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9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO DIVISION**

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 BRANDON FRERE

16 Defendant.

CASE NO. 3:19-cr-00493-SI

**STIPULATION AND [PROPOSED]
ORDER TO CONTINUE RESTITUTION
HEARING FROM OCTOBER 16, 2020 TO
DECEMBER 18, 2020 AT 11:00 A.M., AND
TO CONTINUE SELF-SURRENDER
DATE FROM OCTOBER 30, 2020 TO
JANUARY 15, 2021**

17 **STIPULATION**

18
19 Defendant Brandon Frere, by and through his counsel, Edward W. Swanson, and the
20 United States, by and through Assistant United States Attorney Scott D. Joiner, hereby stipulate
21 and agree as follows:
22

23 1) On July 24, 2020, the Court sentenced the defendant to 42 months imprisonment,
24 pursuant to a Rule 11(c)(1)(C) plea agreement. In the plea agreement, the defendant also agreed
25 to pay full restitution to the victims of his crimes, and that the restitution amount would be set by
26 the Court at the time of sentencing or at a subsequent restitution hearing. Dkt. 59, ¶ 10.

27 2) At the conclusion of the sentencing hearing, the Court set October 16, 2020 as the
28 date for the restitution hearing.

1 3) In the weeks following the sentencing hearing, the government has produced
2 approximately 12,000 pages of Victim Impact Statements to the defense. The government
3 anticipates producing another 500 statements in the coming weeks, along with spreadsheets and
4 other data the government has collected from third parties relevant to the issue of restitution.

5 4) The parties do not anticipate being in a position to present their respective
6 positions on the issue of restitution until after the government has completed its production and
7 the defense has had sufficient time to review that production. Based on the volume of materials
8 at issue and on the press of other business, the parties believe they will need more time to
9 complete this process than is currently allowed by the October 16, 2020 hearing date.

10 5) Under *United States v. Dolan*, 560 U.S. 605, 611 (2010), this Court is not
11 prohibited from entering a restitution order after the 90-day period set forth in 18 U.S.C. §
12 3664(d)(5) so long as it enters an order within the 90-day period clarifying that it will order
13 restitution in this case, leaving open only the amount of restitution to be ordered. *See also*
14 *United States v. Fu Sheng Kuo*, 620 F.3d 1158, 1163 (9th Cir. 2010) (accord).

15 6) The parties hereby stipulate and agree that there should be a restitution order in
16 this case, and that all that is left to be determined is the amount of restitution and the amounts
17 attributable to each victim. The parties respectfully request that the Court so order.

18 7) Accordingly, for the reasons set forth above, the parties jointly stipulate and agree
19 that the restitution hearing be continued until December 18, 2020 at 11:00 a.m. The parties will
20 attempt to resolve the restitution amount via stipulation in advance of that hearing, or otherwise
21 will submit briefs regarding their respective positions on appropriate restitution to the Court by
22 December 4, 2020.

23 8) The defense also requests the Court continue Mr. Frere's self-surrender date to
24 reflect the new restitution-hearing date. Defense counsel requires Mr. Frere's assistance
25 reviewing the materials produced by the government and will need Mr. Frere's consent to any
26 positions taken or agreements made regarding restitution. As such, the defense respectfully
27 requests the Court issue an order continuing Mr. Frere's self-surrender date to January 15, 2021,
28 without prejudice to the defense making additional continuance requests if the COVID-19

