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10 UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 NATALIE LE DEMOLA et al.,

17 Defendants.
18
19
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No. CR 22-CR-00205-JFW-13

GOVERNMENT'S SENTENCING POSITION
REGARDING DEFENDANT AMBER JANE
WADE

Sentencing

Hearing Date: January 9, 2023

Hearing Time: 9:30 a.m.

Location: Courtroom of the
Honorable John F.
Walter

21 Plaintiff United States of America, by and through its counsel
22 of record, the United States Attorney for the Central District of
23 California and Assistant United States Attorneys David C. Lachman and
24 Nisha Chandran, hereby files its sentencing position for defendant
25 AMBER JANE WADE.

26 This sentencing position is based upon the attached memorandum
27 of points and authorities, the files and records in this case, the
28 United States Probation and Pretrial Services Office's presentence

1 investigation report, and such further evidence and argument as the
2 Court may permit.

3 The government respectfully requests the opportunity to
4 supplement its position or otherwise respond to defendant as may
5 become necessary.

6
7 Dated: December 19, 2022

Respectfully submitted,

8 E. MARTIN ESTRADA
United States Attorney

9 SCOTT M. GARRINGER
10 Assistant United States Attorney
11 Chief, Criminal Division

12 /s/

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UNITED STATES OF AMERICA
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 From August 31, 2020, to September 26, 2020, defendant AMBER
4 JANE WADE ("defendant") fraudulently withdrew approximately \$10,500
5 in Pandemic Unemployment Assistance benefits intended for residents
6 of California who were unemployed because of the COVID-19 pandemic.
7 Defendant's coconspirators created an account to receive benefits in
8 the name of victim N.T.S. Defendant then assumed N.T.S.'s identity
9 and used the debit card issued in N.T.S.'s name to make eleven
10 fraudulent cash withdrawals from ATMs operated by Bank of America,
11 totaling approximately \$10,500. In September 2022, defendant pleaded
12 guilty to one count of bank fraud in violation of 18 U.S.C. § 1344
13 (Count Nineteen) pursuant to a plea agreement filed with the Court on
14 August 30, 2022. (CR 238 ("Plea Agreement").)

15 The United States Probation & Pretrial Services Office ("USPPO")
16 issued its Presentence Report ("PSR") and Recommendation Letter on
17 October 11, 2022, calculating a total offense level of 7 and a
18 Criminal History Category of III, which results in an advisory
19 Guidelines range of four to ten months. (CR 272, PSR; CR 271, Rec.
20 Letter.) The USPPO recommended a 15-day term of imprisonment for
21 defendant, which would amount to time-served and reflects a downward
22 variance from the advisory Guidelines range, followed by four months
23 in a residential reentry center. (Rec. Letter at 5.) The USPPO also
24 calculated that the intended and actual loss to California Employment
25 Development Department was \$10,500. (PSR ¶ 47.)

26 For the reasons discussed more fully below, the government
27 agrees with the PSR's total offense level calculation of 7 and the
28 criminal history category. The government, however, objects to the

1 PSR's recommended downward variance. Here, the government
2 respectfully requests that the Court sentence defendant to: (1) two
3 months' imprisonment; (2) three years of supervised release,
4 including a condition of four months in a residential reentry center;
5 and (3) pay restitution in the amount of \$10,500; and (4) pay a
6 mandatory \$100 special assessment.

7 **II. DEFENDANT HELD A LIMITED ROLE IN A LARGE EDD FRAUD SCHEME**

8 Defendant admitted to the following facts at her change of plea
9 hearing and in the plea agreement (PSR ¶¶ 22-45; Plea Agreement
10 ¶ 11):

11 Beginning on or about August 31, 2020, and continuing through at
12 least on or about September 26, 2020, in Los Angeles County, within
13 the Central District of California, and elsewhere, defendant
14 knowingly carried out a scheme or plan to obtain money or property
15 from Bank of America by making false statements or promises;
16 defendant knew that the statements or promises were false; the
17 statements or promises were material, that is, they had a natural
18 tendency to influence, or were capable of influencing, Bank of
19 America to part with money or property; and defendant acted with the
20 intent to defraud. At all relevant times, Bank of America was a
21 financial institution that was insured by the Federal Deposit
22 Insurance Company.

23 Specifically, on August 13, 2020, coconspirators assumed victim
24 N.T.S.'s identity and electronically filed an application in N.T.S.'s
25 name for Pandemic Unemployment Assistance benefits, a form of
26 unemployment insurance benefits for residents of California who were
27 unemployed because of the COVID-19 pandemic ("pandemic benefits").
28 N.T.S. did not authorize anyone, including defendant's

1 coconspirators, to apply for pandemic benefits in his name. The
2 California Employment Development Department ("EDD") approved the
3 application, created an EDD debit account with Bank of America in
4 N.T.S.'s name, mailed a debit card linked to the EDD debit account to
5 the mailing address coconspirators provided, and deposited
6 unemployment insurance benefits, including pandemic assistance
7 benefits, to the EDD debit account.

8 Beginning on or about August 31, 2020, defendant assumed
9 N.T.S.'s identity and used the EDD debit card issued in N.T.S.'s
10 name, ending in number 7456 (the "N.T.S. Card"), to make fraudulent
11 cash withdrawals of pandemic benefits from ATMs operated by Bank of
12 America in Los Angeles County. On August 31, 2020, defendant
13 withdrew \$1,000 from a Bank of America ATM in Palmdale, California,
14 using the N.T.S. Card. On September 7, 2020, defendant withdrew
15 \$1,000 from a Bank of America ATM in Palmdale, California, using the
16 N.T.S. Card. On September 25, 2020, defendant withdrew \$1,000 from a
17 Bank of America ATM in Palmdale, California, using the N.T.S. Card.
18 In total, defendant fraudulently withdrew approximately \$10,500 in
19 EDD funds from Bank of America ATMs using the N.T.S. Card in eleven
20 separate transactions between August 31, 2020, and September 26,
21 2020. N.T.S. did not know defendant and did not authorize her to use
22 the N.T.S. Card to make withdrawals from the EDD debit account
23 created in N.T.S.'s name.

24 N.T.S. faced difficulty during the pandemic and applied himself
25 for unemployment pandemic benefits. (PSR ¶ 48.) He was denied that
26 relief, however, because of this fraudulent scheme. (Id.) N.T.S.
27 had to get a residential mortgage payment modification to prevent
28 foreclosure on his home. (Id.) N.T.S. was disheartened he could

not benefit from the much-needed government assistance due to the fraud scheme. (Id.)

III. THE PRESENTENCE INVESTIGATION REPORT

A. The Government Concurs with USPPPO's Guidelines and Criminal History Calculations

The government agrees with the Guidelines calculation set forth in the PSR. Based on the above facts, and consistent with the parties' plea agreement, the USPPPO calculated a total offense level of 7. The PSR's total offense level calculation is as follows:

Base Offense Level:	7	U.S.S.G. § 2B1.1(a) (1)
Loss of more than \$6,500 but not more than \$15,000:	+2	U.S.S.G. § 2B1.1(b) (1) (B)
Acceptance of Responsibility:	-2	U.S.S.G. § 3E1.1(a)
TOTAL:	7	

(PSR ¶¶ 54-65.)

Based on defendant's criminal history, the USPPPO also determined that defendant has 6 criminal history points and falls within Criminal History Category III. (Id. ¶ 80.) The USPPPO recognized that a total offense level of 7 and a Criminal History Category of III falls within Zone B of the Guidelines and results in an advisory Guidelines range of four to ten months, followed by a period of supervised release of two to five years on Count Nineteen, a Class B felony. (Id. ¶¶ 124, 127.) In the PSR, the USPPPO did not identify any factors that would warrant a departure from the advisory guideline range. (Id. ¶ 137.)

1 As noted above, and consistent with the parties' plea
2 agreement, the government agrees with the PSR's total offense level
3 calculation of 7. More specifically, the government agrees that
4 defendant's intended losses to EDD, and the actual losses that
5 resulted, was \$10,500, resulting in a 2-level increase. (Id. ¶ 45,
6 56.) The government also concurs with the PSR's criminal history
7 calculation, restitution calculation of \$10,500, and the mandatory
8 payment of a \$100 special assessment. (Id. ¶¶ 78-80, 131, 134.)

9 **B. The Government Objects To USPPPO's Downward Variance**

10 Because a total offense level of 7 and a Criminal History
11 Category of III yields an applicable Guidelines range of four to ten
12 months, which falls within Zone B of the Sentencing Table, the USPPPO
13 recognized that the minimum term can be satisfied by a sentence of
14 imprisonment that includes a term of supervised release with a
15 condition that substitutes community confinement or home detention
16 according to the schedule in U.S.S.G. §5C1.1(e), provided that at
17 least one month is satisfied by imprisonment. (Id. ¶ 124; U.S.S.G.
18 §5C1.1(c)(2).) The USPPPO recommended a sentence of 15 days in
19 custody, to be followed by four months in a residential reentry
20 center. (Rec. Letter at 5.) The 15 days' incarceration, however,
21 would equate to time served for defendant and ignores the requirement
22 that defendant serve at least a month of imprisonment.

23 Accordingly, the government objects to this downward variance in
24 light of the seriousness of defendant's criminal conduct and its
25 failure to comply with U.S.S.G. § 5C1.1(c)(2). Defendant and her
26 coconspirators, in total, opened hundreds of fraudulent EDD accounts
27 and cost the EDD program millions of dollars. (Id. ¶ 37.) That
28 scheme could not operate without runners like defendant to physically

1 withdraw the fraudulently obtained money. And defendant personally
2 defrauded EDD out of approximately \$10,500 over a period of less than
3 one month. (Id. ¶ 45.) In each of her eleven transactions,
4 defendant assumed the identity of victim N.T.S. and withdrew benefits
5 intended for Californians suffering unemployment as a result of the
6 COVID-19 pandemic. And victim N.T.S. explained to USPPPO the impact
7 to N.T.S.'s business and family as a result of not receiving those
8 funds - including jeopardizing his housing. (Id. ¶ 48.) Moreover,
9 defendant committed the instant conduct while on probation for her
10 2017 convictions (id. ¶ 79) and she has had difficulty on pretrial
11 release, sustaining multiple violations (id. ¶ 9.).

12 Within defendant's Guidelines range, the Court has discretion to
13 impose a sentence of imprisonment higher than the one month minimum
14 required by U.S.S.G. §5C1.1(c)(2). See U.S.S.G. §5C1.1, App. Note 3.
15 For example, "where the guideline range is 4-10 months, . . . a
16 sentence of two months imprisonment followed by a term of supervised
17 release with a condition requiring four months of community
18 confinement or home detention . . . would be within the guideline
19 range." Id. Considering the seriousness of defendant's criminal
20 conduct, the government respectfully requests a within-Guidelines
21 sentence of two months' imprisonment, to be followed by three years
22 of supervised release, including a condition of four months in a
23 residential reentry center.

24 **C. The Government Agrees That Four Months At A Residential**
25 **Reentry Program Will Benefit Defendant**

26 As the Court is aware, defendant struggled on pretrial release.
27 (CR 265; CR 276.) As discussed in the latest Alleged Violation
28 Report, defendant has been "marginally compliant" and has struggled

1 with stable housing, stable communication with her USPPPO officer, and
2 has most recently submitted three diluted samples for drug testing.
3 (CR 276, Violation Report, at 3.) Moreover, as discussed, defendant
4 committed the instant offense while on probation. (PSR ¶ 79.) More
5 recently, defendant found housing, is employed, and has not submitted
6 a positive drug test while on pretrial release. (Violation Report at
7 3). But defendant is still struggling with communication with her
8 USPPPO officer and submitting diluted samples. (Id.) A residential
9 reentry center will give defendant tools so that she will hopefully
10 succeed while on supervised release.

11 **IV. THE GOVERNMENT RECOMMENDS TWO MONTHS' INCARCERATION HERE**

12 The government recommends that the defendant be sentenced to a
13 Guidelines term of two months' imprisonment, followed by a three-year
14 period of supervised release to include four months in a residential
15 reentry center, to pay a \$100 special assessment, and to pay
16 restitution of \$10,500. This sentence is sufficient, but not greater
17 than necessary, to achieve the purposes in 18 U.S.C. § 3553(a).

18 **A. Nature And Circumstances Of The Offense And History And** 19 **Characteristics Of Defendant**

20 The nature and circumstances of defendant's offense supports a
21 Guidelines sentence of two months' imprisonment to be followed by
22 four months in a residential reentry center. 18 U.S.C. § 3553(a)(1).

23 In mitigation, defendant occupied a small role in the overall
24 scheme, withdrawing a small percentage of the overall loss.
25 Defendant also faced difficult circumstances in the period leading up
26 to her participation in the scheme. In 2017, defendant lost her
27 father, with whom she had a close relationship. (Id. ¶ 98.)
28 Defendant also reported exhausting her savings to help her father as

1 he was unable to work due to his illness. (Id.) Defendant welcomed
2 her second child in 2020, but the father of that child physically and
3 emotionally abused her, including punching her in the face,
4 fracturing her jaw, while she was eight months pregnant. (Id. ¶
5 100.) She lost custody of both of her children in February 2020 due
6 to the physical abuse in the household, which defendant reports took
7 a physical and mental toll on her. (Id. ¶ 102, 103.) These factors
8 support a sentence combining custodial time and a period of community
9 confinement consistent with U.S.S.G. §5C1.1(c)(2). That said, a
10 meaningful custodial sentence greater than time served is necessary
11 in light of the seriousness of defendant's criminal conduct.

12 On balance, the nature and circumstances of the offense and
13 defendant's history and characteristics support the government's
14 recommended Guidelines sentence.

15 **B. Need For The Sentence To Reflect The Offense's Seriousness,**
16 **Promote Respect For The Law, Provide Just Punishment,**
17 **Afford Adequate Deterrence, And Protect The Public**

18 The sentence must satisfy the need to punish defendant, as well
19 as society's need to reflect the seriousness of the offense; promote
20 respect for the law; provide just punishment; afford adequate
21 deterrence; and protect the public. 18 U.S.C. § 3553(a)(2). Here,
22 the government's recommended sentence will provide deterrence both to
23 defendant and to others who might otherwise be inclined to perpetrate
24 a similar crime. Moreover, because the Guidelines calculation
25 reflects the fact the defendant committed the instant offense while
26 on probation, a within-Guidelines sentence promotes respect for the
27 law.

1 **C. Need To Avoid Unwarranted Disparities**

2 Section 3553(a)(6) requires the Court to minimize sentencing
3 disparities among similarly situated defendants. One way of doing so
4 is to correctly calculate the Guidelines range and then sentence
5 defendants within that range. See United States v. Treadwell, 593
6 F.3d 990, 1011 (9th Cir. 2010) ("Because the Guidelines range was
7 correctly calculated, the district court was entitled to rely on the
8 Guidelines range in determining that there was no 'unwarranted
9 disparity'"); Gall v. United States, 552 U.S. 38, 54 (2007)
10 ("[A]voidance of unwarranted disparities was clearly considered by
11 the Sentencing Commission when setting the Guidelines ranges.").
12 Here, under the correctly calculated Guidelines range, other
13 defendants "with similar records who have been found guilty of
14 similar conduct" as defendant, can expect a prison sentence between
15 four and ten months' imprisonment. See U.S.S.G. § 5A (Sentencing
16 Table). As such, the government's within-Guidelines recommended
17 sentence avoids an unwarranted disparity with similarly situated
18 defendants.

19 **V. CONCLUSION**

20 For the foregoing reasons, the government recommends that the
21 Court sentence defendant to two months' imprisonment, three years'
22 supervised release to include four months in a residential reentry
23 center, a \$100 special assessment, and restitution of \$10,500.