

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 16-CR-00013(RHK)

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|---------------------------|---|-------------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | PLEA AGREEMENT AND SENTENCING |
| |) | STIPULATIONS |
| v. |) | |
| |) | |
| ANTON ALEXANDER |) | |
| MARTYNENKO, |) | |
| |) | |
| Defendant. |) | |

The United States of America and Defendant, Anton Martynenko (“Defendant”), agree to resolve this case on the following terms and conditions. This Plea Agreement binds only Defendant and the United States Attorney’s Office for the District of Minnesota. It does not bind any other United States Attorney’s Office or any other federal or state agency.

1. **Charges.** Defendant agrees to plead guilty to Counts 1, 2 and 3 of the Information charging him with the following: (1) Production of Child Pornography, in violation of 18 U.S.C. §§ 2251(a) and 2251(e) (Count 1); (2) Distribution of Child Pornography, in violation of 18 U.S.C. §§ 2252(a)(2) and 2252(b)(1) (Count 2); and (3) Advertising Child Pornography, in violation of 18 U.S.C. §§ 2251(d)(1)(A), 2251(d)(2)(B), and 2251(e) (Count 3).

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JAN 15 2016
U.S. DISTRICT COURT ST. PAUL

2. **Factual Basis.** Defendant agrees to the following facts and further agrees that, were this matter to go to trial, the United States would prove the following facts beyond a reasonable doubt:

The Scheme

a. From on or about a date unknown, but at least as early as 2011, through on or about November 20, 2015, in the State and District of Minnesota, Defendant engaged in a scheme using various social media platforms, including Facebook and Twitter, to solicit child pornography from male victims, some of whom were under the age of 18 years. Specifically, Defendant created various “decoy” female social media profiles and accounts (hereinafter “decoy profile account”) to contact minor males. Defendant, using the decoy profile account, would then “friend” the minor male and/or engage in “chatting” or messaging with the minor male over the internet. While the minor male believed that he was communicating with a female, he was actually communicating with Defendant.

b. As part of the scheme, Defendant would transmit over the internet to the minor male victim photographs of a woman, which Defendant represented were of “her.” In many of the photographs, the woman was partially clothed or naked. During the communications, Defendant would steer the conversation to sexual topics. Defendant, still posing as a female, would persuade and entice the minor male to (1) photograph himself in a mirror showing the minor’s erect penis; and (2) transmit the nude photographs over the internet to Defendant’s decoy profile account. Defendant directed the minor on how to pose in the photographs. In some instances, Defendant also persuaded and enticed the minor male to also transmit to “her” a recording of the minor male masturbating. Defendant admits and agrees that these images and recordings constitute child pornography, as defined in 18 U.S.C. § 2256(8).

c. As part of the scheme, Defendant retained the photographs and recordings received from the minor male victims. Defendant catalogued and organized the images he received from his victims by their first and last name, as well as their age; he sometimes included their high school name. In some instances Defendant would re-initiate communications over the internet with his minor male victims seeking additional naked images. Defendant continued to use decoy profile accounts during these communications. In some instances, if his victims refused to provide him with additional images, Defendant would (1) threaten to distribute the naked images previously received; and/or (2) distribute

the naked images previously received. The images were distributed over the internet through various alias social media accounts.

d. In some instances, as part of the scheme, Defendant would use the various decoy profile accounts he created to offer to produce, display, and distribute the images of child pornography he had previously received from his minor male victims. Specifically, using a decoy profile account, Defendant would message an individual on his or her social media account and indicate that he had naked photographs of specified minor male victims. Defendant repeatedly offered to distribute those naked images. In some instances, Defendant did in fact distribute those naked images.

e. As part of the scheme, at least once, Defendant, still using a decoy profile account and posing as a female, would message his victims that if the victim allowed the decoy's "male" friend to perform oral sex on the victim, then the decoy would not distribute the victim's nude photographs. In one instance, these communications resulted in Defendant engaging in sexual activity with a known minor victim, R.B. In a slightly different approach, Defendant still using the decoy profile account and posing as a female, would message his victims that if the victim allowed the decoy's "male" friend to perform oral sex on the victim, then the decoy would have sex with the victim. In one instance, these communications resulted in Defendant engaging in sexual activity with a known minor victim, M.R.

Count 1

f. Defendant admits and agrees that on or about September 2, 2015, in the State and District of Minnesota, he used, persuaded, and enticed a known minor, VICTIM #1 E.D., to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct, which Defendant knew would be transmitted to him using a means and facility of and in and affecting interstate and foreign commerce, including by computer and via the internet. Specifically, Defendant admits and agrees that he used, persuaded, and enticed VICTIM #1 to produce the following visual depictions of VICTIM #1 engaging in sexually explicit conduct:

- (1) QId3lBkG.jpg;
- (2) r4hJKXqc.jpg;
- (3) WCwH1AMU.jpg;
- (4) iGJk7py3.jpg; and
- (5) 2tYREb-Z.jpg;

Defendant admits and agrees that these visual depictions constitute child pornography, as defined in 18 U.S.C. § 2256(8). Likewise, Defendant admits and agrees that he used,

persuaded and enticed VICTIM #1 to transmit the visual depictions of child pornography to him using a computer over the internet.

Count 2

g. Defendant admits and agrees that on or about July 18, 2015, in the State and District of Minnesota, he knowingly distributed child pornography. More specifically, Defendant admits and agrees that on or about July 18, 2015, he used the decoy profile account of "Kasey Akelt" to transmit over the internet to the Facebook profile of M.V.S., a computer video file titled "Movie4.MOV (1621164644827017)" which depicts VICTIM #2 L.D.G. masturbating. Defendant admits that VICTIM #2 was 16 years old when the video was made; and Defendant further admits that the video shows a minor engaging in sexually explicit conduct.

Count 3

h. Defendant admits and agrees that on or about April 19, 2015, in the State and District of Minnesota, he knowingly made, printed, and published, a notice and advertisement offering to produce, display, distribute and reproduce depictions of five minor males engaging in sexually explicit conduct where such depictions were of such conduct, and such notice and advertisement was transported using a means and facility of interstate and foreign commerce, including by computer. Specifically, on or about April 19, 2015, Defendant admits and agrees that he used a decoy profile account on Facebook to pose as "Marie Anna." From the decoy profile account, Defendant messaged a Facebook account controlled by law enforcement. In his message, Defendant admits and agrees that he wrote the following:

Heyyyy I have nudes of minor VICTIM #3 (C.Z.), VICTIM #4 (C.C), minor VICTIM #2 (L.D.G.), minor VICTIM #5 (T.H.), minor VICTIM #6 (J.E.), minor VICTIM #7 (L.R.G.), and other guys too! Wanna see?! [winking emoticon]

Relevant Conduct

i. Defendant admits and agrees that there were at least 20 minor males from whom he solicited and obtained child pornography. It is the Government's position that Defendant solicited and obtained child pornography from approximately 178 minor males. Likewise, Defendant admits and agrees that he distributed the images he received on at least 50 occasions. It is the Government's position that Defendant distributed the images he received on more than 1000 occasions. Finally, Defendant admits and agrees that he advertised child pornography on at least 50 occasions. It is the Government's position

that Defendant advertised child pornography on more than 1000 occasions. Notwithstanding U.S.S.G. §1B1.2(c), and although Defendant is agreeing to this relevant conduct, the parties agree that this relevant conduct will not be used to increase Defendant's advisory Guidelines range for sentencing purposes.

3. **Statutory Penalties.** The parties agree that the following statutory penalties apply to **Count 1**:

- a. a maximum term of thirty (30) years in prison;
- b. a mandatory minimum term of fifteen (15) years in prison;
- c. a supervised release term of at least five (5) years up to a maximum supervised release term of life;
- d. a criminal fine of up to \$250,000.00;
- e. a mandatory special assessment of \$100.00, which is payable to the Clerk of Court at sentencing; and
- f. payment of mandatory restitution in an amount to be determined by the Court.

The parties agree that the following statutory penalties apply to **Count 2**:

- a. a maximum term of twenty (20) years in prison;
- b. a mandatory minimum term of five (5) years in prison;
- c. a supervised release term of at least five (5) years up to a maximum supervised release term of life;
- d. a criminal fine of up to \$250,000.00;
- e. a mandatory special assessment of \$100.00, which is payable to the Clerk of Court at sentencing; and
- f. payment of mandatory restitution in an amount to be determined by the Court.

The parties agree that the following statutory penalties apply to **Count 3**:

- a. a maximum term of thirty (30) years in prison;
- b. a mandatory minimum term of fifteen (15) years in prison;
- c. a supervised release term of at least five (5) years up to a maximum supervised release term of life;
- d. a criminal fine of up to \$250,000.00;
- e. a mandatory special assessment of \$100.00, which is payable to the Clerk of Court at sentencing; and
- f. payment of mandatory restitution in an amount to be determined by the Court.

The parties agree and understand that the mandatory minimums do not aggregate and that the mandatory minimum sentence in this case is fifteen (15) years in prison.

4. **Waiver of Indictment.** Defendant understands and acknowledges that he has the right to have a Grand Jury consider the charges against him and to determine whether an Indictment is appropriate. Defendant hereby waives in open court prosecution by Indictment and consents that the proceeding may be by Information instead of by Indictment.

5. **Waiver of Pretrial Motions.** Defendant understands and agrees that he has the right to file pre-trial motions in this case. As part of this Plea Agreement, and based upon the concessions of the United States within this Plea Agreement, Defendant knowingly, willingly, and voluntarily gives up any right to pursue those motions.

6. **Revocation of Supervised Release.** Defendant understands that, if he were to violate any condition of supervised release, he could be sentenced to an additional term of imprisonment up to the length of the original supervised release term, subject to the statutory maximums set forth in 18 U.S.C. § 3583.

7. **Guideline Calculations.** Defendant agrees to be sentenced in accordance with the Federal Sentencing Act, 18 U.S.C. §§ 3551, *et seq.*, with reference to the applicable United States Sentencing Guidelines (“U.S.S.G.” or “Guidelines”). Nothing in this plea agreement should be construed to limit the parties from presenting any and all relevant evidence to the Court at sentencing. Consistent with the provisions of U.S.S.G. §3D1.1.2, the three counts of conviction are excluded from the grouping rules since each count represents a distinct criminal episode with separate harms and separate victims. Thus, each of the counts of conviction comprises a separate group.

a. **Calculating the Adjusted Offense Level**

Count 1 - Group 1

The parties stipulate that the following Guideline calculations are applicable with respect to **Count 1**:

- a. **Base Offense Level.** The parties agree that the base offense level for Production of Child Pornography is 32. (U.S.S.G. §2G2.1(a)).
- b. **Specific Offense Characteristics.** The parties agree that 2 levels are added because the offense involved a minor who had attained the age of twelve years but not attained the age of sixteen years. (U.S.S.G. §2G2.1(b)(1)(B)). Because the offense involved distribution, the parties agree that 2 levels are added. (U.S.S.G. §2G2.1(b)(3)). The parties agree that 2 levels are added because, for the purpose of producing sexually explicit material, the offense

involved the knowing misrepresentation of a participant's identity to persuade, induce, entice and coerce the minor to engage in sexually explicit conduct. (U.S.S.G. §2G2.1(b)(6)).

The total adjusted offense level is 38.

Count 2 - Group 2

The parties stipulate that the following Guideline calculations are applicable with respect to **Count 2**:

- a. Base Offense Level. The parties agree that the base offense level for Distribution of Child Pornography is 22. (U.S.S.G. §2G2.2(a)(2)).
- b. Specific Offense Characteristics. The parties agree that 6 levels are added because the offense involved distribution to a minor intended to persuade, induce, entice, or coerce the minor to engage in any illegal activity. (U.S.S.G. §2G2.2(b)(3)(D)). Because the defendant engaged in a pattern of activity involving the sexual exploitation of a minor, the parties agree that a 5 level increase is appropriate. (U.S.S.G. §2G2.2(b)(5)). The parties agree that 2 levels are added because the offense involved the use of a computer for the distribution of the material. (U.S.S.G. §2G2.2(b)(6)). Finally, because the offense involved more than 600 images, the parties agree that a 5 level increase is appropriate.

The total adjusted offense level is 40.

Count 3 - Group 3

The parties stipulate that the following Guideline calculations are applicable with respect to **Count 3**:

- a. Base Offense Level. The parties agree that the base offense level for Advertising Child Pornography is 32. (U.S.S.G. §2G2.1(a)).
- b. Specific Offense Characteristics. The parties agree that 2 levels are added because the offense involved a minor who had attained the age of twelve years but not attained the age of sixteen years. (U.S.S.G. §2G2.1(b)(1)(B)). Because the offense involved distribution, the parties agree that 2 levels are

added. (U.S.S.G. §2G2.1(b)(3)). The parties agree that 2 levels are added because, for the purpose of producing sexually explicit material, the offense involved the knowing misrepresentation of a participant's identity to persuade, induce, entice and coerce the minor to engage in sexually explicit conduct. (U.S.S.G. §2G2.1(b)(6)).

The total adjusted offense level is 38.

Multiple Count Adjustment

| Group # | Adjusted Offense Levels | Units |
|---------|-------------------------|-------|
| 1 | 38 | 1 |
| 2 | 40 | 1 |
| 3 | 38 | 1 |

Greater of the adjusted offense levels above = 40.

Pursuant to U.S.S.G. §3D1.4, three units results in a three-level increase. Accordingly, the parties agree that the total offense level is 43.

b. Acceptance of Responsibility and Other Chapter Three Adjustments

The parties agree that if Defendant (1) provides full, complete and truthful disclosures to the United States Probation and Pretrial Service Office, including providing complete, accurate and truthful financial information; (2) testifies truthfully during the change of plea and sentencing hearings; (3) complies with this agreement; and (4) undertakes no act inconsistent with acceptance of responsibility before the time of sentencing, the Government agrees to recommend that Defendant receive a two-level

reduction for acceptance of responsibility under U.S.S.G. §3E1.1(a), and to move for an additional one-level reduction under §3E1.1(b). Applying this downward adjustment, the parties agree that Defendant's adjusted offense level would be 40.

c. Chapter Four Enhancement

The parties agree that because the offense of conviction is a covered sex crime, and because neither §4B1.1 nor §4B1.5(a) applies, and because Defendant engaged in a pattern of activity involving prohibited sexual conduct, a five level enhancement applies under U.S.S.G. §4B1.5(b)(1), and the offense level is 45. However, U.S.S.G. Chapter 5, Part A, Application Note 2 provides that an offense level of more than 43 is to be treated as an offense level of 43. Therefore, the parties agree that Defendant's final adjusted offense level is 43.

d. Criminal History Category

Based on information available at this time, the parties believe that Defendant's criminal history category is I. This does not constitute a stipulation, but a belief based on an assessment of the information currently known. Defendant's actual criminal history and related status will be determined by the Court based on the information presented in the Pre-sentence Report and by the parties at the time of sentencing. If it is determined that Defendant's criminal history is more than I, that will not be a basis to withdraw from the plea agreement.

e. Advisory Guideline Range

If Defendant's final adjusted offense level is 43, and his criminal history category is I, then the resulting advisory Guidelines range is life in prison. However, the statutorily authorized maximum sentence is 80 years (30 + 20 + 30), which becomes the advisory Guidelines range. U.S.S.G. §5G1.2(b); U.S.S.G. 5G1.2(d) (to the extent the Guidelines range is above the statutory maximum for the counts of conviction, the sentences imposed shall run consecutively "to the extent necessary to produce a combined sentence equal to the total punishment."). The parties understand that the Court will make the final determination of both the final adjusted offense level and criminal history category at the sentencing hearing. Defendant specifically reserves the right to ask for a sentence below the applicable advisory Guidelines range. Defendant understands, however, that the mandatory minimum sentence in this case is fifteen (15) years in prison.

f. Fine Range

If the adjusted offense level is 43, the fine range is \$25,000 to \$250,000. (U.S.S.G. §5E1.2).

g. Supervised Release

The Sentencing Guidelines require a term of supervised release of at least five (5) years and up to a life term if a term of imprisonment of more than one year is imposed. (U.S.S.G. §§5D1.2(a)(1) and 5D1.2(b)(2); 18 U.S.C. § 3583 (k)).

8. **Discretion of the Court.** The foregoing stipulations are binding on the parties, but do not bind the Court. The parties understand that the Sentencing Guidelines are advisory and their application is a matter that falls solely within the Court's discretion. The Court may make its own determinations regarding the applicable Guidelines factors and the applicable criminal history category. The Court may also depart from the applicable Guidelines. If the Court determines that the applicable advisory Guideline calculations or Defendant's criminal history category are different from that stated above, the parties may not withdraw from this Plea Agreement and Defendant will be sentenced pursuant to the Court's determinations.

9. **Forfeiture.** Defendant agrees to forfeit to the United States, pursuant to Title 18, United States Code, Section 2253(a):

- a. any visual depiction described in section 2251, 2251A, 2252, 2252A, 2252B, or 2260 of Chapter 110, or any book, magazine, periodical, film, videotape, or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped or received in violation of Chapter 110;
- b. any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from such offense; and
- c. any property, real or personal, used or intended to be used to commit or to promote the commission of such offense.

Specifically, the parties agree that Defendant shall forfeit the following to the United States:

- Sandisk Cruzer Micro 2 GB Thumbdrive with no serial number;
- Sandisk Cruzer Glide 16 GB Thumbdrive-black/red with no serial

number;

- Samsung Galaxy SPH-D700 bearing serial number 268435459513371714;
- 2GB Attache Orange/Black Thumbdrive with no serial number;
- Monitor & Body of HP Laptop bearing serial number 5CD151788K;
- Toshiba 500 GB Hard Drive (Inside Body of HP Laptop) bearing serial number Z1DYT1AXTP71; and
- Samsung Cellular Phone Model CE0168 bearing serial number 357930044544960.

Defendant agrees that this property is subject to forfeiture because the items were used to commit the violations charged in the Information. The United States reserves the right to seek the forfeiture of additional property on which contraband child pornography is located. The parties specifically agree that the Government is not seeking and will not seek forfeiture of the residence located at 4637 Penkwe Way in Eagan, Minnesota.

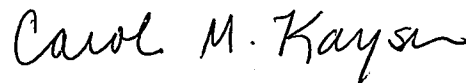
10. **Restitution**. Defendant understands and agrees that 18 U.S.C. § 2259 and the Mandatory Victim Restitution Act, 18 U.S.C. § 3663A, apply and that the Court is required to order Defendant to make restitution to the victim of his crime. This is no agreement with regard to the amount of restitution; however, Defendant understands and agrees that the Court may order him to make restitution to any victim of his crime, regardless of whether the victims are named in the Information.

11. **Special Assessment.** The Guidelines require payment of a special assessment in the amount of \$100 for each felony count of which Defendant is convicted. (U.S.S.G. §5E1.3). Defendant agrees that he is obligated to pay this amount.

12. **Complete Agreement.** This, along with any agreement signed by the parties before entry of the plea, is the entire agreement and understanding between the United States and Defendant.

Dated: 1/14/16

ANDREW M. LUGER
United States Attorney




BY: CAROL M. KAYSER
Assistant United States Attorney

Dated: 1/14/16



ANTON MARTYNNENKO
Defendant

Dated: 1/14/16


MARSH HALBERG
Attorney for Defendant