted individuals.

The government respectfully requests leave to supplement its sentencing position as necessary, and at the time of hearing.

DATED: August 10, 2010

Respectfully submitted,

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