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CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
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JUN 08 2021	
CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
BY _____	DEPUTY _____

1 PAUL ANTHONY MARTIN
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 3 District of Arizona
 4 WILLIAM G. VOIT
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 7 Two Renaissance Square
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13 IN THE UNITED STATES DISTRICT COURT
 14 FOR THE DISTRICT OF ARIZONA

15 United States of America,
 16
 17 Plaintiff,
 18
 19 vs.
 20
 21 Kevin Thomas Kerr,
 22
 23 Defendant.

No. CR 20-00513-DLR

PLEA AGREEMENT

24 Plaintiff, the United States of America, and the defendant, KEVIN THOMAS
 25 KERR, hereby agree to dispose of this matter on the following terms and conditions:

26 **1. PLEA**

27 The defendant will plead guilty to Count One of the Indictment charging the
 28 defendant with a violation of 18 United States Code (U.S.C.) § 875(c), Interstate
 Communications Containing Threat, a Class D felony offense.

2. MAXIMUM PENALTIES

a. A violation of 18 U.S.C. § 875(c) is punishable by a maximum fine of
 \$250,000, a maximum term of imprisonment of 5 years, or both, and a term of supervised
 release of up to 3 years. A maximum term of probation is five years.

b. According to the Sentencing Guidelines issued pursuant to the Sentencing
 Reform Act of 1984, the Court shall order the defendant to:

(1) make restitution to any victim of the offense pursuant to 18 U.S.C.

 **SCANNED**

31

1 § 3663 and/or 3663A, unless the Court determines that restitution would not be
2 appropriate;

3 (2) pay a fine pursuant to 18 U.S.C. § 3572, unless the Court finds that a
4 fine is not appropriate;

5 (3) serve a term of supervised release when required by statute or when a
6 sentence of imprisonment of more than one year is imposed (with the understanding that
7 the Court may impose a term of supervised release in all other cases); and

8 (4) pay upon conviction a \$100 special assessment for each count to
9 which the defendant pleads guilty pursuant to 18 U.S.C. § 3013.

10 c. The Court is required to consider the Sentencing Guidelines in determining
11 the defendant's sentence. However, the Sentencing Guidelines are advisory, and the Court
12 is free to exercise its discretion to impose any reasonable sentence up to the maximum set
13 by statute for the crime(s) of conviction, unless there are stipulations to the contrary that
14 the Court accepts.

15 **3. AGREEMENTS REGARDING SENTENCING**

16 a. Recommendation: Acceptance of Responsibility. If the defendant makes
17 full and complete disclosure to the U.S. Probation Office of the circumstances surrounding
18 the defendant's commission of the offense, and if the defendant demonstrates an
19 acceptance of responsibility for this offense up to and including the time of sentencing, the
20 United States will recommend a two-level reduction in the applicable Sentencing
21 Guidelines offense level pursuant to U.S.S.G. § 3E1.1(a). If the defendant has an offense
22 level of 16 or more, the United States will move the Court for an additional one-level
23 reduction in the applicable Sentencing Guidelines offense level pursuant to U.S.S.G.
24 § 3E1.1(b).

25 b. Non-Binding Recommendations. The defendant understands that
26 recommendations are not binding on the Court. The defendant further understands that the
27 defendant will not be permitted to withdraw the guilty plea if the Court does not follow a
28 recommendation.

1 c. Stipulation: Probation. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United
2 States and the defendant stipulate that the defendant shall be sentenced to 5 years'
3 probation. The United States reserves the right to withdraw from this plea agreement if, in
4 advance of sentencing, the defendant is granted pretrial release and violates any condition
5 of the terms of such pretrial release.

6 d. Stipulation: Mental Health Testing and Treatment. Pursuant to Fed. R. Crim.
7 P. 11(c)(1)(C), the United States and the defendant stipulate that during any period of court
8 supervision (i.e., probation or supervised release), the defendant shall participate in a
9 mental health assessment and participate in mental health treatment as determined to be
10 necessary by a medical professional and/or mental health professional providing mental
11 health treatment, and the defendant shall follow any treatment directions by the treatment
12 provider. The defendant shall take medicine as prescribed by a medical professional
13 providing mental health treatment, unless the defendant has a good faith belief that the
14 medication implicates a significant liberty interest, at which time the defendant must
15 immediately notify the probation officer so that the Court can promptly hold a hearing.
16 The defendant must contribute to the cost of treatment in an amount to be determined by
17 the probation officer.

18 e. Stipulation: No Contact. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United
19 States and the defendant stipulate that the defendant shall not knowingly have any contact,
20 direct or indirect (whether in person or by telephone, letter, email, or any other
21 communications method), with any victims, including: (1) "A.F." (whose name is listed in
22 the unredacted Indictment) or any member of his immediate family; (2) any office or
23 employee of Jackson Lewis P.C.; (3) any office or employee of PRAHealthSciences; and
24 (4) any office or employee of any Johnson & Johnson company.

25 f. Restitution. Pursuant to 18 U.S.C. § 3663 and/or 3663A, the defendant
26 specifically agrees to pay full restitution, regardless of the resulting loss amount but in no
27 event more than \$10,000, to all victims directly or proximately harmed by the defendant's
28 "relevant conduct," including conduct pertaining to any dismissed counts or uncharged

1 conduct, as defined by U.S.S.G. § 1B1.3, regardless of whether such conduct constitutes
2 an “offense” under 18 U.S.C. §§ 2259, 3663 or 3663A. The defendant understands that
3 such restitution will be included in the Court’s Order of Judgment and that an unanticipated
4 restitution amount will not serve as grounds to withdraw the defendant’s guilty plea or to
5 withdraw from this plea agreement.

6 g. Assets and Financial Responsibility. The defendant shall make a full
7 accounting of all assets in which the defendant has any legal or equitable interest. The
8 defendant shall not (and shall not aid or abet any other party to) sell, hide, waste, spend, or
9 transfer any such assets or property before sentencing, without the prior approval of the
10 United States (provided, however, that no prior approval will be required for routine, day-
11 to-day expenditures). The defendant also expressly authorizes the United States Attorney’s
12 Office to immediately obtain a credit report as to the defendant in order to evaluate the
13 defendant’s ability to satisfy any financial obligation imposed by the Court. The defendant
14 also shall make full disclosure of all current and projected assets to the U.S. Probation
15 Office immediately and prior to the termination of the defendant’s supervised release or
16 probation, such disclosures to be shared with the U.S. Attorney’s Office, including the
17 Financial Litigation Unit, for any purpose. Finally, the defendant shall participate in the
18 Inmate Financial Responsibility Program to fulfill all financial obligations due and owing
19 under this agreement and the law.

20 **4. AGREEMENT TO DISMISS OR NOT TO PROSECUTE**

21 a. Pursuant to Fed. R. Crim. P. 11(c)(1)(A), the United States, at the time of
22 sentencing, shall dismiss the following charges: Count Two of the Indictment.

23 b. This agreement does not, in any manner, restrict the actions of the United
24 States in any other district or bind any other United States Attorney’s Office.

25 **5. COURT APPROVAL REQUIRED; REINSTITUTION OF PROSECUTION**

26 a. If the Court, after reviewing this plea agreement, concludes that any
27 provision contained herein is inappropriate, it may reject the plea agreement and give the
28

1 defendant the opportunity to withdraw the guilty plea in accordance with Fed. R. Crim. P.
2 11(c)(5).

3 b. If the defendant's guilty plea or plea agreement is rejected, withdrawn,
4 vacated, or reversed at any time, this agreement shall be null and void, the United States
5 shall be free to prosecute the defendant for all crimes of which it then has knowledge and
6 any charges that have been dismissed because of this plea agreement shall automatically
7 be reinstated. In such event, the defendant waives any and all objections, motions, and
8 defenses based upon the Statute of Limitations, the Speedy Trial Act, or constitutional
9 restrictions in bringing later charges or proceedings. The defendant understands that any
10 statements made at the time of the defendant's change of plea or sentencing may be used
11 against the defendant in any subsequent hearing, trial, or proceeding subject to the
12 limitations of Fed. R. Evid. 410.

13 **6. WAIVER OF DEFENSES AND APPEAL RIGHTS**

14 The defendant waives (1) any and all motions, defenses, probable cause
15 determinations, and objections that the defendant could assert to the indictment or
16 information; and (2) any right to file an appeal, any collateral attack, and any other writ or
17 motion that challenges the conviction, an order of restitution or forfeiture, the entry of
18 judgment against the defendant, or any aspect of the defendant's sentence, including the
19 manner in which the sentence is determined, including but not limited to any appeals under
20 18 U.S.C. § 3742 (sentencing appeals) and motions under 28 U.S.C. §§ 2241 and 2255
21 (habeas petitions), and any right to file a motion for modification of sentence, including
22 under 18 U.S.C. § 3582(c). This waiver shall result in the dismissal of any appeal,
23 collateral attack, or other motion the defendant might file challenging the conviction, order
24 of restitution or forfeiture, or sentence in this case. This waiver shall not be construed to
25 bar an otherwise-preserved claim of ineffective assistance of counsel or of "prosecutorial
26 misconduct" (as that term is defined by Section II.B of Ariz. Ethics Op. 15-01 (2015)).

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28 //

1 **9. ELEMENTS**

2 **Interstate Communications Containing Threat**

3 **18 U.S.C. § 875(c)**

4 On or about March 6, 2020, in the District of Arizona and elsewhere:

- 5 1. The defendant knowingly transmitted a communication in interstate or
6 foreign commerce;
- 7 2. The message threatened to kidnap or injure another person; and
- 8 3. The defendant transmitted the communication for the purpose of issuing a
9 threat or with knowledge that the communication would be viewed as a
10 threat.

11 **10. FACTUAL BASIS**

12 a. The defendant admits that the following facts are true and that if this matter
13 were to proceed to trial the United States could prove the following facts beyond a
14 reasonable doubt:

15 On March 6, 2020, as part of an ongoing series of harassing
16 communications, I knowingly placed an interstate phone call
17 to "A.F." (whose true name is listed in the unredacted
18 Indictment), in which I threatened to injure and kill him.
19 Specifically, while I was living in the state of Illinois, I left a
20 voicemail for A.F. at his place of work. A.F. was employed at
21 a law firm in Arizona and engaged in legal representation. In
the voicemail, among other things, I threatened to kick A.F. in
the genitals and to rip his skull in half. The threatening
voicemail also included anti-Semitic slurs. I left this voicemail
for the purpose of issuing a threat and with knowledge that it
would be viewed as a threat.

22 b. The defendant shall swear under oath to the accuracy of this statement and,
23 if the defendant should be called upon to testify about this matter in the future, any
24 intentional material inconsistencies in the defendant's testimony may subject the defendant
25 to additional penalties for perjury or false swearing, which may be enforced by the United
26 States under this agreement.

27 //

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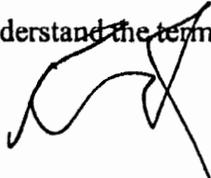
1 may be filed with the Court under seal; accordingly, additional agreements, if any, may not
2 be in the public record.

3 I further agree that promises, including any predictions as to the Sentencing
4 Guideline range or to any Sentencing Guideline factors that will apply, made by anyone
5 (including my attorney) that are not contained within this written plea agreement, are null
6 and void and have no force and effect.

7 I am satisfied that my defense attorney has represented me in a competent manner.

8 I fully understand the terms and conditions of this plea agreement. I am not now
9 using or under the influence of any drug, medication, liquor, or other intoxicant or
10 depressant that would impair my ability to fully understand the terms and conditions of this
11 plea agreement.

12 26 Feb 2021
13 DATE



14 KEVIN THOMAS KERR
Defendant

15 //
16 //
17 //

18 **APPROVAL OF DEFENSE COUNSEL**

19 I have discussed this case and the plea agreement with my client in detail and have
20 advised the defendant of all matters within the scope of Fed. R. Crim. P. 11, the
21 constitutional and other rights of an accused, the factual basis for and the nature of the
22 offense to which the guilty plea will be entered, possible defenses, and the consequences
23 of the guilty plea including the maximum statutory sentence possible. I have further
24 discussed the concept of the advisory Sentencing Guidelines with the defendant. No
25 assurances, promises, or representations have been given to me or to the defendant by the
26 United States or any of its representatives that are not contained in this written agreement.
27 I concur in the entry of the plea as indicated above and that the terms and conditions set
28 forth in this agreement are in the best interests of my client. I agree to make a bona fide

1 effort to ensure that the guilty plea is entered in accordance with all the requirements of
2 Fed. R. Crim. P. 11.

3
4 March 18, 2021
DATE


KRISTINA S. MATTHEWS
MARK D. DUBIEL
Attorneys for Defendant

6
7 **APPROVAL OF THE UNITED STATES**

8 I have reviewed this matter and the plea agreement. I agree on behalf of the United
9 States that the terms and conditions set forth herein are appropriate and are in the best
10 interests of justice.

11 PAUL ANTHONY MARTIN
Acting United States Attorney
District of Arizona

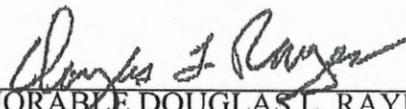
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13
14 February 26, 2021
DATE


WILLIAM G. VOIT
Assistant U.S. Attorney

Digitally signed by WILLIAM VOIT
Date: 2021.02.26 17:51:03 -07'00'

15
16
17 **ACCEPTANCE BY THE COURT**

18
19 6/8/2021
DATE


HONORABLE DOUGLAS L. RAYES
United States District Judge