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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
10

11 UNITED STATES OF AMERICA,
12 Plaintiff,

14 v.

16 ALBERTO MORALES,
17 Defendant.
18

CASE NO: 1:13-CR-00049 LJO

**MEMORANDUM OF PLEA AGREEMENT
UNDER RULE 11(c)(1)(C) OF THE FEDERAL
RULES OF CRIMINAL PROCEDURE**

Date: TBD
Time: TBD
Ctrm: 4

Hon. Lawrence J. O'Neill

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20 Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the United States of
21 America, by and through Benjamin B. Wagner, the United States Attorney for the Eastern District of
22 California, and Assistant United States Attorney Brian W. Enos, has agreed with defendant ALBERTO
23 MORALES (“defendant”), and his attorney, Richard A. Beshwate, Jr., as set forth below. This Plea
24 Agreement is limited to the United States Attorney’s Office for the Eastern District of California and
25 cannot bind any other federal, state or local prosecuting, administrative or regulatory authority.

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1 1. Charges.

2 The defendant acknowledges that he has been charged in an indictment as follows:

3 Receipt or Distribution of Material Involving the Sexual Exploitation of Minors, in violation of
4 Title 18, United States Code, Section 2252(a)(2) (Count One).

5 Possession of Material Involving the Sexual Exploitation of Minors, in violation of Title 18,
6 United States Code, Section 2252(a)(4)(B) (Count Two).

7 2. Nature, Elements and Possible Defenses.

8 The defendant has read the charges against him contained in the indictment, and those charges
9 have been fully explained to him by his attorney. Further, the defendant fully understands the nature
10 and elements of the crime charged in Count Two of the indictment to which he is pleading guilty,
11 together with the possible defenses thereto, and he has discussed them with his attorney.

12 The elements of the crime of Possession of Material Involving the Sexual Exploitation of
13 Minors, as alleged in Count Two of the indictment, are as follows:

14 First, the defendant knowingly possessed;

15 Second, any visual depiction that had been mailed, shipped, or transported in
16 interstate or foreign commerce;

17 Third, by any means, including by computer;

18 Fourth, the producing of such visual depiction(s) involved the use of a minor
19 engaging in sexually explicit conduct; and

20 Fifth, the visual depiction was of such conduct.

21 3. Agreements by the Defendant.

22 (a) Defendant agrees that this plea agreement shall be filed with the court and become a part
23 of the record of the case.

24 (b) Defendant agrees to enter a plea of guilty to Count Two of the indictment which charges
25 him with Possession of Material Involving the Sexual Exploitation of Minors, in violation of Title 18,
26 United States Code, Section 2252(a)(4)(B).

27 (c) As likewise specified within Rule 11(c)(1)(C) of the Federal Rules of Criminal
28 Procedure, defendant understands and agrees that the court can either accept this plea agreement entered

1 into by the parties, at which time it will be binding upon the court, or the court can reject the agreement.
2 If the court rejects the agreement, then (1) either the defendant or the government will have the option to
3 withdraw from the plea agreement, or, alternatively, (2) the defendant will have the option of pleading
4 guilty to the charges in the indictment without an agreement with the government.

5 (d) The defendant is aware that Title 18, United States Code, Section 3742 affords a
6 defendant the right to appeal his plea, conviction, restitution imposed or any sentence imposed.
7 Acknowledging this, the defendant knowingly and voluntarily waives his Constitutional and statutory
8 rights to appeal his plea, conviction, restitution imposed or his sentence. This waiver of appeal includes,
9 but is not limited to, an express waiver of defendant's rights to appeal his plea, conviction, restitution
10 imposed or sentence on any ground, including any appeal right conferred by 18 U.S.C. § 3742 or
11 otherwise. The defendant further agrees not to contest his plea, conviction, restitution imposed or
12 sentence in any post-conviction proceeding, including but not limited to a proceeding under 28 U.S.C. §
13 2255 or § 2241.

14 (e) The defendant further acknowledges that his plea of guilty is voluntary and that no force,
15 threats, promises or representations have been made to anybody, nor agreement reached, other than
16 those set forth expressly in this agreement, to induce the defendant to plead guilty.

17 (f) The defendant agrees to waive all rights under the "Hyde Amendment," Section 617, P.L.
18 105-119 (Nov. 26, 1997), to recover attorney's fees or other litigation expenses in connection with the
19 investigation and prosecution of all charges in the above-captioned matter and of any related allegations
20 (including without limitation any charges to be dismissed pursuant to this Agreement and any charges
21 previously dismissed).

22 (g) The defendant agrees that the sentencing court will consult the 2012 edition of the United
23 States Sentencing Commissions Guidelines ("USSG"), as promulgated by the Sentencing Commission
24 pursuant to the Sentencing Reform Act of 1984, 18 U.S.C. §§ 3551-3742 and 28 U.S.C. §§ 991-998, and
25 as modified by United States v. Booker and United States v. Fanfan, 543 U.S. 220, 125 S.Ct. 738
26 (2005), and must take them into account when determining a reasonable sentence in light of the factors
27 set forth in 19 U.S.C. § 3553(a).

1 (h) Defendant agrees that his conduct is governed by USSG Section 2G2.2, and that the base
2 offense level for his crime is eighteen (18) under USSG § 2G2.2(a)(1); plus two (2) levels for receiving
3 sexually explicit images of prepubescent minors and/or children under twelve (12) years of age
4 (§2G2.2(b)(2)); plus two (2) levels because the offense involved the use of a computer (§ 2G2.2(b)(6));
5 plus four (4) levels because the offense to which defendant pleads guilty involves at least 300 images,
6 but fewer than 600 images (§2G2.2(b)(7)(C)); plus four (4) levels for receiving sexually explicit images
7 of minors that involve the portrayal of sadistic, masochistic or other depictions of violence
8 (§2G2.2(b)(4)), for an aggregate offense level of thirty (30).

9 (i) The defendant agrees that his total adjusted offense level, after reduction of three (3)
10 levels for acceptance of responsibility, will be twenty-seven (27). The defendant agrees that, under 18
11 U.S.C. § 2252(a)(4)(B)(2), he will be subject to a statutory mandatory minimum term of imprisonment
12 of ten years and a statutory maximum term of imprisonment of twenty years. This is true because the
13 defendant agrees that he has sustained a prior conviction, on or about October 2, 2006, for Possession of
14 Material Depicting the Sexual Exploitation of Minors, in violation of 18 U.S.C. § 2252(a)(4)(B).
15 Defendant agrees not to challenge the imposition of the mandatory minimum prison term of ten years
16 (120 months) in this case.

17 (j) The defendant agrees that one component of an overall reasonable sentence will be a term
18 of imprisonment of 120 months, and he agrees not will not in any way, directly or indirectly (by himself
19 or through others), request a sentence that includes a term of imprisonment of less than 120 months
20 imprisonment. He will not request a sentence of less than 120 months imprisonment by way of a request
21 for a downward departure in offense level or criminal history category or by reference to sentencing
22 factors under 18 U.S.C. § 3553(a) or any other means.

23 (k) The defendant agrees that another component of a "reasonable sentence" will include a
24 term of supervised release of one hundred eighty (180) months.

25 (l) If the defendant's conviction on the count to which he is pleading is ever vacated at the
26 defendant's request, or his sentence is ever reduced at his request, the government shall have the right
27 (1) to prosecute the defendant on any of the counts to which he pleaded guilty, (2) to reinstate any
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1 counts that may be dismissed under this agreement, and (3) to file any new charges that would otherwise
2 be barred by this agreement. The decision to pursue any or all of these options is solely in the discretion
3 of the United States Attorney's Office. By signing this agreement, the defendant agrees to waive any
4 objections, motions, and defenses he might have to the government's decision, including Double
5 Jeopardy. In particular, he agrees not to raise any objections based on the passage of time with respect
6 to such counts including, but not limited to, any statutes of limitation or any objections based on the
7 Speedy Trial Act or the Speedy Trial Clause of the Sixth Amendment.

8 (m) Defendant agrees that his conduct is governed by mandatory restitution pursuant to 18
9 U.S.C. § 2259 and agrees to pay the victims the full amount of their losses as ordered by the court and as
10 a result of the defendant's conduct as charged in the indictment. Defendant agrees that the mandatory
11 restitution applies to those victims affected by the charges as set forth in the indictment, including those
12 counts being dismissed as part of the plea agreement and regardless of whether or not the victims are
13 included in the factual basis.

14 (n) The defendant acknowledges that he has been advised, and he understands, that under the
15 Sex Offender Registration and Notification Act, a federal law, that he must register and keep his
16 registration current in each of the following jurisdictions: where he resides, where he is an employee,
17 and where he is a student. He understands that the requirements for registration include providing his
18 name, his residence address, and the names and addresses of any places where he is or will be an
19 employee or student, among other information. He further understands that the requirement to keep the
20 registration current includes informing at least one jurisdiction in which he resides, is an employee, or
21 student not later than three business days after any change in name, residence, employment, or student
22 status. The defendant has been advised, and understands, that failure to comply with these obligations
23 subjects him to prosecution for failure to register under federal law, 18 U.S.C. § 2250, which is
24 punishable by a fine or imprisonment, or both.

25 (o) Defendant agrees to forfeit to the United States voluntarily and immediately all of his
26 right, title, and interest to any and all assets subject to forfeiture pursuant to 18 U.S.C. § 2253. Those
27 assets include, but are not limited to, the following:

- 1 (1) iPhone 5, Model No. A1428, seized from defendant by law enforcement on or
2 about February 1, 2013;
- 3 (2) USB thumb drive, seized from defendant by law enforcement on or about
4 February 1, 2013; and
- 5 (3) Computers, compact discs, hard drives, or other storage devices containing visual
6 depictions of minors engaged in sexually explicit conduct and seized from defendant by
7 law enforcement on or about February 1, 2013.

8 Defendant agrees that the listed assets constitute property items which contain visual depictions
9 mailed, shipped, or transported in violation of 18 U.S.C. § 2252(a)(2) or was used or intended to be used
10 in any manner or part to commit and to promote the commission of the aforementioned violation, all in
11 violation of 18 U.S.C. § 2253.

12 Defendant agrees to fully assist the government in the forfeiture of the listed assets and to take
13 whatever steps are necessary to pass clear title to the United States. Defendant shall not sell, transfer,
14 convey, or otherwise dispose of any of his assets, including but not limited to, the above-listed assets.

15 Defendant agrees not to file a claim to any of the listed property in any civil proceeding,
16 administrative or judicial, which may be initiated. Defendant agrees to waive his right to notice of any
17 forfeiture proceeding involving this property, and agrees to not file a claim or assist others in filing a
18 claim in that forfeiture proceeding.

19 The defendant waives oral pronouncement of forfeiture at the time of sentencing and any defects
20 in such pronouncement that pertain to forfeiture, and waives any defenses to forfeiture, including any
21 defense predicated on the Ex Post Facto, Double Jeopardy, and Excessive Fines Clauses of the United
22 States Constitution. The defendant knowingly and voluntarily waives any right to a jury trial in any
23 criminal or civil forfeiture proceeding.

24 4. Agreements by the Government.

25 (a) The government agrees that defendant's conduct is governed by USSG Section 2G2.2,
26 and that the base offense level for his crime is eighteen (18) under USSG § 2G2.2(a)(1); plus two (2)
27 levels for receiving sexually explicit images of prepubescent minors and/or children under twelve (12)
28 years of age (§2G2.2(b)(2)); plus two (2) levels because the offense involved the use of a computer
(§ 2G2.2(b)(6)); plus four (4) levels because the offense to which defendant pleads guilty involves at

1 least 300 images, but fewer than 600 images (§2G2.2(b)(7)(C)); plus four (4) levels for receiving
2 sexually explicit images of minors that involve the portrayal of sadistic, masochistic or other depictions
3 of violence (§2G2.2(b)(4)), for an aggregate offense level of thirty (30).

4 (b) The government will recommend a three-level reduction in the computation of his
5 offense level (for a final sentencing level of twenty-seven (27)) if the defendant clearly demonstrates
6 acceptance of responsibility for his conduct as defined in Section 3E1.1 of the United States Sentencing
7 Commission Guidelines Manual.

8 (c) The government will move to dismiss Count One of the indictment in this case if the
9 defendant is sentenced under the terms of this plea agreement.

10 (d) The government will recommend a sentence of imprisonment of 120 months, the
11 statutory minimum term of imprisonment allowed under Title 18, United States Code §
12 2252(a)(4)(B)(2).

13 (e) The government agrees to a term of supervised release of 180 months.

14 5. Factual Basis.

15 The defendant will plead guilty because he is in fact guilty of the crime set forth in Count Two of
16 the indictment. Defendant also agrees that the following are the facts of this case, although he
17 acknowledges that, as to other facts, the parties may disagree:

18 Defendant, on or about February 1, 2013, in Stanislaus County, within the State and
19 Eastern District of California and elsewhere, did knowingly possess one or more matters
20 which contained any visual depiction that had been mailed, shipped, or transported in
21 interstate or foreign commerce, or which was produced using materials which had been
22 so mailed, shipped, or transported, the producing of which involved a minor engaging in
23 sexually explicit conduct and the depiction was of such conduct, specifically: the
24 defendant possessed on a cellular device and thumb drive at least one image file which
25 contained a visual depiction, the producing of which involved the use of a minor engaged
26 in sexually explicit conduct, and was of such conduct, as defined in Title 18, United
27 States Code, Section 2256, and which had traveled in interstate commerce all in violation
28 of Title 18, United States Code, Section 2252(a)(4)(B). Defendant possessed between
300 and 600 such images, and they included depictions of pre-pubescent minors engaged
in sado-masochistic conduct.

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1 6. Potential Penalties.

2 Defendant understands that because the count to which he is pleading guilty occurred after
3 November 1, 1987, the court will be required to consult the Sentencing Guidelines adopted by the
4 United States Sentencing Commission.

5 The following are the potential penalties that the defendant faces:

6 **Count Two: Possession of Material Involving the Sexual**
7 **Exploitation of Minors (18 U.S.C. § 2252(a)(4)(B)):**

8 (a) Imprisonment.

9 Minimum (Mandatory): Ten (10) years.
 Maximum: Twenty (20) years.

10 (b) Fine.

11 Maximum: Two Hundred Fifty Thousand Dollars (\$250,000).

12 (c) Both such fine and imprisonment.

13 (d) Term of Supervised Release.

14 Minimum: Five Years.
15 Maximum: Lifetime (18 U.S.C. 3583(k))

16 (Should the defendant violate any of the terms of his supervised release, he can be
17 returned to prison for the remaining period of supervised release actually imposed
 by the court or five years, whichever is less.)

18 (e) Penalty Assessment:

19 Mandatory: One Hundred Dollars (\$100).

20 7. Waiver of Rights.

21 Defendant understands that by pleading guilty he surrenders certain rights, including the
22 following:

23 (a) If defendant persisted in a plea of not guilty to the charges against him, he would have the
24 right to a public and speedy trial. The trial could be either a jury trial or a trial by a judge sitting without
25 a jury. Defendant has a right to a jury trial. But in order that the trial be conducted by a judge sitting
26 without a jury, defendant, the government and the judge all must agree that the trial be conducted by the
27 judge without a jury.

1 (b) If the trial were a jury trial, the jury would be composed of twelve lay persons selected at
2 random. Defendant and his attorney would have a say in who the jurors would be by removing
3 prospective jurors for cause where actual bias or other disqualification is shown, or without cause by
4 exercising peremptory challenges. The jury would have to agree unanimously before it could return a
5 verdict of either guilty or not guilty. The jury would be instructed that defendant is presumed innocent
6 and that it could not convict him unless, after hearing all the evidence, it was persuaded of his guilt
7 beyond a reasonable doubt.

8 (c) If the trial were held before a judge without a jury, the judge would find the facts and
9 determine, after hearing all the evidence, whether or not he was persuaded of the defendant's guilt
10 beyond a reasonable doubt.

11 (d) At a trial, whether by a jury or a judge, the government would be required to present its
12 witnesses and other evidence against defendant. Defendant would be able to confront those government
13 witnesses and his attorney would be able to cross-examine them. In turn, defendant could present
14 witnesses and other evidence on his own behalf. If the witnesses for defendant would not appear
15 voluntarily, he could require their attendance through the subpoena power of the Court. At trial, the
16 defendant would also have the right to assistance of legal counsel. If he could not afford legal counsel,
17 one would be appointed for him by the court at no expense to him.

18 (e) At a trial, defendant would have a privilege against self-incrimination so that he could
19 decline to testify, and no inference of guilt could be drawn from this refusal to testify.

20 Defendant understands that by pleading guilty he is waiving all of the rights set forth above and
21 defendant's attorney has explained those rights to him and the consequences of his waiver of those
22 rights.

23 8. Questions by Court.

24 Defendant understands that if the court questions him under oath, on the record and in the
25 presence of counsel, about the offense to which he has pleaded guilty, his answers, if false, may later be
26 used against him in a prosecution for perjury.

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1 9. Entire Agreement.

2 This plea of guilty is freely and voluntarily made and not the result of force or threats or of
3 promises apart from those set forth in this plea agreement. There have been no representations or
4 promises from anyone as to what sentence this Court will impose.

5 10. Court not a Party.


6 It is understood by the parties that the sentencing court is neither a party to nor bound by this
7 agreement and the sentencing judge is free to impose the maximum penalties as set forth in paragraph 6.
8 Further, in making its sentencing decision, the Court may take into consideration any and all facts and
9 circumstances concerning the criminal activities of defendant, including activities which may not have
10 been charged in the indictment.

11 11. Presentence Report.

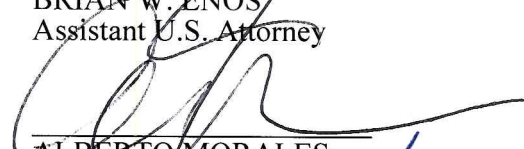
12 Defendant understands that the United States Probation Office is not a party to this agreement
13 and will conduct an independent investigation of defendant's activities and his background. It will then
14 prepare a presentence report which it will submit to the Court as its independent sentencing
15 recommendation. In addition, the government will fully apprise the Probation Office, as well as the
16 Court, of the full and true nature, scope and extent of the defendant's criminal activities,
17 including information on his background and criminal history.

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20 Dated: 12-2-13

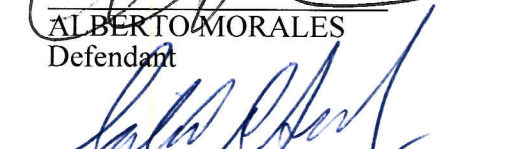
BENJAMIN B. WAGNER
United States Attorney

By: 
BRIAN W. ENOS
Assistant U.S. Attorney

21
22 Dated: 12/2/13


ALBERTO MORALES
Defendant

23
24
25 Dated: 11-19-13


RICHARD A. BESHWATE, Jr., Esq.
Attorney for Defendant