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Chief Approval 

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 8:18-cr-85-T-24JSS

MARC JASON LEVENE

**PLEA AGREEMENT**

Pursuant to Fed. R. Crim. P. 11(c), the United States of America, by Maria Chapa Lopez, United States Attorney for the Middle District of Florida, and the defendant, Marc Jason Levene, and the attorney for the defendant, Richard Reinhart, Esq., mutually agree as follows:

**A. Particularized Terms**

1. Count(s) Pleading To

The defendant shall enter a plea of guilty to Counts One and Three of the Indictment. Counts One and Three charge the defendant with possession of explosives by a convicted felon, in violation of 18 U.S.C. §§ 842(i)(1), 842(d), and 844(a)(1).

2. Maximum Penalties

Counts One and Three each carry a maximum sentence of ten years' imprisonment, a fine of \$250,000.00, a term of supervised release of not more than three years, and a special assessment of \$100 per felony count for

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individuals. With respect to certain offenses, the Court shall order the defendant to make restitution to any victim of the offense(s), and with respect to other offenses, the Court may order the defendant to make restitution to any victim of the offense(s), or to the community, as set forth below.

3. Elements of the Offense(s)

The defendant acknowledges understanding the nature and elements of the offense(s) with which defendant has been charged and to which defendant is pleading guilty. The elements of Counts One and Three are:

First: the defendant was previously convicted of a felony offense;

Second: the defendant thereafter knowingly received or possessed an explosive; and

Third: the explosive had been shipped or transported in or affecting interstate or foreign commerce.

4. Counts Dismissed

At the time of sentencing, the remaining counts against the defendant—Counts Two, Four, Five, and Six—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 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. Guidelines Sentence

Pursuant to Fed. R. Crim. P. 11(c)(1)(B), the United States will recommend to the Court that the defendant be sentenced within the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines, as adjusted by any departure the United States has agreed to recommend in this plea agreement. The parties understand that such a recommendation is not binding on the Court and that, if it is not accepted by this Court, neither the United States nor the defendant will be allowed to withdraw from the plea agreement, and the defendant will not be allowed to withdraw from the plea of guilty.

7. 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 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's offense level prior to operation of subsection (a) is level 16 or greater, and if the defendant complies with the provisions of USSG § 3E1.1(b) and all terms of this Plea Agreement, including but not limited to, the timely submission of the financial affidavit referenced in Paragraph B.5., 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.

8. Cooperation - Substantial Assistance to be Considered

Defendant agrees to cooperate fully with the United States in the investigation and prosecution of other persons, and to testify, subject to a prosecution for perjury or making a false statement, fully and truthfully before

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any federal court proceeding or federal grand jury in connection with the charges in this case and other matters, such cooperation to further include a full and complete disclosure of all relevant information, including production of any and all books, papers, documents, and other objects in defendant's possession or control, and to be reasonably available for interviews which the United States may require. If the cooperation is completed prior to sentencing, the government agrees to consider whether such cooperation qualifies as "substantial assistance" in accordance with the policy of the United States Attorney for the Middle District of Florida, warranting the filing of a motion at the time of sentencing recommending (1) a downward departure from the applicable guideline range pursuant to USSG §5K1.1, or (2) the imposition of a sentence below a statutory minimum, if any, pursuant to 18 U.S.C. § 3553(e), or (3) both. If the cooperation is completed subsequent to sentencing, the government agrees to consider whether such cooperation qualifies as "substantial assistance" in accordance with the policy of the United States Attorney for the Middle District of Florida, warranting the filing of a motion for a reduction of sentence within one year of the imposition of sentence pursuant to Fed. R. Crim. P. 35(b). In any case, the defendant understands that the determination as to whether "substantial assistance" has been provided or what type of motion related thereto will be filed, if any, rests

solely with the United States Attorney for the Middle District of Florida, and the defendant agrees that defendant cannot and will not challenge that determination, whether by appeal, collateral attack, or otherwise.

9. Use of Information - Section 1B1.8

Pursuant to USSG §1B1.8(a), the United States agrees that no self-incriminating information which the defendant may provide during the course of defendant's cooperation and pursuant to this agreement shall be used in determining the applicable sentencing guideline range, subject to the restrictions and limitations set forth in USSG §1B1.8(b).

10. Cooperation - Responsibilities of Parties

a. The government will make known to the Court and other relevant authorities the nature and extent of defendant's cooperation and any other mitigating circumstances indicative of the defendant's rehabilitative intent by assuming the fundamental civic duty of reporting crime. However, the defendant understands that the government can make no representation that the Court will impose a lesser sentence solely on account of, or in consideration of, such cooperation.

b. It is understood that should the defendant knowingly provide incomplete or untruthful testimony, statements, or information pursuant to this agreement, or should the defendant falsely implicate or

incriminate any person, or should the defendant fail to voluntarily and unreservedly disclose and provide full, complete, truthful, and honest knowledge, information, and cooperation regarding any of the matters noted herein, the following conditions shall apply:

(1) The defendant may be prosecuted for any perjury or false declarations, if any, committed while testifying pursuant to this agreement, or for obstruction of justice.

(2) The United States may prosecute the defendant for the charges which are to be dismissed pursuant to this agreement, if any, and may either seek reinstatement of or refile such charges and prosecute the defendant thereon in the event such charges have been dismissed pursuant to this agreement. With regard to such charges, if any, which have been dismissed, the defendant, being fully aware of the nature of all such charges now pending in the instant case, and being further aware of defendant's rights, as to all felony charges pending in such cases (those offenses punishable by imprisonment for a term of over one year), to not be held to answer to said felony charges unless on a presentment or indictment of a grand jury, and further being aware that all such felony charges in the instant case have heretofore properly been returned by the indictment of a grand jury, does hereby agree to reinstatement of such charges by recision of any order

dismissing them or, alternatively, does hereby waive, in open court, prosecution by indictment and consents that the United States may proceed by information instead of by indictment with regard to any felony charges which may be dismissed in the instant case, pursuant to this plea agreement, and the defendant further agrees to waive the statute of limitations and any speedy trial claims on such charges.

(3) The United States may prosecute the defendant for any offenses set forth herein, if any, the prosecution of which in accordance with this agreement, the United States agrees to forego, and the defendant agrees to waive the statute of limitations and any speedy trial claims as to any such offenses.

(4) The government may use against the defendant the defendant's own admissions and statements and the information and books, papers, documents, and objects that the defendant has furnished in the course of the defendant's cooperation with the government.

(5) The defendant will not be permitted to withdraw the guilty pleas to those counts to which defendant hereby agrees to plead in the instant case but, in that event, defendant will be entitled to the sentencing limitations, if any, set forth in this plea agreement, with regard to those counts to which the defendant has pled; or in the alternative, at the option of the

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United States, the United States may move the Court to declare this entire plea agreement null and void.

11. 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 18 U.S.C. §§ 844(c), 924(d), 981(a)(1)(C), and 982(a)(2)(B) and 28 U.S.C. § 2461(c), whether in the possession or control of the United States, the defendant or defendant's nominees.

The assets to be forfeited specifically include, but are not limited to, the following:

**Count One**

<b>Seizure Date</b>	<b>Type of Explosive</b>	<b>Total Weight (lbs.)</b>
1/29/2016	Quick Match	3,212
1/29/2016	Black Powder	22
1/29/2016	Visco Fuse (green)	80
1/29/2016	Visco Fuse (pink)	318
<b>TOTAL</b>		<b>3,701.1 lbs.</b>

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Count Three

<b>Seizure Date</b>	<b>Type of Explosive</b>	<b>Total Weight (lbs.)</b>
2/15/2018	Quick Match	1,594.23
2/15/2018	Time Fuse	1,682.04
2/15/2018	Visco Fuse (green)	505.3
2/15/2018	Visco Fuse (yellow)	250.89
<b>TOTAL</b>		<b>4,032.46 lbs.</b>

The defendant agrees and consents to the forfeiture of these assets pursuant to any federal criminal, civil judicial or administrative forfeiture action. The defendant also agrees to waive all constitutional, statutory and procedural challenges (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds, including that the forfeiture described herein constitutes an excessive fine, was not properly noticed in the charging instrument, addressed by the Court at the time of the guilty plea, announced at sentencing, or incorporated into the judgment.

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 Rule 32.2(b)(4), the defendant agrees that the preliminary order of forfeiture will satisfy the notice requirement and will be final as to the defendant at the time

it is entered. In the event the forfeiture is omitted from the judgment, the defendant agrees that the forfeiture order may be incorporated into the written judgment at any time pursuant to Rule 36.

The defendant agrees to take all steps necessary to identify and locate all property subject to forfeiture and to transfer custody of such property to the United States before the defendant's sentencing. The defendant agrees to be interviewed by the government, prior to and after sentencing, regarding such assets and their connection to criminal conduct. 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 Federal Rule of Criminal Procedure 11 and USSG § 1B1.8 will not protect from forfeiture assets disclosed by the defendant as part of the defendant's cooperation.

The defendant agrees to take all steps necessary to assist the government in obtaining clear title to the forfeitable assets before the defendant's sentencing. In addition to providing full and complete information about forfeitable assets, 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. To that end, the defendant agrees to make a full and complete disclosure of all assets over which defendant exercises control directly or indirectly, including all assets

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held by nominees, to execute any documents requested by the United States to obtain from any other parties by lawful means any records of assets owned by the defendant, and to consent to the release of the defendant's tax returns for the previous five years. The defendant agrees to be interviewed by the government, prior to and after sentencing, regarding such assets and their connection to criminal conduct.

The defendant agrees that the United States is not limited to forfeiture of the property specifically identified for forfeiture in this Plea Agreement. 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. The Defendant expressly consents to the forfeiture of any substitute assets sought by the Government. The defendant agrees that forfeiture of substitute assets as authorized herein shall not be deemed an alteration of the defendant's sentence.

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

The defendant agrees that, in the event the Court determines that the defendant has breached this section of the Plea Agreement, the defendant may be found ineligible for a reduction in the Guidelines calculation for acceptance of responsibility and substantial assistance, and may be eligible for an obstruction of justice enhancement.

The defendant agrees that the forfeiture provisions of this plea agreement are intended to, and will, survive the defendant, notwithstanding the abatement of any underlying criminal conviction after the execution of this agreement. The forfeitability of any particular property pursuant to this agreement shall be determined as if the defendant had survived, and that determination shall be binding upon defendant's heirs, successors and assigns until the agreed forfeiture, including satisfaction of any preliminary order of forfeiture for proceeds.

12. Abandonment of Property – Explosives and Ammunition

The United States of America and defendant hereby agree that any explosive or explosive materials as defined in 18 U.S.C. § 841(c) and (d), 27 C.F.R. § 555.23, and Federal Register Vol. 79, No. 194, at 60496 (October

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7, 2014), and any ammunition seized from the defendant and currently in the custody and/or control of the Bureau of Alcohol, Tobacco, Firearms and Explosives or other appropriate agency, were properly seized and are subject to forfeiture to the government according to 18 U.S.C. § 982(a)(2)(B) and 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), and/or that the explosives and explosive materials constitute evidence, contraband, or fruits of the crimes for which he has pled guilty. As such, defendant hereby relinquishes all claim, title and interest he has in the explosives and explosive materials, and the 858 rounds of CCI .22 caliber ammunition, to the United States of America with the understanding and consent that the Court, upon approval of this agreement, hereby directs the Bureau of Alcohol, Tobacco, Firearms and Explosives, or other appropriate agency, to cause the explosives and explosive materials and ammunition described herein 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 858 rounds of CCI .22 caliber ammunition and the following items:

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Seizure Date	Type of Explosive	Total Weight (lbs.)
1/7/2016	Time Fuse	65
1/28/2016	Time Fuse	68.1
1/29/2016	Quick Match	3,212
1/29/2016	Black Powder	22
1/29/2016	Visco Fuse (green)	80
1/29/2016	Visco Fuse (pink)	318
2/15/2018	Quick Match	1,742
2/15/2018	Time Fuse	1,773
2/15/2018	Visco Fuse (yellow)	250.89
2/15/2018	Visco Fuse (green)	505.3

**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(s), pursuant to 18 U.S.C. § 3663A, for all offenses described in 18 U.S.C. § 3663A(c)(1); and the Court may order the defendant to make restitution to any victim of the offense(s), pursuant to 18 U.S.C. § 3663, 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. The defendant further understands that compliance with any restitution payment plan imposed by the Court in no way precludes the United States from simultaneously pursuing other statutory remedies for collecting restitution (28 U.S.C. § 3003(b)(2)),

including, but not limited to, garnishment and execution, pursuant to the Mandatory Victims Restitution Act, in order to ensure that the defendant's restitution obligation is satisfied.

On each count to which a plea of guilty is entered, the Court shall impose a special assessment pursuant to 18 U.S.C. § 3013. To ensure that this obligation is satisfied, the Defendant agrees to deliver a check or money order to the Clerk of the Court in the amount of \$200.00, payable to "Clerk, U.S. District Court" within ten days of the change of plea hearing.

The defendant understands that this agreement imposes no limitation as to fine.

2. Supervised Release

The defendant understands that the offense(s) to which the defendant is pleading provide(s) 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. Immigration Consequences of Pleading Guilty

The defendant has been advised and understands that, upon conviction, a defendant who is not a United States citizen may be removed



from the United States, denied citizenship, and denied admission to the United States in the future.

4. 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(s) 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.

5. Financial Disclosures

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 to the United States Attorney's Office within 30 days of execution of this agreement an affidavit reflecting the defendant's financial condition. The defendant promises that his financial statement and disclosures will be complete, accurate and truthful and will include all assets in which he has any interest or over which the defendant exercises control, directly or indirectly, including



those held by a spouse, dependent, nominee or other third party. The defendant further agrees to execute any documents requested by the United States needed to obtain from any third parties any records of assets owned by the defendant, directly or through a nominee, and, by the execution of this Plea Agreement, consents to the release of the defendant's tax returns for the previous five years. The defendant similarly agrees and authorizes the United States Attorney's Office to provide to, and obtain from, the United States Probation Office, 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. The defendant expressly authorizes the United States Attorney's Office to obtain current credit reports in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court.

6. 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 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.

7. Defendant's Waiver of Right to Appeal the Sentence

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 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 18 U.S.C. § 3742(b), then the defendant is released from his waiver and may appeal the sentence as authorized by 18 U.S.C. § 3742(a).

8. 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.

9. 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.

10. 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 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

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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.

11. Factual Basis

Defendant is pleading guilty because defendant is in fact guilty. The defendant certifies that defendant 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 November 30, 2015, the Tampa Field Office of the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) received information that a convicted felon, the defendant, Marc Jason Levene (“Levene”), was selling explosives without a federal license or permit. Based on its investigation, the ATF determined that Levene was selling explosive fuses through a business called “ThePyroPro.com.”

On January 7, 2016, ATF Special Agent Balos and Deputy/Bomb Technician Nichols with the Sarasota County Sheriff’s Office (“SCSO”) interviewed Levene about his business of selling explosive fuses. This interview took place in Sarasota, Florida, located in the Middle District of Florida. During the interview, Levene admitted that he owns ThePyroPro.com, which he described as an online business that sells time fuse

and safety fuse. Agent Balos informed Levene that safety fuse and time fuse are part of the federal list of “explosive materials” and that these materials must be stored in an ATF-approved explosives magazine. Agent Balos also explained to Levene that as a convicted felon, Levene was prohibited from possessing explosives, and that time fuse and safety fuse are classified as “low explosives.” Agent Balos further pointed out that persons distributing time fuse are required to have an ATF explosives license, which Levene confirmed he did not possess. Levene admitted that he had tried to obtain relief from his prohibition on possessing explosives, but without success.

At the conclusion of the January 7 interview, Levene surrendered to Agent Balos one box containing five 750-foot rolls of KingShine red and white Chinese time fuse. Levene stated he was sorry for his actions and that he did not know he was violating the law. Levene also said he would stop selling fuse unless he got his rights restored.

#### **Count One**

Three weeks later, on January 28, 2016, Agent Balos and Deputy/Bomb Technician Nichols interviewed Levene at a house where he was residing on Bayonne Street in Sarasota, Florida (the “Bayonne Street residence”). The interviewing agents showed Levene photos of time fuse and visco fuse. Levene said he did not have any more of it. During this interview,

Agent Balos obtained consent to search a shed located in the backyard of the Bayonne Street residence that was used by Levene. During the search of Levene's shed, the ATF and SCSO located the following items:

- 73 boxes of KingShine quick match fuse. Each box contained 30 rolls of quick match. Each roll was 50 meters in length. Altogether, the quick match weighed approximately 3,212 pounds.
- Two boxes of KingShine red and white Chinese time fuse. The time fuse weighed approximately 68.1 pounds.
- Eight boxes of KingShine green perchlorate visco fuse. Each box contained 11 rolls of visco fuse (88 rolls total), weighing approximately 80 pounds.
- Six boxes of KingShine pink perchlorate visco fuse. Each box contained 20 rolls of visco fuse (120 rolls total), weighing approximately 318 pounds.
- Approximately 22 pounds of black powder. Levene said he made the black powder for rockets.

When asked about the contents of the shed at the Bayonne Street residence, Levene admitted that about three months prior he had moved the boxes of explosive fuses into the shed. Levene later admitted that he did not tell Agent Balos about the storage shed because he was afraid ATF would take it. That day, Agent Balos seized the time fuse from Levene's shed. ATF agents and SCSO deputies returned to the Bayonne Street residence the following day, on January 29, 2016, and seized the 3,600 pounds of quick



match, visco fuse, and black powder that Levene knowingly possessed in his shed.

**Count Three**

On November 5, 2017, an ATF special agent, acting in an undercover (UC) capacity, placed an order for time fuse and quick match from the ThePyroPro.com. The e-mail address associated with ThePyroPro.com website was Marc@ThePyroPro.com. The PayPal Activity Log for ThePyroPro.com account reflected the transaction with the UC on November 5, 2017, using an IP Address of 73.255.215.0. That IP address resolved to the Bayonne Street residence and a Comcast account in the name of "Levene." On November 13, 2017, the UC received a package of quick match and time fuse from "Levene," at P.O. Box 202817, Arlington, TX 76006.

On January 24, 2018, Agent Balos conducted surveillance at the Bayonne Street residence. Agent Balos observed Levene leave the residence as a passenger inside a Honda vehicle and travel to a self-storage facility located in Sarasota, Florida. Agent Balos watched surveillance video at the storage facility and observed Levene and his girlfriend access storage unit #815, a unit that Levene's girlfriend had rented for approximately one year. Levene and his girlfriend entered unit #815 without anything in their hands and exited the unit carrying a box and another object, which they placed in the

Honda. On January 30, 2018, an explosives-detection K-9 with the Bureau of Fire & Arson Investigations, Division of Investigative & Forensic Services, conducted a free-air sniff of storage unit #815 and made a positive alert for the presence of explosives inside the unit.

On February 15, 2018, law enforcement officers executed search warrants at storage unit #815 and the Bayonne Street residence. During the search of storage unit #815, ATF agents located the following items:

- 43 boxes of quick match;
- 27 boxes of time fuse;
- 27 boxes of visco fuse;
- One box with miscellaneous precursor materials;
- An explosives packing list; and
- An aluminum press block plate filled with flash powder.

During the search of the Bayonne Street residence, ATF agents and task force officers, and SCSO deputies, located the following items inside the residence:

- One box on an upstairs table containing miscellaneous chemicals used to manufacture explosives;
- Two rolls of quick match and two rolls of time fuse under a living room sofa;
- One box in the dining room containing multiple rolls of quick match and time fuse; and

- One bag with quick match in a southwest bedroom.

During the search of the exterior shed at the Bayonne Street residence (where the quick match, time fuse, and visco fuse were discovered on January 28 – 29, 2016), ATF agents located a box with 858 rounds of CCI .22 caliber ammunition and assorted Remington pistol primers. This box also contained a shipping invoice with the name “Levene,” an unrelated receipt in the name of “Levene,” and a Tupperware container with 0.6 grams of low explosives.

During a search of the Honda vehicle located on the curtilage of the Bayonne Street residence (which was observed on January 24, 2018 traveling to and from storage unit #815), ATF agents located two shipping labels with the name “Levene,” a business card for [ThePyroPro.com](http://ThePyroPro.com), and a box of quick match in the trunk.

On February 15, 2018, the ATF and SCSO conducted a post-*Miranda* interview of Levene. During the interview, Levene admitted that he had a spool of quick match under the sofa in his Bayonne Street residence. Levene further admitted that he had gone to storage unit #815 about two weeks prior, removed some quick match from it and put the quick match in his girlfriend’s vehicle. Levene said he had recently moved fuse from the storage unit to the Bayonne Street residence in case he needed to fill an order.

Levene added that his girlfriend leased storage unit #815 after the ATF seizure in 2016. Levene confirmed that the ATF previously informed him that he was not allowed to possess quick match and safety fuse. During the interview, Levene also admitted that he had purchased fuse from a distributor in North Dakota and sold quick match through ThePyroPro.com. Levene confirmed using the email addresses Marc@ThePyroPro.com. Levene said he obtained the P.O. Box in Arlington, Texas after the ATF seizure in 2016. With respect to the .22 caliber ammunition found in the exterior shed at the Bayonne Street residence, Levene said he bought the ammunition around August 2014 from an online source.

Altogether, on February 15, 2018, the ATF seized 1,742 pounds of quick match (1,594.23 pounds from storage unit #815); 1,773 pounds of time fuse (1,682.04 pounds from storage unit #815); and 505.3 pounds of green visco fuse and 250.89 pounds of yellow visco fuse (all of which ATF seized from storage unit #815).

An ATF Forensic Chemist conducted a laboratory analysis of the quick match, time fuse, and visco fuse seized from the Bayonne Street residence, the shed in the backyard of the residence, the Honda vehicle located outside the residence, and storage unit #815 on January 28 – 29, 2016, and February 15, 2018. The ATF Forensic Chemist determined that all of the

fuses seized from Levene constitute low explosives, specifically, “pyrotechnic fuses.” Pyrotechnic fuse is classified as an “explosive” pursuant to the 2014 Annual List of Explosive Materials, which was published and made available to the public on October 7, 2014. *See* Fed. Reg. Vol. 79, No. 194, at 60496 (October 7, 2014). In the 2014 Annual List of Explosive Materials the Department of Justice specified that quick match constitutes a type of pyrotechnic fuse.

Per federal regulations, low explosives, such as black powder, pyrotechnic fuse (*e.g.*, quick match), and time fuse must be stored in a Type-1, -2, or -4 permanent, portable or mobile indoor/outdoor magazine. *See* 27 C.F.R. §§ 555.207 - 210. During the course of this investigation, law enforcement officers discovered that Levene stored explosives at four separate locations: (1) the Bayonne Street residence; (2) the exterior shed behind the Bayonne Street residence; (3) the Honda vehicle on the curtilage of the Bayonne Street residence; and (4) storage unit #815. None of these locations qualify as a Type-4 magazine, which provides the minimal requirements for the storage of low explosives.

Levene’s possession of the above-described fuses all affected interstate or foreign commerce. For example, Levene purchased all of the seized fuses from distributors outside the state of Florida. Also, with respect

to the quick match, it was manufactured in China. Accordingly, all of these explosive fuses moved in interstate or foreign commerce before Levene knowingly possessed them in the Middle District of Florida.

Prior to possessing the explosive fuses described above, Levene had been convicted of the following felony offenses:

- Attempt to Commit a Felony, to wit: Unlawful Possession of a Controlled Substance (Marihuana) with Intent to Sell, in violation of Section 39-6-417 and 39-6-415 of the Tenn. Code, in the Criminal Court of Shelby County, Tennessee, in Case No. 94046, on or about April 23, 1984;
- Attempt to Commit a Felony, to wit: Unlawful Possession of a Controlled Substance (Diazepam) with Intent to Sell, in violation of Section 39-6-417 and 39-6-412 of the Tenn. Code, in the Criminal Court of Shelby County, Tennessee, in Case No. 94047, on or about April 23, 1984;
- Attempt to Commit a Felony, to wit: Unlawful Possession of a Controlled Substance (Lysergic Acid Diethylamide—LSD) with Intent to Sell, in violation of Sections 39-6-417 and 39-6-406 of the Tenn. Code, in the Criminal Court of Shelby County, Tennessee, in Case No. 94048, on or about April 23, 1984;
- Attempt to Commit a Felony, to wit: Unlawful Possession of a Controlled Substance (Diazepam) with Intent to Sell, in violation of Section 39-6-417 and 39-6-412 of the Tenn. Code, in the Criminal Court of Shelby County, Tennessee, in Case No. 94049, on or about April 23, 1984; and
- Conspiracy to Possess with Intent to Distribute and Distribution of a Controlled Substance, in violation of 21 U.S.C. § 846, in the United States District Court for the Western District of Tennessee, in Case No. 87-20186-01-M, on or about April 14, 1988.

Prior to knowingly possessing the explosive fuses and ammunition described above, Levene had not applied for or obtained restoration of his civil rights from the State of Tennessee or the federal government to possess firearms, ammunition, or explosives. Furthermore, a search of ATF records reflects that Levene does not hold, and has never held, any federal explosives license or permit.

12. 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.


Defendant's Initials     *ML*

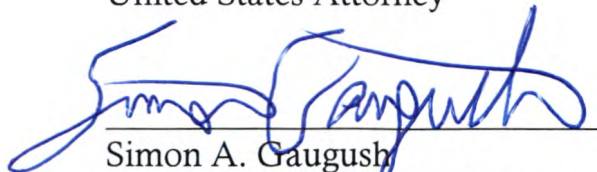
13. Certification

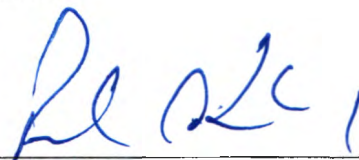
The defendant and defendant's counsel certify that this plea agreement has been read in its entirety by (or has been read to) the defendant and that defendant fully understands its terms.


DATED this 10<sup>th</sup> day of September, 2018.

MARIA CHAPA LOPEZ  
United States Attorney

  
\_\_\_\_\_  
Marc Jason Levene  
Defendant

  
\_\_\_\_\_  
Simon A. Gaugush  
Assistant United States Attorney  
Deputy Chief, Criminal Division

  
\_\_\_\_\_  
Richard Reinhart  
Attorney for Defendant

  
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Josephine W. Thomas  
Assistant United States Attorney  
Chief, Criminal Division