

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Criminal Action No. 12-cr-00363-WJM

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. DAVID PAUL MOE,

Defendant.

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**PLEA AGREEMENT AND STATEMENT  
OF FACTS RELEVANT TO SENTENCING**

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The United States of America (“the government”), by and through Alecia Riewerts Wolak, Assistant United States Attorney for the District of Colorado, and the defendant, David Paul Moe, personally and through counsel Lisa Fine Moses, submit the following Plea Agreement and Statement of Facts Relevant to Sentencing pursuant to Fed. R. Crim. P. 11(c)(1)(B) and D.C.COLO.LCrR 11.1.

**I. PLEA AGREEMENT**

**A. Defendant’s Obligations**

1. **Count of Conviction:** The defendant agrees to plead guilty to Count One of the Indictment, which charges a violation of 18 U.S.C. § 2252A(a)(2), Distribution of Child Pornography. The defendant also agrees to admit the Forfeiture Allegation contained in the Indictment.

2. **Sentencing Position:** The defendant agrees, pursuant to Fed. R. Crim. P. 11(c)(1)(B), that at sentencing he will request a sentence of no fewer than 60 months imprisonment.

3. **Forfeiture of Assets:**

The defendant agrees to forfeit to the government immediately and voluntarily any and all assets and property, or portions thereof, subject to forfeiture, pursuant to Title 18, United States Code, Section 2253, whether in the possession or control of the United States or in the possession or control of the defendant or defendant's nominees. The assets to be forfeited specifically include, but are not limited to: (1) Hewlett-Packard Omni All-In-One desktop computer with serial number 4CS21102SP containing one 1TB Hitachi hard drive with serial number JP2940N01EVA1L; (2) Gateway desktop computer with serial number XCV7321007818 containing one 250GB Western Digital hard drive with serial number WCANKD616624; (3) one 500GB Seagate hard drive with serial number 6VMPH488; (4) one 500GB Western Digital hard drive with serial number WXD0A9950753; (5) one 160GB Western Digital hard drive with serial number WCAP97724690; (6) one 500GB Seagate hard drive with serial number S2W0FXFC; (7) one 500GB Seagate hard drive with serial number 5QM2G0CB; (8) one Western Digital hard drive with serial number WXE407575317; and (9) 383 optical storage disks (CDs and DVDs) containing child pornography and child erotica. The defendant agrees and consents to the forfeiture of these assets pursuant to any federal criminal, civil, and/or administrative forfeiture action. The defendant also hereby agrees that the forfeiture described herein is not excessive and, in any event, the defendant waives any constitutional claims that the defendant may have.

The defendant admits and agrees that the conduct described in the Factual Basis below

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

The defendant further agrees to take all steps necessary to locate property and to pass title to the government before the defendant's sentencing. These steps include, but are not limited to, the surrender of title, the signing of a consent decree of forfeiture, and the signing of any other documents necessary to effectuate such transfers. To that end, the defendant agrees fully to assist the government in the recovery and return to the government of any assets, or portions thereof, as described above wherever located. The defendant agrees to make a full and complete disclosure of all assets over which the defendant exercises control and those which are held or controlled by a nominee. The defendant agrees that the government is not limited to forfeiture of the property described above. If the government 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 government shall, at its option, be entitled to forfeiture of any other property (substitute assets) of the defendant up to the value of

any property described above. This Court shall retain jurisdiction to settle any disputes arising from application of this clause. The defendant agrees that forfeiture of substitute assets as authorized herein shall not be deemed an alteration of the defendant's sentence.

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

4. **Abandonment of Property:**

The United States of America and the defendant hereby agree that any property subject to forfeiture under 18 U.S.C. § 2253, seized from the defendant and currently in the custody or control of Immigration and Customs Enforcement (“ICE”) Homeland Security Investigations (“HSI”), was properly seized and that such property constitutes evidence, contraband, or fruits of the crimes to which the defendant has pled guilty. As such, the defendant hereby relinquishes all claims, title, and interest the defendant has in such property, specifically (1) Hewlett-Packard Omni All-In-One desktop computer with serial number 4CS21102SP containing one 1TB Hitachi hard drive with serial number JP2940N01EVA1L; (2) Gateway desktop computer with serial number XCV7321007818 containing one 250GB Western Digital hard drive with serial number WCANKD616624; (3) one 500GB Seagate hard drive with serial number 6VMPH488; (4) one 500GB Western Digital hard drive with serial number WXD0A9950753; (5) one 160GB Western Digital hard drive with serial number WCAP97724690; (6) one 500GB Seagate hard drive with serial number S2W0FXFC; (7) one 500GB Seagate hard drive with serial number 5QM2G0CB; (8) one Western Digital hard drive with serial number WXE407575317; and (9) 383 optical storage disks (CDs and DVDs) containing child pornography and child erotica, to the

United States of America with the understanding and consent that ICE HSI, or another agency, may cause the property described above to be destroyed forthwith without further obligation or duty whatsoever owing to the defendant or any other person.

As part of the plea agreement in this case, the defendant hereby states under penalty of perjury that the defendant was the sole and rightful owner of the previously referenced property, and that the defendant hereby voluntarily abandons all right and claim to this property.

5. **Restitution:**

Defendant acknowledges that pursuant to 18 U.S.C. § 2259(a), the Court is required to order restitution for the full amount of the victims' compensable losses as defined at 18 U.S.C. § 2259(b)(3) and(c) as may be proved by the government or stipulated to by the parties. The defendant agrees by stipulation to pay restitution not only to the victims of the offense of conviction, but also to the victims of other charged offenses. If any victim of any of the charged offenses submits a claim for restitution and voluntarily agrees to stipulate to restitution of \$3,000 per victim, the defendant agrees to stipulate to and pay restitution of \$3,000 per victim. If any victim of the charged offenses submits a claim for restitution but does not agree to a stipulated amount of restitution, that claim for restitution will be determined by the Court. At this time, victims in two identified series of child pornography have submitted restitution requests through their respective attorneys. For purposes of this paragraph, the term "victim" is defined in 18 U.S.C. § 2259(c), and the term "full amount of the victim's losses" is defined in 18 U.S.C. § 2259(b)(3). Defendant further understands the amount of loss sustained by each victim will be determined during the course of preparation of the presentence investigation report. Defendant acknowledges that the Court may not decline to award restitution because of the defendant's

economic circumstances or the fact that the victims have, or are entitled to, receive compensation for their injuries from the proceeds of insurance or any other source. Defendant agrees to cooperate in the investigation of the amount of loss and the identification of victims. Defendant understands full restitution may be ordered regardless of defendant's financial resources. Defendant understands that an unanticipated amount of a restitution order will not serve as grounds to withdraw his guilty plea. Defendant further agrees to comply with any restitution order. Defendant agrees to cooperate in efforts to collect the restitution obligation, by any means the United States deems appropriate. Defendant understands imposition or payment of restitution will not restrict or preclude the filing of any civil suit or administrative action. Defendant agrees any restitution imposed will be non-dischargeable in any bankruptcy proceeding and the defendant will not seek a discharge or a finding of dischargeability as to the restitution obligation.

**B. Government's Obligations**

1. **Dismissal of Charges:** If the defendant enters an unconditional plea of guilty to Count One of the Indictment and otherwise fulfills all obligations outlined above, the government will not charge the defendant with any other violations of law now known to the United States Attorney's Office for the District of Colorado and will dismiss Counts Two and Three of the Indictment at the time of sentencing.

2. **Sentencing Position:** Provided the guideline range determined by the Court is consistent with or higher than that calculated herein, the government agrees, pursuant to Fed. R. Crim. P. 11(c)(1)(B), to recommend a sentence of 210 months imprisonment, which the parties agree is at the bottom end of the sentencing guideline range as calculated herein.

3. **Acceptance of Responsibility**: If the defendant engages in no conduct that otherwise implicates § 3C1.1, the government agrees that a 3 point reduction in the offense level for acceptance of responsibility is appropriate and agrees to make the appropriate motion at sentencing.

4. **Restitution**: The government agrees to propose to each victim submitting a claim for restitution that he or she consider stipulating to restitution of \$3,000 per victim. The decision about whether to enter such a voluntary stipulation, or to claim some other amount of restitution, will remain with each victim.

**C. Effect of Withdrawal from Plea Agreement**

The parties stipulate and agree that if the defendant moves to withdraw his guilty plea and successfully withdraws his plea, either in the district court or on appeal, this agreement will become null and void. If the defendant, at any time after judgment is entered, obtains dismissal, reversal or remand of the count of conviction for any reason, then this agreement will be null and void. The parties also understand and acknowledge that if either party acts inconsistently with its obligations under this agreement, this breach may provide the other party grounds to unilaterally withdraw from the agreement. If the agreement becomes null and void, the defendant agrees that he shall assert no claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal procedure, or any other federal rule, that statements made by the defendant pursuant to this agreement, including during the plea colloquy, or any leads derived therefrom, should be suppressed or are inadmissible at any trial, hearing, or other proceeding. If the plea agreement becomes null and void for any reason, then by this agreement of the parties, the defendant expressly waives any and all claims or rights to

have this agreement enforced. In such event, the defendant waives any objections, motions, or defenses based upon the Statute of Limitations, the Speedy Trial Act, or Due Process Clause, that would limit or restrict the reinstatement of original charges or the filing of additional charges, surrendered or dismissed as part of the consideration given by the government in this agreement.

## **II. STATUTORY PENALTIES**

If it is determined by the Court that the defendant does not have a prior conviction as described below, the applicable maximum statutory penalty for a violation of 18 U.S.C. § 2252A(a)(2) is not less than 5 years, nor more than 20 years imprisonment, not more than a \$250,000 fine, or both. 18 U.S.C. § 2252A(b)(1).

The parties do not believe the following provision is applicable, but if it is determined by the Court that the defendant has a prior conviction under Chapter 110, 71, 109A, 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, or sex trafficking of children, the penalty for a violation of 18 U.S.C. § 2252A(a)(2) is not less than 15 years nor more than 40 years imprisonment, not more than \$250,000 fine or both.

Pursuant to 18 U.S.C. § 3583(k), because the defendant is pleading guilty to a violation of 18 U.S.C. § 2252A(a)(2), the term of supervised release is not less than 5 years and up to a term of life. The defendant will also be required to pay a \$100 special assessment fee.



### **III. COLLATERAL CONSEQUENCES**

The conviction may cause the loss of civil rights, including but not limited to the right to possess firearms, vote, hold elected office, and to serve on a jury. If the defendant is not a United States citizen, this conviction will result in the defendant's removal from the United States once he has completed any sentence of imprisonment.

#### **A. Violations of Supervised Release**

A violation of any conditions of supervised release may result in a separate prison sentence. If a condition of release is violated, the defendant may be sentenced to up to 2 years without credit for pre-release imprisonment or time previously served on post-release supervision; if the defendant commits any criminal offense under Chapter 109A, 110, or 117, or Title 18, United States Code, Sections 1201 or 1591, for which imprisonment for a term longer than 1 year can be imposed, the defendant shall be sentenced to not less than 5 years and up to the maximum term of imprisonment for the offense, as set forth above.

#### **B. Registration under the Sex Offender Registration and Notification Act**

The defendant has been advised and he understands that under the Sex Offender Registration and Notification Act, a federal law, and pursuant to 18 U.S.C. § 3583(d), upon his release from prison and as a condition of his supervised release, he will be subject to federal and state sex offender registration requirements, and that those requirements may apply throughout his life. The defendant understands he must register as a sex offender and must keep the registration current with the state sex offender registration agency in each of the following jurisdictions: where he was convicted, where he resides, where he is employed, and where he is a student. The defendant understands that the requirements for registration include providing his

name, residence address, and the names and addresses of any places where he is or will be an employee or a student, among other information. The defendant further understands that the requirement to keep the registration current includes informing at least one jurisdiction in which he resides, is an employee, or is a student not later than three business days after any change of name, residence, employment, or student status. The defendant shall comply with requirements to periodically verify in person his sex offender registration information. The defendant has been advised, and understands, that failure to comply with these obligations subjects him to prosecution for violations of applicable state law or 18 U.S.C. § 2250, a federal law, which is punishable by a fine or imprisonment, or both. Defendant further understands that, under 18 U.S.C. § 4042(c), notice will be provided to certain law enforcement agencies upon release from confinement following conviction. Defendant shall provide proof of registration to the Probation Officer within 72 hours of release from imprisonment.

#### **IV. ELEMENTS OF THE OFFENSE**

The parties agree that the elements of the offense to which this plea is being tendered, the crime of Distribution of Child Pornography, 18 U.S.C. § 2252A(a)(2), are as follows:

*One:* Defendant knowingly distributed child pornography;

*Two:* That the child pornography has been transported in or affecting interstate or foreign commerce by any means including by computer, or by a facility of interstate or foreign commerce by any means including by computer; and

*Three:* That at the time of such distribution, defendant knew the material he was

distributing constituted or contained child pornography.<sup>1</sup>

“Distribution” includes making child pornography available to others to download via the Internet.<sup>2</sup>

“Child pornography” is defined as any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct.<sup>3</sup>

“Sexually explicit conduct” means actual or simulated:

1. sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; or
2. bestiality; or
3. masturbation; or
4. sadistic or masochistic abuse; or
5. lascivious exhibition of the genitals or pubic area of any person.<sup>4</sup>

#### **V. STIPULATION OF FACTS RELEVANT TO SENTENCING**

The parties agree that there is a factual basis for the guilty plea that the defendant will tender pursuant to this plea agreement. That basis is set forth below. Because the Court must, as part of its sentencing methodology, compute the advisory guideline range for the offense of

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<sup>1</sup> 18 U.S.C. § 2252A(a)(5)(B); Eleventh Circuit Pattern and Model Jury Instruction No. OI 75.4 (2003) [modified]. The Tenth Circuit does not have a pattern instruction on this crime.

<sup>2</sup> *United States v. Shaffer*, 472 F.3d 1219, 1223 (10<sup>th</sup> Cir. 2007).

<sup>3</sup> 18 U.S.C. § 2256(8)(A).

<sup>4</sup> 18 U.S.C. § 2256(2)(A).

conviction, consider relevant conduct, and consider the other factors set forth in 18 U.S.C. § 3553, additional facts may be included below which are pertinent to those considerations and computations. To the extent the parties disagree about the facts set forth below, the stipulation of facts identifies which facts are in dispute.

The statement of facts herein does not preclude either party from presenting and arguing, for sentencing purposes, additional facts or factors not included herein, which do not contradict the facts to which the parties have stipulated, and which are relevant to the guideline computation under § 1B1.3, or to the sentencing factors found in § 1B1.4; 18 U.S.C. § 3553(a), or to this Court's overall sentencing decision. In "determining the factual basis for the sentence, the Court will consider the stipulation of the parties, together with the results of the presentence investigation, and any other relevant information." §6B1.4 Comm.

The parties agree that the government's evidence would be:

On or about May 4, 2012, a detective with the Loveland Police Department and member of the Internet Crimes Against Children ("ICAC") Task Force, while working in an undercover capacity, logged on to the Internet and accessed a peer-to-peer file sharing program. Peer-to-peer ("P2P") is a type of Internet network that allows a group of computer users with the same networking program to connect with each other and directly access files from one another's hard drives (file sharing). The user must first download and execute a P2P networking program on his/her computer. After launching the program, the program searches for other users or "peers". Once the computer finds another network member on-line, it will connect to that user's connection and file sharing can begin. In general, P2P software allows the user to specify a folder on the computer in which to place files to be shared with other users on a P2P network.

P2P software usually allows the user to search for files using keywords.

A commonly used P2P client software program is eMule. eMule is a free Microsoft Windows P2P client software program for the eDonkey file sharing network. Typically, when a user launches the eMule client program, the client program will likely connect to an eDonkey network server. Once connected to an eDonkey server, information about the files the user is sharing is provided to that server. Such information may include the file's eDonkey hash value, the file's size, and parsed keyword terms from the file name. The eDonkey network uses the hash value to uniquely identify files on the network.<sup>5</sup>

On or about May 4, 2012, the undercover detective attempted to download a digital file believed to contain child pornography from the remote host computer located at Internet Protocol ("IP") Address 174.51.59.13.<sup>6</sup> The detective was able to connect directly to the remote host computer located at IP Address 174.51.59.13 and was placed in queue to receive the file. The detective's client program remained in queue to receive the aforementioned file until on or about May 6, 2012, when the connection was terminated by the user client at IP Address 174.51.59.13. The detective was unable to complete this download and did not receive enough of the file for it to be played or viewed.

However, using investigative techniques and the hash value of the file that the defendant made available, the detective was able to determine that the defendant was offering a child

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<sup>5</sup> A hash value is in essence a "digital fingerprint." For example, a hash value can be taken with regard to an individual file. A known file that has been "hashed" can be reliably identified through its hash value; an identical copy of the file will have exactly the same hash value.

<sup>6</sup> A user accesses the Internet from a computer network or Internet Service Provider ("ISP") that connects to the Internet. The ISP assigns each user an Internet Protocol ("IP") Address. Each IP address is unique. Every computer or device on the Internet is referenced by a unique IP address the same way every telephone has a unique telephone number.

pornography file for distribution on the P2P network. The detective viewed portions of the movie file that the defendant made available for distribution, which was approximately 33 minutes and 46 seconds in length. The movie depicts multiple nude minor females on or near a bed masturbating with their fingers and inserting various dildos, sex toys, and other objects, such as a wine bottle-like object, into their vaginas. The video concludes with a minor female performing oral sex on a nude minor female lying on a bed. It was later determined that the IP address offering this child pornography file for distribution resolved to the defendant's residence in Denver, Colorado.

A federal search warrant was obtained for the defendant's Denver, Colorado, residence by ICE HSI and was executed on July 24, 2012. During the execution of the search warrant, several items containing child pornography were seized: a Hewlett-Packard Omni All-In-One desktop computer; a Gateway desktop computer; numerous external hard drives; and 383 optical storage disks (CDs and DVDs) containing child pornography and child erotica. All of the items seized belong to the defendant. The Hewlett-Packard desktop computer was powered off at the time of the search warrant execution and was connected to the Internet through a wired connection.

During the search warrant, the defendant agreed to speak with law enforcement and provided a detailed statement during which he admitted to the distribution, receipt, and possession of child pornography. The defendant was advised of and waived his *Miranda* rights. He stated that he was the sole resident of the home. He stated that he used P2P programs and the Internet to distribute and receive child pornography and that he was running two P2P programs: eDonkey and WinMX. The defendant acknowledged that he was sharing the child pornography

he collected with others in order to acquire more child pornography. In admitting to possessing child pornography, the defendant estimated that he possessed approximately 10,000 sexually explicit images and videos, and that 2% depicted children under the age of 18. The defendant acknowledged creating the folder on his computer's desktop that contained the video files he was sharing.

During the interview, the defendant stated that the type of sexually explicit behavior by minors most appealing to him was masturbation and naked bodies. The defendant stated that the reason he had so much child pornography is because it always has to be "fresh." The defendant stated that he deletes images of child pornography that he doesn't want to keep, namely pictures of children younger than three or four years old. The defendant stated that "new" and "6yo" were examples of the key words he used to search the P2P network.

During the interview, the defendant was shown portions of the movie file that was made available to the undercover detective in May 2012. The defendant recognized and identified the movie file as one he possessed, but did not remember where it was on his computer or where he got it, though he stated it was through a "video sharing site."

The defendant stated that he had been a teacher at Paddington Station preschool for the last 18 years. At the time the search warrant was executed, the defendant taught Cultural Rhythms/Enrichments (3-5 year olds) and had been the Director of Enrichments and Before and After-School Care programs since 2005.

A forensic examination was conducted on the defendant's computers, external hard drives, CDs, and DVDs. Evidence of distribution and receipt of child pornography was found on the defendant's two computers and an external hard drive, as described more fully below.

Evidence of child pornography possession was found on the defendant's computers, external hard drives, and 383 optical storage disks (CDs and DVDs). At least 800,000 child pornography/erotica images and over 13,000 child pornography/erotica videos were located on the defendant's computers and computer media, including the video that had been made available to the undercover detective in May 2012.

The forensic examination revealed the presence of the eMule and WinMX file sharing programs on the defendant's Hewlett-Packard desktop computer. The forensic examination also reflected the presence of MxMonitor, which is a program designed to work in conjunction with P2P file sharing programs such as eMule and WinMX. According to the forensic examination, the defendant used the Internet to distribute, receive, and attempt to distribute and receive child pornography from at least April 28, 2012, to July 22, 2012. The majority of the child pornography downloads and uploads were video files. The defendant downloaded, uploaded, and attempted to download and upload more than 300 files containing child pornography during this time period. The following are examples of search terms used by the defendant to locate child pornography using a P2P network: "2012 PRIVATE 7YO"; "¡NEW! 4YO LISA"; "NATALYA 5YO"; PTHC 2012"; and "PTHC WEBCAM 2012".

A sampling of the child pornography files the defendant used the Internet to distribute and/or make available to other users for download on the P2P network are described as follows:

- (1) **"2012 - hayley1.MPG"**— This video begins with a depiction of a prepubescent, minor girl, who is lying face-down on what appears to be a bed with a pink blanket and polka dot pillow case. She is wearing a light blue shirt and is nude from the waist down. The video then focuses in on the child's nude buttocks and vagina. What appears to be a male's hand touches the minor girl's vagina and spreads apart her labia with his first and second fingers. A gold band is observed on what appears to be the male's left-hand ring finger. This video is approximately 1 minute in length. This video was distributed on the P2P network by the defendant on at least one



occasion.

- (2) **“2012-privatevid-hv106 more like (melinda assfuck vid lightened).mpg”**— This video depicts a nude, prepubescent, minor girl who is less than 12 years old. The minor girl is lying on her back with her legs spread apart; her vagina is exposed. An adult male is penetrating the minor girl’s anus with his penis. This video is approximately 1 minute and 2 seconds in length. This video was distributed or made available to another user for download on the P2P network by the defendant on at least one occasion.
- (3) **“2012 Rosemary 8yo sucks dad - SDC10676.avi”**— This video depicts a prepubescent, minor girl who is nude from the waist up and lying on her side. An adult male is standing in front of her; he inserts his erect penis in her mouth. While he continues to hold the head of his penis in the minor girl’s mouth, he masturbates himself with his hand. The male then ejaculates on the minor girl’s chest, face, and arm. This video is approximately 47 seconds in length. This video was distributed on the P2P network by the defendant on at least one occasion.
- (4) **“2012-05 Predator.AVI”**— This video appears to be two different videos spliced together. The video begins with a banner described as a black background with a white square. An animated picture of a girl with her head facing down and her hands over her nose and mouth appears within the white square. In large pink letters the word “PREDATOR” is written across the picture of the girl. The words “A predator edit” appears above the square and “torchat: ayjsfrpmcels6n6f” is written underneath. The video depicts a nude, minor girl who is blindfolded and performing oral sex on an adult male. The minor has been previously identified by law enforcement. The male then takes the girl’s hand and places it on his penis. The girl masturbates his penis until ejaculation. The girl then removes the blindfold. The second portion of the video depicts the same minor girl performing oral sex on an adult male and then masturbating his penis with her hand until he ejaculates. This video is approximately 4 minutes and 5 seconds in length. This video was distributed or made available to another user for download on the P2P network by the defendant on at least one occasion.

The forensic examination reflected that the child pornography possessed by the defendant was well-organized and archived. The examination revealed that the defendant possessed child pornography for at least 10 years, based in part on file creation dates. Further, the examination revealed that the defendant distributed and received child pornography since at least 2007, based in part on a review of the eMule and MxMonitor logs on the Gateway desktop computer. The

defendant's child pornography collection included pornographic depictions of children as young as toddlers. A sampling of child pornography files possessed by the defendant are described as follows:

- (1) **"a7547\_1459\_zenll.jpg"**— This image depicts a prepubescent, minor girl lying nude on her back on a plaid blanket. The minor has been previously identified by law enforcement. The minor's legs are spread apart; a nude adult male has positioned himself between her legs and is inserting his penis into her vagina.
- (2) **"a79544\_1012\_lnfbj.jpeg"**— This image depicts a nude, prepubescent, minor girl, approximately six years of age or younger, who is lying on white blankets with her legs up in the air. The minor girl's legs are spread apart and her vagina is exposed. An adult male is standing in the front of the minor and has positioned himself between her legs, holding his penis with his right hand. He is holding the girl's right arm with his other hand. It appears the male has ejaculated on the girl's abdomen.
- (3) **"Babyshivid3Way.mpg"**— This video depicts an adult female, with what appears to be black straps on her torso, lying on her back with her legs spread apart. It appears her hands and legs are restrained. A nude, prepubescent, minor girl, approximately six years of age or younger, has been positioned to stand between the woman's legs. Duct tape has been placed over the minor girl's mouth. An adult male is standing behind the minor girl; he takes the minor's hand and inserts it into the adult female's vagina. The male controls the minor's hand and arm by moving it in and out of the adult female's vagina. The adult male then straddles the adult female, inserts his erect penis in her mouth, leans over her body, and reaches for the minor's hand, which he continues to move in and out of the woman's vagina. The adult male then picks up the minor girl and places the minor's genital area near the woman's face. The video ends with the adult male straddling the minor girl, who is lying on her back. The adult male holds his erect penis, forcibly inserts it into her vagina, and engages in sexual intercourse with the minor girl. This video is approximately 2 minutes and 8 seconds in length.
- (4) **"Stephanie-3yo-pussyfuck.mpg"**—This video depicts a nude, prepubescent, minor girl who is approximately six years of age or younger. The minor girl is lying on her back with her legs spread apart. A nude, adult male has positioned himself between her legs. The adult male initially holds down the minor girl's left leg then adjusts and holds her by the waist while he inserts his penis into her vagina. He pulls out his penis and ejaculates onto the minor girl's genital and lower abdominal area. This video is approximately 43 seconds in length.

Copies of all of the images and videos depicting child pornography were provided to the National Center for Missing and Exploited Children (“NCMEC”). NCMEC reports that 46,699 of the image files and 1,004 of the video files submitted to NCMEC depict minor victims previously identified by law enforcement. The images and videos depict 155 identified victims from 151 identified child pornography series, including the identified victim “Cindy” and at least one victim from the “8 kids” series. Most of the images and videos depicting identified minor victims were produced outside the State of Colorado.

Defendant admits that the images and videos he distributed were child pornography as defined in 18 U.S.C. § 2256(8)(A); that he knew they were child pornography before distributing them; that the material involved minors who had not attained the age of 12 years; that the offense involved distribution for the receipt, or expectation of receipt, of a thing of value, but not for pecuniary gain; that the offense involved material portraying sadistic or masochistic conduct or other depictions of violence; that he used a computer to commit the offense; that the offense involved more than 600 images; and that these images and videos, using a means or facility of interstate or foreign commerce were shipped or transported in or affecting interstate or foreign commerce before the defendant possessed and distributed them in Colorado.

#### **VI. ADVISORY GUIDELINE RANGE CALCULATION**

The parties understand that the imposition of sentence in this case is governed by Title 18, United States Code, Section 3553. In determining the particular sentence to be imposed, the Court is required to consider seven factors. One of those factors is the sentencing range computed by the Court under advisory guidelines issued by the United States Sentencing Commission.

In order to aid the Court, the parties set forth below their estimate of the advisory guideline range called for by the United States Sentencing Guidelines. To the extent that the parties disagree about the guideline computations, the recitation below identifies the matters which are known to be in dispute at this time.

The defendant agrees and consents that facts that determine the offense level will be found by the Court, by a preponderance of the evidence, and that the Court may consider and use any reliable evidence, including hearsay and the facts outlined in the Presentence Report. The parties further agree that the stipulation of facts in this plea agreement will also be used by the Court in determining the sentencing guideline range.

The parties provide the following estimated guideline range for the Court's consideration pursuant to 18 U.S.C. § 3553(a)(4). The range and calculation of that guideline range is an estimate only, and the parties are not bound if the probation department determines that a different guideline range applies. Any estimation by the parties regarding the appropriate advisory guideline application does not limit the positions the parties may take at sentencing on the appropriate sentence for the Court to impose; rather, those limits are set by Part I of this plea agreement. The Court may impose any sentence, up to the statutory maximum, regardless of any advisory guideline range computed, and the parties agree that the Court is not bound by any position of the parties.

The parties understand that the Court is free, upon consideration and proper application of all 18 U.S.C. § 3553 factors, to impose that reasonable sentence which it deems appropriate in the exercise of its discretion and that such sentence may be within the advisory guideline range, less than that called for by the advisory guidelines (in length or form), or above the advisory

guideline range up to and including imprisonment for the statutory maximum term, regardless of any computation or position of any party on any 18 U.S.C. § 3553 factor.

To the extent the parties disagree about the estimated guideline sentencing factors, the computations below identify the factors which are known at this time to be in dispute. § 6B1.4(b).

**Offense Level:** The base guideline is § 2G2.2.

- A. The base offense level for this offense is **22**. § 2G2.2(a)(2).
- B. Because the pornographic material involved a prepubescent minor and minors who had not attained the age of 12, there is an increase of +2 levels. § 2G2.2(b)(2).
- C. Because the offense involved distribution for the receipt, or expectation of receipt, of a thing of value, but not for pecuniary gain, increase by +5. § 2G2.2(3)(B).
- D. Because the offense involved material that portrays sadistic or masochistic conduct or other depictions of violence, there is an increase of +4 levels. § 2G2.2(b)(4).
- E. Because the offense involved the use of a computer or an interactive computer service for the possession, transmission, receipt, or distribution of the material, there is an increase of +2 levels. § 2G2.2(6).
- F. Because the offense involved 600 or more images, increase by +5 levels. § 2G2.2(7)(D).
- G. No victim-related, role-in-offense, obstruction and/or multiple count adjustments apply.
- H. Defendant should receive a decrease in the offense level by -2 based upon his acceptance of responsibility. § 3E1.1(a). Defendant should also receive a decrease in the offense level by -1 for timely notifying the government. § 3E1.1(b). At sentencing, the government will make the appropriate motion for the one-point reduction.
- I. The adjusted offense level is **37**.

**Criminal History Category**

- A. The parties acknowledge and agree that the estimation regarding Defendant's criminal history is tentative. Defendant acknowledges that the criminal history will be further investigated by the United States Probation Department and ultimately determined by the Court. Defendant further acknowledges that any additional facts regarding the criminal history can greatly affect the final guideline range and result in a longer term of

imprisonment. Based upon the facts known at this time regarding Defendant's criminal history, the parties believe that Defendant falls within Criminal History Category ("CHC") I. § 4A1.1.

- B. The career offender and repeat and dangerous sex offender adjustments tentatively do not apply. § 4B1.1; § 4B1.5.

**Guideline Ranges**

- C. The guideline range resulting from the estimated offense level of 37 and the estimated criminal history category of I is 210-262 months. However, the imprisonment range could be from 210 months (bottom of CHC I) to life (top of CHC VI).
- D. Pursuant to § 5E1.2, assuming the estimated offense level of 37, the fine range for this offense would be \$20,000 to \$200,000, plus applicable interest and penalties.
- E. Pursuant to 18 U.S.C. § 3583(k), and § 5D1.2(b)(2), if the Court imposes the term of supervised release, that term shall be at least 5 years but not more than life.

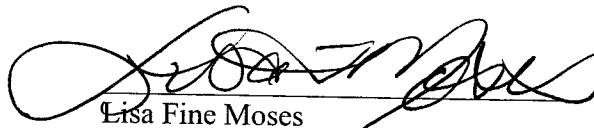
**VII. ENTIRE AGREEMENT**

This document states the parties' entire agreement. There are no other promises, agreements, side agreements, terms, conditions, understandings or assurances, express or implied. In entering this agreement, neither the government nor the defendant have relied, or are relying, on any terms, promises, conditions or assurances not expressly stated in this agreement.

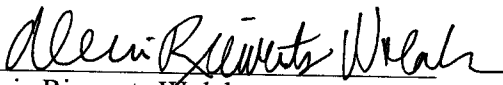
Date: 5/23/13

  
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DAVID PAUL MOE  
Defendant

Date: 5-23-13

  
\_\_\_\_\_  
Lisa Fine Moses  
Attorney for Defendant

Date: May 30, 2013

  
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Alecia Riewerts Wolak  
Assistant U.S. Attorney