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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,
Plaintiff

v.

RYAN S. HERNANDEZ,
Defendant.

NO. CR19-259JCC

PLEA AGREEMENT

The United States of America, by and through Brian T. Moran, United States Attorney for the Western District of Washington, and Steven T. Masada, Assistant United States Attorney for said District, and the defendant RYAN S. HERNANDEZ and his attorney, Sara L. Caplan, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c)(1):

1. **Waiver of Indictment.** Defendant, having been advised of the right to be charged by indictment, agrees to waive that right and enter pleas of guilty to the charges brought by the United States Attorney in an information.

2. **Charge.** Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enters pleas of guilty to the following charges contained in the Superseding Information:

1 a. Computer Fraud and Abuse, as charged in Count 1, in violation of
2 Title 18, United States Code, Section 1030(a)(2)(C) and (c)(2)(B);

3 b. Possession of Child Pornography, as charged in Count 2, in violation
4 of Title 18, United States Code, Section 2252(a)(4)(B) and (b)(2).

5 By entering pleas of guilty, Defendant hereby waives all objections to the form of
6 the charging document. Defendant further waives any objections to venue as to either
7 charge. Defendant further understands that before entering his guilty plea, he will be
8 placed under oath. Any statement given by Defendant under oath may be used by the
9 United States in a prosecution for perjury or false statement.

10 3. **Elements of the Offense.** The elements of the offenses to which
11 Defendant is pleading guilty are as follows:

12 a. The elements of Computer Fraud and Abuse, as charged in Count 1,
13 in violation of Title 18, United States Code, Section 1030(a)(2)(C) and (c)(2)(B), are as
14 follows:

15 *First*, the defendant intentionally accessed without authorization or
16 exceeded authorized access to a computer;

17 *Second*, by accessing without authorization or exceeding authorized access
18 to a computer, the defendant obtained information from a computer that was used
19 in or affecting interstate or foreign commerce or communication; and

20 *Third*, the value of the information obtained exceeds \$5,000.

21 b. The elements of Possession of Child Pornography, as charged in
22 Count 2, in violation of Title 18, United States Code, Section 2252(a)(4)(B) and (b)(2),
23 are as follows:

24 *First*, the defendant knowingly possessed matter that the defendant knew
25 contained visual depictions of minors engaged in sexually explicit conduct;

26 *Second*, the defendant knew each visual depiction contained in the matter
27 was of minors engaged in sexually explicit conduct;
28

1 *Third*, the defendant knew that production of such visual depictions
2 involved the use of a minor engaged in sexually explicit conduct; and

3 *Fourth*, each visual depiction had been either transported in interstate or
4 foreign commerce, or produced using material that had been transported in
5 interstate or foreign commerce by computer or other means.

6 **4. The Penalties.** Defendant understands that the statutory penalties
7 applicable to the offenses to which he is pleading guilty are as follows:

8 a. For the offense of Computer Fraud and Abuse, as charged in
9 Count 1: A maximum term of imprisonment of up to five (5) years of imprisonment, a
10 fine of up to \$250,000, a period of supervision following release from prison of up to
11 three (3) years, and a mandatory special assessment of \$100.

12 b. For the offense of Possession of Child Pornography, as charged in
13 Count 2: A maximum term of imprisonment of up to 20 years, a fine of up to \$250,000, a
14 period of supervision following release from prison of not less than 5 years and up to life,
15 a mandatory special assessment of \$100.00, a \$5,000.00 penalty assessment unless the
16 defendant is indigent, and up to a \$17,000.00 penalty assessment for a child pornography
17 trafficking offense.

18 Defendant further understands that, in order to invoke the statutory sentence for
19 the offense charged in Count 2, the United States must prove beyond a reasonable doubt
20 that the offense charged in this count involved a visual depiction of a prepubescent minor
21 or a minor who had not attained 12 years of age. Defendant expressly waives the right to
22 require the United States to make this proof at trial and stipulates as a part of this plea of
23 guilty that the offense charged in Count 2 involved a visual depiction of a prepubescent
24 minor or a minor who had not attained 12 years of age.

25 Defendant understands that as a part of any sentence, in addition to any term of
26 imprisonment and/or fine that is imposed, the Court may order Defendant to pay
27 restitution to any victim of the offense, as required by law. Defendant understands he
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1 will be required to pay a minimum of \$3,000.00 to each victim of the offense charged in
2 Count 2.

3 If a probationary sentence is imposed, the probation period can be for up to five
4 (5) years. Defendant agrees that the special assessment shall be paid at or before the time
5 of sentencing.

6 Defendant understands that supervised release is a period of time following
7 imprisonment during which Defendant will be subject to certain restrictive conditions and
8 requirements. Defendant further understands that, if supervised release is imposed and
9 Defendant violates one or more of the conditions or requirements, Defendant could be
10 returned to prison for all or part of the term of supervised release that was originally
11 imposed. This could result in Defendant serving a total term of imprisonment greater
12 than the statutory maximum stated above.

13 Defendant understands that as a part of any sentence, in addition to any term of
14 imprisonment and/or fine that is imposed, the Court may order Defendant to pay
15 restitution to any victim of the offense, as required by law.

16 Defendant further understands that the consequences of pleading guilty may
17 include the forfeiture of certain property, either as a part of the sentence imposed by the
18 Court, or as a result of civil judicial or administrative process.

19 Defendant agrees that any monetary penalty the Court imposes, including the special
20 assessment, fine, costs, or restitution, is due and payable immediately and further agrees
21 to submit a completed Financial Statement of Debtor form as requested by the United
22 States Attorney's Office.

23 **5. Rights Waived by Pleading Guilty.** Defendant understands that by
24 pleading guilty, he knowingly and voluntarily waives the following rights:

- 25 a. The right to plead not guilty and to persist in a plea of not guilty;
- 26 b. The right to a speedy and public trial before a jury of his peers;
- 27 c. The right to the effective assistance of counsel at trial, including, if
28 Defendant could not afford an attorney, the right to have the Court appoint one for him;

1 d. The right to be presumed innocent until guilt has been established
2 beyond a reasonable doubt at trial;

3 e. The right to confront and cross-examine witnesses against Defendant
4 at trial;

5 f. The right to compel or subpoena witnesses to appear on his behalf at
6 trial;

7 g. The right to testify or to remain silent at trial, at which trial such
8 silence could not be used against Defendant; and

9 h. The right to appeal a finding of guilt or any pretrial rulings.

10 6. **United States Sentencing Guidelines.** Defendant understands and
11 acknowledges that the Court must consider the sentencing range calculated under the
12 United States Sentencing Guidelines and possible departures under the Sentencing
13 Guidelines together with the other factors set forth in Title 18, United States Code,
14 Section 3553(a), including: (1) the nature and circumstances of the offense; (2) the
15 history and characteristics of Defendant; (3) the need for the sentence to reflect the
16 seriousness of the offense, to promote respect for the law, and to provide just punishment
17 for the offense; (4) the need for the sentence to afford adequate deterrence to criminal
18 conduct; (5) the need for the sentence to protect the public from further crimes of
19 Defendant; (6) the need to provide Defendant with educational and vocational training,
20 medical care, or other correctional treatment in the most effective manner; (7) the kinds
21 of sentences available; (8) the need to provide restitution to victims; and (9) the need to
22 avoid unwarranted sentence disparity among defendants involved in similar conduct who
23 have similar records. Accordingly, Defendant understands and acknowledges that:

24 a. The Court will determine Defendant's Sentencing Guidelines range
25 at the time of sentencing;

26 b. After consideration of the Sentencing Guidelines and the factors in
27 18 U.S.C. § 3553(a), the Court may impose any sentence authorized by law, up to the
28 maximum term authorized by law;

1 c. The Court is not bound by any recommendation regarding the
2 sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines
3 range offered by the parties or the United States Probation Department, or by any
4 stipulations or agreements between the parties in this Plea Agreement; and

5 d. Defendant may not withdraw a guilty plea solely because of the
6 sentence imposed by the Court.

7 7. **Ultimate Sentence.** Defendant acknowledges that no one has promised or
8 guaranteed what sentence the Court will impose.

9 8. **Restitution.** Defendant shall make restitution to Nintendo Co., Ltd.,
10 and/or, its U.S. subsidiary, Nintendo of America (collectively, "Nintendo") in the amount
11 of \$259,323.82, with credit for any amounts already paid.

12 Defendant is aware that, absent an agreement as to restitution, the United States
13 will present evidence supporting an order of restitution for all losses caused by all of
14 Defendant's criminal conduct known to the United States at the time of Defendant's
15 guilty pleas to include those losses resulting from crimes not charged or admitted by
16 Defendant in the Statement of Facts, including additional instances where Defendant
17 attempted to compromise Nintendo's networks and/or to access confidential Nintendo
18 data. In exchange for the promises by the United States contained in this plea agreement,
19 Defendant agrees that Defendant will be responsible for any order by the District Court
20 requiring the payment of restitution for such losses.

21 a. The full amount of restitution shall be due and payable immediately
22 on entry of judgment and shall be paid as quickly as possible. If the Court finds that the
23 defendant is unable to make immediate restitution in full and sets a payment schedule as
24 contemplated in 18 U.S.C. § 3664(f), Defendant agrees that the Court's schedule
25 represents a minimum payment obligation and does not preclude the U.S. Attorney's
26 Office from pursuing any other means by which to satisfy the defendant's full and
27 immediately-enforceable financial obligation, including, but not limited to, by pursuing
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1 assets that come to light only after the district court finds that the defendant is unable to
2 make immediate restitution.

3 b. Defendant agrees to disclose all assets in which Defendant has any
4 interest or over which Defendant exercises control, directly or indirectly, including those
5 held by a spouse, nominee, or third party. Defendant agrees to cooperate fully with the
6 United States' investigation identifying all property in which Defendant has an interest
7 and with the United States' lawful efforts to enforce prompt payment of the financial
8 obligations to be imposed in connection with this prosecution. Defendant's cooperation
9 obligations are: (1) before sentencing, and no more than 30 days after executing this Plea
10 Agreement, truthfully and completely executing a Financial Disclosure Statement
11 provided by the United States Attorney's Office and signed under penalty of perjury
12 regarding Defendant's and Defendant's spouse's financial circumstances and producing
13 supporting documentation, including tax returns, as requested; (2) providing updates
14 with any material changes in circumstances, as described in 18 U.S.C. § 3664(k), within
15 seven days of the event giving rise to the changed circumstances; (3) authorizing the
16 United States Attorney's Office to obtain Defendant's credit report before sentencing;
17 (4) providing waivers, consents or releases requested by the U.S. Attorney's Office to
18 access records to verify the financial information; (5) authorizing the U.S. Attorney's
19 Office to inspect and copy all financial documents and information held by the U.S.
20 Probation Office; (6) submitting to an interview regarding Defendant's Financial
21 Statement and supporting documents before sentencing (if requested by the United States
22 Attorney's Office), and fully and truthfully answering questions during such interview;
23 and (7) notifying the United States Attorney's Office before transferring any interest in
24 property owned directly or indirectly by Defendant, including any interest held or owned
25 in any other name, including all forms of business entities and trusts.

26 c. The parties acknowledge that voluntary payment of restitution prior
27 to the adjudication of guilt is a factor the Court considers in determining whether
28 Defendant qualifies for acceptance of responsibility pursuant to USSG § 3E1.1(a). In

1 addition, in any event, the government will consider Defendant's cooperation regarding
2 restitution in making its sentencing recommendation.

3 **9. Forfeiture of Property.** The defendant understands that forfeiture is part
4 of the sentence that must be imposed in this case. The defendant agrees to forfeit to the
5 United States, immediately, all of his right, title, and interest in any and all property
6 constituting or derived from proceeds he obtained as the result of the offense pursuant to
7 Title 18, United States Code, Sections 982(a)(2)(B) and 1030(i). The defendant also
8 agrees to forfeit to the United States, immediately, any and all property that facilitated the
9 offense pursuant to Title 18, United States Code, Section 1030(i), including but not
10 limited to:

- 11 a. One Seagate external hard drive, serial no. Z84112WS;
- 12 b. One Apple Macbook, serial no. C02MN8TDFD57;
- 13 c. Nintendo Switch console, serial no. XAW10001300634;
- 14 d. Nintendo Switch console serial no. XAW10021377616;
- 15 e. IS-Nitro-Emulator, serial no. 08050639); and
- 16 f. NDEV wireless device, serial no. NMA20089065).

17 With respect to computers, digital devices, and digital or electronic media, Defendant
18 agrees to forfeit the items and all files, data, and other contents of the items

19 Defendant agrees to fully assist the United States in the forfeiture of all forfeitable
20 property and to take whatever steps are necessary to pass clear title to the United States,
21 including but not limited to: surrendering title and executing any documents necessary to
22 effect forfeiture; assisting in bringing any property located outside the United States
23 within the jurisdiction of the United States; and taking whatever steps are necessary to
24 ensure that property subject to forfeiture is not sold, disbursed, wasted, hidden, or
25 otherwise made unavailable for forfeiture. Defendant agrees not to file a claim to any
26 such property in any federal forfeiture proceeding, administrative or judicial, which may
27 be or has been initiated.

1 The United States reserves its right to proceed against any remaining property not
 2 identified in this Plea Agreement, including any property in which Defendant has any
 3 interest or control, if that property was involved in or facilitated his commission of
 4 Computer Fraud and Abuse or if that property constitutes or derives from proceeds he
 5 obtained from the offense.

6 **10. Abandonment of Contraband and Circumvention Devices.** The
 7 defendant also agrees that, if any federal law enforcement agency seized any illegal
 8 contraband or electronic circumvention devices that were in his direct or indirect control,
 9 he consents to the federal administrative disposition, official use, and/or destruction of
 10 that contraband, the devices on which such contraband was stored, and circumvention
 11 devices. The defendant further agrees to the deletion or wiping of content stored on
 12 electronic devices or storage media that are to be returned to the defendant, designee, or a
 13 third party, if any.

14 **11. Statement of Facts.** The parties agree on the following facts. Defendant
 15 admits he is guilty of the charged offense or offenses:

16 On multiple occasions over the course of years, continuing up through June
 17 2019, the defendant RYAN S. HERNANDEZ, who also uses the alias "Ryan
 18 West" and the online moniker "RyanRocks," hacked into protected computers of
 19 Nintendo and stole non-public and proprietary data most commonly related to
 20 developer tools, pre-release video games, and game consoles. HERNANDEZ
 21 shared such information with others through various social media and online
 22 portals. Despite prior contact by Nintendo representatives and law enforcement,
 23 HERNANDEZ persisted.

24 More specifically, in October 2016, HERNANDEZ, then a minor, and an
 25 associate compromised Nintendo's online Developer Portal, which is used to
 26 develop video games and video game consoles. HERNANDEZ used a phishing
 27 message, falsely requesting technical support, posted to a Nintendo online forum
 28 to trick a Nintendo employee to click on an external link embedded in the
 message. As designed, the link directing the Nintendo employee to an external
 site hosting a malware program that secretly scraped the employee's information
 and authentication tokens. The associate then used the employee's stolen tokens
 to upload malware onto the Nintendo developer site, which logged the tokens of
 legitimate users logging onto the site, and later to gain administrator access to the

1 Developer Portal. The associate then used the stolen user tokens to download
2 proprietary Nintendo data. Some of the stolen data, including pre-release
3 information about the Nintendo Switch console, was then leaked to the public.

4 On October 25, 2017, FBI agents contacted HERNANDEZ at his Palmdale,
5 California residence. During that consensual interview, conducted in the presence
6 of HERNANDEZ's parents, HERNANDEZ promised to stop any further
7 malicious activity against Nintendo and confirmed his understanding of the
8 potential consequences of future hacking conduct.

9 Despite his promise, HERNANDEZ thereafter hacked into various servers
10 belonging to Nintendo, similarly targeting information about developer tools,
11 video games, and consoles, including products still under development and others
12 not yet released publicly.

13 Beginning no later than June 2018, and continuing until June 2019 (when
14 agents again contacted him and searched his residence), HERNANDEZ accessed,
15 without authorization, various server groups and downloaded confidential and
16 proprietary information. For example, one of the server groups targeted by
17 HERNANDEZ related to a staging environment for the Nintendo eShop, which is
18 used for pre-production testing. In June 2018, HERNANDEZ accessed the
19 servers, using without authorization a legitimate certificate, and requested and
20 downloaded pre-release information and data, including development tools and
21 files relating to retail titles. Similarly, beginning in June 2018, HERNANDEZ
22 accessed the device authentication server group using an illegitimate certificate
23 obtained from an application extracted from the previously compromised staging
24 environment server group. Beginning in July 2018, HERNANDEZ accessed the
25 server group that managed content for Nintendo retail kiosks, including
26 advertising material and game demos. The servers compromised by
27 HERNANDEZ were located in various states, including Washington and Oregon,
28 and in some cases abroad, and were used in and affect interstate and foreign
commerce and communication.

HERNANDEZ posted about his hacking exploits and leaked stolen
information using various online platforms, such as Twitter and Discord.
HERNANDEZ operated an online forum on Discord dedicated to Nintendo and
Nintendo products called "Ryan's Underground Hangout." Through this Discord
forum, which enables users to create chatrooms (called "servers") where
participants can communicate through posts and/or direct messages as well as
through voice or video chat, HERNANDEZ and his associates collaborated
regarding possible system vulnerabilities, and HERNANDEZ shared details of

downloaded content and information about compromised Nintendo servers and file directories.

On June 19, 2019, FBI agents searched HERNANDEZ's Palmdale, California residence. Therein, they recovered various electronic devices from HERNANDEZ's bedroom, including a Seagate external hard drive (s/n Z84112WS) containing thousands of confidential Nintendo files related to video games, consoles, and developer tools; and an Apple Macbook (s/n C02MN8TDFD57), two Nintendo Switch consoles (s/n XAW10001300634 and s/n XAW10021377616), IS-Nitro-Emulator (s/n 08050639), and NDEV wireless device (s/n NMA20089065) used to facilitate the unauthorized access. Investigators also recovered several circumvention devices used to access pirated games and other proprietary content. The value of the information HERNANDEZ stole was substantial, well in excess of \$5,000. Agents also seized circumvention devices, used to bypass authentication features allowing users to access and play pirated video games.

For some period of time, continuing up through June 19, 2019, HERNANDEZ also knowingly possessed visual depictions of minors engaged in sexually explicit conduct, which he stored electronically on his digital devices. For instance, on the aforementioned Seagate external hard drive, HERNANDEZ possessed approximately 669 graphics and 968 videos of actual minors, including prepubescent minors, engaged in sexually explicit conduct, which he stored in a folder directory called "Bad Stuff" and further organized in a rating system (within subfolders titled "cute," "eh," "okish," etc.).

Among the visual depictions HERNANDEZ knowingly possessed are the three described below:

- File 1: "BR160 12 and 7 Year Old Cousins Suck Fuck 69 And Jerk + Get Caught.avi"

This 50-minute video depicts two prepubescent males on a webcam sitting on what appears to be a bed. Both males remove their clothing and proceed to engage in both manual and oral sex. Based on lack of pubic hair, muscular development, and youthful appearance, both males are approximately between 7 and 12 years old (as indicated by the file name).

- File 2: "2 boys hard fuck xxx.avi"

This 20-minute video depicts a naked prepubescent male laying on a bed. A second prepubescent male is shown removing his clothing and joining the first

male on the bed. The video continues to show the pair engaging in oral and anal sex. Based on lack of pubic hair, muscular development, and youthful appearance, both males are approximately 12 years old.

- File 3: "9 Year Old Zachary And Kevin Suck Jerk And Play + Get Caught.avi"

This 58-minute video depicts two prepubescent males on a webcam sitting on what appears to be a bed. Both males remove their clothing and proceed to engage in both manual and oral sex. Based on lack of pubic hair, muscular development, and youthful appearance, both males are approximately 9 years old (as indicated by the file name).

HERNANDEZ knowingly possessed all of the visual depictions of minors engaged in sexually explicit conduct found on his digital devices. He collected these depictions because of their content and downloaded such visual depictions from the Internet. All of the visual depictions HERNANDEZ possessed were produced using materials that had been shipped or transported in interstate or foreign commerce.

The parties agree that the Court may consider additional facts contained in the Presentence Report (subject to standard objections by the parties) and/or that may be presented by the United States or Defendant at the time of sentencing, and that the factual statement contained herein is not intended to limit the facts that the parties may present to the Court at the time of sentencing.

12. **Sentencing Factors.** The parties agree that the following Sentencing Guidelines provisions apply to this case:

Computer Fraud and Abuse, as charged in Count 1:

- a. A base offense level of 6, pursuant to USSG § 2B1.1(a)(2);
- b. An offense level enhancement of 18 levels (+18), based on an estimated loss caused to Nintendo of more than \$3,500,000, pursuant to USSG § 2B1.1(b)(1)(J);
- c. An offense level enhancement of 2 levels (+2), because the offense involved sophisticated means and the defendant intentionally engaged in and caused the conduct constituting sophisticated means, pursuant to USSG § 2B1.1(b)(10).

Possession of Child Pornography, as charged in Count 2:

a. A base offense level of 18, pursuant to USSG § 2G2.2(a)(1);

b. An offense level enhancement of 2 levels (+2), because the material involved a prepubescent minor or a minor who had not attained the age of 12 years, pursuant to USSG § 2G2.2(b)(2);

c. An offense level enhancement of 2 levels (+2), because the offense involved the use of a computer, pursuant to USSG § 2G2.2(b)(6);

d. An offense level enhancement of 5 levels (+5), because the offense involved more than 600 images, pursuant to USSG § 2G2.2(b)(7).

The parties agree they are free to present arguments regarding the applicability of all other provisions of the United States Sentencing Guidelines. Defendant understands, however, that at the time of sentencing, the Court is free to reject these stipulated adjustments, and is further free to apply additional downward or upward adjustments in determining Defendant's Sentencing Guidelines range.

13. Acceptance of Responsibility. At sentencing, *if* the district court concludes Defendant qualifies for a downward adjustment for acceptance of responsibility pursuant to USSG § 3E1.1(a) and the defendant's offense level is 16 or greater, the United States will make the motion necessary to permit the district court to decrease the total offense level by three (3) levels pursuant to USSG §§ 3E1.1(a) and (b), because Defendant has assisted the United States by timely notifying the United States of his intention to plead guilty, thereby permitting the United States to avoid preparing for trial and permitting the Court to allocate its resources efficiently.

14. Recommendation Regarding Imprisonment. Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B), the parties stipulate and agree to recommend that the appropriate term of imprisonment to be imposed by the Court at the time of sentencing is a term of imprisonment of 36 months on each count, to run concurrently.

Defendant understands that this recommendation is not binding on the Court and the Court may reject the recommendation of the parties and may impose any term of

1 imprisonment up to the statutory maximum penalty authorized by law. Defendant
2 further understands that he cannot withdraw his guilty plea simply because of the
3 sentence imposed by the district court. Except as otherwise provided in this plea
4 agreement, the parties are free to present arguments are regarding any other aspect of
5 sentencing.

6 **15. Registration as a Sex Offender.** Defendant stipulates and agrees that
7 based on the Sex Offender Registration and Notification Act, Title 42, United States
8 Code, Section 16911 *et seq.*, he is entering a plea of guilty to a sex offense and is a sex
9 offender as those terms are defined in the Act. Defendant further agrees that pursuant to
10 the Act, he is required to register as a sex offender, and keep the registration current, in
11 each jurisdiction where the Defendant resides, is an employee, and is a student.
12 Defendant further agrees that for initial registration purposes only, Defendant is required
13 also to register in the jurisdiction in which Defendant is convicted if such jurisdiction is
14 different from the jurisdiction of residence.

15 **16. Non-Prosecution of Additional Offenses.** As part of this Plea Agreement,
16 the United States Attorney's Office for the Western District of Washington agrees not to
17 prosecute Defendant for any additional offenses known to it as of the time of this Plea
18 Agreement based upon evidence in its possession at this time, and that arise out of the
19 conduct giving rise to this investigation, and, if applicable, agrees to move to dismiss any
20 remaining counts in the Indictment at the time of sentencing. In this regard, Defendant
21 recognizes the United States has agreed not to prosecute all of the criminal charges the
22 evidence establishes were committed by Defendant solely because of the promises made
23 by Defendant in this Plea Agreement. Defendant agrees, however, that for purposes of
24 preparing the Presentence Report, the United States Attorney's Office will provide the
25 United States Probation Office with evidence of all conduct committed by Defendant.

26 Defendant agrees that any charges to be dismissed before or at the time of
27 sentencing were substantially justified in light of the evidence available to the United
28 States, were not vexatious, frivolous or taken in bad faith, and do not provide Defendant

1 with a basis for any future claims under the "Hyde Amendment," Pub. L. No. 105-119
2 (1997).

3 **17. Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that, if
4 Defendant breaches this Plea Agreement, the United States may withdraw from this Plea
5 Agreement and Defendant may be prosecuted for all offenses for which the United States
6 has evidence. Defendant agrees not to oppose any steps taken by the United States to
7 nullify this Plea Agreement, including the filing of a motion to withdraw from the Plea
8 Agreement. Defendant also agrees that, if Defendant is in breach of this Plea Agreement,
9 Defendant has waived any objection to the re-institution of any charges that previously
10 were dismissed or any additional charges that had not been prosecuted.

11 Defendant further understands that if, after the date of this Agreement, Defendant
12 should engage in illegal conduct, or conduct that violates any conditions of release or the
13 conditions of confinement (examples of which include, but are not limited to, obstruction
14 of justice, failure to appear for a court proceeding, criminal conduct while pending
15 sentencing, and false statements to law enforcement agents, the Pretrial Services Officer,
16 Probation Officer, or Court), the United States is free under this Plea Agreement to file
17 additional charges against Defendant or to seek a sentence that takes such conduct into
18 consideration by requesting the Court to apply additional adjustments or enhancements in
19 its Sentencing Guidelines calculations in order to increase the applicable advisory
20 Guidelines range, and/or by seeking an upward departure or variance from the calculated
21 advisory Guidelines range. Under these circumstances, the United States is free to seek
22 such adjustments, enhancements, departures, and/or variances even if otherwise
23 precluded by the terms of the Plea Agreement.

24 **18. Waiver of Appellate Rights and Rights to Collateral Attacks.**
25 Defendant acknowledges that, by entering the guilty pleas required by this plea
26 agreement, Defendant waives all rights to appeal from Defendant's conviction and any
27 pretrial rulings of the Court. Defendant further agrees that, provided the Court imposes a
28 custodial sentence that is within or below the Sentencing Guidelines range (or the

1 statutory mandatory minimum, if greater than the Guidelines range) as determined by the
2 Court at the time of sentencing, Defendant waives to the full extent of the law:

3 a. Any right conferred by Title 18, United States Code, Section 3742,
4 to challenge, on direct appeal, the sentence imposed by the Court, including any fine,
5 restitution order, probation or supervised release conditions, or forfeiture order (if
6 applicable); and

7 b. Any right to bring a collateral attack against the conviction and
8 sentence, including any restitution order imposed, except as it may relate to the
9 effectiveness of legal representation.

10 This waiver does not preclude Defendant from bringing an appropriate motion
11 pursuant to 28 U.S.C. § 2241, to address the conditions of Defendant's confinement or
12 the decisions of the Bureau of Prisons regarding the execution of Defendant's sentence.

13 If Defendant breaches this Plea Agreement at any time by appealing or collaterally
14 attacking (except as to effectiveness of legal representation) the conviction or sentence in
15 any way, the United States may prosecute Defendant for any counts, including those with
16 mandatory minimum sentences, that were dismissed or not charged pursuant to this Plea
17 Agreement.

18 19. **Voluntariness of Plea.** Defendant agrees that he has entered into this Plea
19 Agreement freely and voluntarily and that no threats or promises, other than the promises
20 contained in this Plea Agreement, were made to induce Defendant to enter his plea of
21 guilty.

22 //

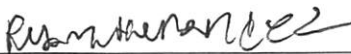
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20. **Statute of Limitations.** In the event this Agreement is not accepted by the Court for any reason, or Defendant has breached any of the terms of this Plea Agreement, the statute of limitations shall be deemed to have been tolled from the date of the Plea Agreement to: (1) thirty (30) days following the date of non-acceptance of the Plea Agreement by the Court; or (2) thirty (30) days following the date on which a breach of the Plea Agreement by Defendant is discovered by the United States Attorney's Office.

21. **Completeness of Agreement.** The United States and Defendant acknowledge that these terms constitute the entire Plea Agreement between the parties, except as may be set forth on the record at the change of plea hearing in this matter. This Agreement binds only the United States Attorney's Office for the Western District of Washington. It does not bind any other United States Attorney's Office or any other office or agency of the United States, or any state or local prosecutor.

Dated this 31st day of January, 2020.



RYAN S. HERNANDEZ

Defendant



SARA L. CAPLAN

Attorney for Defendant



ANDREW C. FRIEDMAN

Assistant United States Attorney



STEVEN T. MASADA

Assistant United States Attorney