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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

United States of America,

Plaintiff,

vs.

Jacob Matthew Medina,

Defendant.

) **19-cr-00329-01-DLR**
)
) **DEFENDANT JACOB MEDINA’S**
) **OBJECTIONS TO PRESENTENCE**
) **INVESTIGATION REPORT AND**
) **SUPPLEMENTAL SENTENCING**
) **MEMORANDUM**
)
)
)

Comes now, Defendant, Jacob Matthew Medina, by and through undersigned counsel, and hereby submits the following Objections to Presentence Investigation Report and Supplemental Sentencing Memorandum to this Court prior to his sentencing hearing. After further review and research with respect to the Presentence Investigation Report, hereinafter “PSR,” Mr. Medina submits substantive objections to the PSR which will change the guideline calculations. In addition, Defendant’s family, friends, and employer have provided character letters to support mitigation and a variance which were not available at the time his original sentencing memorandum was submitted.

1 In this case, Defendant objects to Paragraph 30 on grounds that a four-level
2 enhancement should not have been allocated pursuant to U.S.S.G. §2D1.1(b)(13), because
3 Defendant did not “knowingly” misrepresent or “knowingly” market a substance
4 containing fentanyl. Rather, the evidence in this case supports that Mr. Medina obtained,
5 packaged, and sold pills to buyers on the dark web on behalf of Ghost831, but there was
6 no evidence that he ever knowingly misrepresented what types of drugs he was selling, or
7 evidence that Mr. Medina was responsible for marketing the drugs. Rather, the evidence
8 supports that Mr. Medina sold pills through the dark web, and mailed them in packages
9 using various post offices in Peoria, Glendale, and Phoenix. Therefore, as there is no
10 evidence supporting this enhancement, this Court should disregard these points in
11 calculating the correct guideline range.
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18 In addition, Defendant Jacob Medina objects to the criminal history computations
19 set forth in paragraphs 39, 43, 44, and 45 on grounds that Defendant should not have
20 received one point for his juvenile conviction committed in 2009, and should not have
21 received 2 points for committing the instant offense while “under a criminal justice
22 sentence”. To be sure, his juvenile conviction is too old and should not have been counted
23 pursuant to U.S.S.G. §4A1.2(d)(2)(B), and he was not under a criminal justice sentence at
24 the time he committed the instant offense, which is conceded by the probation department
25 in the PSR. Without these miscalculations, Defendant’s criminal history points should
26 total 5 instead of 8, establishing a Criminal History Category III instead of IV.
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1 Accordingly, based on the objections set forth in this memorandum, with a Total
2 Offense Level of 31 (instead of 35) and Criminal History Category III, Defendant's
3 advisory guideline range should be 135 to 168 months' imprisonment.
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5 Pursuant to the sentencing factors set forth in 18 U.S.C. §3553(a), Defendant Jacob
6 Medina requests that this Court accept the plea agreement, and impose a sentence below
7 the advisory guideline range, after making the aforementioned corrections to the guideline
8 calculations. In this case, Mr. Medina should receive a reasonable variance from the
9 guidelines to avoid unwarranted sentencing disparities and to account for Defendant's
10 good character, strong family support and efforts at rehabilitation. In particular, Defendant
11 has received overwhelming support from family and friends who believe that Mr. Medina
12 has potential for rehabilitation. In addition, Mr. Medina is currently taking educational
13 classes while in custody in order to make positive steps towards rehabilitation. Given Mr.
14 Medina's, character, family support, educational classes, substance abuse issues,
15 acceptance of responsibility, and the need to avoid unwarranted sentencing disparities, a
16 sentence of 10 years imprisonment constitutes a reasonable sentence, which will provide
17 sufficient punishment, promote respect for the law, and allow for adequate deterrence. In
18 addition, as Defendant is amenable to substance abuse treatment, undersigned counsel
19 requests that Mr. Medina be screened for participation in the Federal Bureau of Prisons
20 500 Hour Program.
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30 **I. FACTUAL BACKGROUND**
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1 By way of background Jacob Matthew Medina, hereinafter “Mr. Medina” is 29
2 years old and was born in Gilroy, California to Ernesto Medina and Ramona Ravsten.
3 Jacob has one sister Lauren Medina who resides in Mesa, Arizona. Jacob’s parents
4 separated when he was only 5 or 6 years old, and legally divorced when he was 13.
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7 Unfortunately, Jacob Medina was caught in the middle of his parents’ contentious
8 divorce during most of his youth, and he was shuffled back and forth from California to
9 Arizona. Jacob had a strained relationship with his mother for many years, as she was
10 addicted to methamphetamine from 1999 until 2015. During this period, Jacob witnessed
11 serious verbal altercations between his mother and sister which escalated to the point that
12 he had to call the police on multiple occasions. Jacob also had a falling out with his
13 father during his teen years, and ran away for a period of 5 weeks. Fortunately, Jacob
14 now maintains a good relationship with both of his parents. His mother stopped using
15 methamphetamine, resides in Mesa, Arizona, and works for a homebuilder. Jacob also
16 has a good relationship with his paternal stepsister and maternal half siblings.
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19 Jacob Medina is currently single. In 2017, Jacob became involved in a committed
20 relationship with Erika Marin, the co-defendant in this case. Jacob and Marin have a son
21 together, Alexander Marin (2) who currently resides with his mother in Phoenix.
22 Defendant is no longer in a relationship with Erika and has not had contact with her or his
23 son since his arrest for the instant offense.
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27 **Education and Employment History:**
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1 Jacob Medina attended Palma High School in Salinas, California from 2006 until
2 2007. Thereafter, Defendant attended multiple high schools in Arizona, as he dropped
3 out 3 or 4 times when he was having problems with his father and ran away from home.
4 Eventually, Mr. Medina was able to graduate from Corona Del Sol High School in 2010.
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7 Following high school, Mr. Medina attended Chandler Gilbert Community
8 College from 2010 until 2011, and then returned for one semester in 2012. While in
9 custody for this offense, Defendant started a two-year paralegal program which
10 commenced in May of 2021. Mr. Medina plans to earn a paralegal degree, business
11 degree, or a degree in the medical field during his incarceration.
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15 Jacob Medina has a strong work ethic. In 2017, Defendant worked full time as a
16 warehouse manager for Lotus Market in Mesa, Arizona for a period of four months.
17 From 2017 until 2018, Defendant worked as a warehouse manager for Moxie
18 Distribution in Tempe, Arizona, and also worked the nightshift on weekends as security
19 for BAC Lounge. Most recently, from October of 2018 until his arrest for the instant
20 action, Mr. Edina was employed full time with Carboline Company as a marketing
21 analyst, where he earned approximately \$4,000 per month.
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25 **Mental Health and Substance Abuse:**
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27 In the instant case, Jacob Medina has suffered from anxiety and depression since
28 he was 16 years old. Defendant attended therapy as an adolescent, and is currently on
29 medication for his anxiety and depression.
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1 In addition, Defendant concedes that he has a significant substance abuse problem.
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3 In particular, Jacob has consumed alcohol regularly since he was 16, and in excess since
4 his release from prison in 2017. In addition, Mr. Medina has been smoking marijuana
5 since he was 15, and started experimenting with drugs such as LSD, cocaine and
6 psilocybin during his teenage years. At age 22, Jacob was introduced to heroin while in
7 prison, and started using fentanyl at the age of 26. Jacob concedes that he needs
8 substance abuse treatment, and started taking classes for substance abuse and anger
9 management while in custody. Jacob Medina is amenable to further treatment, and
10 requests that he be considered for the Federal Bureau of Prisons 500 Hour Program.
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15 **Family and Character References:**

16 In the instant case, Jacob Medina has received an outpouring of support from
17 family, friends, and a former employer who will vouch for his integrity, good character,
18 generosity, strong work ethic, compassion for others, and devotion to his family.
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21 Ramona Ravsten is Jacob's mother. Ramona is very forthcoming in describing
22 the difficult path Jacob faced during his youth as the victim of a contentious divorce.
23 However, despite his struggles, Ramon shares that Jacob is a good person with a heart of
24 gold, who has reflected upon his transgressions and wants to give back to his community:
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27 "Jacob Matthew Medina is my son, and I am writing to give you a little bit
28 of history behind Jacob's story. He is such an awesome kid, happy child,
29 always smiling, and always obedient. His father and I got married at a very
30 young age and divorced at a very young age. Unfortunately, we did not
31 have the co-parenting skills to parent our young children to become healthy
32 minded, and to feel safe after a divorce. Instead, he witnessed an ugly
divorce, with brain washing, and custody battles for over a period of 10

1 years. We lost Jacob at the age of 15 when he ran away, he did not want to
2 move back to California where his father and his wife at the time wanted to
3 move. He learned how to survive on the streets and was vulnerable. He
4 was academically successful in school and played sports. This clearly was
5 not supposed to be his path. I have failed Jacob as a parent. Jacob was an
6 adult when he made his life choices, but his mind was not fully matured...

7 We talk almost every day about giving back to the community, and how he
8 would like to help kids that have gone through the same trauma. Jacob is
9 not what he looks like on paper, but he is a person who has a heart of gold
10 and would like to be a part of his son's life and help others that are
11 struggling in the communities." *(See character letter from Ramona*
12 *Ravsten, submitted to the probation department)*

13
14 Ernesto Medina is Jacob's father. Ernesto describes Jacob as a respectful young
15 man who has been a positive member of his community through his service as a member
16 of the Knights of Columbus:
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20 "Jacob was raised to be a respectful young man and has been a positive son
21 for his community as part of the Knights of Columbus in Chandler, AZ. He
22 is a newly father and would someday be a guidance to his son who is two
23 years old. His smiles that he brings and his positive nature is greatly
24 missed by me, Family and friends." *(See character letter from Ernesto*
25 *Medina, submitted to the probation department)*

26 Lauren Medina is Jacob's sister. Lauren and Jacob are only 18 months apart in
27 age and share a very close relationship. Lauren describes the difficult upbringing that she
28 and Jacob witnessed during their youth. While not an excuse for his actions, Lauren
29 expresses that despite his struggles, Jacob has always been a man of good character who
30 cares about his family, friends, and community:
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1 “As children we didn’t have a very good support system after the ages of 4
2 and 6. We were moved from our huge family in California to Arizona for
3 our parents to have a fresh start, but it was nothing but hell. They split
4 shortly after the move and we were pulled and pried in and out of custody
5 battles. I believe we were used as objects and we both have suffered
6 insecurities, and low self esteem from this. I am not making excuses for
7 my brother, but I do believe this played a huge role in the development of
8 our upbringing. Jacob is a beautiful person inside and out, and has a heart
9 of gold. He has always been more of a extravert, and had many friends in
10 school. He always made sure special needs kids were included.” *(See*
11 *character letter from Lauren Medina, submitted to the probation*
12 *department)*

13 Lourdes Rodriguez is Jacob’s maternal grandmother. Lourdes shares her love and
14 admiration for her grandson and explains some of the obstacles he faced during his youth.
15 Lourdes also shares her observations concerning Jacob’s good character, including
16 examples of how Jacob has made efforts to better his community and help raise his
17 siblings. Lourdes also believes that Jacob wants to be positive role model for his infant
18 son:
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21 “Jacob is very much loved by his family and friends. He is basically an
22 intelligent good young man with a good heart. He is always trying to help
23 his family, friends and the community. He was a member of the catholic
24 Knights of Columbus doing charity work to follow his paternal
25 grandfather’s legacy. He would transport the youth who didn’t have a ride
26 to attend their church services at another church. He was always trying to
27 help with raising his younger siblings who are now 12 and 14 years old...
28 Jacob is now a father himself who loves his 2 1/2 year old little boy
29 Alexander whom he has only seen twice while incarcerated. I believe
30 Jacob has learned from his poor decisions and tragic experience of being
31 incarcerated for 2 1/2 years and having a son of his own, desiring to be an
32 active responsible, positive, productive parent for the future of his son.”

1 *(See character letter from Lourdes Rodriguez, submitted to the probation*
2 *department)*

3
4 Rebecca Flores is Jacob’s aunt. Rebecca is employed as a correctional counselor
5 for a correctional prison in California. Rebecca has worked as a peace officer for 25
6 years. Ms. Flores has known Jacob his whole life, and shares her observations
7 concerning his good character:
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10 “When he moved to Arizona I was still a big part of his life. I would pick
11 him and his sister up in AZ to come visit his family in CA during his
12 summers. Jacob has a positive attitude, kind, giving and loving. He has
13 good academic qualities, as he was attending Jr. College classes. I have
14 instilled a Faith based Life for my family and have given Jacob this quality
15 in his life as well.” *(See character letter from Rebecca Flores, submitted*
16 *to the probation department)*

17 Daniella Heim has known Jacob Medina for 11 years. Daniella is a registered
18 nurse who works in a trauma emergency department, and is also taking classes to receive
19 her doctorate degree as a Nurse Practitioner. Daniella describes Jacob as a sweet, kind
20 gentleman and her best friend. Daniella shares her reflections concerning Jacob’s
21 character, and shares her opinion that Jacob has great potential for rehabilitation if given
22 the chance:
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26 “When I met Jacob Matthew Medina 11 years ago, he was the sweet, kind,
27 gentleman that I still know today. He became my best friend. Someone I
28 could trust with anything in life. I would happily leave him with my
29 children or dogs knowing they were always in safe hands. Jacob is a stand-
30 up man, with a good, honest heart and who is true to his word. He is
31 someone who also saw the good in others and would never jump to judge
32 someone based on mistakes others weren’t proud of ...He has had time to
examine his life, mistakes, what is important and what he wants out of this

1 life. He knows he has made mistakes but would like a second chance at
2 becoming an active member of society. He has a son and would like a
3 chance at being the best father, I know he can be. He wants a chance to be
4 the best friend, son and brother. I know in my heart when released, Jacob
5 will be a stand-up citizen, a positive addition to our community and fulfill
6 his second chance at life.” *(See character letter from Daniella Heim,*
7 *submitted to the probation department)*

8
9 Jay Johari is Jacob’s employer at R.J.E.LLC Glow Shots and Cocktails (formerly
10 BAC Lounge). Mr. Johari has known Jacob since February of 2017 and describes Jacob
11 as a sincere, hardworking individual. According to Jay, Jacob was reliable, showed up on
12 time, and performed well on the job. Jay Johari conveys his support for Jacob and
13 understands how difficult it has been for Jacob to be separated from his son:
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16 “I have been Jacob’s employer at R.J.E.LLC (glow shots and cocktails from
17 2017-2018, and in that time Jacob has always been a model employee and a
18 sincere, hardworking individual. Never had a problem showing up on time,
19 and doing what was asked of him. The restaurant industry is a very fast
20 pace, learn as you go kind of industry, which he did a great job. I
21 remember him talking about his child ...It is my belief that Jacob has done
22 and can continue to do a lot of good not only in the community but for my
23 business...Being locked up for over two years and missing his child will
24 put Jacob on the straight and narrow, his life depends on it.” *(See character*
25 *letter from Jay Johari, submitted to the probation department)*

26 With the support of his family, friends and employer, Jacob Medina has strong
27 potential for rehabilitation. To be sure, despite his difficult upbringing and past
28 transgressions, including his participation in the instant case, Mr. Medina is a man of
29 good character who wants to get help for his problems so that he can be a strong role
30 model for his son. Ultimately, Jacob Medina hopes for a reasonable sentence, with
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1 opportunities to continue his education and substance abuse treatment, so that he can
2 rehabilitate his life and support his family once he is released from custody.
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5 **The facts pertaining to the instant offense are as follows:**

6 On or about November 30, 2018, investigators with the Narcotics and Economic
7 Investigations (NECI) Task Force in Sacramento, California conducted an undercover
8 purchase of 3.5 grams of heroin from “Ghost831” an online market found on the dark
9 web, advertising heroin, methamphetamine and oxycodone. The investigation revealed
10 that Ghost831 was an account registered to Defendant Jacob Medina. Mr. Medina and
11 co-defendant Erika Marin mailed packages of illicit substances through the Dream
12 Market.
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17 On December 4, 2018 and thereafter, Defendant Jacob Medina shipped heroin
18 ordered by undercover investigators through the Arrowhead Post Office in Glendale,
19 Arizona. Mr. Medina and co-defendant Erika Marin was involved in several transactions
20 which occurred in November and December of 2018, to various locations in the United
21 States. On December 19, 2018, U.S. Postal inspectors in Arizona conducted an
22 undercover purchase of methamphetamine from Ghost831, and investigated other
23 purchases from Ghost831 between December of 2018 through February of 2019.
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28 Thereafter, on March 2, 2019, officers conducted surveillance at Defendant’s
29 residence located in Glendale, Arizona. Officers followed co-defendant Marin to post
30 offices in Peoria, Glendale, and Phoenix, where she mailed a total of 24 packages. U.S.
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1 Postal Inspectors obtained a search warrant for the packages. A subsequent search of
2 Defendant's residence on March 4, 2019 revealed weapons, ammunition, and various
3 pills containing narcotic substances. Defendant Jacob Medina was arrested on March 4,
4 2019, at which time he made a statement to authorities.
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6

7 Jacob Medina and Erika Marin are being held accountable for shipments of
8 various drugs, including 4 grams of heroin shipped on December 4, 2018; 3.7165 grams
9 of methamphetamine shipped December 31, 2018; 50.3 grams of fentanyl shipped March
10 2, 2019; and for the various drugs found during the search of his residence, including
11 46.8 grams of cocaine, 383.2 grams of fentanyl, 703 grams of heroin, 446.2 grams of
12 marijuana, and 49.3 grams oxycodone.
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16 On March 26, 2019, a five-count Indictment was filed in the United States District
17 Court, District of Arizona, charging two counts of possession with intent to distribute
18 fentanyl, possession with intent to distribute heroin, and possession of firearm in
19 furtherance of a drug trafficking crime. The Indictment includes a forfeiture allegation.
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22 On May 20, 2021 Jacob Medina pled guilty to Count 1 of the Indictment,
23 conspiracy to possess with intent to distribute controlled substances, which alleges that
24 on or between October 17, 2012 and March 4, 2019, Defendant Jacob Medina and Erika
25 Marin knowingly combined, conspired, confederated, and agreed together and with
26 others known and unknown, to possess with intent to distribute 400 grams or more of a
27 mixture containing a detectable amount of fentanyl, and 100 grams or more of heroin.
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1 In the instant case, Defendant Jacob Medina has a significant criminal history
2 characterized by two prior felony convictions, including aggravated assault and attempted
3 possession of marijuana for sale, which occurred in 2010 and 2014, respectively.
4 Defendant was sentenced to 3.5 years custody for his first drug trafficking offense. In
5 mitigation, Defendant's first felony conviction occurred 10 years ago, and his probation
6 was terminated early. With respect to his drug trafficking offense, Mr. Medina
7 successfully completed his community supervision in February of 2018, prior to the
8 commencement of this offense. In addition, while not an excuse for his conduct,
9 Defendant has serious problems with drug addiction, which undoubtedly contributed to
10 his involvement with drug trafficking offenses. In the instant case, Defendant's criminal
11 history points should total 5 (pursuant to the objections below), establishing a Criminal
12 History Category III. Defendant is facing his second drug trafficking offense.

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19 According to the Presentence Investigation Report, and objections submitted
20 herein, Jacob Medina's applicable guideline range should be 135 to 168 months'
21 imprisonment, based on a Total Offense Level 31 and Criminal History Category III.
22 Under the terms of plea agreement, Defendant's sentence shall not exceed 204 months,
23 and such plea agreement does not preclude a sentence below this range.

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27 Mr. Medina is sincerely remorseful for his conduct with respect to the instant
28 offense. Defendant regrets his actions, and realizes that he will have to face a significant
29 penalty as a result of his participation in criminal activity. To be sure, Jacob Medina has
30 demonstrated acceptance of responsibility and admitted to the factual basis of the plea
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1 agreement. In addition, Defendant concedes that he has serious substance abuse
2 problems which contributed to his participation in the instant offense.
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4 In this case, despite his serious criminal involvement in the instant conspiracy, Mr.
5 Medina is a hardworking individual with good character who sincerely regrets his
6 actions. Mr. Medina has learned an important lesson, and realizes that he will have to
7 change his life if he wants to be a part of his son's upbringing in the future. Because of
8 this realization, Jacob has started to make small steps in the right direction, including
9 taking educational classes while in custody. While he has a long way to go, Mr. Medina
10 plans to work on his substance abuse addiction and further his education so that he can be
11 a strong role model for his son by the time he is released from prison. To this end, Mr.
12 Medina requests that he be considered for the Federal Bureau of Prisons 500 Hour
13 Program, so that he can continue his substance abuse treatment, and further requests that
14 he be given a reasonable variance in consideration of his mitigating factors, as well as the
15 need to avoid unwarranted sentencing disparities, so that he has a chance to be part of his
16 son's life after being released from prison. Based on the totality of circumstances, a
17 sentence not to exceed 10 years is sufficiently punitive for Defendant's second drug
18 trafficking offense, and will provide adequate deterrence from future criminal conduct.
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1 **II. OBJECTIONS TO PRESENTENCE INVESTIGATION REPORT**

2 In the instant case, Defendant Jacob Medina has substantive objections to the PSR
3 which impact his guideline calculations:
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5 **Paragraph 30:**

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7 Paragraph 30 applies a four-level enhancement on grounds that “defendant and co-
8 defendant knowingly misrepresented or knowingly marketed as another substance a
9 mixture or substance containing fentanyl. The fentanyl pills were allegedly marketed as
10 oxycodone 30 mg. Based on this assertion, the probation department added four levels,
11 citing to U.S.S.G. §2D1.2(b)(13).*(Defendant notes that there is no U.S.S.G.*

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13 *§2D1.2(b)13), and believes the probation department meant to cite to §2D1.1(b)(13))*
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15
16 U.S.S.G. §2D1.1(b)(13) provides in pertinent part:

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18 “(13) If the defendant knowingly misrepresented or knowingly marketed as
19 another substance a mixture or substance containing fentanyl (N-phenyl-N-
20 [1-(2-phenylethyl)-4-piperidinyl] propanamide) or a fentanyl analogue,
21 increase by 4 levels.” *U.S.S.G. §2D1.1(b)(13).*”

22 In the instant case, Defendant objects to paragraph 30 because there is insufficient
23 evidence that Defendant knowingly misrepresented or knowingly marketed as another
24 substance a mixture or substance containing fentanyl. To be sure, the probation supports
25 this allegation by stating that the fentanyl pills were marketed as oxycodone.
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28 This enhancement is unwarranted when looking at the facts surrounding
29 Defendant’s involvement with the sale of pills in this case. In particular, the probation
30 department concedes on page 5, paragraph 11 of the PSR that on February 4, 2019 and
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1 February 13, 2019, an individual known as Cuevas knowingly purchased counterfeit
2 oxycodone pills from Ghost831, knowing the pills contained fentanyl, and then gave
3 them to his friend V.K., who died of an overdose. Paragraph 12 alleges that another
4 victim, C.K. purchased pills in February of 2019 through the dark web. In this case, there
5 was no representation that C.K. did not know what pills he was buying, or what was in
6 the mixture. The other relevant facts of the investigation reveal that Defendant Jacob
7 Medina used the account Ghost831 to sell drugs and then mailed packages through
8 various post offices to buyers who ordered the pills, knowing what they were buying.
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13 Defendant objects to the four-level enhancement because there is no evidence of
14 any misrepresentation by Defendant Jacob Medina in marketing the pills, and no
15 evidence that he was even responsible for knowingly marketing the pills that were
16 marketed as counterfeit oxycodone. To be sure, the only evidence tying Defendant Jacob
17 Medina to the drug trafficking conspiracy was that he was sending packages with pills to
18 purchasers over the dark web. There is no evidence that Defendant Medina actually
19 marketed the pills that he mailed, and no evidence that he misrepresented the substances
20 contained in the pills. To the contrary, the purchasers of the pills knowingly purchased
21 the pills, while Defendant Medina was responsible for obtaining, packaging, and mailing
22 the pills to various buyers. However, Defendant never admitted that he marketed or
23 knowingly misrepresented a substance containing fentanyl. Clearly this enhancement
24 was meant to punish those responsible for marketing and misrepresenting to buyers
25 through their marketing techniques that they were selling a dangerous narcotic. As
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1 Defendant Jacob Medina does not qualify for this enhancement, this Court should not
2 apply the four-level enhancement.
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6 **Paragraph 39:**

7 In the instant case, the probation department added one criminal history point for
8 Defendant's juvenile adjudication on March 17, 2009 for domestic violence assault,
9 wherein Defendant was 16 years old and was placed on probation, citing to U.S.S.G.
10 §§4A1.1(c) and 4A1.2(d)(2)(B).
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14 U.S.S.G. §4A1.2(d)(2)(B) governs the applicable criminal history points to be
15 allocated for juvenile convictions. §4A1.2(d)(B)(2) provides in pertinent part:
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18 “(d) Offenses Committed Prior to Age Eighteen

19 (1) If the defendant was convicted as an adult and received a sentence of
20 imprisonment exceeding one year and one month, add 3 points under §4A1.1(a)
21 for each such sentence.
22

23 (2) In any other case,

24 (A) add 2 points under §4A1.1(b) for each adult or juvenile sentence to
25 confinement of at least sixty days if the defendant was released from such
26 confinement within five years of his commencement of the instant offense;
27

28 (B) add 1 point under §4A1.1(c) for each adult or juvenile sentence **imposed**
29 **within five years of the defendant's commencement of the instant offense not**
30 **covered in (A).** *U.S.S.G. §4A1.2(d)(2)(B).*
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1 Application Note 7 to §4A1.2(d)(2)(B) provides further guidance for offenses
2 committed prior to age eighteen:
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5 “ Offenses Committed Prior to Age Eighteen.—Section 4A1.2(d) covers offenses
6 committed prior to age eighteen. Attempting to count every juvenile adjudication
7 would have the potential for creating large disparities due to the differential
8 availability of records. Therefore, for offenses committed prior to age eighteen,
9 only those that resulted in adult sentences of imprisonment exceeding one year and
10 one month, or resulted in imposition of an adult or juvenile sentence or release
11 from confinement on that sentence within five years of the defendant's
12 commencement of the instant offense are counted. To avoid disparities from
13 jurisdiction to jurisdiction in the age at which a defendant is considered a
14 "juvenile," this provision applies to all offenses committed prior to age eighteen.”

15 In this case, Defendant Jacob Medina committed a juvenile offense of domestic
16 violence assault when he was sixteen years old. On March 17, 2009, Mr. Medina, then
17 16 years old, was sentenced to probation. He was released from probation on July 8,
18 2009. This sentence was imposed more than 10 years prior to the commencement of the
19 instant offense. To be sure, juvenile convictions with sentences of probation which were
20 imposed 11 years prior to the instant action are never counted. In addition, it was not the
21 intent of the sentencing commission to add criminal history points by speculating that
22 some of the preparatory conduct might have occurred 6 or 7 years ago. In fact, the
23 investigatory facts as set forth in the PSR, combined with the factual basis of the plea
24 agreement, show that Mr. Medina’s criminal conduct commenced in November of 2018
25 at the earliest. While the PSR suggests that Defendant browsed the dark web years
26 earlier and he engaged in some “wire transactions” in 2017, there is no evidence that any
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1 of this earlier involvement included illegal activity. As speculating about possible
2 preparatory conduct was not the intent of the U.S. Sentencing Commission, but rather,
3 the guidelines were designed to create enhancement for criminals who engage in new
4 criminal conduct within short periods of time from their past crimes, this Court should
5 not allow the probation department to engage in speculation in order to enhance
6 Defendant's sentence.
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10 **Paragraphs 43 through 45:**
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12 Jacob Medina objects to the criminal history calculations set forth in paragraphs
13 43 through 45, and herein incorporates by reference the objections from paragraph 39.
14 As Defendant's juvenile conviction should not have been counted, his criminal
15 convictions should result in a subtotal criminal history score of 5 instead of 6, which
16 should be reflected in paragraph 43.
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18

19 In addition, Mr. Medina further objects to paragraph 44 on grounds that he should
20 not have received two additional levels for committing part of the instant offense while
21 on community supervision for attempted possession of marijuana for sale in the La Paz
22 County Superior Court, Docket No.: CR201400037.
23
24

25 In this case, the probation department correctly concedes in paragraph 42 that Mr.
26 Medina was sentenced on September 22, 2014 to 3.5 years custody, followed by
27 community supervision for attempted possession of marijuana for sale. Defendant's
28 community supervision commenced on May 15, 2017, and ended on February 10, 2018.
29 Therefore, his criminal justice sentence was over as of February 10, 2018.
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1 In this case, the probation department provides no explanation as to why
2 Defendant should receive an additional two criminal history points under U.S.S.G.
3 §4A1.1(d), for being under community supervision, when he clearly was not under
4 community supervision when the investigation commenced, in November of 2018.
5
6

7 Nevertheless, Defendant theorizes that the probation department is trying to tack
8 on extra points to Defendant's criminal history by speculating that Defendant may have
9 committed preparatory conduct prior to 2018. However, when looking at the factual
10 basis of the plea agreement, and the facts as set forth in the PSR, it is clear that the
11 investigation by the NECI commenced in November of 2018, and the evidence tying
12 Defendant to the conspiracy involved sales, packaging, and mailing of illegal drugs
13 which occurred from November of 2018 through March of 2019, well after Defendant
14 had completed his community supervision.
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19 While Mr. Medina admitted that he browsed the dark web years earlier and had
20 conducted some wire transactions, there is no evidence that any of this conduct was
21 illegal, or involved the conspiracy to distribute illegal drugs. Moreover, Defendant was
22 in custody for much of the 6.5 years within which the probation department alleges that
23 this conspiracy took place. Rather, all of the investigatory evidence supporting **illegal**
24 **activity on the part of Defendant Jacob Medina**, whether it be preparatory acts or
25 through actual sales on the dark web, occurred between November of 2018 and March of
26 2019. To be sure, Defendant should not be held responsible for earlier criminal acts
27 committed by unknown co-conspirators. As stated previously, the two-point
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1 enhancement is designed to provide extra punishment for criminals who were engaging in
2 criminal conduct while under a criminal justice sentence, not to punish individuals based
3 on speculation.
4

5
6 **Guideline Calculations**

7 In the instant case, the probation department has calculated an advisory guideline
8 range of 235 to 293 months, based on a Total Offense Level 35 and Criminal History
9 Category IV. However, the calculations include an erroneous four-level enhancement for
10 knowingly misrepresenting or marketing as another substance a mixture or substance
11 containing fentanyl, as well as 3 criminal history points which should not have been
12 added.
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16 Pursuant to the objections above, without this enhancement and the three
17 erroneous criminal history points, Defendant's advisory guideline range should be 135 to
18 168 months' imprisonment, based on a Total Offense Level 31 and Criminal History
19 Category III
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22 **III. DISCUSSION**

23
24 **THE SENTENCING FACTORS SET FORTH IN 18 U.S.C. §3553(a)**
25 **SUPPORT A REASONABLE SENTENCE BELOW THE**
26 **CORRECTED GUIDELINE RANGE**
27

28 In *United States v. Booker*, 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005),
29 the Supreme Court held that the United States Sentencing Guidelines are advisory, not
30 mandatory. In other words, the Guidelines are a required *consideration*, but district courts
31 are permitted to tailor a particular sentence in light of other statutory concerns. *Id.* at 757.
32

1 “The district courts, while not bound to apply the Guidelines, must consult those
2 Guidelines and take them into account when sentencing.” *Id.* at 767.
3

4 Ultimately, in arriving at a fair sentence, the Court is *required* to consider certain
5 factors pursuant to 18 U.S.C. §3553(a), including but not limited to: the “nature and
6 circumstances of the offense” (18 U.S.C. §3553(a)(1)); “the history and characteristics of
7 the defendant” (18 U.S.C. §3553(a)(1)); the kinds of sentences available (18 U.S.C.
8 §3553(a)(3)); the need to avoid unwarranted disparities between similarly situated
9 defendants (18 U.S.C. §3553(a)(6)); applicable Guideline factors and policy statements
10 (18 U.S.C. §3553(a)(4) and (5)); and the need to provide restitution to any of its victims
11 (18 U.S.C. §3553(a)(7)).
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16 While the Guidelines were designed to embody the §3553(a) considerations,
17 judges in their discretion may differ on their approach as to how best reconcile “the
18 disparate ends of punishment.” *Rita v. United States*, 551 U.S. 338, 127 S.Ct. 2456, 2457-
19 58 (2007). Thus, the sentencing court is free to disagree with the Sentencing Guidelines,
20 which should not be accorded greater weight than any of the other 18 U.S.C. § 3553(a)
21 considerations. *United States v. Zavala*, 443 F.3d 1165, 1170-1171 (9th Cir. 2006). *See*
22 *also, United States v. Plouffe*, 445 F.3d 1126, 1128 (9th Cir. 2006) (a sentence must be
23 reasonable in view of all the factors in Section 3553(a)).
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28 “[T]he appellate court “may consider the extent of the deviation [from the
29 Guidelines], but must give due deference to the district court's decision that the [18 U.S.C.]
30 § 3553(a) factors, on a whole, justify the extent of the variance.” *Id.* A district court's
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1 discretion under the § 3553(a) factors is quite broad.” *United States v. Orlando*, 553 F.3d
2 1235, 1238-39 (9th Cir. 2009).
3

4 Pursuant to the sentencing factors set forth in 18 U.S.C. §3553, Defendant Jacob
5 Medina respectfully requests that this Court accept the plea agreement and render a
6 reasonable sentence below the corrected guideline range. The history of Mr. Medina and
7 circumstances of the case support that a sentence not to exceed 10 years imprisonment,
8 will provide adequate deterrence, promote respect for the law, and constitutes an
9 adequate disposition to address the seriousness of the offense. In addition, such sentence
10 will avoid unwarranted sentencing disparities and allow Mr. Medina the chance to
11 continue his rehabilitative efforts.
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16 ***A. Mr. Medina’s History, Character, and Substance Abuse Needs***
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18 In the instant case, Jacob Medina is 29 years old and was born in Gilroy,
19 California. Jacob has one sister Lauren Medina, who is 30 and resides in Mesa, Arizona.
20 Jacob suffered a difficult upbringing, as his parents separated when he was an infant and
21 became involved in a contentious custody battle which spanned through Jacob’s youth
22 and adolescent years. To make matters worse, Jacob’s mother Ramona suffered from a
23 serious methamphetamine addiction for most of his youth. As a result, Jacob had a
24 strained relationship with both of his parents, was forced to move back and forth from
25 California and Arizona, dropped out of high school several times, and ran away from
26 home. Jacob also suffered from depression and anxiety during his teenage years, and
27 started using drugs and alcohol, including marijuana, LSD, cocaine, and psilocybin.
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1 Fortunately, Jacob managed to graduate from Corona Del Sol High School in
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3 2010, and attended community college from 2010 until 2012. Jacob also reconnected
4 with his mother when he was 18 years old, and they were able to reestablish a close
5 relationship. In fact, despite his struggles, Jacob maintains a close relationship with both
6 of his parents, his sister Lauren, and his younger half-siblings.
7

8 Undoubtedly, Mr. Medina's family struggles, homelessness, and substance abuse
9 led to his involvement in criminal activity, starting with a domestic dispute with his
10 father when he was 16 years old. Jacob received a probationary juvenile adjudication for
11 this offense. At the age of 18, Jacob committed his first felony, aggravated assault, and
12 in 2014, Mr. Medina committed his second felony conviction, and first drug trafficking
13 offense, attempted possession of marijuana for sale. Mr. Medina is now facing his third
14 felony conviction and second drug trafficking offense. Unfortunately, while in custody,
15 Defendant was introduced to heroin, which later escalated to a fentanyl addiction by the
16 age of 26.
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22 Despite his struggles and serious substance abuse problems, Mr. Medina was
23 attempting to get his life on track following his release from custody by finding steady
24 employment. In particular, during 2017 and 2018, Mr. Medina worked full time as a
25 warehouse manager for various companies, in addition to working security on the
26 weekends for a local bar, known as BAC Lounge in Tempe, Arizona. Defendant's
27 employer at BAC Lounge verifies that he was a dependable and hardworking employee.
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1 In addition, at the time of his arrest, Jacob was working fulltime for Carboline Co. as a
2 marketing analyst.
3

4 In the instant case, Jacob Medina's family and friends are very supportive of him
5 and confirm that Jacob is a good person, honest, and helpful to his family and friends. In
6 addition, Jacob enjoyed giving back to his community, and was volunteering for the
7 Knights of Columbus, where he would volunteer his time transporting youth members to
8 attend church activities. Jacob also was very excited to become a father, and has suffered
9 tremendously from being separated from his two year-old son, Alexander, who was born
10 while Defendant was in custody for the instant action. In fact, Jacob is making efforts
11 toward rehabilitation, such as taking educational classes while in custody, so that he can
12 be a positive role model and support his son after serving a sentence in this case.
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18 In the instant case, based on the sentencing factors set forth in 18 U.S.C. §3553(a),
19 Mr. Medina requests that this Court accepts the plea agreement, and impose a reasonable
20 sentence below the corrected guideline range. Based on Defendant's history, character,
21 strong family support, substance abuse issues, and acceptance of responsibility, Jacob
22 Medina should receive a reasonable sentence below the corrected guideline range. Mr.
23 Medina is a man of good character and strong work ethic with definite potential for
24 rehabilitation if given the chance. To be sure, Jacob has strong family support, a strong
25 work ethic, and further requests that he be approved for the Federal Bureau of Prisons
26 500 Hour substance abuse treatment program. Based on the totality of circumstances and
27 history of Defendant, a sentence not to exceed 10 years imprisonment will allow
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1 Defendant the opportunity to rehabilitate his life after serving a significant sentence in
2 this case.
3

4 ***B. Mr. Medina's Acceptance of Responsibility and Need to Avoid***
5 ***Unwarranted Sentencing Disparities***
6

7 In the instant case, Defendant Jacob Medina has demonstrated acceptance of
8 responsibility and provided a statement wherein he admitted involvement in the instant
9 offense and assisted authorities with regard to his own misconduct by timely pleading
10 guilty to the instant offense. Moreover, Defendant admitted in the factual basis of the
11 plea agreement that between December 4, 2018 and March 4, 2019, he knowingly mailed
12 multiple packages for Ghost831 containing controlled substances.
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16 In the instant case, the probation department has made every effort to make it
17 appear that Defendant has been involved in a conspiracy lasting 6 plus years such that he
18 has been allocated enhancement and extra criminal history points for conduct committed
19 by others. To be sure, Defendant was in custody for a state drug trafficking charge for
20 much of this period of time, and when looking at the investigation which commenced on
21 November 30, 2018, Defendant's involvement in the conspiracy focused on transactions
22 which occurred between December of 2018 and March of 2019. In addition, Mr.
23 Medina's role was to sell, and mail packages of pills on behalf of Ghost831. Mr. Medina
24 was not involved with marketing and leading directives of the conspiracy, any
25 preparatory acts did not involve illegal activity, and there is absolutely no evidence that
26 he misrepresented to buyers the contents of the drugs. In fact, while it was very tragic
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1 that there were victims who overdosed from these pills, in both instances, these buyers
2 knew exactly what they were purchasing.
3

4 Mr. Medina concedes that he made a terrible decision to become involved with
5 this conspiracy, and as set forth pursuant to his first Sentencing Memorandum, his
6 involvement was spurred by his own drug addiction which he has been battling since he
7 was 16 years old. Unfortunately, this addiction became worse once he was introduced to
8 heroin in prison, which in turn contributed to a fentanyl addiction for the last few years.
9
10 Jacob Medina has now reached a point where he realizes that if he does not change his
11 life, he will be risking permanent separation from his child and family, if not death from
12 addiction. Fortunately, Mr. Medina is a young man who has strong family support and
13 much to live for. To be sure, Mr. Medina is now taking educational classes while in
14 custody so that he has the chance for a future, as well as expressing his desire to obtain
15 substance abuse treatment.
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21 Based on the sentencing factors set forth in 18 U.S.C. §3553, this Court should
22 sentence Defendant Jacob Medina below the advisory guideline range, after making
23 corrections to the guideline calculations. Given Defendant's acceptance of responsibility
24 and need to avoid unwarranted sentencing disparities amongst similarly situated
25 defendants, a sentence not to exceed 10 years will best support the statutory goals of
26 sentencing. While Defendant understands that he committed a very serious offense,
27 Jacob is a man of good character and strong family support, with the chance for
28 rehabilitation. Clearly, Defendant has learned a significant lesson and wants to reform his
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1 life and wants to make changes so that he can one day be a positive role model for his
2 son. Based on the mitigating factors in this case, a sentence not to exceed 10 years will
3 provide just punishment, allow for adequate deterrence, protect the public, and promote
4 respect for the law. Such sentence also represents a significant sentence and graduated
5 punishment as compared to his first drug trafficking offense. Further, Mr. Medina
6 requests that he be considered for the Federal Bureau of Prisons 500 Hour Residential
7 Substance Abuse Treatment Program.
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11 **IV. CONCLUSION**

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13 Based on the foregoing, Jacob Medina respectfully requests that this Court impose
14 a reasonable sentence below the corrected guideline range, to include substance abuse
15 treatment.
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17
18 RESPECTFULLY SUBMITTED this 23rd day of August 2021.

19 **SUZUKI LAW OFFICES**

20
21 By: /s/ Joshua Kolsrud
22 Joshua Kolsrud, Esq.
23 *Attorney for Jacob Medina*
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CERTIFICATE OF SERVICE

I certify that on the 23rd day of August, 2021, I electronically transmitted this document to the Clerk’s Office using the CM/ECF system for filing and transmittal of a notice of Electronic Filing to the following CM/ECF registrants:

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