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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 8:07-Cr-516-T-24 MAP

ROBERT METZ

PLEA AGREEMENT

Pursuant to Fed. R. Crim. P. 11(e), the United States of America, by Paul I. Perez, United States Attorney for the Middle District of Florida, and the defendant, ROBERT METZ, and the attorneys for the defendant, Brent D. Armstrong and Morris V. Borenstein, mutually agree as follows:

A. **Particularized Terms**

1. Count Pleading To

The defendant shall enter a plea of guilty to Count ^{Two} ~~One~~ charges the defendant with transporting and shipping visual depictions in interstate commerce, which visual depiction involved the use of a minor engaging in sexually explicit conduct. In violation of Title 18, United States Code, Section 2252A(a)(1).

2. Maximum Penalties

Count Two carries a maximum sentence of not less than five years nor more than ^{forty} ~~twenty~~ years, a fine of \$250,000, a term of supervised release of any term of years or life, but not less than five years, pursuant to Title 18, United States Code,

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Section 3583 (k), and a special assessment of \$100, said special assessment to be due on the date of sentencing.

3. Elements of the Offense

The defendant acknowledges understanding the nature and elements of the offense with which defendant has been charged and to which defendant is pleading guilty. The elements of Count Two are:

First: That the defendant knowingly transported or shipped, or attempted to transport or ship, in interstate commerce, any material;

Second: that contained an image of child pornography;

4. Counts Dismissed

At the time of sentencing, the remaining counts against the defendant, Counts One and Counts Three through Fourteen will be dismissed pursuant to Fed. R. Crim. P. 11(c)(1)(A).

5. No Further Charges

If the Court accepts this plea agreement, the United States Attorney's Office for the Middle District of Florida agrees not to charge the defendant with committing any other federal criminal offenses known to the United States Attorney's Office at the time of the execution of this agreement, related to the conduct giving rise to this plea agreement.

6. Acceptance of Responsibility - Three Levels

At the time of sentencing, and in the event that no adverse information is received suggesting such a recommendation to be unwarranted, the United States will recommend to the Court that the defendant receive a two-level downward adjustment

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for acceptance of responsibility, pursuant to USSG §3E1.1(a). The defendant understands that this recommendation or request is not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw from the plea.

Further, at the time of sentencing, if the defendant complies with the provisions of USSG §3E1.1(b), the United States agrees to file a motion pursuant to USSG §3E1.1(b) for a downward adjustment of one additional level. The defendant understands that the determination as to whether the defendant has qualified for a downward adjustment of a third level for acceptance of responsibility rests solely with the United States Attorney for the Middle District of Florida, and the defendant agrees that the defendant cannot and will not challenge that determination, whether by appeal, collateral attack, or otherwise.

7. Forfeiture of Assets

The defendant agrees to forfeit to the United States immediately and voluntarily any and all assets and property, or portions thereof, subject to forfeiture, pursuant to the provisions of Title 18, United States Code, Section 2253, whether in the possession or control of the United States or in the possession or control of the defendant or defendant's nominees. The assets subject to forfeiture include computers and peripherals, and child pornography which are contraband and/or were used to facilitate the offenses charged in the Indictment, including, but not limited to, the following: a) One Dell laptop computer (#SnCF1BLD1); b) one Gateway computer tower (#CSL59-410-06754); c) nine (9) PNY Jumpdrives; d) two (2) media cards; e) twenty-three (23) DVDs; f) two (2) VHS tapes; g) seven (7) floppy disks; and h) two (2) CDs. The defendant agrees and consents to the forfeiture of these assets pursuant to any

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federal criminal, civil, and/or administrative forfeiture action. The defendant also hereby agrees that the forfeiture described herein is not excessive and, in any event, the defendant waives any constitutional claims that the defendant may have that the forfeiture constitutes an excessive fine.

The defendant admits and agrees that the conduct described in the Factual Basis below provides a sufficient factual and statutory basis for the forfeiture of the property sought by the government. Pursuant to the provisions of Rule 32.2(b)(1), the United States and the defendant request that at the time of accepting this plea agreement, the court make a determination that the government has established the requisite nexus between the property subject to forfeiture and the offense to which defendant is pleading guilty and enter a preliminary order of forfeiture. Pursuant to Rule 32.2(b)(3), the defendant agrees that the preliminary order of forfeiture shall be final as to the defendant at the time it is entered, notwithstanding the requirement that it be made a part of the sentence and be included in the judgment.

The defendant agrees to forfeit all interests in the properties described above and to take whatever steps are necessary to pass clear title to the United States. These steps include, but are not limited to, the surrender of title, the signing of a consent decree of forfeiture, and signing of any other documents necessary to effectuate such transfers.

The defendant further agrees to take all steps necessary to locate property and to pass title to the United States before the defendant's sentencing. To that end, defendant agrees to fully assist the government in the recovery and return to the United States of any assets, or portions thereof, as described above wherever

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located. The defendant agrees to make a full and complete disclosure of all assets over which defendant exercises control and those which are held or controlled by a nominee. The defendant further agrees to be polygraphed on the issue of assets, if it is deemed necessary by the United States.

The defendant agrees that the United States is not limited to forfeiture of the property described above. If the United States determines that property of the defendant identified for forfeiture cannot be located upon the exercise of due diligence; has been transferred or sold to, or deposited with, a third party; has been placed beyond the jurisdiction of the Court; has been substantially diminished in value; or has been commingled with other property which cannot be divided without difficulty; then the United States shall, at its option, be entitled to forfeiture of any other property (substitute assets) of the defendant up to the value of any property described above. This Court shall retain jurisdiction to settle any disputes arising from application of this clause. The defendant agrees that forfeiture of substitute assets as authorized herein shall not be deemed an alteration of the defendant's sentence.

Forfeiture of the defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty this Court may impose upon the defendant in addition to forfeiture.

8. Abandonment of Property

The United States of America and defendant hereby agree that any computer equipment as defined in Title 18, United States Code, Section 2256, seized from the defendant and currently in the custody and/or control of the Federal Bureau of Investigation or other appropriate agency, were properly seized and are subject to

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forfeiture to the government according to Title 18, United States Code, Sections 2253 or 2254, and/or that the computer equipment and peripherals constitute evidence, contraband, or fruits of the crime for which he has pled guilty. The United States and defendant further agree that the computer equipment and child pornography seized were used, or intended to be used, in whole or in part, to commit or promote the commission of the conduct for which the defendant has pled guilty, subjecting it to forfeiture pursuant to Title 18, United States Code, Section 2253 and/or 2254. As such, defendant hereby relinquishes all claim, title and interest he has in the above described property to the United States of America with the understanding and consent that the Court, upon approval of this agreement, hereby directs the Federal Bureau of Investigation, or other appropriate agency, to cause the property described above to be destroyed forthwith without further obligation or duty whatsoever owing to defendant or any other person.

As part of the plea agreement in this case, defendant hereby states under penalty of perjury that he is the sole and rightful owner of the property, and that defendant hereby voluntarily abandons all right and claim to and consents to the destruction of the property identified in Paragraph 7 of this Plea Agreement titled Forfeiture of Assets.

B. Standard Terms and Conditions

1. Restitution, Special Assessment and Fine

The defendant understands and agrees that the Court, in addition to or in lieu of any other penalty, shall order the defendant to make restitution to any victim of the offense, pursuant to 18 U.S.C. § 3663A, for all offenses described in 18 U.S.C. §

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3663A(c)(1) (limited to offenses committed on or after April 24, 1996); and the Court may order the defendant to make restitution to any victim of the offense, pursuant to 18 U.S.C. § 3663 (limited to offenses committed on or after November 1, 1987) or § 3579, including restitution as to all counts charged, whether or not the defendant enters a plea of guilty to such counts, and whether or not such counts are dismissed pursuant to this agreement. On each count to which a plea of guilty is entered, the Court shall impose a special assessment, to be payable to the Clerk's Office, United States District Court, and due on date of sentencing. The defendant understands that this agreement imposes no limitation as to fine.

2. Supervised Release

The defendant understands that the offense to which the defendant is pleading provides for imposition of a term of supervised release upon release from imprisonment, and that, if the defendant should violate the conditions of release, the defendant would be subject to a further term of imprisonment.

3. Sentencing Information

The United States reserves its right and obligation to report to the Court and the United States Probation Office all information concerning the background, character, and conduct of the defendant, to provide relevant factual information, including the totality of the defendant's criminal activities, if any, not limited to the count to which defendant pleads, to respond to comments made by the defendant or defendant's counsel, and to correct any misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject to any limitations set forth herein, if any.

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Pursuant to 18 U.S.C. § 3664(d)(3) and Fed. R. Crim. P. 32(d)(2)(A)(ii), the defendant agrees to complete and submit, upon execution of this plea agreement, an affidavit reflecting the defendant's financial condition. The defendant further agrees, and by the execution of this plea agreement, authorizes the United States Attorney's Office to provide to, and obtain from, the United States Probation Office or any victim named in an order of restitution, or any other source, the financial affidavit, any of the defendant's federal, state, and local tax returns, bank records and any other financial information concerning the defendant, for the purpose of making any recommendations to the Court and for collecting any assessments, fines, restitution, or forfeiture ordered by the Court.

4. Sentencing Recommendations

It is understood by the parties that the Court is neither a party to nor bound by this agreement. The Court may accept or reject the agreement, or defer a decision until it has had an opportunity to consider the presentence report prepared by the United States Probation Office. The defendant understands and acknowledges that, although the parties are permitted to make recommendations and present arguments to the Court, the sentence will be determined solely by the Court, with the assistance of the United States Probation Office. Defendant further understands and acknowledges that any discussions between defendant or defendant's attorney and the attorney or other agents for the government regarding any recommendations by the government are not binding on the Court and that, should any recommendations be rejected, defendant will not be permitted to withdraw defendant's plea pursuant to this plea agreement. The government expressly reserves the right to support and defend

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any decision that the Court may make with regard to the defendant's sentence, whether or not such decision is consistent with the government's recommendations contained herein.

5. Appeal of Sentence-Waiver

The defendant agrees that this Court has jurisdiction and authority to impose any sentence up to the statutory maximum and expressly waives the right to appeal defendant's sentence or to challenge it collaterally on any ground, including the ground that the Court erred in determining the applicable guidelines range pursuant to the United States Sentencing Guidelines, except (a) the ground that the sentence exceeds the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines; (b) the ground that the sentence exceeds the statutory maximum penalty; or (c) the ground that the sentence violates the Eighth Amendment to the Constitution; provided, however, that if the government exercises its right to appeal the sentence imposed, as authorized by Title 18, United States Code, Section 3742(b), then the defendant is released from his waiver and may appeal the sentence as authorized by Title 18, United States Code, Section 3742(a).

6. Middle District of Florida Agreement

It is further understood that this agreement is limited to the Office of the United States Attorney for the Middle District of Florida and cannot bind other federal, state, or local prosecuting authorities, although this office will bring defendant's cooperation, if any, to the attention of other prosecuting officers or others, if requested.

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7. Filing of Agreement

This agreement shall be presented to the Court, in open court or in camera, in whole or in part, upon a showing of good cause, and filed in this cause, at the time of defendant's entry of a plea of guilty pursuant hereto.

8. Voluntariness

The defendant acknowledges that defendant is entering into this agreement and is pleading guilty freely and voluntarily without reliance upon any discussions between the attorney for the government and the defendant and defendant's attorney and without promise of benefit of any kind (other than the concessions contained herein), and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges defendant's understanding of the nature of the offense or offenses to which defendant is pleading guilty and the elements thereof, including the penalties provided by law, and defendant's complete satisfaction with the representation and advice received from defendant's undersigned counsel (if any). The defendant also understands that defendant has the right to plead not guilty or to persist in that plea if it has already been made, and that defendant has the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against defendant, the right against compulsory self-incrimination, and the right to compulsory process for the attendance of witnesses to testify in defendant's defense; but, by pleading guilty, defendant waives or gives up those rights and there will be no trial. The defendant further understands that if defendant pleads guilty, the Court may ask defendant questions about the offense or offenses to which defendant pleaded, and if defendant answers those questions under oath, on the record, and in

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the presence of counsel (if any), defendant's answers may later be used against defendant in a prosecution for perjury or false statement. The defendant also understands that defendant will be adjudicated guilty of the offenses to which defendant has pleaded and, if any of such offenses are felonies, may thereby be deprived of certain rights, such as the right to vote, to hold public office, to serve on a jury, or to have possession of firearms.

The defendant understands and agrees that at the time of sentencing the Court will order the defendant to register with the appropriate state agency or agencies as a sex offender. Pursuant to this order the defendant will register with the appropriate agency or agencies as a sex offender in any state in which he resides, attends school or travels to.

9. Factual Basis

Defendant is pleading guilty because defendant is in fact guilty. The defendant certifies that he does hereby admit that the facts set forth below are true, and were this case to go to trial, the United States would be able to prove those specific facts and others beyond a reasonable doubt:

FACTS

On August 28, 2007, a federal search warrant was executed at the Kissimmee, Florida, the home of Tony Guerra. Guerra had been using the Yahoo! screen name talon_fei@yahoo.com and the Google "Hello" program to trade child pornography, that is receiving and distributing it via the Internet and the Google "Hello" program. He also engaged in Internet chats involving sex with minors and trading child pornography.

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One of the individuals that Guerra chatted with and sent and received child pornographic images from was the defendant, Robert Metz, who was using the screen name rainbow6432.

On October 22, 2007, members of the FBI Sarasota Resident Agency, FBI Ft. Myers RA Innocent Images Task Force, and Detectives from the Manatee County Sheriff's Office executed the federal search warrant at the home of Robert Metz, seizing computers and computer software.

Metz was not home at the time of execution of the search warrant but was contacted via telephone and agreed to come to the residence.

Shortly thereafter Metz arrived at the residence and provided a non-custodial statement. Metz said that he first saw child pornography online in the early ^{2000's} 1990's when he had his first internet connection. Metz said he previously downloaded child pornography using word searches in Yahoo Groups. Metz used the search terms PTHC which he said meant "pre teen hard core", pre-teen, boys and girls. Metz said he has been using the Google "Hello" program to download and trade child pornography for the past 6 months. Metz said that he used the screen name Rainbow6432 to trade child pornography with multiple users via the Internet.

On November 8, 2007, a review of the forensic examination of Metz's computer showed that Metz had over 20,000 child pornographic images of CP. A vast number of images depict infants, toddlers and pre-teen children engaged in sex acts with adults. The images depicts children who have penises in their mouths; semen on them; are having their genitalia exposed in a lewd and lascivious manner, and are being vaginally

and anally penetrated. Many of the images depict sadomasochistic themes in which children are tied up and bound, and some of the photographs depict defecation.

One image on Metz's computer depicted one of his infant age daughters on a blanket with Metz's erect penis in the infant's mouth. He later told investigators that this was his infant daughter, "V2".

The computer examination also showed that from at least August 6, 2007 to September 29, 2007, Metz distributed 16,537 images of child pornography (as described above) to various individuals in the United States, England, Amsterdam, and Germany, among other destinations.

Between August 7, 2007 and September 16, 2007, one of the individuals Metz was trading child pornography with was Coolgirl2005@aol.com. The internet service provider for "Coolgirl2005" at the time of the trading was America On Line. America On Line is located in the State of Virginia, as is the server for America On Line. Child pornography traded between Metz and "Coolgirl2005" would travel from Metz's computer, located in the State of Florida, to the America On Line server located in the State of Virginia, then onto the state where the computer of "Coolgirl2005" was located, thus affecting interstate commerce.

On August 7, 2007 Metz received 180 images of child pornography from Coolgirl2005, and Metz sent Coolgirl2005 356 images of child pornography.

On August 12, 2007 Metz received 230 images of child pornography from Coolgirl2005, and Metz sent Coolgirl2005 659 images of child pornography.

On August 13, 2007 Metz received 528 images of child pornography from Coolgirl2005, and Metz sent Coolgirl2005 921 images of child pornography.

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On August 14, 2007 Metz sent Coolgirl2005 2,667 images of child pornography.

On August 29, 2007 Metz received 1,815 images of child pornography from Coolgirl2005, and Metz sent Coolgirl2005 1,720 images of child pornography.

On August 31, 2007 Metz received 26 images of child pornography from Coolgirl2005, and Metz sent Coolgirl2005 1,377 images of child pornography.

On September 16, 2007 Metz received 1,004 images of child pornography from Coolgirl2005, and Metz sent Coolgirl2005 992 images of child pornography.

The above child pornography was sent to Coolgirl2005 who was utilizing America On Line (AOL) as her Internet Service Provider. The server for AOL is located in Dulles, Virginia. Transmissions would have traveled in interstate commerce from the State of Florida to the State of Virginia, and ultimately to the computer of Coolgirl2005.

Subsequent to seizing Metz's computer, law enforcement learned that Metz had sexually abused his daughter "V1" while she was between the ages of three and eight. Metz had court ordered visitation of her and she spent weekends with him. Metz would shower with her and he would put her hand on his penis. Metz also rubbed her vaginal area and ejaculated on her. As "V1" grew older Metz would have vaginal, anal, and oral sex with her. All of the incidents occurred while they were living in York, Pennsylvania.

On November 13, 2007, law enforcement interviewed Metz at the Sarasota FBI Office. Metz provided a tape recorded post Miranda statement in which he said that he laid in bed with his minor daughter from his second marriage when this daughter was approximately 8 years old. Metz said that the incident occurred in a bedroom at his mother's residence in York, Pennsylvania after his divorce from his second wife. Metz said that this daughter was lying on her back and Metz was lying beside her. Metz said

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that he had his hand on her vaginal area over her clothing and he began to rub her clitoris over top her clothing and then put his fingers under her panties. Metz said that he digitally penetrated her vagina and was aroused by it. Metz said that he used to masturbate to the fantasy of having oral and vaginal intercourse with her and her sister when they were children.

Later in the afternoon of November 13, 2007, Metz provided a written statement to law enforcement in which he outlined in detail how he sexually abused three of his minor daughters over multi-year periods when they were approximately six through eight years of age while taking showers together and in bed at night.

10. Entire Agreement

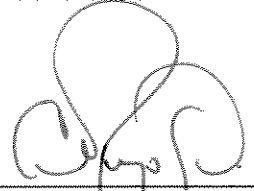
This plea agreement constitutes the entire agreement between the government and the defendant with respect to the aforementioned guilty plea and no other promises, agreements, or representations exist or have been made to the defendant or defendant's attorney with regard to such guilty plea.

11. Certification

The defendant and defendant's counsel certify that this plea agreement has been read in its entirety by (or has been read to) the defendant and that defendant fully understands its terms.

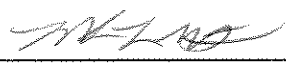
DATED this 31ST day of March, 2008.

ROBERT E. O'NEILL
United States Attorney



By:

COLLEEN MURPHY-DAVIS
Assistant United States Attorney



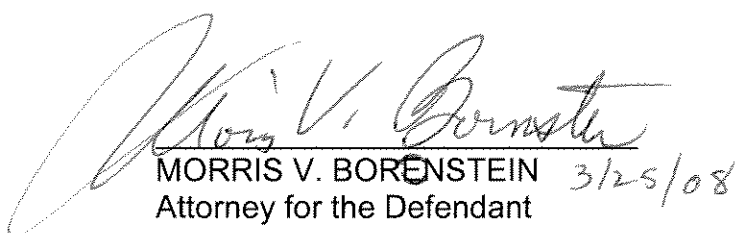
ROBERT METZ 3-25-08
Defendant



BRENT D. ARMSTRONG 3-25-08
Attorney for the Defendant



JAY L. HOFFER
Assistant United States Attorney
Deputy Chief, Special Prosecutions



MORRIS V. BORNSTEIN 3/25/08
Attorney for the Defendant