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 9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 SCOTT QUINN BERKETT,

16 Defendant.

No. CR 21-292-MCS

GOVERNMENT'S SENTENCING POSITION
 FOR DEFENDANT SCOTT QUINN BERKETT

[Victim Impact Statements Filed
 Concurrently Under Seal]

SENTENCING DATE:
 September 12, 2022 at 3 P.M.

18
 19 Plaintiff United States of America, by and through its counsel
 20 of record, the Acting United States Attorney for the Central District
 21 of California and Assistant United States Attorney Kathy Yu, hereby
 22 files its sentencing position for defendant Scott Quinn Berkett
 23 ("defendant").

24 The government's sentencing position is based upon the attached
 25 memorandum of points and authorities, the concurrently filed Victim
 26 Impact Statements (filed under seal), the files and records in this
 27 case, the Presentence Investigation Report, and any other evidence or
 28 argument that the Court may wish to consider at the time of

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 Defendant refused to accept no for an answer.

4 In October 2020, Victim R.E. ("the Victim") and the defendant
5 were romantically involved. However, when she decided she no longer
6 wanted to be with him, defendant would not - could not - accept her
7 rejection. Defendant decided if he could not be with her, no one
8 could. Enraged by her rejection, he sought out a hitman on the Dark
9 Web to kill the Victim, paying \$14,000, and providing detailed
10 instructions on how he wanted the murder carried out (an accident or
11 robbery gone wrong) and requested photographic proof of the murder.
12 (Dkt. No. 1 (Complaint) at 10-15.) Fortuitously, defendant's plot
13 was foiled, and the government subsequently charged him with use of
14 interstate commerce facilities in the commission of murder-for-hire,
15 in violation of 18 U.S.C. § 1958.

16 In committing this offense, defendant demonstrated his callous
17 disregard for human life, his sophisticated attempts to evade law
18 enforcement detection, and his propensity to turn to violence when
19 provoked. Consistent with the plea agreement (Dkt. No. 57 (Plea
20 Agreement) at ¶ 3(d)), therefore, the government recommends a
21 sentence of 60 months' imprisonment. The government further
22 recommends a three-year period of supervised release (the maximum
23 term available for this type of offense), a fine of \$20,000, and a
24 special assessment of \$100.

25 **II. DEFENDANT'S CONDUCT**

26 As set forth in the Plea Agreement (¶ 9), defendant admitted the
27 following facts:
28

1 In approximately April 2021, defendant solicited and paid for
2 murder-for-hire services via a website on the Dark Web ("Dark Web
3 Group") that purportedly offered murder-for-hire services, in order
4 to have victim R.E. murdered. Specifically, using the username
5 "Ula77," and via the internet, defendant provided the Dark Web Group
6 with specific directions and details about his target victim R.E. As
7 payment for R.E.'s murder, defendant sent the Dark Web Group Bitcoin
8 payments totaling approximately \$13,000.

9 In fact, the Dark Web Group does not provide murder-for-hire
10 services, and instead, provided defendant's communications and other
11 related information to law enforcement.

12 In May 2021, an undercover law enforcement officer contacted
13 defendant while posing as the hitman defendant believed he had hired
14 from the Dark Web Group. On May 19, 2021, the undercover law
15 enforcement sent defendant pictures of victim R.E. and defendant
16 confirmed that R.E. was his intended victim and that defendant had
17 made Bitcoin payments to obtain her murder. Defendant further
18 requested proof of R.E.'s successful murder. Finally, defendant made
19 an additional \$1,000 payment to the undercover law enforcement
20 officer via Western Union to obtain the murder of victim R.E.

21 **III. GUIDELINES CALCULATION**

22 The government concurs with the Probation Officer's calculations
23 as to the offense level and criminal history. The PSR concluded that
24 the base offense level was 32 based on U.S.S.G. § 2E1.4 (PSR ¶ 19).
25 Coupled with a criminal history category of I (PSR ¶ 35), the
26 Guidelines range is 87 to 108 months' imprisonment. (PSR ¶ 79.)

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1 **IV. THE GOVERNMENT'S RECOMMENDATION IS SUPPORTED BY THE FACTS OF**
2 **THIS CASE**

3 Based on the facts of this case, the government recommends a
4 sentence of 60 months' imprisonment, a three-year period of
5 supervised release, a fine of \$20,000, and a special assessment of
6 \$100.¹

7 **A. The Severity and Sophistication of the Offense and the Need**
8 **to Protect the Public Are Aggravating Factors**

9 Defendant's crime was not a momentary lapse in judgment, but a
10 premeditated plot to kill the Victim because she rejected his
11 advances. While attempting to take a life is atrocious enough,
12 defendant's chosen method of carrying out the crime - using the Dark
13 Web to hire a hitman and cryptocurrency - speak to his
14 sophistication, meticulous planning, and attempts to anonymize his
15 illegal conduct in the commission of this offense, and are
16 aggravating in nature.

17 The Victim, Victim's mom, Victim's sister, and Victim's dad
18 submitted Victim Impact Statements, which have been concurrently
19 filed under seal. All four statements touch on the anxiety and fears
20 that have taken over their lives due to defendant's actions, and the
21 permanent impact this crime has had - and will continue to have - on
22 their lives.

23 "What the defendant has done to me will haunt me for the rest of
24 my life," the Victim says, "[T]his is something I fear I'll never
25 truly forget or recover from." Even a year later, she still suffers
26

27 ¹ As of this filing, the government has not received any
28 requests for restitution from the Victim, and does not anticipate
requesting restitution in this matter.

1 from anxiety, shock, insomnia, and nightmares; the events "play[]
2 over and over" in her mind "on an almost daily basis." (Ex. A at 1.)
3 Even simple daily tasks like taking out the trash or working the
4 night shift can leave the Victim paralyzed with angst, and such
5 anxieties are exacerbated upon seeing someone who resembles the
6 defendant or a passing glimpse of a California license plate. (Ex. A
7 at 1; Ex. D at 1.)

8 The family shares in the Victim's feelings of helplessness and
9 anxiety. The Victim's mom writes, "There is a man in this world that
10 wants my child dead. A man that wants a picture of her corpse. If I
11 word this too strongly, who's to say it won't anger him further. He
12 isn't going to be locked up forever. If he was bold enough to do
13 this, what else is he capable of?" (Ex. B at 1.) They recount how
14 the Victim was before the offense - someone who had "a room full of
15 stuffed animals, watches cartoons," "dots her I's with hearts," who
16 was "always so kind to everyone" and "always thinking of others over
17 herself." (Ex. B at 1; Ex C. at 1.) The family has had to watch
18 their loved one be "destroyed and broken," with the knowledge that
19 defendant "fully intended to take [the Victim] . . . without
20 hesitation," and that "[t]he rest of her life will be filled with the
21 constant fear that someone will kill her." (Ex C at 1.) Nothing
22 will "restore" the Victim to the way she was before she met the
23 defendant. (Ex. D at 1.)

24 While the Victim has tried to move on, defendant "stole[] her
25 innocence" and "her ability to trust herself and everyone else."
26 (Ex. B at 1.) The Victim's family has been forced to move because
27 defendant knows where they live and they are fearful of what he may
28 do upon release. (Ex. B at 1.) The family also reflected on their

1 fears for other women who may come into defendant's life after
2 incarceration. (Ex. B at 1; Ex. C at 1.)

3 No family should endure what the Victim's family has had to
4 endure. Only a serious sentence by this Court can reflect the
5 severity of the offense, protect the public against this defendant,
6 and deter other would-be offenders from engaging in such conduct.

7 **B. Defendant's Mental Health Issues Are Already Reflected in**
8 **the Government's Recommendation of a 60-Month Sentence**

9 Defendant's mental health condition is a mitigating factor (PSR
10 ¶¶ 58-60); however, it is already accounted for in the government's
11 recommendation of 60 months' imprisonment. A further variance would
12 not reflect the seriousness of the offense or the permanent harm
13 defendant inflicted on the Victim and her family.

14 **C. A Three-Year Term of Supervised Release Is Appropriate**

15 Given defendant's impulse control issues, tendency to turn to
16 violence when provoked, and admitted and documented mental health
17 issues (PSR ¶¶ 58-60), the government believes the maximum term of
18 supervised release of three years is reasonable and appropriate in
19 this case. A three-year period of supervised release will allow
20 continued monitoring of defendant's adjustment to society after
21 serving his term of imprisonment, ensure that he continues to obtain
22 mental health treatment and/or other rehabilitative care, and help
23 protect the public from any relapses. 18 U.S.C. 3583(c).

24 **D. A Fine of \$20,000 Should be Imposed**

25 The Guidelines state that, "the court shall impose a fine in all
26 cases, except where the defendant establishes that [she] is unable to
27 pay and is not likely to become able to pay." U.S.S.G. § 5E1.2 (a)
28 (emphasis added). The Probation Officer concludes that defendant

1 "does not have the ability to make an immediate payment toward a
2 fine." (PSR ¶ 75.) However, while the former may be satisfied here
3 (defendant is currently unable to pay), the latter (defendant's
4 future inability to pay) is not.

5 Defendant is 25 years old, has a high school degree (PSR ¶ 48),
6 has specialized training as a software technician (PSR ¶ 67), and up
7 until the time of the offense, was working as a software technician
8 making \$650 a month (PSR ¶ 69). Notably, defendant already has a job
9 lined up when he is released - as a software technician with his
10 previous employer. (PSR ¶ 50.)

11 In determining the propriety and amount of a fine, the Court
12 "shall consider" the following, among other things: "the need for the
13 combined sentence to reflect the seriousness of the offense . . . to
14 promote respect for the law, to provide just punishment, and to
15 afford adequate deterrence"; "any evidence presented as to the
16 defendant's ability to pay the fine (including the ability to pay
17 over a period of time) in light of [his] earning capacity and
18 financial resources"; and "the expected costs to the government of
19 any term of probation, or term of imprisonment and term of supervised
20 release imposed." (U.S.S.G. §§ 5E1.2(d); see also 18 U.S.C.

21 § 3572(a).) As the Guidelines make clear, "[t]he amount of the fine
22 should always be sufficient to ensure that the fine, taken together
23 with other sanction imposed, is punitive." (U.S.S.G. § 5E1.2(d).)
24 Here, the Guidelines range for a fine against defendant \$30,000 to
25 \$250,000. (PSR ¶ 87.)

26 Based on the facts in this case (in particular, defendant's
27 future ability to pay), the government recommends a below-Guidelines
28 fine of \$20,000. Defendant is currently 25 years old, has no

1 liabilities, has no dependents, and while the income from his former
2 employment was not substantial, he has demonstrated he can find and
3 maintain stable employment - so much so that he already has
4 employment for when he is released. See United States v. Orlando,
5 553 F.3d 1235, 1240 (9th Cir. 2009) ("The defendant bears the burden
6 of proving he is unable to pay the fine . . . However, the court may
7 fine a currently indigent defendant, if it finds that he has earning
8 capacity to pay the fine in the future."); United States v. Haggard,
9 41 F.3d 1320, 1329 (9th Cir. 1994) (no error in imposing fine where
10 defendant could "earn the money to pay a fine by working in the
11 Inmate Financial Responsibility program while incarcerated"). See
12 generally United States v. Stoddard, 150 F.3d 1140, 1147 (9th Cir.
13 1998) (quotations omitted) (analyzing "future ability to pay" by
14 considering defendant's "history of . . . professional and business
15 life," which showed he was "a successful individual who could become
16 successful again"). Indeed, despite defendant living at home and
17 making only \$650 per month as a software technician, his offense
18 involved the payment of approximately \$14,000 to have the Victim
19 killed - demonstrating his access to financial resources. (PSR ¶¶ 9-
20 10.)

21 Assuming the Court imposes the sentence recommended by the
22 government (60 months), defendant would only be about 30 years old at
23 the time of release, and would still have many employable years
24 before him. In conjunction with a custodial sentence of 60 months as
25 well as a three-year period of supervised release, a fine of \$20,000
26 further impresses upon defendant the seriousness of the offense, as
27 well as afford additional deterrence - in the form of regular
28 payments.

1 **V. CONCLUSION**

2 Based on the facts of this case, the government recommends a 60
3 month term of imprisonment, a three-year period of supervised
4 release, a fine of \$20,000, and a special assessment of \$100.

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