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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 DAVID CLARE LOHR,

16 Defendant.

No. CR 19-105-ODW

GOVERNMENT'S SENTENCING POSITION  
FOR DEFENDANT DAVID CLARE LOHR

Hearing Date: October 4, 2021

Hearing Time: 8:30 a.m.

18 Plaintiff United States of America, by and through its counsel  
 19 of record, the Acting United States Attorney for the Central District  
 20 of California and Assistant United States Attorney William M.  
 21 Rollins, hereby files its sentencing position with respect to  
 22 defendant DAVID CLARE LOHR.

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1 This sentencing position is based upon the attached memorandum  
2 of points and authorities, the files and records in this case, and  
3 such further evidence and argument as the Court may permit.

4 Dated: September 21, 2021

Respectfully submitted,

5 TRACY L. WILKISON  
6 Acting United States Attorney

7 CHRISTOPHER D. GRIGG  
8 Assistant United States Attorney  
9 Chief, National Security Division

10 /s/ William M. Rollins  
11 WILLIAM M. ROLLINS  
12 Assistant United States Attorney

13 Attorneys for Plaintiff  
14 UNITED STATES OF AMERICA  
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 Beginning in 2016, defendant DAVID CLARE LOHR ("defendant")  
4 repeatedly poured bleach chemicals onto food products such as bagged  
5 ice, cheese, and frozen seafood at multiple grocery stores in the Los  
6 Angeles area. On July 13, 2021, defendant pled guilty to Counts One,  
7 Five, and Six of the Indictment, which charged him with tampering  
8 with consumer products, in violation of 18 U.S.C. § 1365(a). (CR  
9 82.)

10 Defendant is now before the Court for sentencing. Given the  
11 nature of defendant's crimes and his lengthy criminal history - but  
12 also to account for defendant's subsequent guilty plea, his apparent  
13 remorse, and mitigating mental health issues - the government  
14 respectfully recommends a sentence of 51 months' imprisonment, three  
15 years' supervised release, restitution in the amount of \$749.28, and  
16 a \$300 special assessment.

17 **II. FACTUAL BACKGROUND**

18 In 2018 and 2019, surveillance videos captured defendant pouring  
19 bottles of bleach into refrigerators and freezers containing consumer  
20 products (such as ice and alcoholic beverages) at the locations of a  
21 large grocery store company (the "Grocery Store") in the Los Angeles  
22 area. (CR 1 ¶¶ 7-21.) Customers also reported smelling or handling  
23 consumer products contaminated by bleach (such as frozen shrimp) at  
24 some of those stores. (Id.)

25 On December 14, 2018 for example, defendant opened a bottle of  
26 bleach and poured it into a freezer containing beer at a grocery  
27 store in Manhattan Beach. (Id. ¶ 7.) Similarly, on December 16,  
28 2018, defendant poured another bottle of bleach into a freezer

1 containing ice at a Redondo Beach grocery store. (Id. ¶¶ 8-11.)  
2 During that incident, a customer and her child told a store employee  
3 (the "Employee") that something was wrong with the ice. (Id.) The  
4 child was carrying a bag of ice against his chest when he and his  
5 mother approached. When the Employee grabbed the ice from the child,  
6 he recognized the odor of bleach on the ice. The Employee and the  
7 child's mother both saw that the child's black shirt had changed  
8 colors, to a brown color; the Employee and the child's mother  
9 believed the color change was the result of bleach being pressed  
10 against the child's shirt. (Id.)

11 Defendant poured the bleach into refrigerators and freezers  
12 while the Grocery Store's locations were open to the public, and the  
13 consumer products contaminated by the bleach were accessible to  
14 grocery shoppers in aisles of the stores. (CR 1; CR 82 (Plea  
15 Agreement).) Bleach contains hazardous chemicals that can cause  
16 serious eye irritation, skin irritation, nausea, vomiting, and  
17 diarrhea. (CR 1 ¶ 20.)

18 Defendant has a lengthy criminal history, which includes prior  
19 convictions for felony battery, felony assault on a police officer,  
20 multiple felony grand theft convictions, theft by check, reckless  
21 driving, fleeing/attempting to elude police, theft of property,  
22 concealed weapon, resisting an officer, possession of stolen  
23 property, and assault. (PSR ¶¶ 41-56.) Defendant was serving a term  
24 of probation at the time he committed the instant offenses. (PSR  
25 ¶ 58).

26 **III. THE PRESENTENCE INVESTIGATION REPORT**

27 On August 30, 2021 the United States Probation Office ("USPO")  
28 disclosed its Presentence Investigation Report ("PSR") and Sentencing

1 Recommendation Letter ("Letter") for defendant. (Dkts. 86, 87.)  
2 Based on the above facts, and pursuant to U.S.S.G. § 2N1.1, the USPO  
3 determined defendant's base offense level to be 25. (PSR ¶ 5.)  
4 Following a three-level reduction for acceptance of responsibility,  
5 the USPO calculated defendant's total offense level as 22. (PSR  
6 ¶ 39.)

7 With 18 criminal history points based on his prior convictions  
8 and defendant's commission of the instant offense while on probation,  
9 defendant's criminal history is Category VI. (PSR ¶¶ 57-59.) Given  
10 a criminal history category of VI and a total offense level of 22,  
11 the USPO determined that the applicable Guidelines range is 84 to 105  
12 months' imprisonment. (PSR ¶ 87.) The USPO recommended a downward  
13 variance and sentence of 48 months' imprisonment and three years'  
14 supervised release. (USPO Rec. Ltr.) The USPO also recommended that  
15 defendant be ordered to pay restitution in the amount of \$749.28 to  
16 account for the financial losses defendant caused to the grocery  
17 stores and a mandatory special assessment in the amount of \$300.  
18 (Id.)

19 **IV. ARGUMENT**

20 A 51-month sentence is appropriate in this case. The government  
21 concurs with the PSR's calculation of defendant's total offense level  
22 and agrees that a downward variance is warranted here, although the  
23 government respectfully submits that a five-level variance is  
24 appropriate. In addition, the government agrees with the USPO that a  
25 two-level reduction in the applicable Sentencing Guidelines offense  
26 level is warranted pursuant to U.S.S.G. § 3E1.1, and moves for  
27 additional one-level reduction available under that section.  
28

1 Based on an adjusted offense level of 17 - which represents a  
2 five-level downward variance from the total offense level of 22 - and  
3 a Criminal History Category of VI, defendant's adjusted Guidelines  
4 range would be 51-63 months' imprisonment. The government thus  
5 recommends an overall sentence of 51 months, at the low-end of the  
6 adjusted Guidelines range, and submits that such a sentence would be  
7 sufficient, but not greater than necessary, to meet the sentencing  
8 goals set forth in 18 U.S.C. § 3553(a).

9 Importantly, consistent with the plea agreement and the USPO's  
10 recommendation, the government also recommends that the Court require  
11 defendant to participate in psychiatric treatment and take all  
12 psychiatric medications prescribed to him while on Supervised  
13 Release. After defendant is released from prison, the Court should  
14 also allow defendant to reside and receive support services via Care  
15 Industry 2 and mental health treatment from Augustus F. Hawkins  
16 Mental Health Center, located at 1220 E. Martin Luther King Jr. Blvd,  
17 Los Angeles, CA 90011.

18 **A. SENTENCING RECOMMENDATION**

19 The government respectfully requests that the Court adopt the  
20 factual findings and criminal history calculation of the PSR in this  
21 matter, and the additional information in this sentencing position.  
22 In accordance with the factors listed in 18 U.S.C. § 3553(a)(1)-(7),  
23 the government recommends a five-level downward variance and that the  
24 Court impose the following sentence: (a) 51 months' imprisonment; (b)  
25 three years' supervised release; (c) restitution in the amount of  
26 \$749.28; and (d) a \$300 special assessment. Upon release, defendant  
27 should reside and receive support services at the Hawkins Mental  
28 Health Center.

1 The sentence recommended by the government is reasonable within  
2 the meaning of Title 18, United States Code, Section 3553(a). United  
3 States v. Booker requires the Court to consider the factors  
4 identified in Section 3553(a) when imposing sentence. 543 U.S. 220  
5 (2005). Among the factors to be considered are: the nature and  
6 circumstances of the offense; the history and characteristics of the  
7 defendant; the need to protect the public from future crimes of the  
8 defendant; and the Sentencing Guidelines. 18 U.S.C. § 3553(a).

9 In terms of the nature and circumstances of the offense, see 18  
10 U.S.C. § 3553(a)(1), defendant engaged in dangerous crimes that put  
11 unsuspecting customers inside grocery stores - including children -  
12 at serious risk of injury had they consumed the products contaminated  
13 by defendant or inhaled bleach. In fact, during the December 16,  
14 2018 incident at the Redondo Beach grocery store, a child  
15 inadvertently handled a bag of ice contaminated by defendant,  
16 resulting in stains on the child's shirt. (CR 1 ¶¶ 8-11.) Defendant  
17 engaged in these crimes again and again at different grocery stores  
18 throughout Southern California, exacerbating both the risk to the  
19 public and the fear that an individual or group of individuals were  
20 attempting to contaminate the food supply chain in the region. (See  
21 generally CR 1.)

22 Section 3553(a)(2) requires the Court to consider factors  
23 including the need for the sentence to reflect the seriousness of the  
24 offense, to promote respect for the law, to provide just punishment  
25 for the offense, to afford adequate deterrence to criminal conduct,  
26 and to provide defendant with needed educational or vocational  
27 training, medical care, or other correctional treatment in the most  
28 effective manner. These considerations also weigh in favor a

1 sentence of 51 months. Again, defendant committed crimes that put  
2 innocent, extremely vulnerable members of the public at risk of  
3 injury when they were simply trying to buy food for their families.  
4 As the Probation Office put it, “[t]he seriousness of the offense  
5 stems from the potential physical injury that touching or ingesting  
6 bleach can cause as well as the financial injury that occurs to the  
7 grocery store[.]” (USPO Recc. Ltr.) Moreover, defendant’s instant  
8 offense follows years of flagrant contempt for the law by committing  
9 multiple felonies as an adult, including the crime that led to a term  
10 of probation at the time he tampered with consumer products here.  
11 See 18 U.S.C. § 3553(a)(1) (requiring consideration of the “history  
12 and characteristics” of the defendant). Defendant’s prior  
13 convictions involved theft by check, reckless driving,  
14 fleeing/attempting to elude police, theft of property, battery,  
15 concealed weapon, resisting an officer, battery on law enforcement  
16 officer, grand theft motor vehicle, possession of stolen property,  
17 and assault. (PSR ¶¶ 41-56.)

18 Nevertheless, in this case, the government also recognizes that  
19 the beginning of defendant’s criminal history “appears to coincide  
20 with the onset of his schizophrenia.” (USPO Recc. Ltr.) Indeed,  
21 defendant recalls hearing voices and hallucinating in his late 20s,  
22 around the time he stopped working and interacting with his  
23 grandparents. (PSR ¶ 74.) Moreover, apparently in part because of  
24 his mental illness, defendant has been without a stable residence  
25 since the age of 29. (Id.)

26 Defendant is now taking Risperidone, which “has worked well in  
27 treating his schizophrenia” and he believes that he “will have to  
28 take this medication for the foreseeable future” and “expressed

1 interest in mental health treatment.” (Id.) Defendant has also been  
2 cooperating with medical staff and following treatment  
3 recommendations. (Id.) Ultimately, defendant also admitted his  
4 guilt and took responsibility for his crimes. In light of these  
5 unique facts, the government believes that a five-level downward  
6 variance - and ongoing psychiatric care - are warranted. United  
7 States v. Almenas, 553 F.3d 27 (1st Cir. 2009) (affirming downward  
8 variance of 43 months based on defendant’s combination of physical  
9 and mental disabilities); United States v. Meyers, 503 F.3d 676 (8th  
10 Cir. 2007) (“district court did not abuse its discretion in finding  
11 that a shorter period of incarceration, with mental health treatment  
12 and supervised release, is the most effective sentence”).

13 Finally, section 3553(a)(2) requires the Court to consider the  
14 need to protect the public from further crimes of defendant. In this  
15 case, although defendant has shown significant improvement while  
16 incarcerated and while taking medication, his extensive criminal  
17 history and recidivism suggest that 51 months is the minimum amount  
18 of time necessary to deter him from committing future crimes against  
19 the public: According to the PSR, his lengthiest prior sentence was  
20 36 months, an amount of time that was unfortunately insufficient to  
21 prevent defendant from posing the subsequent threat to the public  
22 that he did in this case. On balance, the government thus believes  
23 that a 51-month sentence followed by ongoing mental health and  
24 psychiatric treatment during supervised release is fair and just.

25 **V. CONCLUSION**

26 In sum, a term of 51 months’ imprisonment would be “sufficient,  
27 but not greater than necessary, to comply with the purposes  
28 enumerated in 18 U.S.C. § 3553(a)(2).” 18 U.S.C. § 3553(a).

1 Restitution, a mandatory special assessment of \$200, and a three-year  
2 period of supervised release, with the conditions of supervised  
3 release recommended by the Probation Officer, are warranted under 18  
4 U.S.C. §§ 3583(c) and (d).

5 Dated: September 21, 2021

Respectfully submitted,

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Acting United States Attorney

7  
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Chief, National Security Division

9  
10 /s/ William M. Rollins  
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